Securities and Exchange Commission
PHILIPPINES

**MARKETS AND SECURITIES REGULATION DEPARTMENT**
**SPECIAL HEARING PANEL**

**IN THE MATTER OF:**

**R&L INVESTMENT, INC., ET. AL.**
x----------------------------------------------------x

**SEC MSRD CASE NO. MSRD-MID-2020-1**

**R&L INVESTMENT, INC.,**
**JOSEPH LEE (*President*)**
**LUCY LINDA LEE (*Nominee*)**
**JONATHAN LEE (*Associated Person*)**

Respondents.
x----------------------------------------------------x

**June 11, 2021**

**To:** 6/11/2021

**ASSISTANT DIRECTOR ADAN EVAN O. PASCUA**
Markets and Securities Regulation Department
Securities and Exchange Commission
Secretariat Building, PICC Complex,
Roxas Boulevard, Pasay City.

**R&L INVESTMENT, INC.,**
No. 671 Lee Street, Addition Hills, Mandaluyong City.

**JOSEPH LEE**
No. 671 Lee Street, Addition Hills, Mandaluyong City.

**LUCY LINDA LEE (*Nominee*)**
No. 671 Lee Street, Addition Hills, Mandaluyong City.

**JONATHAN LEE (*Associated Person*)**
No. 671 Lee Street, Addition Hills, Mandaluyong City.

Meljohn Aborera
06/14/21

**SANTIAGO CRUZ AND ASSOCIATES LAW OFFICES**
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SANTIAGO CRUZ AND ASSOCIATES
LAW OFFICES
RECEIVED
JUN 14 2021
Time: 12:45pm By: Cathy

**GREETINGS:**

Please take notice that on June 11, 2021, a Decision, copy hereto attached, was issued in the above-entitled case, the original of which is now on file with the Commission.

**MARLON G. FACUN**
SHP Chairman

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
SECURITIES AND EXCHANGE COMMISSION
PASAY CITY

**MARKETS AND SECURITIES REGULATION DEPARTMENT**

**SPECIAL HEARING PANEL**

**IN THE MATTER OF**

**R & L INVESTMENTS, INC.**
x---------------------------------------------------x

**SEC MSRD CASE NO. MSRD-MID-2020-1**

**R & L INVESTMENTS, INC.**
**JOSEPH LEE (President)**
**LUCY LINDA LEE (Nominee and Salesman)**
**JONATHAN LEE (Associated Person)**

**Respondents.**
x---------------------------------------------------x

# DECISION

Before the Hearing Panel is the **Formal Charge**, dated September 2020, issued by Investigation and Review Committee ("IRC")[1] against **R&L Investments, Inc.** ("R&L"), a corporation duly registered under the laws of the Philippines, a licensed Broker Dealer, with business address at No. 671 Lee Street, Addition Hills, Mandaluyong City and its officers and employees, namely, **Joseph Lee, Lucy Linda Lee**[2] and **Jonathan Lee** specifically charging Respondents for violation of the following provisions of the Securities Regulation Code ("SRC") and the 2015 Implementing Rules and Regulations of the SRC ("2015 SRC Rules" or "IRR"), as follows:

## Charges against R&L Investments, Inc.

1. **Rule 28.1.5.** Registration of Salesmen and Associated Persons of Brokers Dealers
2. **Rule 30.2.1.** Ethical Standards Rules

[1] composed of officers and personnel of the Markets and Securities Regulation Department ("MSRD") of the Securities and Exchange Commission
[2] Passed away on December 14, 2020 as per Death Certificate (Annex A of Respondents' Position Paper)

3. **Rule 30.2.1.2.3.** Capabilities
4. **Rule 30.2.6.** Supervision
5. **Rule 30.2.1.2.4.** Information About Clients
6. **Rule 34** Segregation and Limitation of Functions of Members, Brokers and Dealers
7. **Rule 52.1** Accounts and Records, Reports, Examination of Exchanges, Members, and Others
8. **Rule 52.1.6.** Customer Account Information Rule
9. **Rule 52.1.10.** Monthly Securities Counts by Brokers Dealers

**Charges against Mr. Joseph Lee**
**(R&L's President)**

1. **SRC Sec. 26.** Fraudulent Transactions
2. **Rule 28.1.5.** Registration of Salesmen and Associated Persons of Brokers Dealers
3. **Rule 30.2.1.** Ethical Standards Rules
4. **Rule 30.2.1.2.3.** Capabilities
5. **Rule 30.2.1.2.4.** Information About Clients
6. **Rule 30.2.6.** Supervision
7. **Rule 34** - Segregation and Limitation of Functions of Members, Brokers and Dealers
8. **Rule 52.1** - Accounts and Records, Reports, Examination of Exchanges, Members, and Others
9. **Rule 52.1.6.** Customer Account Information Rule
10. **Rule 52.1.10.** Monthly Securities Counts by Brokers Dealers

**Charges against Mr. Jonathan Lee**
**(R&L's Associated Person)**

1. **SRC Sec. 26.** Fraudulent Transactions
   **SRC Sec. 54.** Investigative Sanctions
2. **Rule 28.1.5.** Registration of Salesmen and Associated Persons of Brokers Dealers
3. **Rule 30.2.1.** Ethical Standards Rules
4. **Rule 30.2.1.2.3.** Capabilities
5. **Rule 30.2.1.2.4.** Information About Clients
   **Sec. 30.2.1.2.4.** Information About Clients
6. **Rule 30.2.6.** Supervision
7. **Rule 34** - Segregation and Limitation of Functions of Members, Brokers and Dealers
8. **Rule 52.1.1.** Books and Records Rule
9. **Rule 52.1.6.** Customer Account Information Rule
10. **Rule 52.1.10.** Monthly Securities Counts by Brokers Dealers

**Charges against Ms. Lucy Linda Lee**[3]
**(R&L's Nominee Salesman)**

1) **SRC Sec. 26.** Fraudulent Transactions

[3] Passed away on December 14, 2020 as per Death Certificate (Annex A of Respondents' Position Paper)

**SRC Sec. 54.** Administrative Sanctions
2) **Rule 28.1.5.** Registration of Salesmen and Associated Persons of Brokers Dealers
3) **Rule 30.2.1.** Ethical Standards Rules
4) **Rule 30.2.1.2.3.** Capabilities
5) **Rule 30.2.1.2.4.** Information About Clients
**Sec. 30.2.1.2.4.** Information About Clients
6) **Rule 30.2.6.** Supervision
7) **Rule 34** - Segregation and Limitation of Functions of Members, Brokers and Dealers
8) **Rule 52.1.1.** Books and Records Rule
9) **Rule 52.1.6.** Customer Account Information Rule
10) **Rule 52.1.10.** Monthly Securities Counts by Brokers Dealers

## Antecedent Facts and Proceedings

On 14 November 2019, the Securities and Exchange Commission ("SEC" or "Commission") in SEC En Banc Case No. MP-2019-001 ordered the Capital Markets Integrity Corporation ("CMIC') to take over the operations of R&L Investments, Inc. ("R&L"), pursuant to Section 33.1 (d) of the SRC and Rule 33.1.1.26.3 of the SRC-IRR.

The Take Over Order was issued due to the deterioration of the financial condition of R&L rendering it incapable of meeting the demands of its client security holders and the payment of their share proceeds.

Consequently, the Commission directed the MSRD to conduct a thorough investigation of the incident to determine the various violations of the securities laws possibly committed and to institute, among others, the appropriate administrative charges against all the responsible persons, including R&L, its officers and employees.

Pursuant to the direction, MSRD created the IRC. Hence, subpoenas were issued by IRC separately to Venture Securities, Inc. ("Venture Securities" or "VSI"), R&L, Marlo Moron and Julieto Sulapas, and the investigative proceedings were conducted on 9 December to 12 December 2019. The IRC conducted a conference with R&L, Joseph Lee, Jonathan Lee and Lucy Linda Lee on December 9 and 12, 2019.

On 5 February 2020, the SHP composed of the undersigned was created to hear, resolve and decide matters relative to the case.

After conducting the investigation, the IRC formally instituted the Formal Charge dated September 2020 against the Respondents. The Formal Charge was received by the respondents on 7 September 2020.

## FORMAL CHARGE

Briefly, the Formal Charge alleges that:

1) Marlo Moron transferred the shares belonging to R&L's clients to another broker dealer via EQ trade. EQ trade happens when shares are transferred from one broker dealer to another broker dealer **without change in beneficial ownership** [4].

2) In order to complete the transfer, the PDC system requires two credentials from the sending and receiving broker: (a) the Maker who would input the order to transfer, and (b) the Checker who would validate the transfer[5].

3) As revealed during the investigative proceedings, Lucy admitted that she gave Moron the necessary maker and checker credentials for the PCD system. Likewise, Jonathan, admitted that he knew this but he did not take any action on such authority given by Lucy to Moron[6]. On the other hand, Joseph Lee, the President of R&L since 2018[7], admitted during the investigative proceedings that he has no knowledge of the daily operations of the company[8].

4) In addition to the having the maker checker credentials, Moron was also given viewing access to the back-office system of R&L. As a result, he was able to access and acquire information pertaining to the shareholdings of all the R&L clients and to tamper the BP portfolio reports to match the back-office records to hide his fraudulent schemes[9].

5) These acts pave the way for Moron to employ the fraudulent schemes that resulted in the loss of client shares of R&L[10].

6) Based on the documents submitted by R&L and Venture Securities ("Venture"), a total of Php1,130,508,721.09 worth of shares in R&L were transferred to the "Julieto Sulapas account" account in Ventures through EQ trade transactions executed by Moron for the period of 2012 to 2019[11].

7) However, a comparison of the Julieto Sulapas ledger in R&L with that of Venture revealed that the shares transferred to the "Julieto Sulapas account" in Venture do not exist or were not recorded in the "Julieto Sulapas account" in R&L. Therefore, the shares transferred to the "Julieto Sulapas account" in Venture came from the accounts of the other clients of R&L[12].

**ANSWER**

The Respondents filed their Answer with Entry of Appearance[13] ("Answer") to the Formal Charge and, on one hand, admitted the following allegations in the Formal Charge:

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[4] Paragraph 4, Formal Charge
[5] Paragraph 4, Formal Charge
[6] Paragraph 5, Formal Charge
[7] Paragraph 12, Formal Charge
[8] Paragraph 13, Formal Charge
[9] Paragraph 7, Formal Charge
[10] Paragraph 6, Formal Charge
[11] Paragraph 16, Formal Charge
[12] Paragraph 17, Formal Charge
[13] Attached are copies of the following documents:

Investigation was commenced by the Securities and Exchange Commission in light of the Take Over Order, dated 14 November 2019, due to the deterioration of the financial condition of R&L Investments, Inc. [sic] render it incapable of *meeting the demands of the latter's client security holders* and *payment of their share proceeds*[14].

The deterioration was brought about by the fraudulent schemes allegedly committed by one Marlo Moron that resulted to the loss of allegedly Php700 million worth of client shares of R&L Investments, Inc[15].

Subpoenas were issued to R&L Investment, Inc., Venture Securities, Inc., Marlo Moron and Julieto Sulapas, and investigative proceedings were conducted on 9 December to 12 December 2019[16].

On the other hand, Respondents categorically denied the other allegations in the Formal Charge for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the same and/or for the following special and affirmative defenses:

1. Lack of authority over respondents R&L Investments, Inc. and Joseph Lee

2. Improper charge of fraud

3. Improper charges of violating rules on control measures, supervision duties, segregation of duties, ethical standards, books and records, customer information, and independent audit

In view of Respondents foregoing answer to the formal charge, a clarificatory conference was held on February 24, 2021. Both Petitioner and Respondents (except of Lucy Linda Lee who passed away on December 14, 2020), together with counsel, appeared during the conference.

During the conference, the parties were directed to submit their respective position papers within ten (10) days from February 24, 2021 and to furnish each other with copies thereof.

Both were likewise given a period of five (5) days from receipt of the respective position paper of the other party to file their comments/replies thereto. After the lapse of said date, with or without the position paper or comments/replies, the case was deemed submitted for resolution.

Complainant and Respondents in compliance with the aforementioned order, submitted their respective position papers both substantially reiterating their arguments in their previous

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(1) Inquest Resolution dated 7 November 2019, (2) Investigation Data Form dated 6 November 2019, (3) Letter dated 6 November 2019 from the Philippine National Police Anti-Cybercrime Group, (4) Joint Affidavit of Arrest dated 6 November 2919 (5) Supplemental Complaint Affidavit dated 18 November 2019, and (6) Reply dated 18 December 2019, in connection with the case filed by respondents against Moron before the Office of Prosecutor – Mandaluyong City.

[14] Paragraph 1, Answer (with Entry of Appearance)

[15] ibid

[16] ibid

submissions and submitted additional documents to support their allegations. Both parties also filed their comments/reply against each other's position paper.

**PETITIONER'S POSITION PAPER**

In its Position Paper, Petitioner alleged and maintained the following:

1) Respondents cannot claim lack of knowledge or information as the basis for the charges are all documents readily available or coming from the respondents themselves[17].

2) Respondents did not identify the specific paragraphs in the Formal Charge to which each Special and Affirmative Defenses apply as required under Section 10 Rule 8 of the Rules of Court.

   2.1 According to the Petitioner, out of the twelve provisions of the SRC and corresponding Sections in the Implementing Rules and Regulations cited in the Formal Charge that were violated by the Respondents, only three Special and Affirmative Defenses were cited in the Answer. The Respondents did not identify the specific paragraphs in the Formal Charge to which each Special and Affirmative Defenses apply[18].

3) Markets and Securities Regulation Department ("MSRD") has authority to examine, investigate and file appropriate legal actions against R&L[19] and Joseph Lee[20].

   3.1 Petitioner disagrees with the Respondents argument that the MSRD has no authority to initiate administrative action against R&L and Joseph Lee.

   Petitioner cited Rule 39.1.1.7.4 of the 2015 Implementing Rules and Regulations of the Securities Regulation Code[21] as the basis for MSRD to initiate the administrative case against R&L –

   39.1.1.7 Investigations

   39.1.1.7.4 The **Commission shall not be precluded from initiating its own investigation** ahead of, parallel to or following an investigation conducted by an SRO. In such an event, the SRO shall coordinate, cooperate, and provide a copy to the Commission, upon notice or order, documents, pieces of evidence or other information related to the case that it may hare earlier gather or are available in its database and which it may readily procure.

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[17] Paragraph 4.7, Petitioner's Position Paper
[18] Paragraph 4.8, Petitioner's Position Paper
[19] Paragraph 5.6, Respondents Position Paper
[20] Paragraph 5.9, Respondents Position Paper
[21] Paragraph 5.5, Petitioner's Position Paper

With regard to MSRD's authority to file an administrative case against Joseph Lee, Petitioner quoted a portion of the Order[22], dated November 14, 2019, issued by the Commission en banc as MSRD's basis –

CMIC to determine the various violations possibly committed by R&L Investments, Inc., its officers and employees and to submit its report and recommendations to the Markets and Securities Regulation Department for purposes of instituting administrative or criminal action against the responsible persons, without precluding the Commission from conducting its own examination, investigation, or filing of any action against R&L and its responsible officers and employees[23].

4) Petitioner argued that Respondents' defense of improper charges of fraud is unmeritorious[24].

   The statement that the Respondents have observed the guidelines imposed by the SRC and its implementing Rules and Regulations is untrue and have been refuted by documents and own admissions of the Respondents[25].

5) Petitioner contended that Respondents' argument that the internal and external auditors and regulators for the past years did not raise findings or recommendation is immaterial[26].

   Petitioner cited Rule 39.1.1.7.4 of the 2015 SRC IRR –

   Sec. [sic] 39.1.1.7.4 – The Commission shall not be precluded from initiating its own investigation ahead of, parallel to or following an investigation conducted by and SRO. Xxx. In case of conflict between the findings of the Commission and the Exchange, the former's decision shall prevail[27].

6) Petitioner emphasized that the findings of fraud is brought about by Respondents gross and inexcusable negligence[28].

   Petitioner cited the case of Joseph Harry Walter Poole-Blunden vs. Union Bank of the Philippines[29] as pronounced by the Supreme Court in said case, gross negligence connotes want of care in the performance of one's duties; it is a negligence characterized by want of even slight care, acting or omitting to act in situation where there is duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. This type of negligence is so inexcusable; it is tantamount to bad faith.

[22] Attached as Annex B, Petitioner's Position Paper
[23] Paragraph 5.7, Petitioner's Position Paper
[24] Paragraph 6.1, Petitioner's Position Paper
[25] Paragraph 6.2, Petitioner's Position Paper
[26] Paragraph 6.9, Petitioner's Position Paper
[27] Paragraph 6.11, Petitioner's Position Paper
[28] Paragraph 6.13, Petitioner's Position Paper
[29] GR No. 205838, November 29, 2017

The Court in the case stated that banks assume a degree of prudence and diligence higher than that of a good father of a family, because their business is imbued with public interest and is inherently fiduciary. Thus, banks have the obligation to treat the accounts of its clients "meticulously and with the highest degree of care." The failure of the bank, in the instant case, to ascertain the status or conditions of the property being foreclosed was found to be equivalent to gross inexcusable negligence palpable enough to equate to bad faith.

In the same way, the business of R&L Investments, Inc as broker dealer is not just an ordinary business but one imbued with public interest and highly based on trust and confidence. The broker dealer has the fiduciary duty to its clients and is required to exercise a high level of diligence.

Petitioner narrated the allegations in the Formal Charge and the admission of the Respondents during the investigative proceedings or stated in the official documents.

**REPLY TO PETITIONER'S POSITION PAPER**

On March 51, 2021, Respondents filed their Reply to Petitioner's Postion Paper

**ISSUES**

I. Whether or not Respondents'right to due process was violated;
II. Whether or not the Formal Charge failed to state ultimate facts;
III. Whether or not the Markets and Securities Regulation Department of the Securities and Exchange Commission has authority over (i) R&L and (ii) Joseph Lee;
IV. Whether or not Respondents violated the SRC and 2015 SRC IRR;
V. Whether or not Respondents Joseph Lee, Jonathan Lee and Lucy Linda Lee violated Section 26 in relation to Section 54 of the SRC.

**THE RULING**

Before resolving the main issue, it is important to determine (i) whether Respondents' right to due process was violated and (ii) whether the Formal Charges failed to state ultimate facts.

**Whether or not Respondents right to due process was violated**

Records show that the only attachment to Petitioner's Formal Charge was Marlo Moron's Counter Affidavit relative to the criminal case filed against him by herein Respondents in the Prosecutors Office of Madaluyong City. Thereafter, Petitioner attached the following documents in his Position Paper.

1) Formal Charge;
2) SEC Take Over Order (SEC En Banc Case No. MP-2019-001); and

3) Sinumpaang Salaysay of Julieto Sulapas.

Respondents argued that their right to due process was clearly violated when Petitioner did not allude or attached the alleged evidence in its Formal Charge such as the (i) affidavit of Julieto Sulapas, (ii) text messages, and (iii) supposed admission made by respondents[30].

We disagree with the Respondents.

I. Failure to allude or attach Affidavit of Julieto Sulapas and text messages

It is emphasized that the present case is an administrative proceeding. In administrative case, due process simply means the opportunity to explain one's side as stressed by the Supreme Court in an en Banc case entitled In the Matter of the Loss of Registered Foreign Letter No. 06876676 from Australia, Addressed to Mrs. Maria Coronel (A.M No 93-9-249-CA December 5, 1994) -

> **It has been repeatedly held in many instances that the essence of due process is simply an opportunity to be heard or as applied to administrative proceedings, an opportunity to explain one's side**. In the present case, movant cannot deny that he was given ample opportunity to file his comment and memorandum for his defense which he actually availed of. This was his opportunity to present evidence in his favor, knowing fully well that he was already under investigation and was being charged with gross negligence in a show cause-letter dated June 18, 1993 signed by the Court of Appeals Clerk of Court. Movant cannot now complaint that he was not afforded an opportunity to submit evidence of lack of formal charges against him and formal investigation thereon. We reiterate: In administrative proceedings, we are not bound by rigid rules of procedure or technicalities. (emphasis supplied)

It cannot be said that Respondents were denied due process just because said documents were not alluded to or attached in the Formal Charge. In the present case, the subject affidavit of Julieto Sulapas and text messages were attached to Petitioner's Position Paper. Respondents were given the opportunity to comment thereon by filing their Reply[31] and, which is now the subject of this Panel's ruling.

In the case of Victor B. Endriga vs. Court of Appeals and Civil Service Commission,[32] the Court resolved to deny Victor B. Endriga's appeal on the ground that his right to due process was violated due to the inordinate and oppressive delay of COA in confronting him about his accountabilities. According to Endriga, the long delay of more than 17 years from the time of demand deprived him of opportunity to gather evidence in his behalf. In said case the Court ruled as follows:

> We agree with the CA that the petitioner's right to due process was not violated. **The essence of due process** is simply the opportunity to be heard, or, **as applied to administrative proceedings**, the **opportunity to explain one's side** or the

[30] Paragraph 1, Respondent Reply to Petitioner's Position Paper
[31] Filed on March 15, 2021
[32] GR No. 230386, June 7, 2017

**opportunity to seek a reconsideration** of the adverse action or ruling complained of.

II. Failure to attach Respondents' admission in the Formal Charge

On the issue of Petitioner's failure to attach the Respondents admission to the Formal Charge is a denial of their right to due process, We are not swayed.

Records show that Respondents' admissions were made orally during the investigation proceedings wherein members of the Investigation and Review Committee, which includes herein Petitioner, were present. Consequently, Petitioner, having heard of said oral admission of the Respondents, may introduce the said admissions. Moreover, the subject oral admissions of the Respondents, testified upon by the Petitioner, are admissible in evidence, though not reduced in writing[33].

The Respondents' oral admissions during the investigation proceeding are found in the following paragraphs of the Formal Charge:

> "5. As revealed during the investigative proceedings, **Lucy admitted that she gave Moron the necessary maker and checker credentials for the PCD system. Jonathan admitted that he knew this but he did not take any action on such authority given by Lucy to Moron.**"
>
> "6. It was also **admitted by Lucy that she** gave her own admin access pass to the PCD system to Moron and **allowed the latter to change the admin passwords and effectively have sole access herein.**"
>
> "12. **Joseph Lee** has been the President of R&L Investments since 2018. As president, he has the duty to oversee the day-to-day operations of the company – a duty that cannot be delegated to another person.
> 13. Apparently, his **open admission during the investigative proceedings** that **he has no knowledge of the daily operations of the company,** only proves he failed and deliberately refuse to perform his duty. Xxx xxx xxx"
>
> "20. During the investigative proceedings, **Lucy admitted that Moron was given access to the trading floor and that he also executes trades.**"
>
> "35. **Lucy admitted that she gave her admin access to the PDTC system to Marlo Moron for his daily transactions**, allegedly due to the trust and confidence the R&L officers repose on Moron."
>
> "37. **Lucy admitted during the investigative proceedings of R&L that Moron was functioning as salesman and settlement office at the same time**, which are incompatible functions under the SRC."
>
> "41. During the investigative proceedings, Lucy **Linda Lee admitted that she never met Julieto Sulapas** personally and merely relied on Moron's representation that their late father knew Julieto Sulapas."

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[33] See The People of the Philippine Islands vs. Martin Bantagan (GR No. 33045, August 15, 1930)

"42. In addition, **Jonathan Lee also admitted that he was never aware of a client named Julieto Sulapas** until the latter incurred material debit balances in his account with R&L."

"54. It was **noted during the administrative proceedings that Moron was allowed to do the following**:

54.1 Execute trades despite not being a licnesesd salesman;

54.2 Continuous access on the credentials for both maker and checker accounts in PDTC; and

54.3 Admin access on PDTC web-based account.

55. **Jonathan Lee admitted during the investigation proceedings that he allows Moron to do the above acts**. This is a willful disregard of his duties as an associated person."

"62. During the investigative proceedings, **Lucy Linda Lee admitted that she never met Julieto Sulapas personally** and merely relied on Moron's representation that their late father knew Julieto Sulapas."

"63. In addition, **Jonathan Lee also admitted that he was never aware of a client name Julieto Sulapas** until Sulapas incurred material debit balances in his account with R&L."

Peitioner argued that the foregoing admissions are deemed admitted because Respondents failed to specifically deny the same.

In its Answer to the Formal Charge, Respondents stated that the allegations in paragraphs 4 to 75, which includes the above-quoted admissions, are categorically denied for lack of knowledge or information sufficient to form a belief as to the truth or falsity of the same.

We agree with the Petitioner.

**I. Contrary to human experience**

We find Respondents' denial of lack of knowledge or information to be contrary to human experience.

It is only logical to expect a person, alleged to have admitted a particular statement, to know if he/she indeed gave said statement. More so in this case, as the particular acts allegedly admitted by each of the respondents were also mentioned in the pleadings and annexes filed by Respondents in the present case, as would be presented in the discussions that would follow.

**II. Lack of sincerity and good faith**

In addition, Respondents' denial of lack of knowledge or information should be made with sincerity and good faith. In the case of Capital Motors Corporation vs. Nemesio I. Yabut (GR No. L-21840, March 19, 1970) the Supreme Court decreed that:

> The rule allowing an answer to contain the allegation that the defendant has **no knowledge or information** sufficient to form a belief as to the truth of an averment and giving such answer the effect of a denial, does not apply where the fact as to which want of knowledge is asserted, is so plainly and necessarily within the defendant's knowledge that his averment is pallably untrue. This form of denial **must be availed of with sincerity and good faith**, not for the purpose of confusing the other party; nor for purposes of delay.

As pronounced by the Court, the denial must be availed of with sincerity and good faith. However, it can be established from pleadings and annexes of the Respondents that there is clearly lack of sincerity and of good faith.
Respondents alleged lack of knowledge or information that they admitted that Marlo Moron was given the maker checker credentials to the PCD system and that Moron was allowed to change the admin password.

Contrary to Respondents allegation, a perusal of (i.) paragraph 21 of the Supplemental Complaint-Affidavit executed by Lucy Linda Lee (Annex H of Respondents Answer) and (ii) paragraphs 18 and 19 of Respondents Position Paper would confirm that they are aware that Marlo Moron has the maker checker credentials for the PCD system and he could change the admin passwords.

To recall, Peitioner, in the Formal Charge, alleged that Lucy and Jonathan Lee admitted the following:

> "5. As revealed during the investigative proceedings, **Lucy admitted** that she gave Moron the necessary maker and checker credentials for the PCD system. **Jonathan admitted** that he knew this but he did not take any action on such authority given by Lucy to Moron."
>
> "6. It was also **admitted by Lucy** that she gave her own admin access pass to the PCD system to Moron and allowed the latter to change the admin passwords and effectively have sole access herein."

The foregoing admission of Lucy Linda Lee are found in the Supplemental Complaint-Affidavit (Annex "H" of Respondents Answer) Respondents filed in connection with the criminal case against Marlo Moron. In said Supplemental Complaint-Affidavit, Lucy Linda Lee stated as follows:

> "21. Inasmuch as **Marlo** was appointed as settlement clerk, and due to the trust and confidence reposed to Marlo, he **was granted complete access to the on-line web-based system of PDTC for R&L Investments, Inc., including the nomination and change of passwords. It is worth-pointing that the system requires Marlo N. Moron to change the password regularly: every (30) days.**"

On the other hand, Joseph Lee and Jonathan Lee were also aware that Marlo Moron has access to R&L's online web-based system. In Respondents' Position Paper, they declared as follows:

POSITION PAPER

Respondents, R&L Investment, **Joseph Lee**, and **Jonathan Lee**, through undersigned counsel, unto this Honorable Commission, respectfully submit their Position Paper, in compliance with the Order of the SEC Special Panel last 24 February 2021, and **respectfully alleged that**:

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STATEMENT OF FACTS

Xxx xxx xxx

18. Inasmuch as Marlo was appointed as settlement clerk, **he has access to R & L Investments Inc.'s online web-based system. The system requires him to log-in in the system using the assigned username and password. It is worth-pointing that the system requires Marlo N. Moron to change the password regularly or very sixty (60) days.**

19. Due to the trust and confidence repose to Marlo, **he has complete access to the on-line web-base system of PDTC including the nomination and change of passwords.**

Respondents alleged lack of knowledge or information, yet they are aware that Marlo Moron was given the maker checker credentials to the PDTC system and that Moron was allowed to change the admin password.

In addition to the foregoing, Respondents also denied that they admitted that Marlo Moron was functioning as a salesman. However, their respective statements in the Supplemental Complaint-Affidavit and Position Paper would confirm otherwise.

Peitioner alleged in the Formal Charge that Respondents admitted the following:

"20. During the investigative proceedings, **Lucy admitted that Moron was given access to the trading floor and that he also executes trades.**"

"37. **Lucy admitted during the investigative proceedings of R&L that Moron was functioning as salesman** and settlement office at the same time, which are incompatible functions under the SRC."

Respondents denied, for lack of knowledge or information, that they admitted the foregoing. However, it can be established in the Supplemental Complaint-Affidavit (Annex "H" of Respondents Answer), that Lucy Linda Lee was aware that Moron was functioning as a salesman:

"22. Aside from **trading, selling and purchasing the stock securities**, Marlo is tasked to download the 'BP Portfolio Report' ("BP" meaning Business Partner) from the on-line system of PDTC."

In the case of Joseph Lee and Jonathan Lee, they were also aware that Marlo Moron buys and sells securities for R&L clients. Said Respondents, in their Positon Paper, stated as follows:

POSITION PAPER

Respondents, R&L Investment, **Joseph Lee**, and **Jonathan Lee**, through undersigned counsel, unto this Honorable Commission, respectfully submit their Position Paper, in compliance with the Order of the SEC Special Panel last 24 February 2021, and **respectfully alleged that**:

I

STATEMENT OF FACTS

Xxx xxx xxx

17. Thereafter, Marlo Moron was appointed as **settlement clerk** of R&L Investments, Inc. His **functions include placing orders for our clients either to sell or buy** and to access the shares of stock stored in the corporation's account in the PDTC system.

Based on the foregoing, it can be deduced that there is lack of good faith and sincerity on the part of the Respondents.

**III. The acts of Marlo Moron are plainly and necessarily within Respondents' knowledge**

Respondents denied having knowledge that they admitted the actions of Marlo Moron. However, the aforementioned pleadings and annexes of the Respondents proved that said actions of Marlo Moron are plainly within their knowledge. It is worthwhile to emphasize the case of Aquintey vs. Timbong[34] wherein the Court declared that:

> When matters of whether the defendant alleges having no knowledge or information sufficient to form a belief are **plainly and necessarily within the defendant's knowledge**, an alleged "ignorance or lack of information **will not be considered as a specific denial**. Section 11, Rule 8 of the Rules also provides that material averments in the complaint other than those as to the amount of unliquidated damages shall be **deemed admitted** **when not specifically denied**. (emphasis supplied)

Consistent with the above Supreme Court decisions, the Panel finds Respondents' admissions deemed admitted.

**Whether or not Formal Charge failed to state ultimate facts**

Section 1, Rule 8 of the Rules of Court provides that:

[34] GR No. 16674, December 20, 2006

Every pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the **ultimate facts** on which the party pleading relies for his claim or defenses, as the case may be, omitting the statement of mere evidentiary facts. (emphasis supplied)

Ultimate facts, as defined by the Court in the case of Francisco S. Tantuico, Jr. vs. Republic of the Philippines Presidential Commission on Good Government (GR No. 89114, December 2, 1991), mean essential facts constituting plaintiffs cause of action. In the same case, the Court went on further and explained that a fact is essential if it cannot be stricken out without leaving the statement of the cause of action insufficient.

A cause of action is essential in civil cases. However, such is not the case in administrative proceedings. It is well settled that in administrative cases the issue is not whether the complainant has a cause of action against the respondents, but **whether an individual breached the norms or standards**[35].

Given the administrative nature of the present case, what then needs to be established in the present case are (i) the norms and standards and (ii) the breach of the norms and standards.

The Panel noted Respondents' argument that pages 1 up to 15 of the Formal Charge are simply citations of the Securities Regulation Code [sic][36]. However, a carelful reading of said citations would reveal that these citations of the SRC and the 2015 SRC IRR are the norms and standards which herein Respondents are accused to have violated.

To enumerate a few of the citations, the following are quoted as follows –

**Charges against R&L**

1. Rule 28.1.5 Registration of Salesmen and Associated Persons of Broker Dealers

   28.1.5 Registration of Salesmen and Associated Persons of Brokers Dealers

   28.1.5.1 A **person** may not be **employed** as a salesman or associated person of a Broker Dealer or Issuer of proprietary or non-proprietary securities unless **registered as salesman or Associated Person under this Rule**[37].

2. Rule 30.2.1 Ethical Standards Rules

   Rule 30.2.1.1 Every **Broker Dealer**, **Associated Person** and **salesman** of a Broker Dealer (herein after referred to as a "Registered Person"), in connection of his business, **shall observe high standards of commercial honor, and just and equitable principles of trade**[38].

   Xxx xxx xxx

[35] See Rey C. Mutia vs. Lucila C. Pacariem (A.M. P-06-2170 July 11, 2006)
[36] Paragraph 3, Respondents' Reply to Petitioner's Position Paper
[37] Page 1 to 2, Formal Charge
[38] Page 2, Formal Charge

**Charges against Mr. Joseph Lee**
**(R&L's President)**

1. (SRC) Sec. 26. Fraudulent Transactions

   Sec. 26. Fraudulent Transactions. – It shall be **unlawful for any person,** directly or indirectly in connection with the purchase or sale of any securities to:

   26.1 **Employ any device, scheme, or artifice to defraud;**

   Xxx xxx xxx

   26.3 **Engage in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person.**

   Xxx xxx xxx

The particular acts of the Respondents, which breached the standards provided under the SRC and 2015 SRC IRR will be addressed in the succeeding discussion.

**Whether or not the Markets and Securities Regulation Department ("MSRD") of the Securities and Exchange Commission has authority over (i) R&L and (ii) Joseph Lee.**

Respondents argued that (i) MSRD, at the moment, has no authority over R&L considering that the PSE and CMIC has yet to conclude their investigation and (ii) that MSRD has no authority over administrative actions involving respondent Joseph Lee as president of R&L.

We disagree with the Respondents.

## I. MSRD's authority to initiate administrative action against R&L

In support of their argument that MSRD has no authority to initiate administrative action against R&L, Respondents cited Section 2-2 (e)(2), Part 1[39] of the 2016 Rules of Procedures of the Securities and Exchange Commission ("2016 SEC Rules of Procedure").

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[39] "Sec. 2-2. Authority of Operating Departments over cases filed before the Commission –

Xxx
e. Markets and Securities Regulation Department ("MSRD") shall have exercise authority over the following actions and matters committed in the regular course of operations:
xxx

According to Respondents, the MSRD has no authority over administrative actions involving R&L because it is subject to the authority of the self-regulatory organization, such as the Philippine Stock Exchange ("PSE") and Capital Markets Integrity Corporation ("CMIC").

Respondents further argued that CMIC shall have the authority to investigate and resolve all violations of the securities law.

It is emphasized that the Commission's jurisdiction over R&L, as well as CMIC, is based on law. Section 5(a) of the SRC states that the Commission has jurisdiction and supervision over all corporations, partnerships or association who are grantees of primary franchises and/or licenses or permit by the Government. In addition, Section 5(f) of the SRC also states that the Commission has the power to impose sanctions for violation of law and the rules, regulations and orders issued pursuant thereto.

It is well settled that jurisdiction is conferred by law and it is not subject to stipulations of the parties. Thus, Respondents could not argue that the 2016 SEC Rules of Procedure divested the Commission of its jurisdiction over R&L.

Furthermore, it should be noted that the authority granted to CMIC under the *2016 SEC Rules of Procedure* and the *CMIC Rules by Trading Participants* are mere recognition of the authority of the Commission over CMIC. In cannot be denied that said rules were subject to the Commission's approval. Thus, said authority of CMIC over R&L, like spring water, could not rise above its sources of power[40], the Commission.

In addition, as explained by the Respondents, CMIC is a self-regulatory organization which acts as the independent regulatory arm of the Philippine Stock Exchange (PSE) tasked to perform the audit, surveillance and compliance monitoring of the activities of market participants[41]. However, it is important to note that the authority of CMIC to administer the market is not absolute as the same is at the discretion of the Commission. A reading of Section 32.2 (b) of the SRC would show the that authority to determine whether a market would be administered by an SRO rests upon the sole discretion of the Commission -

> **Section 32.** Prohibition on the Use of Unregistered; Regulation of Over-the-Counter Markets -
>
> 32.2 (b) **The Commission** may promulgate rules and regulations governing transactions by brokers, dealers, salesmen or associated persons of a broker dealer, over any facilities of such trading market and **may require such market to be administered by a self-regulatory organization** determined by the Commission as capable of insuring the protection of investors comparable to that provided in the case of a registered Exchange. (emphasis supplied)

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2. Administrative and adjudicative actions involving intermediaries and market professionals such as:
(a) Brokers/Dealers, unless subject to the authority of the Self-Regulatory Organization
(b) Xxx"

[40] See Hon. Jose D. Lina, Jr., Sangguniang Panlalawigan of Laguna and Hon. Calisto Cataquiz vs. Hon. Francisco Dizon Pano and Tony Calvento (GR No. 129093, August 30, 2001)
[41] Paragraph 41, Respondents' Position Paper

Also, Respondents' argument that the issuance of the Formal Charge is premature considering that the PSE and CMIC has yet to conclude their investigation is without legal basis. As aptly cited by the Petitioner, Rule 39.1.1.7.4 of the 2015 SRC IRR[42] provides –

> 39.1.1.7 Investigations
>
> 39.1.1.7.4 The **Commission shall not be precluded from initiating its own investigation ahead of, parallel to or following an investigation conducted by an SRO.** In such an event, the SRO shall coordinate, cooperate, and provide a copy to the Commission, upon notice or order, documents, pieces of evidence or other information related to the case that it may hare earlier gather or are available in its database and which it may readily procure.

## II. MSRD's authority to initiate administrative action against Joseph Lee, as President of R&L

The president of a company manages the day-to-day affairs of the corporation. This obligation originates from the company's by-laws. A company's by-laws, as defined by the Court in the case of China Banking Corporation vs. Court of Appeals and Valley Golf and Country Club, Inc.[43], are *the rules and regulations or* ***private laws enacted by the corporation to regulate, govern and control*** *its own actions, affairs and concerns and its stockholders or members and directors and* ***officers*** *with relation thereto and among themselves in relation to it.*

Records of the case show that Respondents attached R&L's Certificate of Incorporation (Annex B of the Answer). An examination of the corresponding by-law of R&L, on file with the Commission, would establish the fact that Joseph Lee, as the president of R&L, is required to exercise supervision, direction and control over the corporation and its employees. His authority over them is evident in Section 5, Article IV (Officers) of R&L's by-laws provides:

> **ARTICLE IV**
> **OFFICERS**
>
> xxx
>
> Section 5. PRESIDENT – The President shall be the chief executive officer of the corporation and, subject to the control of the Board of Directors, shall in general, supervise and control all of the business and affairs of the corporation. He shall preside at all meetings of the Board of Directors and stockholders and accordingly authenticate all minutes thereof in conjunction with the Secretary. He shall suggest, for and guide policies to be adopted by the Board and shall see that all orders and resolutions of the Board are carried into effect. **He shall have general supervision and direction of all of the other officers of the corporation and shall see that their respective duties are properly performed**. xxx

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[42] Paragraph 5.5, Petitioner's Position Paper
[43] GR No. 117604, March 26, 1997

To emphasize, Joseph Lee has the power of supervision, direction over the Associated Person and Salesman of R&L, Jonathan Lee and Lucy Lee, respectively. Furthermore, Joseph Lee is compelled by the company's by-laws to see that respective duties of Jonathan Lee and Lucy Lee are properly performed. Consequently, Joseph Lee, as president of R&L, is considered as a controlling person, as defined under Section 51 of the SRC:

> Section 51. *Liabilities of Controlling Persons, Aider and Abettor and Other Secondary Liability*. 51.1. **Every person who**, by or through stock ownership, agency, or otherwise, **or in connection with an agreement** or understanding with one or more other persons, **controls any person liable under this Code** or the **rules or regulations of the Commission** thereunder, shall also be liable jointly and severally with and to the same extent as such controlled persons to any person to whom such controlled person is liable, unless the controlling person proves that, despite the exercise of due diligence on his part, he has no knowledge of the existence of the facts by reason of which the liability of the controlled person is alleged to exist.

As such, Section 51.1 of the SRC makes controlling person jointly and severally liable for any violation of the SRC and its IRR by the controlled person. Therefore, MSRD has authority to initiate administrative action against Joseph Lee.

**Whether or not Respondents violated the SRC and 2015 SRC IRR**

As discussed above, in an administrative case the issue is not whether the complainant has a cause of action against the respondents, but whether an individual breached the norms or standards. Petitioner, in its Formal Charge, alleged that the Respondents breached the following standards under the SRC and the 2015 SRC IRR.

**EMPLOYMENT OF UNREGISTERED SALESMAN**

Petitioner alleged that **R&L, Joseph Lee, Jonathan Lee** and **Lucy Linda Lee** violated Rule 28.1.5 of the 2015 Implementing Rules and Regulations of the Securities Regulation Code (2015 SRC IRR) which prohibits the employment of unregistered salesman. Petitioner alleged the following:

> 20 It was also revealed in the official documents that R&L has two (2) trading terminals located in the PSE Trading Floor from 2011 to 2019 and one (1) offsite trading terminal from May 1, 2016 to July 31, 2018. Beyond July 31, 2018, R&L has no offsite trading terminals; hence, all client transactions beyond said date can be executed only in the PSE Trading Floor.
>
> 21 Further, a perusal of the documents received from PSE show that during the period of August 1, 2018 to 2019, Lucy did not log in the PSE Trading Floor in comparison to the 223 days Marlo Moron logged in.

22 It is also significant to note that out of this 223 log-ins, 56 coincides with the execution of the Julieto Sulapas transactions, while Lucy Linda Lee is not present.

To substantiate the allegation that Moron was given access to the trading floor, Petitioner attached a letter from the President and CEO of the Philippine Stock Exchange, Mr. Ramon S. Monzon. Attached to said letter is a List of TP personel who were given access to the PSE Trading Floor from 2011 to 2018 (February 12, 2018) and from 2018 (February 19) – 2019. A perusal of the list shows that Marlo Moron was indeed given access to the trading floor.

Respondents, on the other hand, argued in its Reply to Petitioner's Position Paper that:

> 17. While respondent **Lucy Lee might had admitted that Moron was given access to the trading floor** as settlement clerk, **she did not categorically admit that Moron was allowed to trade in her absence**. Unfortunately, she can [sic] longer expound and clarify her statements.
>
> 18. However, it is clear from the records that respondent Lucy Lee did not authorize Marlo Moron to trade the shares that are the subject matter of the instant controversy.

We find Respondents' argument without merit.

With regard to Respondent **Lucy Linda Lee**, the above arguments of Respondents are inconsistent with the Supplemental Complaint-Affidavit, which Lucy Linda Lee herself executed (attached as Annex H of Respondents Answer), the pertinent paragraphs are quoted as follows:

> "22. **Aside from trading, selling and purchasing the stock securities**, Marlo is tasked to download the "BP Portfolio Report" ("BP" meaning Business Partner) from the on-line system of PDTC.

It can be inferred from the above statement that Lucy Linda Lee was aware that Marlo Moron trades, sells and purchases stock securities. It is important to note that Lucy Linda Lee is the only registered salesperson in R&L. Under the relevant provisions of the PSE Rules, **only traders with valid license issued by the SEC** and who have been **duly certified by the PSE are allowed to use the PAM**[44], a management tool provided by the Exchange used by Trading Participants for executing trades, among others[45]. Otherwise stated, only salesperson with valid license issued by the SEC and duly certified by the PSE are allowed to trade.

Given the aforementioned PSE Rule, the trading activities of Marlo Moron, a settlement clerk, would not have been possible unless Lucy Linda Lee provided her credientials to access the PSE trading platform. Access to the PSE trading platform "effectively" allowed Marlo Moron to act as a salesman of R&L, in violation of Rule 28.1.5 of the 2015 SRC IRR.

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[44] the Exchange will only grant terminal account IDs to Trading participants and their Trader with valid licenses issued by the SEC and who have been duly certified by the PSE to use the PAM

[45] PAM (Poste D' Access Aux Marche) shall mean the order and trade management tool provided by the Exchange used by the Trading Participants for executing trades and accessing market data.

With regard to Respondents **R&L**, **Joseph Lee** and **Jonathan Lee**, the Panel noted the following statements in the Position Paper, the pertinent portions of which are herein quoted as follows:

POSITION PAPER

> Respondents, **R&L Investment**, **Joseph Lee**, and **Jonathan Lee**, through undersigned counsel, unto this Honorable Commission, respectfully submit their Position Paper, in compliance with the Order of the SEC Special Panel last 24 February 2021, and **respectfully alleged that**:
>
> I
>
> STATEMENT OF FACTS
>
> Xxx xxx xxx
>
> 15. **For the record**, Marlo Moron was initially hired by R&L as Office Clerk sometime 2003. At the same time, his wife, Edna Moron, was also working with us as Office Clerk as evidenced by our letter dated 8 July 2003 addressed to the Philippine Stock Exchange, Inc., a copy of which was attached as Annex "D" of the Answer.
>
> 16. Sometime in 2018, Marlo was promoted as Office/Trading Floor Assistant as evidenced by the updated list of directors, officers and office and trading floor personnel submitted to PSE, a copy of which was attached as Annex "E" of the Answer.
>
> 17. Thereafter, **Marlo Moron** was appointed as **settlement clerk** of R&L Investments, Inc. His **functions include placing orders for our clients either to sell or buy** and to access the shares of stock stored in the corporation's account in the PDTC system.
>
> Xxx xxx xxx
>
> 20. Aside from **trading, selling and purchasing the stock securities**, Marlo is tasked to download "BP Portfolio Report" ("BP" meaning Business Partner) from the on-line system of PDTC."

It can be verified from the foregoing statements that **R&L**, **Joseph Lee** and **Jonathan Lee** were also aware that, among the functions of Marlo Moron, upon his appointment as settlement clerk, is placing buy and sell orders for R&L clients. The placing of buy and sell order is a function of a salesman as defined under Rule 28.1.5.2.1 of the 2015 SRC IRR. Notwithstanding the lack of license to act as salesman, R&L, Joseph Lee and Jonathan Lee allowed Marlo Moron to effectively act as a salesman without the proper license.

In view of the foregoing, we find that Respondents violated Rule Rule 28.1.5 of the 2015 SRC IRR.

**ETHICAL STANDARDS**

Petitioner alleged that Respondents **R&L, Joseph Lee, Jonathan Lee** and **Lucy Linda Lee** violated Rule 30.2.1.1 of the 2015 SRC IRR –

> 30.2.1 Ethical Standards Rule
>
> 30.2.1.1 Every Broker Dealer, Associated Person and salesman of a Broker Dealer (herein after referred to as "registered person"), in the conduct of his business, shall observe standards of commercial honor, and just and equitable principles of trade

As registered persons, it is the obligation of R&L, Joseph Lee, Jonathan Lee and Lucy Linda Lee to act honestly, fairly and in the best interest of their clients[46] in conducting their business.

As discussed above, Lucy Linda Lee admitted the following during the investigation proceeding, which Petitioner cited as violation of the Ethical Standards Rule:

> "62. During the investigative proceedings, **Lucy Linda Lee admitted that she never met Julieto Sulapas personally** and merely relied on Moron's representation that their late father knew Julieto Sulápas[47]."
>
> "5. As revealed during the investigative proceedings, **Lucy admitted that she gave Moron the necessary maker and checker credentials for the PCD system.** Jonathan admitted that he knew this but he did not take any action on such authority given by Lucy to Moron[48]."
>
> "6. It was also **admitted by Lucy that she** gave her own admin access pass to the PCD system to Moron and **allowed the latter to change the admin passwords and effectively have sole access herein[49].**"

As pointed out by the Petitioner in the Formal Charge, Marlo Moron effectively had sole access to the PCD system. Moreover, Marlo Moron was allowed to change the admin password. In so doing, Marlo Moron was able to transfer R&L client shares through EQ trade which resulted to the loss of P700 million worth of client shares, as would be discussed in the succeeding paragaphs.

With regard to Respondents **R&L, Joseph Lee** and **Jonathan Lee**, the Panel noted the following the statements in the Position Paper, the pertinent portions of which are herein quoted as follows:

POSITION PAPER

> Respondents, **R&L Investment, Joseph Lee,** and **Jonathan Lee**, through undersigned counsel, unto this Honorable Commission, respectfully submit their

[46] Rule 30.2.1.2.1 2015 SRC IRR
[47] Paragraph 62, Formal Charge
[48] Paragraph 5, Formal Charge
[49] Paragraph 6, Formal Charge

Position Paper, in compliance with the Order of the SEC Special Panel last 24 February 2021, and **respectfully alleged that**:

I

STATEMENT OF FACTS

Xxx xxx xxx

15. **For the record**, Marlo Moron was initially hired by R&L as Office Clerk sometime 2003. At the same time, his wife, Edna Moron, wa also working with us as Office Clerk as evidence by our letter dated 8 July 2003 addressed to the Philippine Stock Exchange, Inc., a copy of which was attached as Annex "D" of the Answer.

Xxx xxx xxx

17. Thereafter, **Marlo Moron** was appointed as **settlement clerk** of R&L Investments, Inc. His functions include placing orders for our clients either to sell or buy and to **access the shares of stock stored in the corporation's account in the PDTC system**.

18. Inasmuch as **Marlo** was appointed as settlement clerk, he **has access to R & L Investments Inc.'s online web-based system. The system requires him to log-in in the system using the assigned username and password. It is worth-pointing that the system requires Marlo N. Moron to change the password regularly or every sixty (60) days**.

It can be established from the foregoing that Respondents, R&L, Joseph Lee, Jonathan Lee and Lucy Linda Lee were aware that Marlo Moron had access to the PDTC system and could change the username and passwords to the system. The Ethical Standards Rule requires the Respondents to act honestly, fairly and in the best interest of their clients. However, Respondents' act of tolerating of Marlo Moron's actions is contrary to the interest of their clients. As would be discussed in the succeeding paragraph, R&L lost P700 million worth of client shares due to the EQ trades of Marlo Moron.

In view of the foregoing, We find Respondents to have violated the Ethical Standards Rule.

**CAPABILITIES**

Petitioner alleged that **R&L**, **Joseph Lee**, **Jonathan Lee** and **Lucy Linda Lee** violated Rule 30.2.1.2.3.2.2 of the 2015 SRC IRR –

30.2.1.2.3 Capabilities

30.2.1.2.3.2.2 **Satisfactory internal control procedures** and financial and operational capabilities which can be reasonably expected **to protect** his operations, **his clients** and other registered persons from financial loss arising

**from** theft, **fraud and other dishonest acts**, or professional misconduct or omission of all company officers, employees and authorized representative.

In his Formal Charge, Petitioner alleged that:

> 35. Lucy also admitted that she gave her admin access to PDTC system to Marlo Moron for his daily transactions, allegedly due to the trust and confidence the R&L officers repose on Moron.
>
> 36. The access to the abovementioned passwords allowed Moron to execute the transfer of shares and to approve such transfers. The admin access also allowed Moron to reset the passwords at his will.
>
> 37. Lucy also admitted during the investigative proceedings of R&L that Moron was functioning as salesman and settlement officer at the same time, which are incompatible functions

On the other hand, as discussed earlier, Respondents R&L, Joseph Lee and Jonathan Lee are aware that Marlo Moron functions as settlement clerk and salesman. In addition, they are also aware that Marlo Moron, a settlement clerk, has access to the PDTC system. Respondents act of allowing Marlo Moron to perform said functions underscores the lack of check and balance procedure in R&L.

In view of the foregoing, We find Respondents to have violated Rule 30.2.1.2.3.2.2 of the 2015 SRC IRR.

**INFORMATION ABOUT CLIENTS**

Petitioner alleged that Respondents violated Rules 30.2.1.2.4.1, 30.2.1.2.4.3 and 30.2.1.2.4.6 of the 2015 SRC IRR, which states:

> **Rule 30.2.1.2.4. Information About Clients**
>
> 30.2.1.2.4.1. A registered person should seek from his clients, information about their financial situation, investment experience and investment objectives regarding the services to be provided pursuant to SRC Rule 52.1.6 and other applicable laws. If a client refuses to disclose reasonable information about his financial situation, the registered person shall make the necessary estimate based on his initial evaluation of the information given by the client.
>
> xxx xxx xxx
>
> 30.2.1.2.4.3. A registered person shall take all reasonable steps to establish the true and full identity of each of his clients, their financial situation, investment experience, and investment objectives.
>
> xxx xxx xxx

Sec. 30.2.1.2.4.6. A registered person should be reasonably satisfied about the identity, address and contact details **of the person ultimately responsible for originating the instruction in relation to a transaction, the person who stands to gain the commercial or economic benefit of the transaction and/or bears the commercial or economic risk**; Provided, however, that in relation to an investment company, or discretionary account, the person referred to above is the investment company or account, not those who hold a beneficial interest therein.

xxx xxx xxx

According to Petitioner's Formal Charge:

41. During the investigative proceedings, Lucy Linda Lee admitted that she never met Julieto Sulapas personally and merely relied on Moron's representation that their late father knew Julieto Sulapas.

42. In addition, Jonathan Lee also admitted that he was never aware of a client named Julieto Sulapas until the latter incurred material debit balances in his account with R&L.

On the other hand, Respondents in their Answer, argued as follows:

20. With regard to client information on Julieto Sulapsa, **standard Know-Your-Customer procedures were satisfied everytime he transacts with respondent R&L**. The Formal Charge stated that Sulapas had more than P1B worth of shares in his account with Venture Securities. Respondents were not in the position to know the source of Sulapas's shares in his account with Venture Securities. If it is true that Sulapas had more than 1B worth of shares with Venture Securities, the latter should be required to explain the source of such shares.

The above argument was reiterated by the Respondents in their Position Paper.

Meanwhile, Peitioner, in his Position Paper, argued that:

7.11. In addition, although it is true that Respondents may have no knowledge of the position or source of shares of Julieto Sulapas with Venture Securities, R&L Investments, Inc. as the source of the shares that were EQ Trade transferred in the name of Julieto Sulapas, has the duty to ensure that the shares transferred are actually in the name of Julieto Sulapas. This, the Respondents clearly failed to do. Hence, the claim of lack of knowledge as to the affairs of Julieto Sulapas with Venture Securities is immaterial to the Formal Charge against Respondents.

Petitioner's argument that it is the Respondents duty to ensure that the shares transferred are actually in the name of Julieto Sulapas would fall squarely in the Books and Records Rule, which would be discussed in the succeeding paragraph.

A reading of the provisions of the Information About Clients Rule would show that the same pertains to the Know Your Client Rule (KYC). The application of the KYC Rule is a continuing requirement (1.) from the time a client opens an account with a broker dealer and (2.) everytime the client would trade.

In the present case, Petitioner argued that there was breach in the KYC Rule because Lucy Linda Lee admitted that she never met Julieto Sulapas and she relied on Marlo Moron's representation that their father knew Sulapas. However, this Panel noted a copy of Julieto Sulapas' CAIF (Annex F) attached to Respondents' Answer to the Formal Charge.

Given said information, Lucy Linda Lee may not have met Julieto Sulapas at the time he opened his account with R&L. However, her statement that she relied on Marlo Moron's representation that her late father knew Sulapas would show that the KYC procedure at the time Julieto Sulaspas opened his account would have been done during the life time of her late father.

With regard to Jonathan Lee, as an Associated Person, he is expected to know the general operations of R&L without necessarily engaging or actively participating in its day-to-day operations[50], which includes account opening, among others.

In view of the foregoing, We find Petitioner's argument insufficient to hold Respondents liable for violation of the Client Information Rule.

**SUPERVISION**

Petitioner alleged that Respondents, Joseph Lee, Jonathan Lee and Lucy Linda Lee violated Rule 30.2.6.1 of the 2015 SRC IRR –

> 30.2.6.1. The management of every Broker Dealer shall establish and maintain an appropriate and effective compliance function within the firm which is independent of all operational and business functions. The compliance functions shall be performed by an Associated Person who shall be registered with the Commission and required to report directly to the board of directors and the company President. The management shall ensure that the Associated Person/s performing the compliance function possesses sufficient training and experience in securities regulation matters and an understanding of the securities activities of the firm enabling them to effectively execute their duties.

In support of the allegation that Respondents violated the above-quoted provision, Petitioner argued that:

> 46. It was established in the investigative proceedings that notwithstanding the fact that Lucy was the designated administrator (admin) of the PDTC account, Moron was able to gain access to it.
>
> 47. In addition, Moron, in several years, was able to reset the password on a monthly basis so that he can have continuous access to the PDTC system.

[50] See Rule 28.1.5.7.2 of the 2015 SRC IRR

As discussed earlier, Lucy Linda Lee admitted she gave Moron the necessary maker and checker credentials for the PCD system[51]. She further admitted that **she** gave her own admin access pass to the PCD system to Moron and allowed the latter to change the admin passwords and effectively have sole access herein[52]."

With regard to Respondents R&L, Joseph Lee and Jonathan Lee, the Panel noted the following statements in the Position Paper, the pertinent portions of which are herein quoted as follows:

POSITION PAPER

> Respondents, **R&L Investment**, **Joseph Lee**, and **Jonathan Lee**, through undersigned counsel, unto this Honorable Commission, respectfully submit their Position Paper, in compliance with the Order of the SEC Special Panel last 24 February 2021, and **respectfully alleged that:**
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> 15. **For the record**, Marlo Moron was initially hired by R&L as Office Clerk sometime 2003. At the same time, his wife, Edna Moron, wa also working with us as Office Clerk as evidence by our letter dated 8 July 2003 addressed to the Philippine Stock Exchange, Inc., a copy of which was attached as Annex "D" of the Answer.
>
> Xxx xxx xxx
>
> Xxx xxx xxx
>
> 18. Inasmuch as **Marlo** was appointed as settlement clerk, he **has access to R & L Investments Inc.'s online web-based system. The system requires him to log-in in the system using the assigned username and password. It is worth-pointing that the system requires Marlo N. Moron to change the password regularly or every sixty (60) days.**

Petitioner contended that there were no internal controls on checks and balances in R&L. Said lack of internal control on check and balances can be inferred from the following:

1. Marlo Moron has access to the PDTC system.
2. Marlo Moron functions as settlement clerk and salesman

Under the Rule on Supervision, R&L is required to ensure that Jonathan Lee possesses sufficient training and experience in securities regulation matters and an understanding of the securities activities of the firm enabling them to effectively execute their duties. The fact that Marlo Moron can perform the above-mentioned functions only highlights Jonathan Lee's failure to supervise the activities of the company.

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[51] Paragraph 5, Formal Charge

[52] Paragraph 6, Formal Charge

In view of the foregoing, We find the Respondents to have violated Rule 30.2.6.1 of the 2015 SRC IRR

**SEGREGATION AND LIMITATION OF FUNCTIONS OF MEMBERS, BROKERS AND DEALERS**

Petitioner alleged that Respondents, Joseph Lee, Jonathan Lee and Lucy Linda Lee violated the following Rules of the 2015 SRC IRR:

> Rule 34.8 A Broker Dealer shall adopt proper internal controls to prevent the commission of fraud and ensure that the customers'cash and securities positions are intact and are properly accounted for by the segregating trading, settlement, accounting and back-office functions including their respective physical facilities.
>
> Rule 34.9 Access to computer files should be limited to authorized users and the appropriate security measures shall be adopted.
>
> Rule 34.11.1 Any Broker Dealer that assumes more than one function whether as dealer, adviser, or that engages in market making transactions, shall maintain proper segregation of those functions within the company to prevent flow of information between the different units of the company that performs functions that may have potential conflict of interest.
>
> Rule 34.11.3 A Broker Dealer shall at all times ensure that its trading functions and back-office settlement functions and physical setup are properly segregated and shall establish written procedures to ensure compliance with this rule

Petitioner, in its Formal Charge, alleged that

> 50. Proper internal controls which include the segregation of trading and settlement functions are designed to prevent fraud.
>
> 51. It was revealed during the investigative proceedings that Moron was provided the system admin access of Lucy including the password change to ensure his continuous access as system admin. This clearly shows ~~a~~ lack of proper internal controls in the access to the computer files and lack of appropriate security measures to the computer systems of R&L.
>
> 52. It was also noted during the investigative proceedings that Moron was allowed by R&L to perform the functions of settlement clerk and salesman concurrently, which are conflicting functions in accordance with the Chinese Wall doctrine.

As discussed earlier, Respondents Joseph Lee, Jonathan Lee and Lucy Linda Lee were all aware that Marlo Moron holds the position of settlement clerk. Notwithstanding Moron's position as settlement clerk, Respondents also allows him to act as a salesman. Respondents' action is a breach of Rule 34.8 of the 2015 SRC IRR which requires the segregation of trading and settlement, among others.

Given the foregoing, We find Respondents to have violated the Rule on Segregation of Functions of Broker Dealers

**Rule 34.10 2015 SRC IRR**

Petitioner alleged that Respondent, Jonathan Lee, violated Rule 34.10 of the 2015 SRC IRR

> Rule 34.10 The Associated Person of a Broker Dealer shall supervise the functions of the employees and check all executed trades and other transactions of the company.

Petitioner, in his Formal Charge, alleged that:

> 54. It was noted during the administrative proceedings that Moron was allowed to do the following:
>
> 54.1. Execute trades despite not being a licensed salesman;
> 54.2. Continuous access on the credentials for both maker and checker accounts in PDTC; and
> 54.3. Admin access on PDTC web-based account.
>
> 55. Jonathan Lee admitted during the investigative proceedings that he allows Moron to do the above acts. This act is a willful disregard of his duties as an associated person.
>
> 56. Likewise, Jonathan Lee's tolerance towards Moron is a clear violation of his duties as associated person - to supervise the functions of the employees and check all executed trades and other transactions in maintaining proper segregation of functions in the company.

As argued by the Petitioner, Jonathan Lee, as R&L's Associated Person, disregarded his duty supervise the functions of R&L's employees. As established in the earlier discussions, Jonathan Lee is aware that Marlo Moron is a settlement clerk and, yet, he was allowed to trade. This is a breach of his duty to supervise the function of Marlo Moron as settlement clerk.

In view of the foregoing, We find substantial basis to hold Jonathan Lee to have violated Rule 34.10 of the 2015 SRC IRR

**BOOKS AND RECORDS RULE**

Petitioner alleged that Respondent, Jonathan Lee, violated Rule 52.1.1.1 of the 2015 SRC IRR

> Rule 52.1.1.1 A Broker Dealer shall make, keep current and maintain in its principal office the following books and records relating to its business:
>
> 52.1.1.1.1 Blotter and Similar Records – xxx
> 52.1.1.1.2 Purchase and Sale Blotter – xxx

52.1.1.1.3 In/Out Receipts Book – xxx
52.1.1.1.4 Stock Debit Memo (SDM)/ Stock Credit Memo (SCM) – xxx
52.1.1.1.5 Cash Receipts/Disbursment Book

Petitioner, in its Formal Charge, alleged R&L, Joseph Lee, Jonathan Lee and Lucy Linda Lee violated the above rule, as follows:

58. Based on the PDTC reports, there are several transfers between R&L and Venture. Upon tracing the transactions, it was noted that shares were transferred from R&L to Venture under the Julieto Sulapas account;

59. However, a review of books and records of R&L as requested by the Department revealed that the following are incomplete:

    59.1. Stock debit/credit memo;
    59.2. In/out receipts book;
    59.3. Customer ledger;
    59.4. Securities in transfer ledger;
    59.5. Detailed Collateral Valuation; and,
    59.6. Securities record/ledger;

60. Thus, the incomplete books and records shows the failure of the Broker Dealer R&L Investments to make, keep current and maintain their books and records related to the business as required under the Securities Regulation Code and its Implementing Rules and Regulations;

This Panel noted Respondents' allegation that there were several transactions between R&L and Venture. We relate said allegation to Respondents' explanation in their Supplemental Complaint Affidavit (Annex H of Respondents Answer) –

> 16. Our clients may also instruct us to transfer their shares of stock to the custody of another brokerage firm. In order to facilitate such transfer, our clients will inform us in **writing or electronic mail their instruction to transfer**. Upon receipt of the written order, we can execute the transfer of our clients' shares of stock to another brokerage firm using the PDTC system. When using the PDTC system for such transfer, it should be noted that the regulating authorities **strictly prohibits any change of ownership of said stocks.**

The "writing or electronic mail" would allude to the "transfer out" instruction from Julieto Sulapas or clients which would be reflected in the In/Out Receipts Book of R&L. Rule 52.1.1.1.1.2 of the 2015 SRC IRR explains an In/Out Receipts Book, as follows:

> An In/Out Receipts Book setting forth the receipts and delivery of securities to and from other Broker Dealers and securities depository in case of stock dividend distribution, including information on the date of receipt or delivery of the securities to or from Broker Dealers, the In/Out Receipt number, name of security, number of shares, and description of such receipt and delivery of securities (e.g. lodgment or upliftment of shares, transfer request by a customer). If the receipt and delivery of shares refer to a transfer of shares by a customer from/to his

account with the Broker Dealer to/from his other account with another Broker Dealer, the Broker Dealer should obtain a written transfer request from the customer prior to executing the transfer and keep the document on file.

Had the Respondents' In/Out Receipt Books accurately reflected the request transfer from R&L clients, then there would have been no loss of Php700 Million worth of R&L client shares brought about by the unauthorized EQ trade transactions.

In view of the foregoing, We find Respondents to have violated the Books and Records Rules

**Rules 52.1.6.8, 52.1.6.15 and 52.1.6.16 of the 2015 SRC IRR**

Petitioner alleged that Respondents, R&L, Joseph Lee, Jonathan Lee and Lucy Linda Lee, violated Rules 52.1.6.8, 52.1.6.15 and 52.1.6.16 of the 2015 SRC IRR

> 52.1.6.8 The Broker Dealer shall develop clear customer acceptance policies and procedures when conducting business relations or accommodating specific transactions and shall exercise due diligence in implementing its policies and procedures. Furthermore, it shall adopt adequate internal control measures for verifying the true and full identity of their customers. It shall require customers to produce original documents of identiy issued by an official authority, preferably bearing a photograph of the customer and where practicable, maintain file copies of documents of identity; otherwise, relevant details on the identity documents will be recorded.
>
> 52.1.6.15 It is the Broker Dealer's duty to know its clients well and, accordingly, it shall be **primarily responsible in keeping current all material information** contained in the CAIF.
>
> 52.1.6.16 The Broker Dealer, its directors, officers, and associated persons, are required to report suspicious client transaction to the Anti-Money Laudering Council (AMLC), pursuant to the provisions of the Anti-Money Laundering Act (RA 9160, as amended)
>
> For purposes of this section, a suspicious client transaction shall mean any transaction which causes any ordinary person to have a feeling of apprehention or mistrust about the transaction considering (a) its unusual nature or circumstances, or (b) the person or group of persons with whom they are dealing, and based on the bringing together of all relevant factors including knowledge or the person's or persons'business or background (as well as behavioral factors.

Petitioner, in its Formal Charge, alleged R&L, Joseph Lee, Jonathan Lee and Lucy Linda Lee violated the above rules, as follows:

62. During the investigative proceedings, Lucy Linda Lee admitted that she never met Julieto Sulapas personally and merely relied on Moron's representation that their late father knew Julieto Sulapas.

63. In addition, Jonathan Lee also admitted that he was never aware of a client named Julieto Sulapas until Sulapas incurred material debit balances in his account with R & L.

Xxx xxx xxx

64. In addition, under the SRC, knowing the client is an important point in classifying suspicious transactions for purposes of reporting of suspicious client transactions to the Anti-Money Laundering Council (AMLC). Hence, the fact that R&L and its management do not know their client Julieto Sulapas, this will effectively remove their chance to determine whether the transactions of Julieto Sulapas are suspicious transactions for proper reporting to the AMLC.

According to Petitioner, Respondents' admission revealed the failure of R&L and its officers on their duties to **know their clients well**[53]. Consequently, Respondents violated Rules 52.1.6.8 and 52.1.6.15 of the 2015 SRC IRR.

Petitioner is harping on the KYC rule discussed ealier under Rule 30.2.1.2.4. To recall, the application of the KYC Rule is a continuing requirement (1.) from the time a client opens an account with a broker dealer and (2.) everytime the client would trade. Lucy Linda Lee may not have met Julieto Sulapas at the time he opened his account with R&L; however, her statement that she relied on Marlo Moron's representation that her late father knew Sulapas would explain the KYC requirement at the time Sulapas opened his account with R&L.

With regard to Jonathan Lee, as an Associated Person, he is expected to know the general operations of R&L without necessarily engaging or actively participating in its day-to-day operations[54], which includes account opening and trading (buy and/or sell), among others.

However, a reading of Rule 52.1.6.8 would show that the same pertains to the requirement for broker dealers to establish a Written Supervisory Procedure ("WSP"). Petitioner did not allege that Respondents did not establish a WSP.

Petitioner charged Respondents for violation of Rule 52.1.6.15 which speaks of updating the CAIF. Records of the present case reveal the existence of Julieto Sulapas' CAIF (Annex F of Respondents Answer). Petitioner did not allege that the same is not current.

On the issue of the Respondents reporting suspicious transactions to the AMLC, it is worthwhile to distinguish a buy or sell transaction as against an EQ trade.

Under the buy or sell transaction, a client would instruct his broker dealer to buy or sell shares. Accordingly, the broker dealer is expected to report suspicious transactions to the AMLC. In the

[53] Paragraph 64, Formal Charge
[54] See Rule 28.1.5.7.2 of the 2015 SRC IRR

case of the EQ trade, the client shares will merely be transferred to another broker dealer were said client also has an account. There is no transfer of ownership.

In the present case, Petitioner did not allege that Julieto Sulapas was engaged in buying and selling of shares involving his R&L account, which would require the reporting of suspicious transaction to the AMLC.

We find Petitioner's argument deficient to establish that Respondents violated Rules 52.1.6.8, 52.1.6.15 and 52.1.6.16 of the 2015 SRC IRR.

**Rule 52.1.10.13 of the 2015 SRC IRR**

Petitioner alleged that Respondents, R&L, Joseph Lee, Jonathan Lee and Lucy Linda Lee, violated Rule 52.1.10.13 of the 2015 SRC IRR. However, a reading of the 2015 SRC IRR would reveal that there is no Rule 52.1.10.13. Consequently, Petitioner's charge has no leg to stand on.

**Whether or not Respondents, Joseph Lee, Lucy Linda Lee and Jonathan Lee violated Section 26 in relation to Section 54 of Republic Act No. 8799 or known as The Securities Regulation Code**

The scheme perpetrated by Marlo Moron, which led to the loss of Php700 Million worth of R&L client shares was explained in the Supplemental Complaint Affidavit (Annex H of the Answer of R&L), paragraphs 21 to 23 which states that –

> 21. Inasmuch as **Marlo** was appointed as settlement clerk, and due to the trust and confidence reposed to Marlo, he was **granted complete access to the on-line web-based system of the PDTC** for R&L, **including the nomination and change of passwords**. It is worth-pointing that the system requires Marlo N. Moron to change the password regularly: every thirty (30) days.
>
> 22. Aside from trading, selling and purchasing the stock securities, **Marlo is tasked to download the "BP Portfolio Report" ("BP" meaning Business Partner) from the on-line system of PDTC.**
>
> 23. The BP Portfolio Report indicates [sic] list the stock securities under the name and custody of R&L Investments, Inc., such as the name of stock security, beginning balance, difference, close price and market value. This report is the primary resource of the company's officers, regulators, and audit bodies to verify the company's stock position or inventory.

The access to the PDTC system is critical to the scheme perpetrated by Marlo Moron as described in paragraph 16 of the subject Supplemental Complaint Affidavit –

> 16. Our clients may also instruct us to transfer their shares to stock to the custody of another brokerage firm. In order to facilitate such transfer, our **clients** will inform us in writing or electronic mail their **instruction to transfer**. Upon receipt of the written order, **we can execute the transfer of our clients shares of stock to another brokerage firm using the PDTC system**. When using the PDTC system for such transfer, it should be noted that the **regulators prohibits change of ownership** of said stock.

As explained above, an EQ Trade prohibits the change of ownership of the shares that would be transferred from one broker to another. However, in the present case, Marlo Moron will allegedly transfer stock securities under the custody of R&L Investment Inc. to Venture Securities, Inc. making it appear that those stock securities are owned by Julieto C. Sulapas[55].

To summarize the foregoing statements:

(i) The transfers of R&L's client shares were executed through the PDTC system;
(ii) Marlo Moron was granted complete access to the on-line web-based system of the PDTC;
(iii) Marlo Moron was also tasked to download the BP Portfolio Report from the on-line system of PDTC containing the following information:

1. Name of stock security;
2. Beginning balance;
3. Ending balance;
4. Differences;
5. Close price; and
6. Market Value

As to how the alleged scheme evaded detection, we note Respondents' statement in paragraph 39 of the Supplemental Complaint-Affidavit, *Marlo Moron has been manipulating the pdf file of the BP Portfolio Report*. The ending balance in the downloaded BP Portfolio Report will be manipulated to match the stock position of R&L reflected in its back-office system. As narrated by the Respondents, Moron has limited viewing access to the back-office system[56].

Given the foregoing alleged scheme of Marlo Moron, Petitioner charged Respondents, Joseph Lee, Jonathan Lee and Lucy Linda Lee with violation of Sec. 26 of the SRC –

> Sec. 26. Fraudulent Transactions. It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities to:
>
> 26.1 Employ any device, scheme or artifice to defraud
>
> Xxx xxx xxx

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[55] Paragraph 29, Respondents Position Paper.
[56] Paragraph 18, Respondents Answer

26.3 **Engage in any act**, transaction, **practice or course of business which operates or would operate as a fraud** or deceit upon any person.

Fraud has been defined, in its general sense, to comprise anything calculated to deceive, including all acts, omission, and concealment involving a breach of legal or equitable duty, trust, or confidence justly repose, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another[57].

As discussed earlier, Respondents omitted to perform their legal duties under the pertinent provision of the SRC, its implementing rules and regulations and other laws implemented by the Commission. It was established from the records of the case that Respondents were all aware and tolerated Marlo Moron's (i) complete access to the on-line web-based system of PDTC, (ii) authority to download the BP Portfolio and (iii) viewing access to the back-office. This act tolerance on the part of the Respondents gave Marlo Moron undue and unconscientious advantage over the unsuspecting clients of R&L.

Moreover, Marlo Moron's alleged scheme, which resulted to the loss of Php700 Million worth of R&L client shares, could not have been perpetrated overnight. Thus, it could be said that Respondents' continuous disregard to perform their legal duty and tolerance of Marlo Moron's activity has become the business practice of R&L to the detriment of its clients, which makes them liable under Sec. 26.3 of the Securities Regulation Code.

Consequently, under Section 54.1 of the SRC administratively penalize any violation of the SRC and its implementing rules and regulations –

> Sec. 54.1 If, after due notice and hearing, the Commission finds that: (a) There is a violation of this Code, its rules or its order; xxx it shall, in its discretion, and subject only to the limitations hereinafter prescribed, impose any or all of the following sanctions as may be appropritate in light of the facts and circumstances:
>
> (i) Xxx
>
> (ii) A fine of no less thn Ten thousand pesos (P10,000.00) or 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 case of violation of Sections 19.2, 20, 24, 26 and 27, disqualification from being an officer, member of the Board of Directors, or persons 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.

## FINAL NOTE

The foregoing acts and violations committed by the Respondents indispensably contributed, if not the proximate cause of the losses incurred by the clients of R&L.

[57] See People of the Philippines vs. Balasa (GR No. 108601-02, September 3, 1998)

We cannot tolerate and ignore any act or omission on the part of those involved in the capital market which would violate the norm set by the securities law especially on the transactions and responsibilities of Broker Dealers and that would diminish or even just tend to diminish the faith of the investors on the integrity of the capital market.

Likewise, the practice of installing undiscerning persons in entities involved in the capital market cannot be tolerated, let alone allowed to perpetuate. This must be curbed by holding accountable those who consciously and willfully commit wrongful acts in the performance of their duties as officers, registered persons or employees.

The Respondents must be reminded that transactions involving securities affect the general public and the national economy. We stress that Republic Act No. 8799, otherwise known as the "The Securities Regulation Code," enunciates, inter alia, the State policy of promoting the development of the capital market and the protection of investors.[58]

For this reason, it is totally unacceptable and unconscionable to place the Respondents' act and imprimatur on these issues that seriously endanger the integrity of entire securities market. For this Commission to cop-out and to close its eyes to these acts and deeds, while convenient, would be to abandon its duty of safeguarding public interest and the integrity of the capital market.

**PENALTIES TO BE IMPOSED**

Notwithstanding the provisions of SEC Memorandum Circular No. 6, series of 2005 (MC 6, s. 2005 or Circular), the Commission, in its discretion, has the power to impose other alternative penalties as provided for under Sec. 54.1 of the SRC.

The pertinent portion of Sec. 54.1 of the SRC is herein reproduced:

> Sec. 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 (b) xxx xxxxxx (c) xxx xxxxxx (d) xxx xxxxxx, 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;
>
> (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 persons performing

[58] SEC. 2. *Declaration of State Policy*. – 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.To achieve these ends, this Securities Regulation Code is hereby enacted.

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 a result of the purchase, sale or communication proscribed by such Section; and

(v) Other penalties within the power of the Commission to impose. (emphasis supplied)

In the implementation of the foregoing and in order to give effect to the intent of the SRC, the Commission adopted SRC Rule 54.1 which mirrors the above-mentioned provision of law, thus:

> 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 (b) xxx xxxxxx (c) xxx xxxxxx (d) xxx xxxxxx, 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***:
>
> 54.1.1 Suspension, or revocation of any registration for the offering of securities;
>
> 54.2.2. 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;
>
> 54.1.3. 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 persons 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;
>
> 54.1.4. 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; and
>
> 54.1.5. Other penalties within the power of the Commission to impose. (emphasis supplied)

On the basis of the above-quoted provisions, it is clear that the Code gives the SEC flexibility based on its discretion to impose various kinds of sanctions since not all sanctions apply in every case and the SEC is empowered to select the sanction appropriate to the facts and circumstances of each situation.

The Commission may thus impose any of the above-mentioned alternative penalties against a Company and any person found administratively liable for violating any provision of the SRC and its IRR. If fine alone is the penalty imposed, the maximum shall be Php1,000,000.00.

To emphasize, the phrase "***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** " operates to confer discretion to SEC to select the sanction appropriate to the facts and circumstances of each case. Applying Section 54.1, therefore, it does not prohibit the Commission to impose sanction based on its discretion.

Thus, it could be said that the appropriate penalty under Sec. 54.1 of the SRC may be applied as an alternative penalty on the penalties imposed under MC 6, s.2005, which was issued purposely to rationalize the penalties to be imposed by the Commission to insure strict compliance with the Code and its IRR.

Likewise, under the same provision of the Circular it states that the imposition of the foregoing penalties shall be without prejudice to the imposition of other administrative sanctions or to the filing of criminal charges against the person/s responsible for the violation.

The clear tenor and intention of Memorandum Circular is not to remove the application of SRC Section 54 as an alternative penalty, but to lay down a rule of preference in the application of the penalties provided for in the SRC.

The pursuit of this purpose clearly does not foreclose the possibility of applying Section 54 for violators of any of the provision of the SRC. Neither does it defeat the legislative intent behind the law.

Hence, the Memorandum Circular establishes a rule of preference in the application of the administrative monetary penalty provision of SRC such that where the circumstances of both the offense and the offender clearly indicate good faith or a clear mistake of fact without taint of bad faith or negligence, otherwise, the imposition of a fine under the SRC should be considered as the more appropriate penalty. Needless to say, the determination of whether the circumstances warrant the imposition of a fine under the SRC provision rests solely upon the Commission. Should the Commission decide that any of the provision under Section 54 of the SRC is the more appropriate penalty, Memorandum Circular No. 6 Series of 2005 ought not be deemed a hindrance.

It is, therefore, understood that SEC Memorandum Circular No. 6 Series of 2005 does not remove the imposition of any of the penalty provided for under Section 54 of the SRC as an alternative penalty for violations of any of the provision of the SRC and its IRR.

Further, Section 29 of the SRC provides:

> **Section 29.** *Revocation, Refusal or Suspension of Registration of Brokers, Dealers, Salesmen and Associated Persons.* – 29.1. Registration under Section 28 of this Code may be refused, or any registration granted thereunder may be revoked, suspended, or limitations placed thereon, by the Commission if, after due notice and hearing the Commission determines the application or registrant.
>
> (a) Has willfully violated any provision of this Code, any rule, regulation or order made hereunder, or any other law administered by the Commission, or in the case of a registered broker, dealer or associated persons has failed to supervise, with a view to preventing such violation, another person who commits such violation;

**WHEREFORE**, premises considered, the Panel finds that the Respondents violated the above-mentioned pertinent provisions of the SRC and the SRC IRR and hereby imposed the following administrative sanctions:

A. **R & L Investment, Inc.**

1. A fine of One Million Pesos (P1,000,000.00) for violation of Rule. 28.1.5. (Registration of Salesmen)

2. A fine of One Million Pesos (P1,000,000.00) for violation of Rule 30.2.1. (Ethical Standards Rule)

3. A fine of One Million Pesos (P1,000,000.00) for violation of Rule 30.2.1.2.3 (Capabilities)

4. A fine of One Million Pesos (P1,000,000.00) for violation of Rule 52.1.1. (Books and Records Rule)

5. A fine of One Million Pesos (P1,000,000.00) for violation of Rule 34 (Segregation and Limitation of Function of Members, Brokers and Dealers)

6. A fine of One Million Pesos (P1,000,000.00) for violation of Rule 30.2.6. (Supervision)

7. Revocation of its license/registration as broker/dealer pursuant to Section 29 of the SRC for willfully violating all of the above-mentioned provisions of the SRC and the SRC IRR

B. **Mr. Joseph Lee**

1. A fine of One Million Pesos (P1,000,000.00) for violation of Sec. 51 in relation to Sec. 26 of the SRC and disqualification from being an officer, member of the Board of Directors or person performing similar functions pursuant to Sections 54.1, 28 and 29 of the SRC.

2. A fine of One Million Pesos (P1,000,000.00) for violation of Rule. 30.2.1. (Ethical Standards Rules)

3. A fine of One Million Pesos (P1,000,000.00) for violation of Rule 30.2.1.2.3. (Capabilities)

4. A fine of One Million Pesos (P1,000,000.00) for violation of Rule 30.2.6. (Supervision).

5. A fine of One Million Pesos (P1,000,000.00) for violation of Rule 52.1.1. (Books and Records Rule)

6. A fine of One Million Pesos (P1,000,000.00) for violation of Rule. 28.1.5. (Registration of Salesmen)

7.Disqualification from being a registered person pursuant to Sections 28 and 29 of the SRC

C. **Mr. Jonathan Lee**

1. A fine of One Million Pesos (P1,000,000.00) for violation of Sec. 26 in relation to 54 of the SRC and revocation of his license as Associated Person pursuant to Section 54.1 of the SRC.

2. A fine of One Million Pesos (P1,000,000.00) for violation of Rule. 30.2.1. (Ethical Standards Rules)

3. A fine of One Million Pesos (P1,000,000.00) for violation of Rule 30.2.1.2.3. (Capabilities)

4. A fine of One Million Pesos (P1,000,000.00) for violation of Rule 30.2.6. (Supervision).

5. A fine of One Million Pesos (P1,000,000.00) for violation of Rule 34 (Segregation and Limitation of Functions of Members, Brokers and Dealers)

6. A fine of One Million Pesos (P1,000,000.00) for violation of Rule 52.1.1. (Books and Records Rule)

7. Disqualification from being a registered person pursuant to Sections 28 and 29 of the SRC

8. Disqualification from being an officer, member of the Board of Directors or person performing similar functions pursuant to Section 54.1 of the SRC

**D. Ms. Lucy Linda Lee[59]**

1. A fine of One Million Pesos (P1,000,000.00) for violation of Sec. 26 in relation to 54 of the SRC.

2. A fine of One Million Pesos (P1,000,000.00) for violation of Rule. 30.2.1. (Ethical Standards Rules)

3. A fine of One Million Pesos (P1,000,000.00) for violation of Rule 30.2.1.2.3. (Capabilities)

4. A fine of One Million Pesos (P1,000,000.00) for violation of Rule. 28.1.5. (Registration of Salesmen)

In conformity with SRC Rule 30.2.6.3, which provides that the final responsibility for proper supervision shall rest with the Broker Dealer Company and Section 51 of the SRC, which states that the controlling person shall also be liable jointly and severally with and to the same extent as the controlled persons, R&L and Mr. Joseph Lee are held jointly and severally liable for the monetary penalty imposed on its officers and employees. In sum, the total monetary penalties imposed upon all Respondents amount to Twenty-Two Million Pesos (Php 22,000,000.00).

Finally, this Decision is without prejudice to any further action that the Investigation and Review Committee of MSRD may institute on the basis of evidence that it may, now or hereafter secure.

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[59] Passed away on December 14, 2020

**SO ORDERED."**

11 June 2021.

**MARLON G. FACUN**
Chairman

**EMMA A. VALENCIA**
Member

**ERWIN EDWARD P. MENDINUETO**
Member

Copy furnished:

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[58] Passed away on December 14, 2020