Republic of the Philippines
Department of Finance
Securities and Exchange Commission
Commission En Banc

**F. YAP SECURITIES, INC.**
*Appellant,*

-versus-

**SEC En Banc Case No. 07-20-385**

**CAPITAL MARKETS INTEGRITY CORPORATION,**
*Appellee.*
**x---------------------------------------x**

# DECISION

Before this Commission is the Memorandum of Appeal dated 30 June 2020 filed by Appellant F. Yap Securities, Inc. (the "Appeal") praying for the reversal and the setting aside of the Resolution dated 21 February 2020, which was subsequently affirmed by the Board of Directors of Appellee, the Capital Markets Integrity Corporation, in a Resolution dated 16 June 2020 (the "Assailed Resolution").

## THE PARTIES

F. Yap Securities, Inc. (the "Appellant") is a corporation duly organized and existing under the laws of the Republic of the Philippines, and is a Trading Participant as defined under the Securities Regulation Code (SRC) duly licensed to conduct business as a broker/dealer of securities in the Philippine Stock Exchange (PSE). Its principal office is at the 17/F Lepanto Building, 8747 Paseo de Roxas, Makati City.

The Capital Markets Integrity Corporation (the "Appellee") is a self-regulatory organization (SRO) duly organized and existing under the laws of the Republic of the Philippines whose mandate is to maintain the integrity of the capital market and minimize the risk of the investing public by ensuring that trade participants comply with applicable rules and regulations. Its principal office is at the 10/F PSE Tower, 5$^{th}$ Avenue corner 28$^{th}$ Street, Bonifacio Global City, Taguig City.

## RELEVANT FACTS

On 18 May 2000, Yapster E-Trade, Inc. (Yapster) was organized and registered with the Commission, with Appellant and related parties as its shareholders.[1] Yapster secured a license as a broker in securities from the

[1] Par. 12 of the Appeal

Commission.[2] On the same date, Appellant and Yapster executed an Exclusive Agreement where they established and operated the first online platform in the country, and where Yapster became the sole and exclusive online arm of Appellant.[3]

As a licensed broker/dealer, Appellant subsequently catered to both traditional clients who manually signed-up with it, and to online clients who were referred to Yapster. Appellant maintains the TC codes of all its clients, traditional and online. As regards its online clients, Appellant finally approves the forms that have been reviewed by Yapster, and thereafter assigns the respective PSE-issued TC codes. The documents of the online clients are however returned to Yapster for maintenance and safekeeping only for and on behalf of Appellant.[4]

On 10 April 2008, Appellant and Yapster entered into and executed a Revised Commission Agreement (the "Commission Agreement") where Appellant charged Yapster the amount of P20.00 per trade which was allegedly understood as "per stock transaction per day". The said amount was paid by Yapster internally to offset administrative costs of Appellant, and was therefore not passed on to the online clients.

On different dates covering July and August 2019, the Audit and Compliance Department of Appellee conducted its annual regulatory examination of Appellant's books and records covering the period of 01 June 2018 until 31 May 2018, and noted that Appellant (a) executed trades using nine hundred ninety-two (992) unique TC codes that did not have matching backroom codes, and (b) charged Yapster a flat commission of P20.00 per trade.[5]

On 24 October 2019, Appellee issued a show cause letter directing Appellant to explain why it should not be held liable for violating (a) Article XV(1) of the Implementing Guidelines of the Revised Trading Rules, and (b) PSE Memo Nos. 2008-0467 and 2016-0083 in relation to Rule 30.2.5.2 of the 2015 SRC Rules (the "Relevant Rules").

In response to Appellee's show cause letter, Appellee submitted its written explanation on 30 October 2019, therein stating/explaining that (a) the list of TC codes with no matching backroom codes are clients of Yapster as all their transactions pass through Appellant's Flexitrade System, and (b)

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[2] Par. 14 of the Appeal
[3] Par. 13 of the Appeal
[4] Par. 16 of the Appeal
[5] Par. 4 of the Comment dated 28 July 2020

Appellant has an existing agreement with Yapster which is the basis of the P20.00 commission per stock per day.

After the conduct of an exit conference on 10 April 2020 which was attended by representatives of Appellant, Appellee then issued its Resolution dated 21 February 2020 finding Appellant to have violated the Relevant Rules and imposed upon the latter the sanctions provided in Article XII of the CMIC Rules. The request for reconsideration filed by Appellant on 10 March 2020 was denied by Appellee in a Resolution dated 16 June 2020 after finding that the same was devoid of merit. This led to the filing of the instant Appeal.

In its letter dated 1 July 2020, Appellee informed Appellant of its obligation to pay the fines imposed in the Assailed Decision which was immediately executory notwithstanding the filing of the Appeal with the Commission. Appellant however requested for an extended period of one (1) week within which to pay the fines, which request was noted by Appellee and resulted in the adjustment of the deadline for the payment of the fines to 9 July 2020.

On 7 July 2020, and during the pendency of the Appeal, Appellant filed with the Commission a Very Urgent Motion for the Issuance of a Stay Order (the "Urgent Motion") to enjoin the execution of the Assailed Resolution.

On 9 July 2020, the Commission issued a Resolution granting the Urgent Motion and enjoining Appellee from executing the Assailed Resolution until the issues in the instant Appeal are resolved.

## ISSUES

I. Did Appellant violate Article XV(1) of the Implementing Guidelines of the Revised Trading Rules?

II. Did Appellant fail to charge the minimum commission rates for its 992 clients?

III. Did Appellant fail to establish and maintain an effective compliance function?

## RULING

We find the Appeal meritorious and hereby grants the same.

I. **Appellant substantially complied with the requirement of Article**

**XV(1) of the Implementing Guidelines of the Revised Trading Rules**.

In its Appeal, Appellant maintained that the 992 online clients subject of the Assailed Resolution have TC codes with corresponding accounts in its back office. Appellant alleged that it and Yapster are occupying and holding the same office which houses all its documents, data and information considering that they are related companies. In support thereof, Appellant showed that it was able to immediately submit to Appellee CMIC the excel file containing the backroom codes covering the 992 TC Codes in its email dated 1 August 2019.[6]

Appellee CMIC countered by maintaining that Appellant violated Article XV(1) of the Implementing Guidelines of the Revised Trading Rules (the "Guidelines"). In support thereof, Appellee argued that while Appellant and Yapster are "inter-related", compliance by Yapster does not benefit Appellant because they are separate entities.[7] Moreover, Appellee argued that it was not enough for Appellant to show that the data and the backroom documents are readily available and accessible to it because what is determinative in the instant case is Appellant's actual designation of the trading codes which was allegedly not substantially proven.[8]

We find for Appellant.

Article XV(1) of the Guidelines issued by the Exchange to implement the provisions of the Revised Trading Rules provides:

> "The TP shall designate a unique trading account code that corresponds to an account existing in their back office."

At the outset it should be emphasized that the afore-quoted provision is covered by Section 52.1 of the SRC which embodies the Books and Records Rule, thus:

> "Section 52. *Accounts and Records, Reports, Examination of Exchanges, members, and Others*. – 52.1. Every registered Exchange, broker or dealer, transfer agent, clearing agency, securities association, and other self-regulatory organization, and every other person required to register under this Code, <u>shall make, keep and preserve for such periods, records</u>, furnish such copies thereof, and make such reports, <u>as the Commission by its rules and regulations may prescribe</u>. <u>Such accounts</u>, correspondence, memoranda, papers, books, and other records <u>shall be subject at any time to such</u>

[6] Par. 37 (page 10) of the Appeal; Annex "F" of the Appeal
[7] Pars. 33 and 35 of the Comment dated 28 July 2020
[8] Par. 39 of the Comment

> reasonable periodic, special or other examinations by representatives of the Commission as the Commission may deem necessary or appropriate in the public interest of for the protection of investors." (Emphasis supplied)

Relative to the foregoing, Article IX Section 1(a) of the CMIC Rules specifically allows Trading Participants, as defined therein, to keep records in whatever form at its principal office subject to the condition that the same should be readily made available and provided to the Commission or the SRO when requested, to wit:

> "With the prior approval of the Commission and in addition to the computerized and effective recording and accounting system maintained by SRC 28.1(1)(E)(2)(x), a Trading Participant may make, keep current and maintain the books and records required by this Article IX and SRC Rule 52.1 in electronic form and/or medium (including electronic records, which the Exchange trading system may allow to be so made, kept current and maintained), provided that upon request by the Commission, the CMIC, or any other party, who may be legally entitled or authorized to access said books and records, the Trading Participant shall promptly and readily provide a comprehensible and certified true printed and/or electronic copy of the books and records or any part thereof." (Emphasis supplied)

The Commission has the power and authority to interpret and enforce the SRC, its IRR and other related regulations (collectively, the "Securities Laws") aimed at ensuring safe and sound securities markets. Considering that Trading Participants play an essential and critical role in these markets, the Commission has established, approved and implemented rules and regulations requiring them to act in a manner that is protective of the interests of their customers and other market participants. These rules, along with rules promulgated by the self-regulatory organizations (SROs) which include the Appellee CMIC, seek to ensure that Trading Participants operate, *inter alia*, in a financially sound manner, maintain adequate custody of customer assets, and refrain from deceptive and manipulative practices. To monitor compliance with these rules, the Commission requires Trading Participants to make and maintain records that document their transactions with customers and overall securities operations. The Commission and the SROs review these records to determine and/or ensure that Trading Participants are acting within the requirements of, and fully complying with the provisions of the Securities Laws. Accordingly, if investors are to be adequately protected, regulators must be able to rely on these records as providing a true account of a Trading Participant's operations.

The afore-quoted provisions require Trading Participants to create and preserve in an accessible manner, a comprehensive record of each securities transaction they effect and of their securities business in general. These rules impose minimum recordkeeping requirements that are based on standards a prudent Trading Participant should follow in the normal course of business. The requirements are an integral part of the investor protection function of the Commission, and other securities regulators, in that the preserved records are the primary means of monitoring compliance with Securities Laws, including antifraud provisions and financial responsibility standards.

In *Palanca IV v. RCBC Securities, Inc.*[9] (the "Palanca Case"), the Supreme Court emphasized that the ultimate objective of Securities Laws, which is also its unifying principle, is the protection of investors, thus:

> "It has been observed that the aforequoted provision lays down seven core principles of our securities regulation laws: self-regulation, encouragement of the widest participation of ownership in enterprises, enhancement of the democratization of wealth, promotion of capital market development, protection of investors, ensuring full and fair disclosure about securities, and minimization, if not total elimination, of insider trading and other fraudulent or manipulative devices and practices that create distortions in the free market, with the unifying principle being the protection of investors. These core principles animate the whole of the SRC; and as such, any doubt or conflict in the interpretation of the SRC and its implementing rules must be resolved in a manner that will carry out the foregoing principles." (Emphasis supplied)

In relation to the instant Appeal, investor protection depends on the examination process, which in turn, relies on the records that Trading Participants are required to make and maintain. It cannot be overemphasized that the Commission's regulatory function is undermined to the extent that these records are inaccurate, retained in a non-accessible manner, or capable of alteration. Thus, a failure to maintain accurate, accessible, and true records may lead to situations where a firm cannot account for customer property or its own assets. For these reasons, the recordkeeping requirements are an important part of managing systemic risk in the industry. Stated otherwise, if the record-keeping system of a Trading Participant substantially complies with the applicable laws and regulations and, more importantly, is immediately accessible and/or available to the regulator, the risk that public investors will be prejudiced or damaged is very low. Hence, in the Palanca Case, it was emphasized by the Supreme Court that the SRC's overarching principle of investor protection is satisfied if a Trading Participant keeps and maintains its records and accounts in such a way that it is able to "*promptly and readily provide a comprehensible and certified true printed and/or electronic copy of the books and records or any part thereof when requested by the SEC, the CMIC, or any other party who may be legally entitled or authorized to access said books and records.*"[10]

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[9] G.R. No. 241905, March 11, 2020
[10] Ibid

In the instant case, the records show that Appellant actually designated the unique trading account codes for the 992 clients and the data covering the same was readily available and accessible to it for which reason, Appellant was able to immediately submit the same to Appellee. The excel file containing the backroom codes covering the 992 TC Codes which was submitted by Appellant in its email dated 1 August 2019 is evidence that shows Appellant's substantial compliance with the letter and intent of the afore-quoted provision discussed earlier.

Under the system which Appellant was maintaining in relation to the custody and care of its books and records, and with its ability to immediately produce and submit records required by regulators which Appellant has shown in the instant case, the Commission finds that Appellant has satisfied and substantially complied with the requirements of the law/regulation.

Moreover, it bears emphasis that the provisions of the SRC and its IRR are deemed written into, and should be considered in interpreting the Guidelines issued by the Exchange to implement the provisions of the Revised Trading Rules. Hence, to determine whether the Appellant fulfilled and complied with its obligation under the law, it was necessary in the instant case for the Commission to evaluate and pass upon Appellant's compliance not only with the Exchange Guidelines/Rules but also with the SRC and its IRR. This is based on the principle that compliance with SRC and its IRR necessarily means compliance with the Guidelines and the Rules of the Exchange.

Verily, the excel file containing the backroom codes covering the 992 TC Codes which was submitted by Appellant in its email dated 1 August 2019 proved that the trading codes issued by the Exchange to Appellant have a corresponding account existing at its back office/main office for which reason, it was readily and immediately made available to Appellee. The foregoing ensured that the safeguards established by the law and regulation for the protection of investors were not compromised.

The foregoing is consistent with Rule 2 of the 2015 SRC Rules[11] which specifically provides that securities regulations should be interpreted in a manner that ensures that implementation of the objectives of the SRC and its IRR, primordial of which is the protection of investors. The same rule mandates and directs the Commission to resolve any doubt as to the

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[11] "Any doubt that may arise in the interpretation of these Rules shall be resolved by the Commission in a manner that would accomplish the following objectives: (i) organize a socially-conscious and self-regulating market, (ii) encourage wide public ownership of business enterprises, (iii) promote the development of the capital market, (iv) protect the investors, (v) ensure full and timely disclosure of material information, and (vi) minimize, if not eliminate, fraudulent or manipulative devices and practices that create distortions in a free market."

interpretation of any of its provision in a manner that will ensure the accomplishment of the said objective and to assure the investing public that the Philippine capital market is just, fair and transparent.

## II. Appellant did not violate PSE Memoranda Nos. 2008-0467 and 2016-0083 in relation to Rule 30.2.5.2 of the 2015 SRC Rules.

In the Assailed Resolution, CMIC found Appellant to have violated PSE Memoranda Nos. 2008-0467 and 2016-0083 (the "PSE Memo") when it charged Yapster a flat commission of P20.00 for every trade executed. Appellee CMIC maintained that by entering into a Commission Agreement, Appellant allegedly disregarded the Securities Laws which require that commission rates be pegged on the transaction value.

In its Appeal, Appellant maintained that Yapster is not its client, hence Appellee CMIC committed a reversible error in finding that it violated the PSE Memo. In support thereof, Appellant argued that the Online Trading Agreement which it (through Yapster) executed with its online clients shows that the commissions charged against the latter are based on rates prescribed by the PSE[12], and that the P20.00 flat rate charged against Yapster pursuant to the Commission Agreement was in the nature of an administrative fees.[13]

In its Comment, Appellee maintained that Appellant FYSI violated the minimum commission rules because by charging Yapster a flat rate of P20.00, it failed to comply with the rates prescribed in the PSE Memo. Appellee is in effect arguing that the rates provided in the Commission Agreement which the parties intended to be an administrative fee should comply with the rates prescribed in the PSE Memo notwithstanding the fact that Appellant has already shown that it was already charging its online clients a commission at the rate prescribed under the PSE Memo.

We do not agree with Appellee.

PSE Memorandum No. 2008-0467 provides for the minimum commission rates for trade transactions covering equity and equity-related products which Trading Participants are required to comply with. This regulation undoubtedly applies to Appellant, being a Trading Participant duly licensed to conduct business as a broker/dealer of securities.

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[12] Pars.49 and 50 of the Appeal
[13] Par. 52 of the Appeal

At the outset, it should be pointed out that the securities business is essentially as service business where broker-dealers receive compensation in the form, among others, of commissions, over the counter transactions, advisory fees, service charges, from a variety of activities which are subject to specific regulations and limitations. In relation to commissions on stock exchange transactions, the PSE Memorandum No. 2008-0467 prescribes the minimum commission rates intended to cover the execution of the transaction, arrangements for the registration and delivery of the securities, and basic research and custodial services. Notably, while the said regulation provides for a minimum rate, broker-dealers are not prohibited from charging higher rates although as a matter of practical consideration, firms seldom charge more than the minimum rate for the services for which the rate schedule applies.

In the instant case, the records show that Appellant's transactions with online clients are covered by the Online Trading Agreement which provides for the payment by the latter of commissions at the rates set forth in Annex "A" thereof. Moreover, in support of its claim that it did not charge its 992 clients a fixed commission rate of P20.00, Appellant submitted in evidence the sales invoice of one of the said clients who was charged a commission of P90.00 which is equivalent to 0.0025 of the transaction value.[14]

On the basis of the foregoing, the Commission finds that Appellant complied with PSE Memorandum No. 2008-0467. Consequently, Appellee's argument that Appellant's violation of PSE Memorandum No. 2008-0467 consists in its act of charging Yapster a flat rate of P20.00 must therefore fail for lack of merit and basis.

Considering that the transaction covering Appellants 992 online clients have already been charged a commission rate based on the transaction value prescribed in PSE Memorandum No. 2008-0467, We agree with Appellee that the P20.00 paid by Yapster for the subject transactions pursuant to the Commission Agreement was in the nature administrative fees. The absence of any provision relating to compliance with PSE Memorandum No. 2008-0467 or any reference thereto in the Commission Agreement shows the intent of the parties to treat the said amount as administrative fees and not as commissions. To sustain Appellee's position that the P20.00 paid by Yapster was a fixed commission rate would lead to an absurd situation where the same transaction is twice charged with commission i.e. the online clients paying the commission at the rate

[14] See Annex "C" of the Reply dated 12 August 2020

prescribed in the Online Trading Agreement, and Yapster paying a flat commission rate of P20.00.

Moreover, a careful examination of the Online Trading Agreement will reveal that for and in consideration of Appellant's provision of the services therein as the stockbroker in the buying and selling of the account of its online clients, the latter have agreed to pay the fees and commissions prescribed therein.[15] Considering, however, that the Online Trading Agreement specifically identifies Appellant and Yapster as the service providers, it is legally and physically impossible for Yapster to be a client who is obliged therein to pay fees and commissions. Thus, the 992 transactions covered by the Online Trading Agreement could not have been charged a flat rate of P20.00 because Item No. 4 therein specifically provides for the rates of commissions as prescribed by the rules; neither could Yapster have been obliged to pay the commissions covering the 992 transactions at the rates prescribed in the Online Trading Agreement because it was not a client who was availing the services of Appellant. More importantly, We note that the records of the case is bereft of evidence that will support CMIC's claim that Appellant charged its clients a flat commission rate and disregarded the rates prescribed in the PSE Memo. It is hornbook law that allegations, unsubstantiated by evidence, are not equivalent to proof.[16]

Given that the transactions of the 992 online clients of Appellant were governed by the provisions of the Online Trading Agreement, the payment made by Yapster for the same transactions at the rate of P20.00/transaction pursuant to the Commission Agreement could no longer be considered as commissions because the online clients have already paid for it. If at all, such payments were in the nature of administrative fees made by Yapster in consideration for its use of Appellant's online trading facility.

It appears that Appellee misconstrued and misapplied PSE Memorandum No. 2008-0467 which covers an arrangement between a broker/dealer or trading participant i.e. Appellant and the customers or buyers i.e. Appellant's client; and not those between the Appellant and Yapster.

Moreover, there is also no evidence on record showing that the Appellant's clients are privy to the Commission Agreement. Consequently, the P20.00/transaction fees paid by Yapster under the document denominated as Commission Agreement in consideration for the latter's use of Appellant's online trading facility cannot be stretched to include an arrangement such as

[15] Par. No. 4 of the Online Trading Agreement
[16] Gatan vs Vinarao (G.R. No. 205912, October 18, 2017)

the one alluded to by the CMIC i.e. the commissions paid by Yapster as an online client.

The Commission also notes that for eight (8) successive years beginning 2012 when Appellee became an SRO and started examining and auditing the operations of Appellant, the latter has been found to have not committed material violations of the securities laws.[17] The fact that the Commission Agreement has already been in effect during the said period can only be construed to mean that Appellant was compliant with PSE Memorandum No. 2008-0467, and the P20.00/transaction fee that was paid by Yapster pursuant to the document denominated as Commission Agreement was considered by Appellee as administrative fees.

Finally, having found that Appellant has not violated Article XV(1) of the Implementing Guidelines of the Revised Trading Rules and the PSE Memo, the answer to the third issue is readily apparent and need be expounded in this decision.

**WHEREFORE**, premises considered, the Memorandum of Appeal dated 30 June 2020 filed by Appellant F. Yap Securities, Inc. is hereby **GRANTED**. The Resolution dated 16 June 2020 of the Capital Markets Integrity Corporation is **REVERSED** and **SET ASIDE**.

**SO ORDERED.**

Pasay City, 07 June 2021.

**EMILIO B. AQUINO**
Chairperson

**EPHYRO LUIS B. AMATONG**
Commissioner

**JAVEY PAUL D. FRANCISCO**
Commissioner

**KELVIN LESTER K. LEE**
Commissioner

**KARLO S. BELLO**
Commissioner

[17] Annexes "E" to "E-4" of the Appeal