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

SAN MIGUEL BREWERY, INC.,
Appellant,

-versus-

SEC En Banc Case No. 07-12-263
Promulgated on: 29 September 2022

JUSTINA F. CALLANGAN, in her capacity as the Director of the Corporation Finance Department of the Securities and Exchange Commission,
Appellee.
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DECISION

Before this Commission is the Memorandum on Appeal dated 6 July 2012 (the "Appeal"), which was filed on even date by San Miguel Brewery, Inc. (San Miguel), assailing the Letter-Order dated 5 June 2012[1] of the Corporation Finance Department[2] (the "Assailed Order") directing San Miguel to file an amended Registration Statement (RS) in relation to the Thirty-Eight Billion Eight Hundred Million Pesos (₱38,800,000,000.00) Fixed Rate Bonds (Bonds) it issued on 3 April 2009, the dispositive portion of which reads:

> "In view of the foregoing, you are hereby directed to file an amended registration statement within fifteen (15) days from receipt of this letter."

THE PARTIES

San Miguel is a domestic corporation duly organized and existing under the laws of the Philippines, having been issued a Certificate of Registration with SEC Registration No. CS200711828. Its principal office

[1] Annex "A" of the Appeal.
[2] Now, the Corporate Governance and Finance Department

is at San Miguel Corporation Head Office, #40 San Miguel Avenue, Mandaluyong City, Metro Manila.

Dir. Justina Callangan (Dir. Callangan) is the Director of the Corporation Finance Department (the "CFD"), one of the operating departments of the Securities and Exchange Commission (the "Commission"), charged with the duty of monitoring and ensuring compliance with applicable laws, rules, and regulations by public companies, mutual fund companies, exchange traded funds, financing companies, lending companies, issuers of members certificates/shares, timeshares/commercial papers and foundations. Dir. Callangan was impleaded in this case in her capacity as Director of CFD.

THE RELEVANT FACTS

On 17 March 2009, the Commission issued in favor of San Miguel the Registration Order and Permit to Sell Securities for the ₱38.8 Billion Bonds, which rendered effective the RS dated 16 March 2009. The said RS provides that the Offer Period is from 18 March 2009 to 27 March 2009. San Miguel forthwith issued the registered Bonds on 3 April 2009.

In the Trust Agreement dated 16 March 2009 (the "Agreement") between San Miguel and Bank of the Philippine Islands, which embodied the terms and conditions of the Bonds, San Miguel agreed to maintain a Minimum Current Ratio[3] of 1:1 and a Maximum Debt-to-Equity Ratio[4] of 3.5:1 for as long as the Bonds, or any portion thereof, remain outstanding.

In its letter dated 16 December 2011,[5] San Miguel informed the CFD of its intention to change its covenant in the Agreement to maintain a minimum current ratio of 1:1, with a covenant to maintain a minimum interest coverage ratio of 4:75:1, the same being the more relevant ratio. To implement this proposal, San Miguel informed the CFD of the process that it will follow, i.e., that (a) it will send a written notice of the proposed amendment to all bondholders and secure the consent of the majority bondholders, in compliance with the Agreement; (b) it will execute a supplemental agreement covering the amendment after securing the consent of the majority bondholders; and (c) file a report on SEC Form 17-C with the Commission, disclosing the terms of the supplemental agreement. Relative thereto, San Miguel sought the confirmation of the CFD that its proposed procedure is sufficient to render the proposed replacement of its minimum current ratio covenant with a minimum

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[3] Current ratio refers to SMBI's current assets divided by its current liabilities.
[4] Debt-to-Equity Ratio refers to SMBI's indebtedness for borrowed money divided by its total stockholders' equity.
[5] Annex "B" of the Appeal.

interest coverage ratio covenant, and that it does not need to file an amended RS for the Bonds.

In a letter dated 3 February 2012,[6] the CFD informed San Miguel that it has referred the latter's 16 December 2011 letter to the Commission *En Banc*, and the same was subsequently referred to the Office of the General Counsel (OGC) as a request for opinion.

On 5 June 2012, the CFD issued a letter informing San Miguel of the OGC Opinion issued on 4 April 2012 (the "OGC Opinion") which provided that the filing of an Amended RS, covering changes in financial covenants in the Agreement is required if, and as long as, the Bonds are still being traded in the secondary market. The CFD also informed San Miguel that the OGC Opinion was adopted by the Commission *En Banc*.[7]

On the basis thereof, the CFD issued the Assailed Order on 12 April 2012, directing San Miguel to file an Amended RS.

On 4 July 2012, San Miguel sought the reconsideration of the Assailed Order, arguing that there was no more need to file an Amended RS since the change in financial covenants ratio under the Bonds have already been completed and disclosed to the investing public. San Miguel's motion for reconsideration was denied by the CGFD which resulted in the filing of the instant Appeal.

On 30 July 2012, the CFD filed its Reply Memorandum praying for the dismissal of the Appeal for lack of merit, citing the OGC Opinion in support of its position. Further, the CFD raised also maintained that the Appeal should be dismissed for being a prohibited pleading, arguing that since the Assailed Order was issued based on the Resolution of the *En Banc*, the proper remedy was to have filed the same with the Court of Appeals.

On 19 September 2012, San Miguel filed its Rejoinder dated 13 September 2012 ("Rejoinder") where it maintained that the Appeal filed with the Commission was proper because it sought the reversal of the Assailed Order issued by the Director of the CFD. San Miguel also reiterated its position that the amendment of the RS is no longer necessary since the offering of the Bonds were already completed.

On separate dates, i.e., 3 April 2012 (Series A Bonds), 4 April 2014 (Series Bonds) and 3 April 2019 (Series C Bonds), the Bonds matured.

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[6] Annex "A" of the Reply.
[7] *Id.*., Annex "C"

Subsequently, their respective face values were paid.[8] The dates of maturity of the Bonds, which are also contained in the Philratings Report dated 3 October 2011, were disclosed by San Miguel to the Commission.

During the pendency of the appeal, the jurisdiction over the registration of bonds and its issuers were transferred to the Markets Regulation and Securities Department (MSRD). Thus, on 25 August 2021, the Commission, through the OGC, issued an Order directing the MSRD and San Miguel to file a manifestation and inform the Commission of any supervening event that will facilitate the prompt disposition of the case.

On 3 September 2021, the MSRD filed its Manifestation praying for the dismissal of the Appeal for lack of merit. The MSRD argued that the maturity and payment of the Bonds did not moot the Appeal, because the Commission is not precluded from ruling on the issue presented therein, and imposing the appropriate penalties if it finds that San Miguel has violated applicable laws, rules, and regulations.[9]

To date, SMB has not filed any manifestation.[10] Hence, the case is deemed submitted for decision.

ISSUE

The sole issue presented to this Commission is whether San Miguel should file an Amended RS with respect to the Bonds.

RULING

We dismiss the instant case for being moot and academic.

In *Express Telecommunications, Inc. vs AZ Communications, Inc.*,[11] the Supreme Court reiterated its consistent position on when a case can be considered moot and academic, thus:

> "A case is moot when a supervening event has terminated the legal issue between the parties, such that this Court is left with nothing to resolve. It can no longer grant any relief or enforce any right, and anything it says on the matter will have no practical use or value."

Relative thereto, the Supreme Court also reiterated and applied in the case of *Republic v. Moldex*,[12] the rule established in jurisprudence, that

[8] See Order dated 17 March 2009
[9] Paragraph 4, MSRD Manifestation.
[10] Order was served on the counsel of record on 26 August 2021.
[11] G.R. No. 196902, July 13 2020
[12] G.R. No. 171041, 10 February 2016.

moot and academic cases should be dismissed, and that courts (as well as administrative agencies exercising quasi-judicial powers) are precluded from rendering advisory opinions intended to resolve issues that will have no practical purpose, thus:

> "A case becomes moot and academic when, by virtue of supervening events, the conflicting issue that may be resolved by the court ceases to exist. There is no longer any justiciable controversy that may be resolved by the court. **This court refuses to render advisory opinions and resolve issues that would provide no practical use or value. Thus, courts generally "decline jurisdiction over such case or dismiss it on ground of mootness.**" (Emphasis Supplied)

In the instant case, considering that the Bonds have matured, and the bondholders have been paid the face value of the Bonds respectively held by them, a ruling on whether San Miguel needs to amend its RS will not serve any practical purpose because given the foregoing circumstances, the terms, conditions, as well as the obligations in the Agreement, relating to the Bonds have already been complied with and extinguished. The maturity of the bonds and the full payment of their face value are supervening events that have effectively rendered the instant case moot and academic.

The amendment of the RS will then have no practical value because with the maturity and full payment of the Bonds, there are no more bondholders and prospective investors to speak of who are the intended recipients of the information relating to the terms and conditions of the Bonds. Any order directing the amendment of the RS will thus be an exercise in futility because the Bonds which are subject thereof have ceased to exist with its maturity, and the extinguishment of all the obligations attendant thereto.

The foregoing notwithstanding, it is worth pointing out that the conduct by the Commission of an independent examination of the Audited Financial Statements (AFS) submitted by San Miguel covering the years 2011 until 2019 shows that the latter complied with the terms of the RS. Specifically, the relevant AFS confirmed that San Miguel complied with its obligation to maintain a Minimum Current Ratio of 1:1 and a Maximum Debt-to-Equity Ratio of 3.5:1 during the effectivity of the Bonds.

Given the foregoing, this Commission finds no cogent reason to depart from the rule established in jurisprudence that a case that has become moot and academic should be dismissed.

WHEREFORE, this case is **DISMISSED** for being moot and academic.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner