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

TIMSON SECURITIES, INC., PHILIP LAUDE, AND ABIGAIL C. LORICA,
Petitioners-Appellants,

-versus- **SEC En Banc Case No. 12-16-396**

CAPITAL MARKETS INTEGRITY CORPORATION,
Respondent-Appellee.
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D E C I S I O N

This treats of the ***Memorandum on Appeal***[1] ("Appeal") filed by Timson Securities, Inc. ("TSI") with the Commission En Banc ("Commission") through the Office of the General Counsel ("OGC"), assailing Capital Markets Integrity Corporation's ("CMIC") Decision[2] ("CMIC Decision") which imposed a penalty of ₱90,000.00[3] on TSI for violation of Article V, Section 4(c) of the CMIC Rules and a penalty of ₱30,000.00[4] for violation of Article VI, Section 2 of the CMIC Rules (collectively referred as "CMIC Rules").

PARTIES

TSI is a stock corporation registered with the Commission, with SEC registration No. CS201306194, and duly licensed as a securities broker/dealer. Its principal office is at 33rd Floor, Robinsons Equitable Tower, ADB Avenue, Poveda St., Ortigas, Pasig City.[5] Philip Laude is the nominee of the corporation and made as respondent to the CMIC case in his capacity; while Abigail C. Lorica is TSI's Associated Person (AP).

CMIC is a domestic corporation duly authorized and licensed by the Commission to act as a Self-Regulatory Organization (SRO), with SEC registration No. CS201104274. Its principal address is at 10th Floor PSE Tower, 5th Ave. Corner 28th St., Bonifacio Global City, Taguig City. CMIC's primary purpose is to "*function as the independent audit, surveillance and compliance unit of the Philippine Stock Exchange, Inc.*"[6]

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[1] Filed on 11 February 2016.
[2] Dated 12 November 2015.
[3] Pursuant to Section 4 (b) (iv) of Article XII in relation to Section 3 (b) (iii) of Article XII of the CMIC Rules.
[4] Pursuant to Section 4 (c) (ii) of Article XII in relation to Section 3 (c) of Article XII of the CMIC Rules.
[5] 2019 General Information Sheet (GIS).
[6] 2019 GIS submitted to the Commission.

RELEVANT FACTS

The case arose from an audit conducted by CMIC's Regular Examination Unit (REU) and the Audit and Compliance Department (AUD). From the said audit, the CMIC, through a *Show Cause Letter* dated 5 October 2015, informed TSI of its finding of violation of Article V, Section 4(c) of the CMIC Rules, and directed it to explain why it should not be penalized for such violation which is classified as a major offense under the CMIC Rules. The CMIC found Philip Laude (Mr. Laude), a licensed trader of TSI, to have created and maintained four (4) joint accounts enumerated as follows:

CLIENT CODE	CUSTOMER NAME	TC CODE
LaudeMic	Philip Laude and or Michael Laude	12071306724516
LaudePhi	Philip Laude and or Michael Laude	12071306715886
LaudeTim	Philip Laude and or Timothy Laude	12071306724530
LaudeAll	Philip Laude and or Allison Laude	12071306724509

In its letter dated 22 October 2015, TSI denied having violated the CMIC Rules and argued that Mr. Laude's joint accounts with his children are categorized as *In Trust For* held in trust by Mr. Laude for the benefit of his minor children.

On 12 November 2015, CMIC issued a Decision (the "CMIC Decision") finding the justification of TSI unmeritorious and imposed upon it a monetary penalty in the aggregate amount of PhP120,000.00 (the "Monetary Penalty"). The request for reconsideration on TSI was denied by CMIC.

In its Appeal, TSI argued that, considering that the joint accounts are held in trust by Mr. Laude for his minor children, there can be no violation of the Article V, Section 4(c) of the CMIC Rules because what is prohibited is the opening of a solo or joint account with another trading participant.[7] TSI further argued that the joint accounts are owned by Mr. Laude's children, considering that they are the beneficial owners thereof. TSI insists that under the 2015 Implementing Rules of the SRC[8], "*trust accounts are owned by the beneficiaries and not by anyone else and treated separate and distinct from other accounts*."[9]

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[7] Paragraph 22 of the Memorandum on Appeal.

[8] 52.1.1.1.15.3. Where a trustee, nominee or other fiduciary opens and maintains an account with a Broker Dealer as a representative of one or more particular beneficiaries and where all transactions effected in that trust are solely for the particular predetermined beneficiaries for whom the account is maintained, such beneficiaries (who thus have ownership of the account itself as distinguished from an interest in particular securities or credits which may happen to be recorded therein) shall be beneficial owners of the account. Where the agent's or trustee's transactions on behalf of a trust or particular individuals are of such volume and importance as to warrant the opening of a separate account for the particular trust or individuals, the Broker Dealer shall obtain the name and address either of the particular trust or of the beneficiaries.

[9] Paragraph 28 of the Memorandum on Appeal.

TSI also argued in the Appeal that since the CMIC had previously cleared TSI of any violation in its past audit covering the period covering 1 October 2013 to 30 September 2014, the creation of the joint accounts in October 2013 were included in the said audit and were thus cleared by CMIC. The CMIC "*cannot now unfairly make findings of violations on events which it had passed upon in its previous audits.*"[10] TSI thus prayed for the reversal of the CMIC Resolution No. 60-2015[11] which denied its motion for reconsideration.

In its Reply,[12] CMIC maintained that TSI violated the CMIC Rules arguing that Article V, Section 4(c) of the CMIC Rules clearly provides that a "trader or salesman should use and maintain only one (1) personal dealing account, and only with his firm, which should be registered under his real name." CMIC likewise emphasized that the maintenance of a personal account is subject to the following requirements: "*(a) the privilege will not be abused; (b) the transaction would not place the clients at a disadvantage; (c) the personal transactions would only be made with his firm; (d) only one (1) personal account would be maintained; (e) the personal account would only be in his own firm; (f) the personal account would be registered in his name; (g) prior written approval of the firm was obtained; and (h) personal transactions shall consider the "Customer First Policy.*"[13]

CMIC alleges that Mr. Laude's act of maintaining his personal account simultaneously with the four (4) joint accounts already constitutes abuse of privilege and puts at a disadvantage the other clients of TSI. CMIC argues that Mr. Laude practically controls the joint accounts that he has with his four (4) minor children because the latter have no capacity to act. CMIC thus concluded that Mr. Laude exercise of control over his own personal account and the four (4) joint accounts constitutes an abuse of the privilege.

In response to TSI's position that it did not violate the CMIC Rules since the joint accounts are held by Mr. Laude in trust for his children, CMIC argued that the same has no merit because the equitable ownership of these joint accounts is vested with Mr. Laude. CMIC insists that what the securities laws proscribe is the abuse of privilege; and the maintenance of a personal account and joint accounts with minor children in the guise of an "*In Trust For*" accounts necessarily contravenes the purpose of prescribing that traders and salesmen should have only one personal dealing account, whether solo, joint or *In Trust For*.

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[10] Paragraph 26 of the Memorandum on Appeal.
[11] Paragraph 9 of the Reply Memorandum.
[12] Filed to the OGC on 7 March 2016.
[13] Paragraph 18 of the Reply.

ISSUE

Whether or not the CMIC committed reversible error in penalizing TSI based on its findings that the latter violated the CMIC Rules?

DISCUSSION

The Commission denies the Appeal.

Article V, Section 4(c) of the CMIC Rules provides:

> "(c) A trader or salesman should use and maintain only one (1) personal dealing account, and only with his firm, which should be registered under his real name. Additionally, he is prohibited from having, opening or using a solo or joint account with any person in any other Trading Participant for the purpose of transacting securities." (emphasis supplied).

The main objective of the CMIC Rules is to keep and protect the integrity of the capital market and minimize exposure of the investing public to unreasonable risks by maintaining the highest code of ethics, honor and integrity among its trading participants, and the highest standards in the commercial and financial transactions.[14] It is in this context that traders and salesmen are expected to act and carry themselves in a manner that would promote the integrity of the capital market,[15] and not to act or enter into any transaction that would adversely affect the performance of, or compromise their duties to the investing public, their company, the Exchange and the Commission.[16]

Records show that CMIC found that Mr. Laude, a registered trader of TSI was maintaining a personal account and four (4) joint accounts with his minor children. TSI and Mr. Laude did not dispute the finding of CMIC but maintained that the same does not constitute a violation of Section 4(c) of the CMIC Rules because the four (4) joint accounts are "in trust for" or "and/or" accounts.

The Commission does not agree. The prohibition in Section 4(c), Article V of the CMIC Rules imposed on traders and salesmen from maintaining multiple accounts is categorical. Moreover, nowhere in the said provision nor in the CMIC Rules can we find a provision which recognizes a joint account as an exemption to the prohibition. The reason behind the prohibition obvious; the maintenance by a trader or salesman of multiple personal account will adversely affect the performance of his duties and

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[14] Section 1, Article I of the CMIC Rules.
[15] Section 3(a), Article V of the CMIC Rules.
[16] Section 1(e), Article V of the CMIC Rules.

functions. In the instant case, this is more likely considering that the beneficiaries of the joint accounts are members of the immediate family of Mr. Laude. In the natural order of things, a father who works as trader/salesman is likely to prioritize his personal account and his joint accounts with his minor children over the accounts of his clients, to the detriment of the latter. To sustain TSI's position of allowing traders or salesmen to maintain multiple accounts will necessarily result in the erosion of the confidence reposed on them in particular, and in the capital market in general, by the investing public.

Citing Article 1441 of the Civil Code, TSI alleged that CMIC committed reversible error in considering the joint accounts as his personal account, arguing that the same are owned by and are for the benefit of his minor children.[17] TSI argued that as an "in trust for" accounts, the joint accounts of Mr. Laude and his four (4) children should not be considered as his personal account because the account ledgers will show that the same are not for Mr. Laude's benefit.

We are not convinced.

A joint account is an account that is shared between two or more individuals and allows anyone named on the account to access funds within it. In the instant case, Mr. Laude created and maintained four (4) joint brokerage accounts with TSI where they deposited their money with the latter, who placed trades on their behalf. As a party named in the joint account, and considering that the account is shared with his minor children, Mr. Laude was practically obligated to manage the account to ensure that that the same will have optimal yields. In this context, the joint account is for all legal intents and purposes, considered a personal account of Mr. Laude.

We also do not agree with TSI's argument that Mr. Laude's four (4) joint accounts with his minor children should not be considered as his personal accounts because the same are in the nature of an "in trust for" accounts. In the case of *Tala Realty Services Corporation v. Banco Filipino Savings and Mortgage Bank,*[18] the Supreme Court defined a trust as a fiduciary relationship with respect to a specific property which imposes upon the holder of the title prescribed equitable duties, thus:

> "A trust is defined as a "***fiduciary relationship with respect to property which involves the existence of <u>equitable duties imposed upon the holder of the title to the property</u> to deal with it for the benefit of another***. A person who establishes a trust is called the trustor; one in whom confidence is reposed as regards property for the benefit of another is known as the

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[17] Par. 22 of the Memorandum on Appeal.
[18] G.R. No. 137533. November 22, 2002. [441 PHIL 1-46].

> trustee; and the person for whose benefit the trust has been created is referred to as the beneficiary or cestui que trust.'""[19] (emphasis and underscoring supplied)

Essentially a trust relationship creates two kinds of ownership: legal and equitable, thus:

> "Trust is the legal relationship between ***one person who has equitable ownership of a property*** and another who ***owns the legal title*** to the property. The trustor is the one who establishes the trust; the beneficiary, the person for whose benefit the trust was created; and the trustee, the one in whom, by conferment of a legal title, confidence has been reposed as regards the property of the beneficiary."[20]

In the instant case, Mr. Laude intentionally and voluntarily established a trust when he opened and maintained a joint account with his four (4) minor children. Mr. Laude was also the trustee who assumed the responsibility of holding, managing and ensuring that the amounts covered in the joint accounts will dealt with in a manner that is most beneficial to his four (4) children who are the beneficiaries thereof. We agree with CMIC that the four (4) joint accounts which were held in trust by Mr. Laude were personally managed controlled by him considering that his children's capacity to act is limited on account of their minority. Section 4(c), Article V of the CMIC Rules which prohibits the maintenance of several dealing accounts was thus correctly applied by CMIC.

Moreover, we also find TSI's contention that the 2015 Implementing Rules of the SRC[21] recognizes the beneficiaries as the owners of the account to be misplaced. While the provision cited by TSI recognizes that trust accounts can be created where another person opens an account with the broker/dealer for the benefit of a third person, this is not applicable in the instant case because here, it was Mr. Laude, the registered trader who opened and maintained the trust/joint accounts for the benefit of his minor children.

Such being the case, the penalty of ₱90,000.00[22] initially imposed upon TSI for violation of Article V, Section 4(c) of the CMIC Rules is

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[19] *Ibid.*
[20] Spouses Oco v. Limbaring, G.R. No. 161298. January 31, 2006. [516 PHIL 691-704]
[21] "52.1.1.1.15.3. ***Where a trustee, nominee or other fiduciary opens and maintains an account with a Broker Dealer as a representative of one or more particular beneficiaries*** and where all transactions effected in that trust are solely for the particular predetermined beneficiaries for whom the account is maintained, such beneficiaries (who thus have ownership of the account itself as distinguished from an interest in particular securities or credits which may happen to be recorded therein) shall be beneficial owners of the account. Where the agent's or trustee's transactions on behalf of a trust or particular individuals are of such volume and importance as to warrant the opening of a separate account for the particular trust or individuals, the Broker Dealer shall obtain the name and address either of the particular trust or of the beneficiaries." (emphasis and underscoring supplied)
[22] Pursuant to Section 4 (b) (iv) of Article XII in relation to Section 3 (b) (iii) of Article XII of the CMIC Rules.

inappropriate. Again, **the prohibition on maintaining multiple accounts in Section 4(c), Article V of the CMIC Rules is imposed on traders and salesmen.**

Hence, ***we find it necessary to impose the said penalty upon Mr. Laude, the trader of TSI.***

In relation thereto, Section 34.13 of Rule 34 of the Implementing Rules and Regulations of the Securities Regulation Code ("IRR-SRC") also penalizes the violation of the prohibition on maintaining multiple accounts by traders or salesmen. A penalty of 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 Section 34.2 shall be imposed upon the trader or salesman,[23] as in this case, Mr. Laude.

On the basis of the foregoing, CMIC correctly found that TSI failed to provide for and implement effective and appropriate compliance mechanisms to ensure that its associated persons, traders, salesmen and employees comply with the CMIC Rules and securities laws. This explains why Mr. Laude was able to conveniently open and maintain four (4) additional joint accounts with TSI by a mere letter request.[24] TSI should have created and established stringent mechanisms to effectively supervise its traders and associated persons, and ensure that they live up to highest code of ethics, honor and integrity, and the highest standards in the commercial and financial transactions.

Finally, we agree with CMIC that its issuance of an audit finding that a trading participant is compliant with the pertinent rules covering a particular period does not preclude the CMIC from investigating a possible violation committed during the period covered by the audit considering that these audits are based on a sampling methodology; hence, not all client records are being subjected to the enquiry. More importantly, a violation of the CMIC Rules is certainly not cured by the conduct of and submission of an audit report by the CMIC to the effect that the audited company is compliant with the rules. To sustain TSI's argument would render the CMIC utterly ineffective in complying with its mandate of protecting the integrity of the capital market.

WHEREFORE, premises considered, the *Memorandum of Appeal* filed by Timson Securities, Inc. is hereby **DENIED** for lack of merit and the

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[23] Section 54.1.4 of the Implementing Rules and Regulations of the Securities Regulation Code.
[24] Attachments to Annex "D" of the Memorandum on Appeal.

DECISION of the Capital Markets Integrity Corporation is hereby **AFFIRMED WITH MODIFICATION**.

SO ORDERED.

Pasay City, Philippines, 14 May 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner