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

AYALA CORPORATION,
Appellant,

-versus-

SEC En Banc Case No. 07-14-337
Promulgated: 20 June 2023

MARKETS AND SECURITIES REGULATION DEPARTMENT,
Appellee.
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DECISION

For consideration is the Memorandum of Appeal (the "*Appeal*") filed by Ayala Corporation on 26 June 2014 seeking the reversal of the Letter-Order dated 11 June 2014 (the "Assailed Order") issued by the Markets and Securities Regulation Department ("MSRD") imposing upon Ayala Corporation ("Ayala") the penalty of "REPRIMAND" for its failure to comply with Item 4(a) of SEC Form 17-C, the dispositive portion of which reads:

> "In view of the late disclosure of the reason of the cessation from office of Atty. Tan, and considering further that this is the company's first violation of SRC Rule 17, it is hereby **REPRIMANDED**. The company is hereby warned that henceforth, it shall take measures to fully comply with the same, otherwise, appropriate monetary penalties shall be imposed pursuant to the Consolidated Scales of Fines (SEC Memorandum Circular No. 8, Series of 2005)"

RELEVANT FACTS

Appellant Ayala is a corporation duly organized and existing under Philippine laws, having been issued a Certificate of Incorporation with SEC Registration No. 34218.

On 11 April 2014, Ayala conducted its Annual Stockholders Meeting and Organizational Board Meeting for the purpose of, among others, electing its directors and officers for the year 2014-2015.

On 14 April 2014, Ayala filed its Current Report (SEC Form 17-C) with the Commission where it disclosed its newly-elected members of the

Board of Directors (the "Board") and officers, which included Atty. June Vee M. Navarro (Atty. Navarro) who was elected Assistant Corporate Secretary (ASC) of Ayala.

On 30 April 2014, the MSRD issued a Letter[1] (the "Show Cause Letter") directing Ayala to show cause why it should not be held liable for the late filing of its SEC Form 17-C, based on its finding that Atty. Shiela Marie Tan's (Atty. Tan) removal/resignation was not disclosed as required under Item 4(a)(i) of SEC Form 17-C, implementing SRC Rule 17(1)(A)(iii)(1)(2)(c) of the 2003 Amended Implementing Rules and Regulations of the SRC (the "SRC IRR").[2]

In its Letter-Reply[3] dated 6 May 2014 Ayala clarified that Atty. Tan, its former ASC, neither resigned nor was removed, but that her term as ASC expired on 11 April 2014 pursuant to Section 25 of the Corporation Code. Hence, Ayala maintained that it is not required to disclose the expiration of the term of Atty. Tan as ASC in its SEC Form 17-C.

On 11 June 2014, the MSRD issued the *Assailed Order* finding the explanation of Ayala unmeritorious, and imposed upon it the penalty of Reprimand (the "Assailed Penalty").

Hence, the instant Appeal.

Ayala essentially argued that the cessation of office in Item 4 (a)(i) of SEC Form 17-C is limited to a resignation and removal of the officer; thus, it cannot be penalized for failure to disclose the mere expiration of term of an officer. Further, both the SRC and its IRR require SEC Form 17-C to disclose only significant matters that may affect the decision of investors on the shares of the issuer. To require the disclosure of a mere expiration of term of office, which is a normal and regular incident, goes beyond the materiality required by the SRC and its IRR.

On 25 July 2014, the MSRD filed its *Reply Memorandum("Reply")* praying for the dismissal of the Appeal on the ground that Ayala failed to comply with Item 4(a) of SEC Form 17-C. This, according to MSRD, justifies the imposition of the Assailed Penalty. The MSRD maintained that the expiration of the term of the directors/officers of a listed company, which includes the Assistant Corporate Secretary, must be

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[1] Annex "C" of the Appeal.

[2] 2. The disclosure required by paragraph 1(A)(iii)(1) above shall be made by the issuer:

> c. to the Commission on SEC Form 17-C within five (5) days after occurrence of the event being reported, unless substantially similar information as that required by Form 17-C has been previously reported to the Commission by the registrant.

[3] Annex "D" of the Appeal.

disclosed because the same is considered material information. The Assistant Corporate Secretary is the officer responsible for keeping and maintaining the integrity, safety, and accuracy of the corporate records. The requirement is essential in that it reaffirms the confidence of the investors in the company.[4]

On 5 November 2020, an Order was issued directing herein parties to submit a *Manifestation* regarding any supervening event that might have mooted the instant case.

On 18 February 2021, the MSRD filed its *Manifestation* stating that *"the MSRD it is not aware of any supervening event or development that occurred which may assist in the speedy disposition of this case."*[5]

To date, Ayala has not filed any *Manifestation* thus, the instant Appeal is deemed submitted for decision.

ISSUE

Whether Ayala is required to disclose under Item 4(a)(i) of SEC Form 17-C the cessation of office of its former Assistant Corporate Secretary due to expiration of term.

RULING

The Commission finds the instant *Appeal* bereft of merit.

In its Appeal, Ayala maintained that the MSRD erred in imposing the Assailed Penalty because Item 4(a) of SEC Form 17-C requires the disclosure of resignations or removals. Thus, the requirement therein of disclosing the "cessation of holding office" should be construed and applied only if the same is brought about by either resignation or removal.[6] Ayala also argued that since Item 4(a) of SEC Form 17-C admits of two (2) contradictory interpretations, the one which does not require a specific disclosure of end of term should be sustained by the Commission, applying the principles of statutory construction, since this is consistent with its heading *i.e.* "Resignation or Removal".[7]

We do not agree.

Section 17.1(b) of the Securities Regulation Code (SRC) provides:

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[4] *Reply Memorandum* dated 24 July 2014. Par 12
[5] *Manifestation* dated 8 January 2021.
[6] *Appeal Memorandum*. Pars. 11 to 13
[7] *Ibid.* pars. 17 to 20

> "SEC. 17. Periodic and Other Reports of Issuers. – 17.1 Every issuer satisfying the requirements in Subsection 17.2 hereof **shall** file with the Commission:
>
> (a) xxx
>
> (b) Such other periodical reports for interim fiscal periods and current reports on significant developments of the issuer as the Commission may prescribe as necessary to keep current information on the operation of the business and financial condition of the issuer." (Emphasis and underscoring supplied)

In implementing the afore-quoted provision, Rule 17(2) of the SRC IRR emphasized that the purpose of the disclosure requirement is to ensure that every material fact or event that is reasonably expected to affect investors' decisions on securities is provided and made available, to wit:

> "*Required Reports.* - Every issuer set forth in paragraph 1 hereof, shall file with the Commission:
>
> (a) an annual report on SEC Form 17-A for the fiscal year in which the registration statement approved by the Commission became effective, and for each fiscal year thereafter, within 105 days after the end of the fiscal year;
>
> (b) a quarterly report on SEC Form 17-Q, within forty five (45) days after the end of each of the first three quarters of each fiscal year. The first quarterly report of the issuer shall be filed either within forty five (45) days after the effective date of the registration statement or on or before the date on which such report would have been required to be filed if the issuer had been required previously to file reports on SEC Form 17-Q, whichever is later;
>
> (c) (i) a report on SEC Form 17-C as necessary to make a full, fair and accurate disclosure to the public of every material fact or event that occurs which would reasonably be expected to affect investors' decisions in relation to those securities.
>
> (ii) The disclosure required by subparagraph (c)(i) above shall be made by the issuer:
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> (A) promptly to the public through the news media;
>
> (B) if the issuer is listed on an Exchange, to that Exchange within ten (10) minutes after occurrence of the event and prior to its release to the public through the news media;
>
> (C) to the Commission on SEC Form 17-C within five (5) days after occurrence of the event being reported unless substantially similar information as that required by Form 17-C has been previously reported to the Commission by the registrant.

> (iii) **An illustrative, non-all inclusive, list of the kinds of events which shall be reported pursuant to this paragraph is contained in SEC Form 17-C. Merely because an event does not appear on that list does not mean that it does not have to be reported if, in fact, it is material.** (Emphasis supplied)

While it is true that Item 4 of SEC Form 17-C bears the heading "Resignation and Removal", the same should not be construed as excluding a fact or event that would have an impact on investors' decisions on securities because, as mentioned earlier, this is the purpose of the requirement. Hence, we find therein a specific instruction to provide, among others, the reason for the directors or officers' cessation from office, which discloses an intent to cover not only resignation and removal. Certainly, a president of a listed corporation whose term ends and who does not get re-elected is an important fact that will have an impact on investors' decision on securities. This reality holds true for a chairman, member(s) of the board of directors and other officers of a listed corporation whose term ends and who does not get re-elected.

It is in this context that the penultimate paragraph of the afore-quoted provision of Rule 17(2) of the SRC IRR specifically states that *"[m]erely because an event does not appear on that list does not mean that it does not have to be reported if, in fact, it is material"*. In other words, when it comes to disclosure, what is paramount is the effect or impact that an information, fact or event will have on the investors' decision on securities, and ultimately on the market. If it has, then such information, fact or event is considered material,[8] and would have to be disclosed, even if the rules does not specify.

This Commission cannot overemphasize the proper compliance by regulated entities, especially listed corporations, with the reportorial requirements to promote the development of the capital market, protect investors and eliminate fraudulent or manipulative devices and practices. In this regard, this Commission has consistently held that maximum efficiency of the capital markets is achieved when people can make rational investment decisions; and people make decisions based on what they know. Thus, it is crucial that all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it, and so long as they hold it.

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[8] "Rule 3.1.I of the 2003 Amended SRC Implementing Rules and Regulations (2003 SRC-IRR) defines a material fact/information as:

> I. Material Fact/Information means any fact/information that could result in a change in the market price or value of any of the issuer's securities, or would potentially affect the investment decision of an investor."

The steady flow of timely, comprehensive, and accurate information allows investors to make sound decisions that facilitate efficient capital formation that is important to the national economy.[9]

Finally, it should be emphasized, lest it be forgotten, that SEC Form 17-C[10] implements Section 26 of the Corporation Code[11] which requires the immediate disclosure of the fact of death, resignation or the cessation of the holding of an office in any manner by a director, trustee or an officer of a corporation, to wit:

> "Should a director, trustee or officer die, resign **or in any manner cease to hold office**, his heirs in case of his death, the secretary, or any other officer of the corporation, or the director, trustee or officer himself, **shall** immediately report such fact to the Securities and Exchange Commission." (Emphasis supplied)

Considering that SEC Form 17-C implements both Section 17 of the SRC and Section 26 of the Corporation Code, the interpretation as well as the rule established therein by this Commission that the reason for the director or officer's cessation from office, has the force of law partaking as it is of the nature of a rule/regulation.[12]

The foregoing notwithstanding, the Commission takes administrative notice of the fact that, based on its records, this is Ayala's first violation of SEC Form 17-C, and despite its contrary position with the MSRD on the matter which was sustained by this Commission, it has not made any similar violation after this incident. This, to the mind of the Commission, warrants the recall of the penalty of "REPRIMAND". However, given the fact that the Commission has already laid down the proper interpretation of Item 4 of SEC Form 17-C, as well as the policy behind the rule, Ayala is reminded to strictly comply with the same, moving forward.

WHEREFORE, premises considered, the Assailed Order of the Markets and Securities Regulation Department is hereby **MODIFIED**. The penalty of REPRIMAND is hereby **RECALLED**. Ayala Corporation is

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[9] Decision dated on 10 October 2017. Sumitomo Metal Mining Philippine Holding Corporation vs. Corporation Finance Department (SEC EB Case No. 07-11-241).

[10] Item 4(d) provides: "Reporting under this Item 4 is deemed to satisfy the reporting requirements set forth in **Section 26 of the Corporation Code** of the Philippines and any rules thereunder."

[11] Batas Pambansa Blg. 68

[12] "It is elementary that rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, and are entitled to great respect. Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality. As such, courts cannot ignore administrative issuances especially when, as in this case, its validity was not put in issue. Unless an administrative order is declared invalid, courts have no option but to apply the same." (*Land Bank of the Phils. v. Colarina, G.R. No. 176410, [September 1, 2010], 644 PHIL 76-105)*

warned that the commission of a similar violation will be meted with the appropriate penalty(ies) provided under the applicable laws, rules or regulations.

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

*On official business