Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

Office of the General Counsel

IN THE MATTER OF:

SEC En Banc Case No. 07-09-169
For: Review of Order of Revocation of Registration of and Permit to Sell Securities

METRO ALLIANCE HOLDINGS & EQUITIES CORPORATION,
Appellant.

x---x

DECISION

For consideration of the Commission *En Banc* is the *Appeal* dated 14 July 2009 filed on 15 July 2009 by Metro Alliance Holdings & Equities Corporation ("Appellant", for brevity) from the Order of Revocation of Registration of and Permit to Sell Securities dated 25 June 2009 issued by the Commission's Corporation Finance Department ("CFD").

THE FACTS

BACKGROUND

On 4 December 2003, Appellant entered into a Memorandum of Agreement with its special purpose entity, Polymax Worldwide Limited ("Polymax"), whereby Appellant confirmed the designation of Polymax as the acquisition company in the proposed acquisition of the senior debt papers of Bataan Polyethelyne Corporation ("BPC") from International Finance Corporation.[1]

On 7 July 2005, Polymax and BPC executed a Deed of Conveyance, whereby BPC transferred to Polymax, under an asset for share swap, the petrochemical plant of BPC in exchange for 85 million common shares of Polymax with par value of US$1 per share.[2]

On 20 July 2005, Appellant, Polymax and NPC International Limited ("NPCI") entered into a Share Purchase Agreement ("SPA") which provided that NPCI will acquire 60% of the issued share capital of then still-to-be-incorporated NPC Alliance Corp. ("NPCA") from Polymax.[3]

[1]Memorandum on Appeal, p. 2.
[2]Ibid., p. 3.
[3]Ibid.

On 8 August 2005, Polymax incorporated NPCA with the objective of transferring the petrochemical plant of BPC to the latter which will own and manage the plant.[4]

The following day, or on 9 August 2005, the petrochemical plant was eventually transferred by Polymax to NPCA in consideration for 4.8 million shares of common stock of NPCA, resulting in 100% ownership by Polymax of NPCA.[5]

On 16 December 2005, Polymax, NPCA, NPCI and Petrochemical Industries Investment Company ("PIIC") entered into an Amended Share Purchase Agreement ("Amended SPA") whereby: (1) NPCI and PIIC will purchase 40% and 20%, respectively, of NPCA's shares of common stock from Polymax; and (2) NPCI will advance US$15 million representing advance payment to be used to fund bona fide third party costs of NPCA or BPC for the recommissioning, operation and maintenance of the petrochemical plant or such other third party costs or expenses, taxes, or duties as agreed between Polymax and NPCI.[6]

By virtue of the SPA and Amended SPA, Polymax now has only 40% equity in NPCA, while NPCI and PIIC have 40% and 20%, respectively. A Joint Venture Agreement was entered into between Polymax, on one hand, and NPCI and PIIC, on the other.[7]

The joint venture between Polymax on one hand, and NPCI and PIIC on the other, spawned several accounting/legal issues. One of these is the issue on who will bear the cost in the delay of the full operation of the petrochemical plant now that it is owned by NPCA. NPCI and PIIC insist that it should be for the account of Polymax, while Polymax maintains that it should be for the account of NPCA as the owner of the plant. NPCA's pre-commissioning cost for the petrochemical plant and its operating expenses for the year ended December 31, 2006, were capitalized by NPCA and recorded as receivables from Polymax. On the other hand, in Polymax's books, it has receivables from NPCA. These amounts are substantial.[8]

Another issue is the one on how the 60% interest in NPCA should be treated. This issue arose when Polymax filed a case for Declaratory Relief against NPCI, PIIC and NPCA, praying for the declaration of: (1) the Share Purchase Agreement(s) and the Stockholders' Agreement as null and void; (2) the transfer of the 60% equity shares in NPCA to the NPCI group as null and void; and (3) Polymax as the owner of such shares.[9]

---

[4] Memorandum on Appeal, p. 3.
[5] Ibid.
[6] Ibid, p. 4.
[7] Ibid.
[8] Ibid.
[9] Memorandum on Appeal, p. 5.

PROCEEDINGS BEFORE THE CFD

Records of the Commission reveal that the following reports were due for submission by the Appellant:

Report	Due Date
2006 Annual Report (SEC Form 17-A)	15 April 2007
2007 1st Quarter Report (SEC Form 17-Q)	15 May 2007
2007 2nd Quarter Report (SEC Form 17-Q)	15 August 2007
2007 3rd Quarter Report (SEC Form 17-Q)	14 November 2007

A] 2006 ANNUAL REPORT (SEC FORM 17-A)

On 11 May 2007, Appellant filed its SEC Form 17-L or a Notice of Inability to File its 2006 Annual Report (SEC Form 17-A).[10]

In response to the Show-Cause Letter of CFD dated 27 June 2007, Appellant explained that it had not been able to submit its 2006 Annual Report because it had to be consolidated with that of Polymax, which, unfortunately, was encountering the above-mentioned accounting/legal issue on who should bear the cost of the delay in the operation of the petrochemical plant.[11]

On 30 July 2007, the CFD, finding Appellant's explanation unmeritorious, partially assessed Appellant the penalty of Two Hundred Eighty-Eight Thousand Pesos (Php288,000.00) for its continued failure to file its 2006 Annual Report.[12]

B] 1ST, 2ND & 3RD QUARTER REPORTS FOR 2007 (SEC FORMS 17-Q)

For Appellant's failure to file its 1st, 2nd & 3rd Quarter Reports for 2007, the CFD issued Show-Cause Letters dated 2 July 2007, 19 December 2007, and 18 February 2008, respectively.[13]

In reply, Appellant merely reiterated its explanation for the non-filing of its 2006 Annual Report.[14]

On 1 August 2007, the CFD partially assessed Appellant the penalty of Twenty-Seven Thousand Two Hundred Pesos (Php27,200.00) for its continued failure to file its 1st Quarter Report for 2007.[15]

---

[10] CFD's Reply-Memorandum dated 12 October 2009, p. 1.
[11] Appellant's letter-reply dated 16 July 2007.
[12] Supra, Note 10, p. 3.
[13] Ibid.
[14] Ibid.
[15] Ibid.

C] SUSPENSION OF REGISTRATION OF SECURITIES

For Appellant's continued failure to submit its 2006 Annual Report and 2007 1st Quarter Report, a hearing for suspension was scheduled on 24 October 2007, which Appellant did not attend.[16]

As a result of the company's failure to file its 2nd and 3rd Quarter Reports for 2007, in addition to the non-filing of its 2006 Annual Report and 2007 1st Quarter Report, another hearing for suspension was held on 18 February 2008, wherein Appellant reiterated its earlier explanation.[17]

Eventually, Appellant's Registration of Securities was suspended for a period of sixty (60) days from the company's receipt of the Suspension Order dated 17 July 2008, or until the company was able to submit the foregoing reports and fully pay the corresponding penalties.[18] **The Suspension Order** provides that:

> "Should the company fail to submit its 2006 Annual Report (SEC Form 17-A), as well as its 1st, 2nd, and 3rd Quarter Reports for 2007 (SEC Form 17-Q), the Commission shall immediately initiate proceedings for the revocation of its Registration of Securities."

D] REVOCATION OF REGISTRATION OF SECURITIES

After the hearing on the revocation of the registration of securities held on 21 November 2008, Appellant was allowed by CFD to file on 5 December 2008 its explanation. Appellant explained that its inability to file its reports was due to the refusal of its External Auditor, Sycip Gorres and Velayo ("SGV"), to give an unqualified opinion on the company's financial statements.[19]

On 25 June 2009, the CFD issued herein assailed Revocation Order.

ISSUE(S)

The ultimate issue to be resolved herein is whether CFD erred in revoking the registration of securities of Appellant.

---

[16] Supra, Note 10, p. 4.
[17] Ibid.
[18] Ibid.
[19] Supra, Note 10, p. 5.

DISCUSSION

To stress, the Revocation Order was issued due to the company's failure to comply with the Suspension Order, that is, it failed to file the reports and pay the penalties within sixty (60) days from its receipt of the Suspension Order.[20]

The records reveal that Appellant received the Suspension Order on 30 July 2008; hence, **it had until 30 September 2008 within which to comply with the same.**[21]

The records likewise reveal that **Appellant filed the afore-said reports on 12 August 2008**, which is well within the given sixty-day period for compliance with the Suspension Order.[22]

The CFD, however, **deemed such reports as not filed** considering that:

a) The 2006 Consolidated Audited Financial Statements which were attached to the 2006 Annual Report (SEC Form 17-A) **contained a *qualified opinion* from the External Auditor in violation of SRC Rule 68.1(2) which requires an unqualified opinion,** ***rendering the same deemed not filed***; and

b) Since the said 2006 Consolidated Audited Financial Statements of Appellant has been deemed not filed, the succeeding reports such as the 2007 1st, 2nd, and 3rd Quarter Reports (SEC Forms 17-Q) could not be properly accomplished, as a comparative presentation with a duly accomplished 2006 Consolidated Audited Financial Statements is required.[23]

SRC Rule 68.1(2), which CFD invokes in support of the above conclusion, provides that:

> "Audited financial statements of companies covered by this Rule **with an auditor's opinion that is other than unqualified** ***because of departure(s) from the generally accepted accounting principles in the Philippines*** shall be deemed not filed and shall give rise to the imposition of appropriate sanctions on the company.
>
> The Commission reserves the right to obtain clarification or to question other modifications in the report issued by the external auditor which it deems unreasonable." (Emphasis ours)

---

[20] CFD's Reply-Memorandum dated 12 October 2009, p. 5.
[21] Ibid.
[22] Ibid. p. 9.
[23] Ibid.

An auditor may not be able to express an unqualified opinion when either of the given circumstances exists and, in the auditor's judgment, the effect of the matter is or may be material to the financial statements, i.e., (a) there is a limitation on the scope of the auditor's work, which could lead to a qualified opinion or disclaimer of opinion, or (b) there is disagreement with management regarding the acceptability of the accounting policies selected, the method of their application or the adequacy of financial statement disclosures which could lead to a qualified opinion or an adverse opinion. A disclaimer of opinion should be expressed when the possible effect of a limitation on scope is so material and pervasive that the auditor has not been able to obtain sufficient appropriate audit evidence and accordingly, is unable to express an opinion on the financial statements.[24]

Appellant argues that CFD erred in finding the reports as deemed not filed because the qualified opinion or disclaimer of opinion of the External Auditor was not due to a departure from the generally accepted accounting principles in the Philippines, which is what is required for SRC Rule 68.1(2) to apply, but was due to a scope limitation that is beyond the control of the External Auditor and is not imposed by its management.

SGV issued a disclaimer of opinion in its Audit Report dated 13 December 2007 on Appellant's 2006 Consolidated Financial Statements, based on the following justifications:

> "Because of the matters described in the following paragraph, we were **unable to complete an audit** in accordance with the Philippine Standards on Auditing.
>
> The Company has significant liabilities which consist mainly of bank loans, interest and penalties that are past due. In addition, the Company has made significant investments to acquire, through Polymax Worldwide Limited (Polymax), its special purpose entity, and NPC Alliance Corporation (NPCA), a wholly-owned subsidiary of Polymax, the decommissioned petrochemical plant of Bataan Polyethylene Corporation. Polymax then entered into a Share Purchase Agreement (SPA) with NPC International Limited (NPIC) and Petrochemical Industries Investment Company (PIIC) for the sale, subject to certain conditions, of its 60% ownership interest in NPCA, which now owns the petrochemical plant. In March and September 2006, the parties entered into a series of variation agreements to further revise the amended and restated SPA. Under the provisions of these variation agreements, Polymax agreed to transfer to NPIC and PIIC 60% of NPCA's shares of stock, prior to completion of certain conditions, provided these will be completed on or before December 31, 2006. Concurrent with the execution of the variation agreements, the parties executed a Deed of Absolute Sale whereby Polymax sold, transferred and conveyed to NPCI and PIIC all its rights and interests over 60% of NPCA's shares of stock. On December 31, 2006, however, the variation agreements expired while the conditions

[24] Philippine Standards on Auditing 701, paragraphs 11 & 13.

subsequent remained unsatisfied. Given this, there is a need to resolve with certainty the ownership of NPCA as of December 31, 2006.

We did not audit the financial statements of Polymax in 2006 which statements reflect total assets and liabilities representing 77% and 45%, respectively, of the related consolidated totals.

The company's ability to settle the obligations and the realization of the investments depend on the complete resolution of the closing requirements of the Share Purchase Agreement (SPA) and the successful recommissioning and commercial operations of the petrochemical plant. The present conditions indicate a **material uncertainty** on the ability of the company to operate in the normal cause of business." (Emphasis ours)

The Office of the General Accountant ("OGA") commented that Appellant's subject Audited Financial Statements should be considered as filed because, based on the foregoing, SGV's failure to complete the audit is by reason of limitation of scope, not a deviation from the generally accepted accounting principles as contemplated by SRC Rule 68.1(2).[25] Further, the said Audited Financial Statements contains sufficient disclosure on the legal issues involving the SPA and the surrounding circumstances.[26]

Moreover, this scope limitation is due to the pending case for Declaratory Relief, the resolution of which is beyond the control of the company.[27] In a letter to OGA dated 30 September 2009, the company manifested that "*Polymax has filed as of 27 November 2007 a case for Declaratory Relief to judicially declare as null and void the transfer to NPCI and PIIC of the 60% interests of Polymax in NPC Alliance Corporation*". It explained that "*considering the pendency of the case for Declaratory Relief, it would be highly anomalous for the Corporation to take position that the 60% interests of Polymax in NPC Alliance Corporation is no longer 'Assets Held for Sale' and treat it as receivable, and then once there is a final judgment upholding its stand, it will have to reverse again its financial statement that the 60% interests of Polymax is still 'Assets for Sale'. This will all the more create confusion in the minds of the stockholders.*"[28]

Hence, the reports filed by the Appellant within the sixty-day period mentioned in the Suspension Order, or on 12 August 2008, are deemed filed and acceptable.

However, the timeliness of the said reports is a totally different issue. In this connection, Appellant alleges that: (1) prior to the submission of its reports on 12 August 2008, it requested CFD, through telephone conversion with Trixie Posadas

---

[25] Memorandum of the Office of the General Accountant (OGA) to the Office of the General Counsel dated 16 September 2011.
[26] Ibid.
[27] Ibid.
[28] Ibid.

and Atty. Jose Marie Fabella, the computation of the penalties as of 12 August 2008; (2) as no assessment was sent, another request for the computation was made two (2) days after; (3) Ms. Posadas conveyed that CFD will review the reports and send the billing when available; and (4) no billing was sent and instead, Appellant received the Revocation Order.[29]

CFD explains that no final assessment could be sent considering that the period from which the penalty for the delay shall be computed continues to run up to the present.[30] This, based on CFD's finding that the reports are not deemed filed.

However, had the ruling that the reports are deemed not filed on 12 August 2008 been reconsidered, as it is herein now reconsidered, the penalty for the delay could have already been finally determined during the revocation proceedings, and paid by the Appellant to avoid the Revocation Order.

Thus, Appellant should be assessed and meted the appropriate penalty for the delay, after a proper proceeding therefor, in accordance with due process principles.

WHEREFORE, premises considered, the instant *Appeal* is hereby **GRANTED**. The Order of Revocation of Registration of and Permit to Sell Securities dated 25 June 2009 is hereby **SET ASIDE**. However, the Corporation Finance Department is hereby **DIRECTED** to **DETERMINE** and **IMPOSE**, after proper proceedings, penalties against Metro Alliance Holdings & Equities Corporation for its late filing of its 2006 Annual Report (SEC Form 17-A) and 2007 1st, 2nd, and 3rd Quarter Reports (SEC Forms 17-Q).

SO ORDERED.

Mandaluyong City, 22 September 2011.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

---

[29] Memorandum on Appeal, pp. 1-2.
[30] CFD's Reply-Memorandum dated 12 October 2009, p. 9.