Republic of the Philippines
Department of Finance
Securities and Exchange Commission

IN THE MATTER OF

ACESITE (PHILS.) HOTEL CORP.,

ABACUS SECURITIES CORPORATION and SHIELA MARIE C. AGUILAR (AP), AB CAPITAL SECURITIES, INC. and ERICSON C. WEE (AP), B.H. CHUA SECURITIES CORP. and VIOLETA T. CASTILLO (AP), TOWER SECURITIES, INC. and ADORA C. CABILES (AP), VENTURE SECURITIES, INC. and ADORA M. AGUILAR (AP),
Appellants,

-versus-

ENFORCEMENT AND PROSECUTION DEPARTMENT,
Appellee.

SEC En Banc Case No. 09-11-244
(EPD Case no. 11-2929)
For: Violation of Section 24.1 of the SRC in relation to Rule 24.1 (b)-1 of its Implementing Rules and Regulations

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DECISION

This resolves the Notice of Appeal and Memorandum of Appeal[1] filed by Appellant Venture Securities, Inc. and Adora M. Aguilar dated September 30, 2011 to assail the Order[2] of the Enforcement and Prosecution Department, now known as the "**Enforcement and Investor Protection Department**" or "**EIPD**" dated September 15, 2011 finding appellants liable for violating Section 24.1 of the Securities Regulation Code ("Code") and ordering appellants to pay the monetary penalties under Section 54 of the same Code.

THE PARTIES

Appellant **Venture Securities, Inc.** (**"Venture"**) is a duly licensed corporation organized and incorporated under domestic law, which is primarily engaged in the business of brokering, dealing and underwriting stocks, bonds, securities, mortgages and other choses in action.

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[1] Records, pp. 45-62.
[2] *Id.* pp. 74-118.

Appellant **Adora M. Aguilar ("Aguilar")** is the Associated Person[3] ("AP") of Venture. Defendants Venture and Aguilar are the only remaining defendants out of the ten (10) that appealed the Order of the EIPD in this instant case.

Appellee EIPD is one of the operating departments of the Securities and Exchange Commission ("Commission") tasked to ensure compliance by all market participants, issuers and individuals, and take appropriate enforcement action against them for infractions of the laws, rules and regulations implemented by the Commission. The same is vested with the primary authority to conduct investigations and administrative actions involving, among others, the selling, offering or transacting unregistered securities by entities without a secondary license, as well as to initiate petitions for revocation of corporate registration except those under the original authority of the Company Registration and Monitoring Department ("CRMD"). Finally, the EIPD is tasked to investigate, *motu proprio* or upon a verified complaint or referral, violations of laws, rules and regulations implemented by the Commission, as well as to initiate the issuance of a Cease and Desist Orders ("CDO") by the latter.

STATEMENT OF THE CASE

In the assailed Order of the EIPD, the latter narrates that the Market Regulation Department of the SEC, now known as the Market and Securities Regulation Department ("MSRD"), referred this case to the EIPD alleging that Beneficial Owners[4] ("BOs") Forum Holdings Corporation, Pacific Images, Inc., Waterfront Philippines, Inc., Omar M. Guinomla, Richard D. Anderson, Peter S. Salud and Rogelio D. Garcia, through their respective broker-dealers ("BDs") Westlink Global Equities, Inc, Abacus Securities, Inc., AB Capital Securities, Inc., B.H. Chua Securities, Corp., Tower Securities and Venture Securities, Inc. are engaged in the manipulation of the price of the Acesite (Phils.) Hotel Corporation (formerly known as Delbros Hotel Corporation) ("DHC") shares through (a) *Improperly Matched Orders* and (b) *Painting the Tape* Trades from June 19 to July 29, 2008 ("Covered Period"). As a result, appellants were allegedly able to create a false and misleading appearance of active trading of the DHC shares.

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[3] Under Section 3.5 of the Securities Regulation Code is defined as: an employee therefor whom, directly exercises control of supervisory authority, but does not include a salesman, or an agent or a person whose functions are solely clerical or ministerial."

[4] Under Rule 3.1.2 of the 2004 Implementing Rules and Regulations of the SRC is defined as: "Beneficial owner or beneficial ownership means any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power (which includes the power to vote or direct the voting of such security) and/or investment returns or power (which includes the power to dispose of, or direct the disposition of such security)."

Thus, the EIPD sent show-cause letters[5] to the BDs and BOs involved herein ordering them to explain why no administrative sanction or criminal charges be filed against them for committing market manipulation of the DHC shares during the covered period. Said BDs and BOs filed their respective replies for the same.

On September 15, 2011, the EIPD issued the assailed Orders against the BDs and BOs, finding them liable for violation of Section 24.1 of the SRC in relation to SRC Rule 24.1(b)-1 of its Amended Implementing Rules and Regulations.

All the BOs and BDs B.H. Chua Securities Corp. and Tower Securities, Inc. complied with said Orders by paying the fine imposed upon them. However, BDs Abacus Security Corp. and AB Capital Securities, Inc. filed their respective Letters of Reconsideration on October 7, 2011, which was denied by the EIPD through an Order[6] dated October 25, 2011.

During the pendency of this case, all the other appellants and their respective BOs, except appellant Venture paid their respective penalties.

Hence, the instant Notice of Appeal and Memorandum of Appeal filed by appellants on September 30, 2011 before the Commission *En Banc*. Subsequently, the EIPD filed its respective Reply-Memorandum[7] dated November 3, 2011 to controvert the allegations in the same.

ISSUES

In their Memorandum of Appeal, appellants Venture and Aguilar raise the lack of knowledge or access to such information as would lead them to suspect that the BOs involved herein were in collusion with each other to manipulate the prices of the DHC shares.

To simplify, this Commission considers that the following are the issues in this case:

I. Whether or not the appellants are liable for manipulating the market price of DHC shares under Sec. 24 through: (a) *Improper Matched Orders;* and (b) *Painting the Tape Trades* during the Covered Period; and

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[5] Records, pp. 37-44.
[6] Records, pp. 67-71.
[7] Filed on November 14, 2011.

II. Whether or not lack of knowledge or access to information is a defense for Broker-Dealers in charges for Manipulative Practices.

DISCUSSION

After a careful perusal of the facts and circumstances of this case, appellants are found liable for committing manipulative practices under Section 24.1 of the SRC in relation to Rule 24.1 (b)-1 of the Amended Implementing Rules and Regulations through the above-stated methods done in the following manner:

I. Appellants are liable for committing Painting the Tape Trades through Improper Matched Orders.

Under the Implementing Rules and Regulations of the Securities Regulation Code ("IRR"), the term *Improper Matched Orders* refers to engaging in transactions where both the buy and sell orders are entered at the same time with the same price and quantity by different but colluding parties[8] while *Painting the Tape* means engaging in a series of transactions in securities reported publicly to give the impression of activity or price movement in a security[9]. The ratio behind its prohibition is to prevent rigging of the market and to permit operation of the natural law of supply and demand.[10]

Based on said definitions provided for under the Code and its IRR, *Improper Matched Order* is specific mode of manipulating the price of securities while *Painting the Tape* is a general one such that it may be committed through a singular or combination of any of the manipulative practices enumerated under the law. In fact, the Code, its IRR and jurisprudence do not provide that said manipulative practices cannot co-exist or commingle with each other in one situation.

First, the BOs involved herein traded the DHC shares from June 19 to July 22, 2008, through their respective BDs including the appellants herein, in such a way that upon posting of a certain quantity of said shares for a certain price in the market for sale, **the same will be matched and bought immediately in a matter of a few seconds or minutes by one or more of**

[8] 2004 Implementing Rules and Regulations of the Securities Regulation Code, par. 4(iii), Rule 24.1(b)-1,
[9] *Id.*, par. 4(i).
[10] U.S. vs Stein, 456 F.2d 844 (1972).

the appellants on behalf of their BOs for the same price, which when totaled matches the same quantity as sold in the market.[11]

This is apparent in appellant Venture's sell transactions from the June 25 to July 29, 2011 based on the Order Tickets, Deal Confirm Tickets, Buying and Selling Confirmation Invoices, Customer Account Statements and Customer which the EIPD summarized in the table below and which appellants failed to deny:

Stock	Trade Date	Trade No	Quantity	Price	Buy TP	Buy Client	Sell Client	Sell TP	Time Buying	Time Selling
DHC	6/25/08		550,000	10.00			**Peter Salud**	**Venture**		10:03:11
DHC	6/25/08	1180	304,000	10.00	Abacus	Rogelio Garcia	**Peter Salud**	**Venture**	10:03:49	10:03:11
DHC	6/25/08	1190	246,000	10.00	Abacus	Omar Guinomla	**Peter Salud**	**Venture**	10:04:48	10:03:11
DHC	6/25/08		4,000	10.00			**Peter Salud**	**Venture**		10:05:45
DHC	6/25/08	1227	4,000	10.00	Abacus	Omar Guinomla	**Peter Salud**	**Venture**	10:05:45	10:05:45
DHC	6/27/08		7,000	13.00			**Peter Salud**	**Venture**		11:19:44
DHC	6/27/08	3175	7,000	13.00	Abacus	Rogelio Garcia	**Peter Salud**	**Venture**	11:19:53	11:19:44
DHC	7/1/08		250,000	9.90			**Omar Guinomla**	**Venture**		11:43:34
DHC	7/1/08	3417	208,000	9.90	Westlink	Rogelio Garcia	**Omar Guinomla**	**Venture**	11:43:37	11:43:34
DHC	7/1/08	3438	42,000	9.90	Regina	Rogelio Garcia	**Omar Guinomla**	**Venture**	11:44:24	10:41:54
DHC	7/2/08		304,000	10.00			**Rogelio Garcia**	**Venture**		10:41:54
DHC	7/2/08	1682	304,000	10.00	BH Chua	FHC	**Rogelio Garcia**	**Venture**	10:46:05	11:09:59
DHC	7/4/08		492,000	9.90			**Peter S. Salud**	**Venture**		11:09:59
DHC	7/4/08	2603	312,000	9.90	Abacus	Rogelio Garcia	**Peter S. Salud**	**Venture**	11:12:16	11:09:59
DHC	7/4/08	2617	180,000	9.90	Westlink	Rogelio Garcia	**Peter S. Salud**	**Venture**	11:12:16	11:19:14
DHC	7/4/08		7,000	9.90			**Peter S. Salud**	**Venture**		11:19:14
DHC	7/4/08	2847	7,000	9.90	Westlink	Rogelio Garcia	**Peter S. Salud**	**Venture**	11:19:17	11:26:35
DHC	7/4/08		43,000	9.90			**Peter S. Salud**	**Venture**		11:26:35
DHC	7/4/08	3092	43,000	9.90	Westlink	Rogelio Garcia	**Peter S. Salud**	**Venture**	11:26:40	10:52:28
DHC	7/10/08		436,000	9.80			**Peter Salud**	**Venture**		10:52:28
DHC	7/10/08	4573	210,000	9.80	UCPB	Omar Guinomla	**Peter Salud**	**Venture**	10:52:28	10:52:28
DHC	7/10/08	2580	100,000	9.80	Abacus	FHC	**Peter Salud**	**Venture**	10:53:05	10:52:28
DHC	7/10/08	2582	126,000	9.80	Abacus	Omar Guinomla	**Peter Salud**	**Venture**	10:53:17	11:00:13
DHC	7/10/08		230,000	9.80			**Rogelio Garcia**	**Venture**		11:00:13
DHC	7/10/08	2739	130,000	9.80	BH Chua	FHC	**Rogelio Garcia**	**Venture**	11:00:14	11:00:13
DHC	7/10/08	2750	100,000	9.80	Abacus	Omar Guinomla	**Rogelio Garcia**	**Venture**	11:00:21	11:20:57
DHC	7/16/08		50,000	9.80			**Omar Guinomla**	**Venture**		11:20:57
DHC	7/16/08	2580	50,000	9.80	Abacus	Richard Anderson	**Omar Guinomla**	**Venture**	11:21:01	11:50:57
DHC	7/16/08	2656	176,000	9.80	AB Capital	Pacific	**Omar Guinomla**	**Venture**	11:21:53	11:24:10
DHC	7/16/08		260,000	9.80			**Peter Salud**	**Venture**		11:24:10
DHC	7/16/08	2777	60,000	9.80	AB Capital	Pacific	**Peter Salud**	**Venture**	11:24:46	11:24:35
DHC	7/16/08		40,000	9.80			**Rogelio Garcia**	**Venture**		11:24:35
DHC	7/16/08	2778	40,000	9.80	AB Capital	Pacific	**Rogelio Garcia**	**Venture**	11:24:46	11:41:32
DHC	7/21/08		379,000	9.80			**Peter Salud**	**Venture**		11:41:32
DHC	7/21/08	3133	312,000	9.80	Abacus	FHC	**Peter Salud**	**Venture**	11:42:00	11:41:32
DHC	7/21/08	3151	67,000	9.80	Abacus	Rogelio Garcia	**Peter Salud**	**Venture**	11:42:44	11:41:32
DHC	7/21/08	3152	500,000	9.80			**Peter Salud**	**Venture**		11:42:38
DHC	7/21/08	3152	233,000	9.80	Abacus	Rogelio Garcia	**Peter Salud**	**Venture**	11:42:44	11:42:38
DHC	7/21/08	3168	267,000	9.80	AB Capital	Rogelio Garcia	**Peter Salud**	**Venture**	11:43:23	11:42:38
DHC	7/23/08		370,000	9.80			**Peter Salud**	**Venture**		10:49:06
DHC	7/23/08	2516	220,000	9.80	BH Chua	FHC	**Peter Salud**	**Venture**	10:49:25	10:49:06
DHC	7/23/08	2544	150,000	9.80	Abacus	FHC	**Peter Salud**	**Venture**	10:50:36	10:49:06
DHC	7/24/08		155,000	9.80			**Rogelio Garcia**	**Venture**		11:08:05
DHC	7/24/08	5118	155,000	9.80	AB Capital	Pacific	**Rogelio Garcia**	**Venture**	11:09:28	11:08:05
DHC	7/24/08		235,000	9.80			**Omar Guinomla**	**Venture**		11:06:19
DHC	7/24/08	5011	17,000	9.80	Abacus	FHC	**Omar Guinomla**	**Venture**	11:06:52	11:06:19
DHC	7/24/08		228,000	9.80			**Peter Salud**	**Venture**		11:06:38
DHC	7/24/08	5012	183,000	9.80	Abacus	FHC	**Peter Salud**	**Venture**	11:06:52	11:06:38
DHC	7/24/08	5038	45,000	9.80	AB Capital	Pacific	**Peter Salud**	**Venture**	11:07:48	11:06:38
DHC	7/24/08		41,000	9.80			**Peter Salud**	**Venture**		11:12:35
DHC	7/24/08	5309	25,000	9.80	AB Capital	Pacific	**Peter Salud**	**Venture**	11:12:35	11:12:35
DHC	7/24/08	5380	16,000	9.80	Abacus	FHC	**Peter Salud**	**Venture**	11:14:21	11:12:35
DHC	7/28/08		200,000	9.80			**Rogelio Garcia**	**Venture**		11:39:44
DHC	7/28/08	3942	200,000	9.80	BH Chua	Peter Salud	**Rogelio Garcia**	**Venture**	11:39:58	11:39:44
DHC	7/29/08		623,000	9.80			**Rogelio Garcia**	**Venture**		10:42:25
DHC	7/29/08	2558	223,000	9.80	BH Chua	Peter Salud	**Rogelio Garcia**	**Venture**	10:42:30	10:42:25
DHC	7/29/08	2559	150,000	9.80	Westlink	Peter Salud	**Rogelio Garcia**	**Venture**	10:42:31	10:42:25
DHC	7/29/08	2567	200,000	9.80	BH Chua	FHC	**Rogelio Garcia**	**Venture**	10:42:38	10:42:25
DHC	7/29/08	2570	50,000	9.80	Abacus	Peter Salud	**Rogelio Garcia**	**Venture**	10:42:55	10:42:25
DHC	7/29/08		210,000	9.80			**Omar Guinomla**	**Venture**		10:44:10
DHC	7/29/08	2603	102,000	9.80	Abacus	Peter Salud	**Omar Guinomla**	**Venture**	10:44:34	10:44:10
DHC	7/29/08	2632	108,000	9.80	Westlink	Peter Salud	**Omar Guinomla**	**Venture**	10:46:05	10:44:10

[11] Records, pp. 89-106.

The fact that this went on continuously from June 19 to July 22, 2008 cannot be a mere coincidence. The frequency of the transasctions should have alerted appellants to inquire on the circumstances of their BOs and buyers of said shares. Appellants could have exercised due diligence and made independent inquiries to their BOs on why said shares are being traded frequently during the span of the Covered Period and determined who purchased said shares with the resources they have on hand. Unfortunately, appellants failed to do the same without any justifiable reason.

Second, there is collusion between the BOs involved herein considering their relationship with each other. Appellants Venture and Aguilar cannot deny that their buy and sell logs show **that they were all sold and bought by the same set of people among themselves, namely: (a) Peter S. Salud, (b) Rogelio D. Garcia and (c) Omar M. Guinomla, who are all clients of Appellant Venture**. It is true that there is nothing illegal in the statement of appellant that "it is not uncommon for a group of friends or peers to come to an agreement to gradually divest their holdings in a particular issue"[12]. However, the act of the BOs of appellants coming together and agreeing to manipulate the DHC by making an artificial image of active trading as evinced by the frequency of their transactions with each other during the Covered period is unlawful.

The appellants even admitted during the conferences of this case that they knew that their clients were related to each other and that Rogelio D. Garcia is a director and consultant of Wellex Industries, Inc., the majority owner of the shares of Waterfront Philippines, Inc., as disclosed in his Customer Account Information Form. Waterfront Philippines, Inc., in turn, owns majority of the shares of Acesite Hotel Corporation (DHC)[13]. Appellant Aguilar also stated in said conferences that Peter S. Salud, Omar M. Guinomla and Rogelio D. Garcia were all referred by one Felino Lee and that the latter was authorized by said persons to facilitate their transactions.[14] This cannot by denied by appellants herein since they have knowledge of this information, which should have made them cautious in handling their clients' transactions.

Lastly, there seems to be no valid commercial reason to justify the sudden demand for the DHC shares and the increase of its price during the covered period. **The defense of appellants that the news article of the Philippine Star dated July 18, 2008 stating "Acesite eyes schemes to fund renovation of Manila Pavilion" motivated said demand and price was belied by the fact that Acesite denied any knowledge or information relevant to the unusual trading of its shares during the PSE's query about**

[12] *Id.* P. 54.
[13] Records, p. 8.
[14] *Id.* p.111.

the ceiling price alert on June 19, 2008.[15] The latter's statement just shows that Acesite was not expecting any sudden price movement or demand of its shares during the Covered Period.

The immediate buy and sell transactions of herein appellants, coupled with the fact that the appellants knew that their BOs are related to each other falls squarely within the definition of *Improper Matched Orders* under the IRR. As a result, prices of the DHC shares unusually fluctuated during the Covered Period which might have induced the public to invest over said shares on the belief of profitability. Appellants as well as their clients (BOs) were able to make it appear to the public that the shares of DHC were actively being traded from June 19 to July 29, 2008, when in fact, it was only the appellants herein who are dealing with each other. Such is also the very essence of the manipulative practice of *Painting the Tape* under the IRR.

Thus, appellants are liable for committing Manipulative Practices under Sec. 24.1 of the SRC, in relation to Section 24.1 (b)-1 of its IRR through *Improper Matched Orders* resulting to *Painting the Tape* Trades of the DHC Shares during the Covered Period.

II. Lack of information or access to information on the part of the appellants is untenable.

As to the defense of appellants Venture and Aguilar of lack of knowledge or access to such information as would lead them to suspect that the BOs involved herein were in collusion with each other to manipulate the prices of the DHC shares, the same deserves scant consideration.

Paragraph 2 and 3 of Section 24.1(b)-1 of the Amended IRR of the Securities Regulation Code is clear that it mandates Broker-Dealers to consider several circumstances before dealing with and trading securities on behalf of their clients, to wit:

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[15] *Id*, p. 6.

"2. It shall be unlawful for any **Broker Dealer**, associated person or salesman of a Broker Dealer (hereinafter collectively referred to as "registered person"), **to make a bid or offer for, or deal in securities, on account of any other person where the registered person intends to create, or the registered person is aware that the other person intends to create, or taking into account the circumstances of the order, the registered person reasonably suspects that a person has placed the order with the intention of creating, a false or misleading appearance of active trading** in any security or with respect to the market for, or the price of, any security.

3. In considering whether an order violates Section 24 of the Code, a Broker Dealer shall consider:

a. Whether the order, or execution of the order, would materially alter the market for, and/or the price of, the securities;
b. The time the order is entered or any instructions concerning the time of entry of the order;
c. Whether the person on whose behalf the order is placed, or another person who the Broker Dealer knows to be a related party of that person, may have an interest in creating a false or misleading appearance of active trading in any security or with respect to the market for, or the price of, any security;
d. Whether the order is accompanied by settlement, delivery or security arrangements which are unusual;
e. Whether the order appears to be part of a series of orders, whether when put together with orders which appear to make up the series, the order or the series is unusual having regard to the matters referred to in this paragraph 3; and
f. Whether there appears to be a legitimate commercial reason for that person placing the order, unrelated to an intention to create a false or misleading appearance of active trading in or with respect to the market for, or price of, any security.

Failure to consider these factors shall raise a presumption that a transaction/s is manipulative." (Emphasis supplied)

Said provisions of the IRR compel BDs to go the extra mile and conduct independent inquiries to determine the circumstances surrounding the shares they are dealing with in order to protect the market from being rigged by individuals who intend to profit from said market manipulations. Otherwise, the BDs are presumed to be engaged in manipulative transactions as stated above.

Here, appellant BDs failed to overcome the presumption under the law. **The appellants, as BDs, knew that the DHC shares were not being actively traded during that time. Furthermore, the news article regarding the**

renovation of the Manila Pavilion is not enough to justify the sudden active trading of the DHC. To reiterate, when Acesite was asked regarding the sudden fluctuation of their shares, the latter stated that they have no information regarding that matter which shows that Acesite has no expectation that their shares will be actively traded during time. The presence of these suspicious circumstances, coupled with the sudden active trading of the DHC during the Covered Period should have triggered the appellants to make an inquiry on said transactions. Despite the same, the appellants failed to do so and still proceeded to pursue said transactions during the covered period which resulted to an appearance of active trading. The same mislead the public into believing that there was active trading of said DHC shares, when in fact there was none and which might have caused innocent investors to deal with the same to their damage and prejudice.

To reiterate, appellants, as BDs, have all the resources and duty under the law to conduct their own inquiry over the transactions of their BOs with respect to the DHC shares. **Information over the buyers of the DHC shares during the Covered Period are easily accessible by making a simple inquiry with the Philippine Stock Exchange**. Appellants cannot pass the liability solely to their BOs considering that they were the ones who primarily dealt with said transactions. Moreover, said transactions of the BOs would not have been possible with the participation of appellants herein.

Finally, it is worthy to mention that the BOs of the appellants have already paid the administrative penalties imposed upon them by the EIPD[16]. This already constitutes an admission on the part of the BOs for the charges herein and the same warrants the liabilities of the appellants for their participation over said manipulative transactions.

Therefore, appellants cannot allege lack of access or information over the transactions of their BOs as mandated by the Securities Regulation Code and its Implementing Rules and Regulations.

WHEREFORE, premises considered, the Notice of Appeal and Memorandum of Appeal filed by appellants is hereby dismissed for lack of merit. Appellants Venture Securites, Inc. and Adora M. Aguilar are hereby ordered to pay the administrative fines of **ONE HUNDRED THOUSAND PESOS (PHP 100,000.00)** and **FIFTY THOUSAND PESOS (PHP 50,000.00)** for violation of Section 24.1 of the Securities Regulation Code, in

[16] Records. P. 120-121.

relation to Rule 24.1(b)-1 of its Amended Implementing Rules and Regulations[17].

SO ORDERED.

Pasay City, Philippines; 8 August 2019.

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

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[17] SEC Consolidated Scale of Fines, Part A (9.3) .