



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

**IN THE MATTER OF:
R&L INVESTMENTS, INC.**

**INVESTIGATION AND REVIEW
COMMITTEE,**

Appellant,

SEC En Banc Case No. 05-22-495

- versus -

Promulgation: 26 NOV 2024

**VENTURE SECURITIES, INC.,
WILFREDO S. RACADIO
(President), ADORA M. AGUILAR
(Associated Person), LORETO B.
BALABIS (Salesman), TERESITA
B. MOSENABRE (Settlement
Head),**

Appellees.

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DECISION

Before this Commission is the Appeal Memorandum dated May 2, 2022 (the "Appeal") filed by the Investigation and Review Committee (the "Committee") praying that the Resolution dated 29 March 2022 (the "Assailed Resolution") of the Special Hearing Panel (SHP) be declared VOID, and for the reinstatement of the Decision dated 11 June 2021 issued by the latter in SEC MSRD Case No. MSRD-MID-2020-2 (the "Assailed Decision"), specifically on the penalty imposed upon Venture Securities, Inc. (VSI), the dispositive portion of which, in part, reads:

"WHEREFORE, premises considered, the panel finds that the Respondents violated the above-mentioned pertinent provisions of the SRC and the SRC IRR and hereby imposed the following administrative sanctions:

A. Venture Securities, Inc.

1. A fine of One Million Pesos (P1,000,000.00) for violation of Rule 30.2.1. (Ethical Standards Rules)
2. A fine of One Million Pesos (P1,000,000.00) for violation of Rule 30.2.1.1.2.3 (Capabilities)

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3. A fine of One Million Pesos (P1,000,000.00) for violation of Rule 30.2.1.2.4 (Information About Clients)
4. A fine of One Million Pesos (P1,000,000.00) for violation of Section 48.2 and SRC Rule 48.2 (Prohibition on Extension of Credit)
5. A fine of One Million Pesos (P1,000,000.00) for violation of Section 50 of the SRC and SRC Rule 50 (Purchases and Sales in Cash Account)
6. A fine of One Million Pesos (P1,000,000.00) for violation of Rule 52.1.1 (Books and Records Rule)
7. A fine of One Million Pesos (P1,000,000.00) for violation of Rule 52.1.6 (Customer Account Information Rule)
8. A fine of One Million Pesos (P1,000,000.00) for violation of Rule 30.2.6. (Supervision)
9. Revocation of its license/registration as broker/dealer pursuant to Section 29 of the SRC for willfully violating all of the above-mentioned provisions of the SRC and the SRC IRR.

xxx xxx xxx”

The Commission is cognizant of the Memorandum of Appeal dated 28 April 2022, docketed as SEC En Banc Case No. 05-22-496 (the “Individual Respondents’ Appeal”), separately filed by Wilfredo S. Racadio, Adora M. Aguilar, Teresita B. Mosenabre and Loreto Balabis (the “Individual Respondents”), which contains an exhaustive presentation of their respective defenses, and the evidence in support thereof. In the interest of convenience, and to accord due and proper appreciation and consideration to the defenses proffered by the Individual Respondents in the Individual Respondents’ Appeal, and to avoid prejudice to any of the parties, the Commission, applying suppletorily Sec. 2, Rule 31 of the Rules of Court,¹ will consider and dispose of the instant Appeal separately of the Individual Respondents’ Appeal.² The instant Decision will therefore

¹ Pursuant to Sec. 1-6, Part I, Rule I of the 2016 Rules of Procedure of the Securities and Exchange Commission.

² “Consolidation is “a procedural device granted to the court as an aid in deciding how cases in its docket are to be tried so that the business of the court may be dispatched expeditiously and with economy while providing justice to the parties.” Though there is no hard and fast rule requiring the consolidation of related cases, Section 1, Rule 31 of the Rules of Court allows the courts to order the consolidation of cases involving a common question of law or fact that are pending before it in order to avoid unnecessary costs or delay.

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To be clear, the failure to consolidate a case with a related case does not necessarily result in the dismissal of the former, unless there is *litis pendencia* or *res judicata*. Thus, it is incumbent upon the parties to be on the lookout and to immediately inform the courts of cases pending with other courts,

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focus and pass-upon only on the allegations, arguments, and the evidence presented by VSI.

THE RELEVANT FACTS

On 14 November 2019, the Commission issued a Take Over Order in En Banc Case No. MP-2019-001, directing the Capital Markets Integrity Corporation (CMIC) to take over the operations of R&L Investments, Inc. (R&L), on the basis of a finding that the latter's financial condition has deteriorated, which rendered it incapable of meeting the demands of its client security holders, and the payment of their share proceeds.

The Commission also directed its Markets and Securities Regulation Department (MSRD) to conduct an independent investigation on the fraudulent transactions that resulted in the loss of the shares owned by the clients of R&L, to determine the violations committed by all who were involved therein, including VSI, and the Individual Respondents. For this purpose, the Investigation and Review Committee (the "Committee") was created, which issued subpoenas to the parties, and conducted its investigation from 9 to 12 December 2019.

A Special Hearing Panel (SHP) was likewise created by the MSRD on 5 February 2020. The SHP was tasked to determine and pass upon the administrative cases against (a) R&L, its management and officers, (b) VSI, its management and officers, (c) Mr. Marlo Moron (Mr. Moron), and (d) Mr. Julieto Sulapas (Mr. Sulapas).³

On September 2020, the Committee issued a Formal Charge, directing VSI, among others, to submit and file with the SHP a verified answer to the findings of the Committee for violation of the following provisions of the Securities Regulation Code (SRC) and/or its Implementing Rules and Regulations (SRC-IRR):

- (a) Rule 30.2.1. – Ethical Standards Rule;
- (b) Rule 30.2.1.2.3. – Capabilities;
- (c) Rule 30.2.1.2.4. – Information about Clients;
- (d) Rule 48.2. – Prohibitions on Extension of Credit;
- (e) Rule 48.1. – Margin;
- (f) Rule 50. – Purchases and Sales in Cash Account;
- (g) Rule 52.1.1 – Books and Records Rule; and

and if needed, to move for the consolidation of related cases in order to avoid the dismissal of a case on the grounds of *litis pendentia* and/or *res judicata*, or the issuance of conflicting decisions." (*Goodland Company, Inc. vs Banco de Oro-Unibank, Inc.*, G.R. No. 208543. February 11, 2019)

³ MSRD Memorandum dated 5 February 2020, signed by Dir. Vicente Graciano P. Felizmenio, Jr.

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(h) Rule 52.1.6. Customer Account Information Rule.

The following factual antecedents and findings were obtained and reached during the investigation conducted by the Committee, which became the basis for the issuance of the Formal Charge, to wit:

Mr. Moron, an employee of R&L, orchestrated and carried out a fraudulent scheme which facilitated the unauthorized transfer of the shares of the clients of R&L to the account of Mr. Sulapas in R&L. Mr. Sulapas opened an account in R&L sometime in 2007 (the "Sulapas R&L Account").⁴ The total amount of the shares of the clients of R&L which were fraudulently transferred to Mr. Sulapas' R&L reached PhP700 Million, more or less, which also accounted for the loss of R&L.⁵

In 2012, Mr. Sulapas opened two (2) account with VSI i.e. Customer Account SU026 and SU027 (the "Sulapas VSI Accounts") where he personally appeared in its office, and declared in his CAIF that his PhP1 Million income is derived from JS Lumber.⁶ During the Covered Period, as defined below, the shares of the clients of R&L which were fraudulently transferred to the Sulapas R&L Account, were eventually transferred to the Sulapas VSI Accounts, where they were actively traded, resulting in the regular issuance of checks payable to Mr. Sulapas.

The Sulapas VSI Accounts were used in effecting huge transactions with a volume of about PhP2 Billion. VSI assumed that there was check and balance in R&L, which led it to apply the usual practice of calling the settlement officer. The personal check settlement was in the name of Mr. Sulapas who claimed the cash immediately at T+3.⁷

In 2015, VSI granted Mr. Sulapas a credit line with a PhP 40 Million stock position.⁸

The report submitted by the Capital Markets Integrity Corporation (CMIC) on VSI showed that for the period covering 2012 to 2019 (the "Covered Period"), the transaction volume of all of VSI's clients

⁴ *Investigation Report on R&L Investment, Inc., Venture Securities, Inc. and other individual persons*, dated 17 August 2020. Par. 21 (page 4), see also par. 27 (page 8)

⁵ *Formal Charge* (SEC MSRD Case No. MSRD-MID-2020-2) dated September 2020. par. 2 of page 15

⁶ *Investigation Report on R&L Investment, Inc., Venture Securities, Inc. and other individual persons*, dated 17 August 2020. Pars. 3, 7 (page 5); see also par. 3 (page 9)

⁷ *Ibid.* pars. 6, 18 and 19 (pages 5 and 6)

⁸ *Ibid.* par. 18 (page 10)

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amounted to roughly 14% (buying) and 20% (selling); where in terms of value, the transactions involving Mr. Sulapas' accounts in VSI reached PhP9,905,454,333.20 (which can be broken down as buy transactions worth PhP4,602,939,508.50 *i.e.* 15%, and sell transactions worth PhP5,302,514,824.70 *i.e.* 13%).⁹

The account ledger of Mr. Sulapas showed that while he had approximately two thousand eight hundred (2,800) buy transactions during the Covered Period, he only made five (5) cash payments in the same period.¹⁰

The documents submitted by VSI showed that no inquiry or verification was made in relation to the transactions of Mr. Sulapas during the Covered Period which reached almost PhP10 Billion, despite the fact that the liquid net worth and annual income which he declared in his Customer Account Information Form (CAIF) was less than PhP1,000,000.00.¹¹ This, according to the Committee, constitutes gross inexcusable negligence of VSI who, through and/or together with its officers and employees, failed to perform the duties entrusted to them by law; and for which reason, might render VSI liable under Sec. 26 of the SRC and the SRC-IRR.¹²

The investigation also showed that VSI was placed on notice of Mr. Sulapas' disclosure that he does not have accounts in other companies, one that is contained in his 2017 CAIF which was accomplished in relation to his second VSI account.¹³ Moreover, the following established circumstances showed that VSI fell short in complying with its obligations as broker-dealer: (a) Mr. Sulapas' CAIF was shown to have been irregularly accomplished; (b) some of the EQ trades involving the Sulapas VSI Accounts were effected without written requests and/or with unsigned requests, and certain "transfer in" and "transfer out" requests were unsigned; and (c) Mr. Sulapas was not required to update his CAIF.¹⁴

In their Answer dated 21 September 2020, VSI and the Individual Respondents maintained that they are not liable under the provisions of the SRC/SRC-IRR specified in the Formal Charge, and prayed for the

⁹ *Formal Charge* (SEC MSRD Case No. MSRD-MID-2020-2) dated September 2020. pars. 3 and 4 (page 15)

¹⁰ *Ibid.* par. 5 (page 15)

¹¹ *Ibid.* par. 8 (page 16)

¹² *Ibid.* par. 18 (page 16)

¹³ *Investigation Report on R&L Investment, Inc., Venture Securities, Inc. and other individual persons, dated 17 August 2020.* Par. 4 (page 9)

¹⁴ *Ibid.* pars (a), (b) and (c) of page 27

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dismissal of the same for alleged lack of merit. VSI claimed that it complied with all applicable provisions of the SRC and the SRC-IRR in all matters relating to the Sulapas VSI Accounts, to wit:

- (a) The creation of the Sulapas VSI Accounts complied with all the requirements of KYC, where VSI identified the true owner of the account, and found the information on the financial situation, investment experience and objectives provided by Mr. Sulapas to be adequate for the purpose of opening such account;¹⁵
- (b) Mr. Sulapas is a day trader who executed numerous buy and sell transactions in a trading day during the Covered Period, and who, because of his trading pattern, showed that he is a knowledgeable and responsible trader who did not have any issues in settling his account. VSI found nothing suspicious or irregular in any of the transactions of Mr. Sulapas during the Covered Period, one that was allegedly affirmed by the CMIC;¹⁶
- (c) The Sulapas VSI Accounts were cash accounts which had certain features that VSI extended in recognition of the good standing and credit profile of Mr. Sulapas. Considering that the Sulapas VSI Accounts complied with the requirements in Rules 48.1 and 48.2 of the SRC-IRR, VSI granted Mr. Sulapas a credit line which allowed him to borrow up to 40% of the current market value of his present stockholdings;¹⁷
- (d) VSI conducted the proper KYC procedures, and continued monitoring the buy and sell transactions of Mr. Sulapas after the Sulapas VSI Accounts were created. Based on the trading pattern of Mr. Sulapas, VSI found that he can sustain funding for his transactions almost entirely from his trading activities, which explained why he only made a few deposits into the Sulapas VSI Accounts during the Covered Period;¹⁸
- (e) VSI also implemented proper internal control measures as shown by the implementation of the procedures required in opening an account; the segregation of its trading, settlement, accounting and back office functions; the maintenance of its books and records;¹⁹ and
- (f) VSI has systems in place for purposes of Anti-Money Laundering, where it reports all covered transactions. In this

¹⁵ Answer dated 21 September 2020. pars. 4.3 and 4.6

¹⁶ *Ibid.* pars. 4.9, 4.10, 4.11, 4.13, 4.15 and 4.21

¹⁷ *Ibid.* pars. 4.23, 4.24, and 4.26

¹⁸ *Ibid.* pars. 4.29, 4.30, 4.32 and 4.33

¹⁹ *Ibid.* pars. 4.34, 4.35, and 4.37

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regard, the transactions involving the Sulapas VSI Accounts were not reported as suspicious as they were in accordance with his trading profile and established trading pattern.²⁰

In compliance with the directive issued by the SHP during the conference held on 24 February 2021, VSI and the Individual Respondents filed their Position Paper on 8 March 2021 where they prayed for the dismissal of the Formal Charge for lack of merit. In support thereof, VSI and the Individual Respondents essentially reiterated their previous allegations and arguments. In addition, they argued that the Formal Charge which embodied a recital of the violations of VSI, among others, failed to allege the ultimate facts that constitute a cause of action against them.²¹

On the same date, 8 March 2021, the Committee filed its Position Paper where it prayed for the issuance of an order sustaining the finding of liability of VSI for violation of the relevant provisions of the SRC and the SRC-IRR. The Committee maintained that:

- (a) VSI did not follow the requirements relative to the creation of the Sulapas VSI Accounts, as it failed to conduct the initial screening;²²
- (b) The admissions of, and the documents submitted by VSI, the Sinumpaang Salaysay and the Supplemental Affidavit of Mr. Sulapas do not support the conclusion that there was nothing suspicious or irregular in the transactions of Mr. Sulapas. On the contrary, they showed that (i) Mr. Sulapas is not an active day trader as he holds his securities for one to three days, on the average;²³ (ii) Mr. Sulapas' daily trading amounts during the Covered Period did not start low and gradually increased;²⁴ (iii) Mr. Sulapas denied having transacted the Sulapas VSI Accounts;²⁵ (iv) the Sulapas VSI Accounts had settlement issues as the proceeds from the selling transactions originally purchased was not sufficient to sustain the buying transactions i.e. the Sulapas VSI Accounts incurred a net loss of PhP431 Million;²⁶ (v) the Sulapas VSI Accounts were not cash accounts since the same were backed

²⁰ *Ibid.* par. 4.40

²¹ *Position Paper* dated 8 March 2021. See. Pars. 2.5 and 2.8

²² *Position Paper* dated 8 March 2021 filed by the Committee. Pars. 6.3, 6.4, 6.5 and 6.6

²³ *Ibid.* pars. 6.15, 6.15, and 6.18

²⁴ *Ibid.* par. 6.21

²⁵ *Ibid.* par. 6.22

²⁶ *Ibid.* pars. 6.23, 6.24 and 6.25

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- by a Credit Line Agreement;²⁷ and (vi) VSI did not maintain proper customer acceptance and KYC procedures, internal control procedures, record keeping and anti-money laundering procedures on the Sulapas VSI Accounts;²⁸ and
- (c) VSI is liable for fraud under Sec. 26 of the SRC.

On 15 March 2021, VSI and Individual Respondents filed their Reply (to Complainant's Position Paper dated 8 March 2021) where they essentially reiterated their previous allegations and arguments in support of their position that the Formal Charge is dismissible for lack of merit. Specifically in relation to VSI, the Reply restated that: (a) it followed the relevant laws and rules by complying with the KYC and other applicable requirements in the opening of the Sulapas VSI Accounts;²⁹ (b) VSI found nothing suspicious or irregular in any of the transactions of Mr. Sulapas during the Covered Period;³⁰ (c) the Sulapas VSI Accounts were cash accounts that substantially complied with the requirements for a margin account;³¹ (d) VSI maintained proper customer acceptance and KYC procedures, internal control procedures, record-keeping and Anti-Money Laundering Procedures which the Committee failed to refute;³² and (e) the Committee failed to show how VSI and Individual Respondents violated Sec. 26 of the SRC and Rule 26.1 of the SRC-IRR.³³ Finally, the Reply faults the Committee for giving credence to the Sinumpaang Salaysay and Supplemental Affidavit of Mr. Sulapas which, according to VSI and Individual Respondents, were filled with false and misleading allegations³⁴, and cannot be used pursuant to the doctrine of *res inter alios acta alteru nocere non debet*.³⁵

The SHP forthwith issued the Assailed Decision in SEC MSRD Case No. MSRD-MID-2020-2. The monetary penalties as well as the revocation of VSI's license/registration as a broker/dealer was imposed on the basis of the following findings of violation of the relevant provisions of the SRC and the SRC-IRR:

- (a) VSI failed to implement the proper KYC procedures on the Sulapas VSI Accounts; to take all reasonable steps to establish the true and full identity of Mr. Sulapas, his financial

²⁷ *Ibid.* par. 6.36

²⁸ *Ibid.* pars. 6.40 to 6.59

²⁹ Reply dated 15 March 2021. pars. 2.18, 2.20, 2.34

³⁰ *Ibid.* par. 2.30 to 2.37

³¹ *Ibid.* par. 2.52 and 2.56

³² *Ibid.* par. 2.57 to 2.59; 2.68 to 2.69; 2.71

³³ *Ibid.* 2.85

³⁴ *Ibid.* par. 2.24

³⁵ *Ibid.* par.2.28

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- situation, investment experience and objectives;
- (b) VSI intentionally and repeatedly allowed or facilitated the buy transactions of Mr. Sulapas which exceeded his declared financial capacity, and extended a credit line of up to 40% of the value of his stock position, when as early as 2012, it was already clear that Mr. Sulapas' financial capacity cannot sustain funding for his buy and sell transactions if not for the execution of the EQ trade transactions;
 - (c) VSI did not take steps to ensure that Mr. Sulapas updates his CAIF, even after becoming aware that the latter had an existing account with another broker, R&L, contrary to what was declared;
 - (d) VSI failed to implement systems relating to compliance with Anti-Money Laundering;
 - (e) VSI unlawfully extended credit to Mr. Sulapas who had no margin account with it;
 - (f) VSI violated Rule 50.2 when it failed to liquidate numerous transactions made through the Sulapas VSI Accounts which did not pay in full the amount due within T+3;
 - (g) VSI failed to maintain satisfactory internal control procedures, and financial and operational capabilities, when it facilitated "transfer in" and "transfer out" transactions which did not have written authorizations from Mr. Sulapas;
 - (h) VSI failed to comply with the Books and Records Rule which is shown by the discrepancies in the Stock (In) CM and EQ trade forms of Mr. Sulapas; and
 - (i) VSI violated the Ethical Standards Rules, and did not establish an effective and appropriate compliance function, which was shown by its failure to properly address and rectify the violations, irregularities, infractions or unusual activities committed by its officers and employees

On 28 June 2021, VSI and the Individual Respondents filed their Motion for Reconsideration (the "Motion") where they sought the reconsideration, reversal and setting aside of the Assailed Decision, and the concomitant dismissal of the Formal Charge. VSI maintained that it complied with all the relevant laws, rules and regulations in relation to the transactions covering the Sulapas VSI Accounts which were fully disclosed to the CMIC, and it is not guilty of bad faith, amounting to fraud, in its handling thereof, especially that the CMIC never found any adverse findings on the same.³⁶ The Sulapas VSI Account was not, and cannot therefore be the proximate cause of the loss of the shares of the clients of

³⁶ *Motion for Reconsideration* dated 28 June 2021. Pars. 3.2 to 3.7; 3.10

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R&L.³⁷ In particular, VSI refuted the following findings of the SHP for allegedly being baseless, inaccurate, misleading and/or incomplete, as follows:

- (a) In relation to the financial capacity, and the capability of Mr. Sulapas to trade, the Committee only presented the buy transactions of the Sulapas VSI Accounts, and omitted the sell transactions;³⁸
- (b) The Sinumpaang Salaysay and Supplemental Affidavit of Mr. Sulapas failed to provide a clear, consistent and coherent narration of the events, which made Mr. Sulapas an uncredible witness;³⁹
- (c) The grant to a credit line to the Sulapas VSA Accounts, with the execution of a Credit Line Agreement, is allowed and sanctioned under Rule 48.2 of the SRC-IRR, especially that the same complied with the requirements prescribed therein;⁴⁰
- (d) There is nothing in the SRC-IRR which requires both the “transferring” and “receiving” broker/dealers to obtain a written request from a client, contrary to the position of the SHP; at any rate, VSI allegedly required Mr. Sulapas to submit a written transfer request for his “transfer out” transactions, and secured a verbal or written confirmation from the transferring broker/dealer Mr. Sulapas’ “transfer in” transactions;⁴¹
- (e) Mr. Sulapas was able to settle his obligations within T+3 days in compliance with Rule 50.1 of the SRC-IRR, or within a reasonable amount of time;⁴²

The Motion also questioned the failure of the SHP to apply the prescriptive periods provided in the Code of Commerce and the Civil Code of the Philippines, arguing that its reliance on the case of *Citibank N.A. et. al. vs Tanco-Gabaldon, et. al.* was misplaced.⁴³ Finally, the Motion assailed the correctness of the monetary penalties imposed, arguing that the same is inconsistent with that prescribed under Memorandum Circular No. 6, series of 2005 (MC No. 6-2005)⁴⁴; as well as the penalty of

³⁷ *Ibid.* pars. 1.4, 3.11, 3.12 to 3.15

³⁸ *Ibid.* 3.22

³⁹ *Id.* pars. 3.40, 3.41

⁴⁰ *Id.* pars. 3.60 to 3.62; 3.68

⁴¹ *Id.* pars. 3.75 to 3.77; 3.80; 3.123.5

⁴² *Id.* par. 3.113

⁴³ *Id.* pars. 3.125 to 3.133

⁴⁴ *Id.* pars. 3.151 to 3.154

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revocation of the license and registration of VSI, arguing that bad faith was not proven by the evidence on record.⁴⁵

The Assailed Resolution partially granted the Motion by setting aside the order revoking the license/registration of VSI as a broker/dealer on the basis of a finding that it did not act in bad faith; and by modifying the monetary penalties imposed upon VSI, as follows:

1. A fine of Two Hundred Thousand Pesos (PhP200,000.00) for violation of Rule 30.2.1 (Ethical Standards Rule);
2. A fine of Two Hundred Thousand Pesos (PhP200,000.00) for violation of Rule 30.2.1.2.3 (Capabilities);
3. A fine of Two Hundred Thousand Pesos (PhP200,000.00) for violation of Rule 30.2.1.2.4 (Information About Clients);
4. A fine of Two Hundred Thousand Pesos (PhP200,000.00) for violation of Sections 48.2 and SRC Rule 48.2 (Prohibitions on Extension of Credits);
5. A fine of Two Hundred Thousand Pesos (PhP200,000.00) for violation of Section 50 of the SRC and SRC Rule 50 (Purchases and Sales in Cash Account);
6. A fine of Two Hundred Thousand Pesos (PhP200,000.00) for violation of Rule 52.1.1 (Books and Records Rule);
7. A fine of Two Hundred Thousand Pesos (PhP200,000.00) for violation of Rule 52.1.6 (Customer Account Information Rule); and
8. A fine of Two Hundred Thousand Pesos (PhP200,000.00) for violation of Rule 30.2.6 (Supervision).

On 2 May 2022, the Committee filed the Appeal where it assailed the reversal by the SHP of the revocation of VSI's license as a broker dealer, and in reducing the monetary penalties imposed upon it. The Committee emphasized that the acts and omissions which violated the SRC and the SRC-IRR indispensably contributed, if it had not been the proximate cause, to the losses incurred by the clients of R&L. It argued that the SHP committed reversible error since under Section 29(a) of the SRC, the revocation of a license of a broker/dealer can be sustained by a showing that there was a failure to supervise, which need not be willful.⁴⁶ Thus, considering that there was a clear showing that the Individual Respondents have willfully violated the relevant provisions of the SRC and the SRC-IRR, the penalty of revocation of its license as a broker/dealer is thus proper as it showed that VSI failed to supervise

⁴⁵ *Id.* pars. 3.161

⁴⁶ *Appeal* dated 2 May 2022. Par. 50

them, in addition to the bad faith on the part of its Board of Directors which was likewise allegedly established by evidence.⁴⁷

On 8 June 2022, VSI and the Individual Respondents filed their Comment/Opposition [To: Appeal Memorandum (Partial Appeal) dated 02 May 2022] which prayed for the outright dismissal and/or denial of the Appeal for lack of merit. In reiterating its position that it complied with the relevant laws and regulations, and should therefore not be penalized, VSI emphasized that the fraudulent scheme and/or theft which ultimately resulted in the loss of around P700 Million, more or less, worth of R&L shares owned by the clients of R&L, was completely carried out and consummated in R&L,⁴⁸ making the Lees, Mr. Moron, and Mr. Sulapas, and not VSI, as the real thieves of the R&L shares. VSI equally pointed out that the alleged abject neglect/gross incompetence of the CMIC made possible the perpetration of the fraudulent scheme for seven (7) long years.⁴⁹

In addition, the Comment/Opposition raised the following matters/issues which allegedly justify the outright dismissal of the Appeal:

- (a) The Appeal was improperly verified and does not contain the required Certification Against Forum Shopping;
- (b) The appeal violated the right of VSI to due process when it raised certain issues for the first time, and showed a clear predisposition to find fault in VSI;
- (c) The Committee is barred from seeking the reinstatement of the revocation of the secondary license of VSI, considering that the administrative penalties imposed are already barred by laches; and
- (d) The excessive, arbitrary, gravely abusive and confiscatory penalties imposed upon VSI in the Assailed Resolution totally disregarded the provisions of MC No. 6-2005.

ISSUES

- (A) Whether the matters subject of the instant case have already prescribed, or are barred by laches.
- (B) Whether VSI was denied of its right to due process.

⁴⁷ *Ibid.* pars. 51 and 52

⁴⁸ VSI in fact took pains in elaborating the process and fraudulent scheme that was employed by the Lees, Mr. Moron and Mr. Sulapas, if only to show that it had no participation in the same. (Comment/Opposition. See Discussions on page 2 to 9; see also pars. 3.2 to 3.6)

⁴⁹ *Ibid.*

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- (C) Whether VSI violated Rule 30.2.1 of the SRC-IRR (Ethical Standards Rule).
- (D) Whether VSI violated Rule 30.2.1.2.3 of the SRC-IRR (Capabilities).
- (E) Whether VSI violated Rule 30.2.1.2.4 of the SRC-IRR (Information About Clients).
- (F) Whether VSI violated Section 48.2 of the SRC, in relation to Rule 48.2 of the SRC-IRR (Prohibitions on Extension of Credits).
- (G) Whether VSI violated Section 50 of the SRC, in relation to Rule 50 of the SRC-IRR (Purchases and Sales in Cash Account).
- (H) Whether VSI violated Rule 52.1.1 of the SRC-IRR (Books and Records Rule).
- (I) Whether VSI violated Rule 52.1.6 of the SRC-IRR (Customer Account Information Rule); and
- (J) Whether VSI violated Rule 30.2.6 of the SRC-IRR (Supervision).
- (K) Whether the SHP was correct in modifying the monetary penalties imposed in the Assailed Decision.
- (L) Whether the SHP committed reversible error in reconsidering and setting aside the penalty of revocation of the registration of VSI.

RULING

Before this Commission delves into and passes upon the issues presented in the instant case, a preliminary discussion on the nature and functions of broker/dealers, the mandate and objectives of the securities laws, and the role of the Commission as the country's securities regulator are, to Our mind, imperative as these will provide the proper context and understanding of the Decision.

The functions and duties of Broker/Dealers in the capital and/or securities market.

VSI, a corporation duly organized and existing under Philippine laws, is a registered broker/dealer. It was established for the primary purpose of buying, selling of, or dealing in stocks, bonds, debentures, and

other securities and commercial papers for its own account as a dealer or for the account of others as a stockbroker.⁵⁰

The Securities Regulation Code⁵¹ (SRC) defines a “broker” as “a person engaged in the business of buying and selling securities for the account of others”⁵²; and a “dealer” as “any person who buys and sells securities for his/her own account in the ordinary course of business”⁵³. Simply stated, a broker is a registered firm who executes trades in securities for the account of others, acting as an intermediary between a buyer and seller, and charging a commission for services rendered; while a dealer, on the other hand, is a registered firm who is in the business of buying and selling securities for its own account, with or without the assistance of a broker. Broker/dealers therefore operate in two (2) capacities i.e. as agent (broker) or as principal (dealer).

In the Philippines, very much like in most jurisdictions around the world, the securities markets perform the significant and critical economic function of raising capital, channeling funds from and across individuals, firms, and even the government. In securities trading, funds may be borrowed from lenders by selling them securities. Securities, which may be in the form of shares of stock, bonds, or debentures, among other financial instruments, are characterized as “*claims on the borrower’s future income or assets*”. Financial markets act as intermediaries connecting a borrower with investment opportunities to a lender with excess funds but not enough productive investment.⁵⁴ This, among others, enables the financial markets to promote and facilitate economic efficiency and production. We find the Supreme Court elaborating this matter/process in the case of *Banco de Oro et. al. vs Republic*,⁵⁵ to wit:

“Whether referring to money market securities or capital market securities, transactions occur either in the primary market or in the secondary market. Primary markets facilitate the issuance of new securities. Secondary markets facilitate the trading of existing securities, which allows for a change in the ownership of the securities.” The transactions in primary markets exist between issuers and investors, while secondary market transactions exist among investors.

⁵⁰ *Comment/Opposition [To: Appeal Memorandum (Partial Appeal) dated 02 May 2022]*. Par. 1.1

⁵¹ Republic Act. No. 8799

⁵² Section 3.3

⁵³ Section 3.4

⁵⁴ See *Villafuerte vs SEC et. al.* (G.R. No. 208379. March 29, 2022)

⁵⁵ G.R. No. 198756. January 13, 2015

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In semidirect financing, a **securities broker or dealer brings surplus and deficit units together, thereby reducing information costs. A Broker is "an individual or financial institution who provides information concerning possible purchases and sales of securities. Either a buyer or a seller of securities may contact a broker, whose job is simply to bring buyers and sellers together."** A dealer "also serves as a middleman between buyers and sellers, but **the dealer actually acquires the seller's securities in the hope of selling them at a later time at a more favorable price.**" Frequently, "a dealer will split up a large issue of primary securities into smaller units affordable by . . . buyers . . . and thereby expand the flow of savings into investment." In semi direct financing, "[t]he ultimate lender still winds up holding the borrower's securities, and therefore the lender must be willing to accept the risk, liquidity, and maturity characteristics of the borrower's [debt security]. There still must be a fundamental coincidence of wants and needs between [lenders and borrowers] for semidirect financial transactions to take place."

The securities market and the transactions therein are imbued with public interest which necessitates the regulation thereof by the State. This was emphasized and explained by the Supreme Court in *Philippine Stock Exchange vs Secretary of Finance*⁵⁶, to wit:

"The importance of the stock market and the transactions therein to the country's economy and commercial development cannot simply be brushed aside. The Court in *Abacus Securities Corp. vs Ampil* stated:

Stock market transactions affect the general public and the national economy. The rise and fall of stock market indices reflect to a considerable degree the state of the economy. Trends in stock prices tend to herald changes in business conditions. Consequently, securities transactions are impressed with public interest, and are thus subject to public regulation.

⁵⁶ G.R. No. 213860. July 05, 2022

Given this consequential importance, the State is empowered to regulate stock market transactions. As mentioned by Chief Justice Alexander G. Gesmundo (Chief Justice Gesmundo), an absolutely unrestricted market could be potentially harmful as fraudulent transactions may be perpetrated; on the other hand, too much regulation may discourage investors, including foreign investors, to enter the market due to high costs and burdens of doing business. The Chief Justice noted that "whenever there is a regulation imposed by the State in the commercial aspect of the stock market, the Court should not simply brush aside the issue; rather, such issue must be meticulously examined to determine whether it is in line with the Constitutional principle to recognize the indispensable role of the private sector, encourage private enterprise, and provide incentives to needed investments.

Trading through a broker or a securities intermediary is allowed under Section 43.1 of Republic Act No. 8799, or the Securities Regulation Code (SRC). **Brokers are essentially the counterparties to the stock transactions at the stock exchange. They buy and sell stocks on behalf of the principal.** As the principals of these brokers are generally undisclosed, brokers are generally personally liable for contracts thus entered into." (Emphasis supplied)

Discernible from the afore-quoted ruling of the Supreme Court is its (implied) recognition of the important role played by broker/dealers in securities transactions, especially in the secondary markets (as opposed to primary markets where new securities are issued by a corporation or the government) where the buyers and sellers of securities that have been previously issued are matched, which facilitate and ensure the continuous trading and flow of investments. A productive and robust securities market where both issuers and investors thrive and benefit from are made possible, to a large extent by broker/dealers who play an indispensable role in the secondary markets, to wit:

"Issuers of securities do not acquire new funds when their securities are sold from the secondary market. However, **the secondary market makes the securities more liquid or easier to exchange. As investors can easily buy and sell their securities, this makes the securities more attractive to investors which, in turn, makes it easier for issuers to**

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sell more securities in the primary market.”⁵⁷ (Emphasis supplied)

Hence, similar to an exchange, the stock brokerage/dealership business is not only an ordinary business; it is a highly regulated industry imbued with public interest having a direct impact on the economy, as well as in the investing public’s trust and confidence in the capital markets.

Section 28⁵⁸ of the SRC is categorical in saying that the business of buying or selling securities in the Philippines as a broker or dealer can only be carried out by a person who is registered as such with the Commission. In this regard, We need not overemphasize the fact that the stock brokerage or dealership business carries with it defined and exacting duties, responsibilities, and obligations which include, among others, the submission of the necessary documents/information to keep the application for registration current and accurate,⁵⁹ as well as compliance with the relevant and applicable provisions of the SRC and the SRC-IRR.⁶⁰ The stringent and exacting regulatory requirements which the SRC, the SRC-IRR, and other securities laws mandate to be fully and consistently complied with are in place to ensure that their objectives, and the purposes for which they were enacted, are met and achieved.

In the same vein, the duty of broker/dealers to fully comply with all applicable laws, rules and regulations, including any amendments thereto, is inherent in the grant of the license or registration to carry out a brokerage/dealership business. It is established in jurisprudence that the license granted by the State partakes of the nature of a permit, and not a contract from which a right can be demanded from the State. The continued enjoyment by a broker/dealer of the privilege to carry out its business is therefore conditioned on its continued compliance with applicable laws, rules and regulations. Verily, the failure of a broker/dealer to comply with the provisions of the SRC may result in the imposition of the appropriate sanctions, including the suspension or revocation of its license.⁶¹ The doctrine in *SEC vs Universal Rightfield Property Holdings, Inc.*⁶² where the Supreme Court sustained the

⁵⁷ See Concurring opinion of J. Leonen in *Villafuerte vs SEC* (G.R. No. 208397. March 29, 2022)

⁵⁸ **“Section 28. Registration of Brokers, Dealers, Salesmen and Associated Persons. – 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission. Xxx.”** (Emphasis supplied)

⁵⁹ See Section 28.10 of the SRC

⁶⁰ See Section 30 of the SRC

⁶¹ See Section 29 of the SRC

⁶² G.R. No. 181381. July 20, 2015

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revocation of the issuer's registration of securities, and its license to sell the same, reiterated the nature of a license as a mere privilege which can be withdrawn by the state for failure on the part of the licensee to comply with the applicable laws, rules and regulations, to wit:

"Rather, when the SEC exercises its incidental power to conduct administrative hearings and make decisions, it does so in the course of the performance of its regulatory and law enforcement function.

Significantly, unlike in *Globe Telecom, Inc.* where the Court ruled that the fine imposed by the NTC without notice and hearing, was null and void due to the denial of petitioner's right to due process, **the revocation of URPHI's registration of securities and permit to sell them to the public cannot be considered a penalty but a withdrawal of a privilege**, which regulatory power the SEC validly exercised after giving it due notice and opportunity to be heard." (Emphasis supplied)

The mandate and the regulatory powers of the Commission under the SRC.

Section 5 of the SRC, provides for the powers and authority expressly granted to the Commission which include, among others, the power to regulate and investigate to ensure compliance, and to impose the appropriate penalties on the basis of a finding of violation of its provisions:

"Section 5. Powers and Functions of the Commission. –
5.1. The commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investments Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:

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- (c) **Approve, reject, suspend, revoke** or require amendments to registration statements, and **registration and licensing applications;**

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- (d) **Regulate, investigate or supervise the activities of persons to ensure compliance;**

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- (f) **Impose sanctions for the violation of laws and rules, regulations and orders, and issued pursuant thereto;**

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- (n) Exercise such other powers as may be provided by law as well as those which **may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.**" (Emphasis supplied)

In the case of *Provident International Resources Corp. v. Venus*⁶³, the Supreme Court, in sustaining the power of the Commission to impose the appropriate penalties which include the revocation of the corporate license/registration, explained the basis for the exercise of the said powers, thus:

"It can be said that the SEC's regulatory authority over private corporations encompasses a wide margin of areas, touching nearly all of a corporation's concerns. **This authority more vividly springs from the fact that a corporation owes its existence to the concession of its corporate franchise from the state. Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and associations (excluding cooperatives, homeowners' association, and labor unions); compel legal and regulatory compliances; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted.**" (Emphasis supplied)

The grant of, and the exercise by the Commission of its regulatory, rule-making and quasi-judicial powers and authority have for their main

⁶³ G.R. No. 167041, June 17, 2008.

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objective and purpose, the implementation of the State policies provided in Sec. 2 of the SRC, which are also the mandates given to the Commission, to wit:

"SECTION 2. Declaration of State Policy. — The State shall establish a socially conscious, free market that regulates itself, encourage the widest participation of ownership in enterprises, enhance the democratization of wealth, promote the development of the capital market, protect investors, ensure full and fair disclosure about securities, minimize if not totally eliminate insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market." (Emphasis supplied)

The afore-quoted provision embodies the *raison d'être* of the SRC and the SRC-IRR, from which the intent and purpose for which the law was enacted by the Congress can be deduced. Thus, the Commission has consistently interpreted and implemented the provisions of the SRC and the SRC-IRR with a view of pursuing and achieving the State policies and principles. In this regard, the case of *Palanca IV v. RCBC Securities, Inc.*,⁶⁴ emphasized that Section 2 of the SRC, which embodies the core principles of the securities laws, should be considered in interpreting its various provisions to ensure that these principles are effectively carried out, thus:

"It has been observed that the afore-quoted 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. We therefore resolve the issues before Us with these principles in mind, giving particular attention to the principles of full

⁶⁴ G.R. No. 241905, [March 11, 2020].

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disclosure, investor protection, and the elimination of fraudulent or manipulative devices and practices.”
(Emphasis supplied)

The securities laws of the US from which our securities laws were patterned, as well as the securities laws of other major jurisdictions, came about in response to, and to address serious abuses that pervade in unregulated capital markets. These problems in the capital markets which are as timeless as the avarice of sellers and the gullibility of buyers⁶⁵ have not disappeared, and this Commission is witness to the fraud and abuses that continue to be perpetrated in this era of technological advancement. Thus, the securities laws of today continue to promote and implement socially-directed objectives as the protection of investors, the elimination of manipulative and deceptive practices, the promotion of full disclosure, the encouragement of high ethical standards, and the provision of effective sanctions for violation.⁶⁶

The prohibition of fraudulent activities/transactions, and the disclosure provisions in the SRC ensure the protection of investors, and promote honesty, trust and ethical behavior in commercial transactions. The anti-waver provisions of the SRC and the mandatory nature thereof are categorical statements that certain behaviors, including omissions, will not be tolerated in transactions carried out in the stock market. Moreover, untrue statements or omissions of material facts or information, and any act or practice that constitutes fraud or deceit are prohibited in connection with the purchase or sale of securities.

The noble objectives of the SRC justify and render imperative the strict and assiduous implementation and enforcement of its provisions, as they essentially relate to the very performance by the Commission of its mandate of ensuring full and fair disclosure of securities to promote the development of the capital market, protect investors and eliminate fraudulent or manipulative devices and practices. In this regard, the Supreme Court has emphasized in *SEC vs Subic Bay Golf and Country Club, Inc.*⁶⁷, that the Commission is clothed with ample authority, and is duty-bound, to impose the appropriate penalties, including the suspension or revocation of a registration or license, for the protection of the investing public, among others, to wit:

⁶⁵ Elaine A. Welle, Freedom of Contract and the Securities Laws: Opting Out of Securities Regulation by Private Agreement, 56 Wash. & Lee L. Rev. 519 (1999).

⁶⁶ *Ibid.*

⁶⁷ G.R. No. 179047. March 11, 2015

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"Pursuant to these policies, the Securities and Exchange Commission is given regulatory powers and "absolute jurisdiction, supervision and control over all corporations, partnerships' or associations.

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To ensure compliance with the law and the rules, the Securities and Exchange Commission is also given the power to impose fines and penalties. It may also investigate motu proprio whether corporations comply with the Corporation Code, Securities Regulation Code, and rules implemented by the Securities and Exchange Commission.

Any fraud or misrepresentation in the issuance of securities injures the public. **The Securities and Exchange Commission's power to suspend or revoke registrations and to impose fines and other penalties provides the public with a certain level of assurance** that the securities contain representations that are true, and that misrepresentations if later found, would be detrimental to the erring corporation. It creates risks to corporations that issue securities and adds cost to errors, misrepresentations, and violations related to the issuance of those securities. This protects the public who will rely on representations of corporations and partnerships regarding financial instruments that they issue. **The Securities and Exchange Commission's regulatory power over securities-related activities is tied to the government's duty to protect the investing public from illegal and fraudulent instruments."** (Emphasis supplied)

Be that as it may, emphasis should be made of the fact that market participants, including and especially broker/dealers, are, by themselves, duty-bound to fully comply with all the applicable and relevant provisions of the SRC and the SRC-IRR. This duty, being a condition to the grant of the license, and the continued use/enjoyment thereof, is not, and should not be made dependent on the performance by the Commission or the registered SROs *i.e.* PSE or CMIC of their duties to implement and/or enforce the SRC and the SRC-IRR. In other words, the failure of the Commission and/or the registered SROs to perform their respective duties is not, and will not be a ground to exculpate a market participant from liability resulting from the latter's violation of the SRC and/or the

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SRC-IRR. If at all, such failure will expose the SRO and/or its responsible officers to the risk of being imposed the proper penalties provided by law.

The instant case calls for a determination of whether VSI complied with its duties and responsibilities under the SRC and the SRC-IRR, in relation to the Sulapas VSI Account.

The voluminous documents of the instant case will bear that the fraudulent transactions were carried out in R&L during the Covered Period using the Sulapas R&L Account that resulted in the loss of a huge amount of shares owned by the clients of R&L. In like manner, the same documents show that the shares that were stolen from the clients of R&L which were transferred from the Sulapas R&L Account, were further transferred to the Sulapas VSI Accounts, where Mr. Sulapas appeared to have actively traded and profited from the same.

VSI had consistently denied any participation in the actions/transactions that resulted in the loss of the shares owned by the clients of R&L. VSI maintained that the theft of the shares owned by the clients of R&L during the Covered Period was carried out and consummated wholly within R&L, making it practically impossible for VSI (and other brokers) to know, or discover the same.⁶⁸ VSI argued that the SHP committed reversible error in penalizing it when "*it could not have contributed to the loss of these securities because by the time that the same have been EQ traded to Venture Securities, the theft of shares of clients of R&L Investments has already been completed or consummated within R&L Investments through the transfer to the account of Sulapas in R&L Investments*"⁶⁹, and it complied with the relevant provisions of the SRC and the SRC-IRR. VSI thus posited that the objective of the instant case was to make it a scapegoat for the abject neglect and gross incompetence of the CMIC.⁷⁰

For its part, the SHP maintained that the imposition of the penalties against VSI was warranted since the acts and omissions of the latter indispensably contributed and completed the chain which caused the losses of R&L's clients. The said acts and omissions of VSI are integral parts of the cause.⁷¹

⁶⁸ Comment/Opposition dated 8 June 2022. Pars. 3.20, 3.31, 3.34, 3.35, 3.43

⁶⁹ *Ibid.* see second paragraph of page 247

⁷⁰ *Ibid.* see second paragraph of Item D (page 147)

⁷¹ *Resolution.* see second paragraph of the *Fourth Issue* (page 23)

The obvious flaw in the arguments of both VSI and the SHP rest in their failure to consider that as a registered broker/dealer, VSI was duty bound to fully comply with the applicable provisions of the SRC and the SRC-IRR in acting on all the matters involving the Sulapas VSI Accounts, which were completely within its exclusive domain. As explained earlier, the duty and obligation of every broker/dealer to fully comply with the laws, rules and regulations are conditions for their continued enjoyment of the privilege to carry out such business granted in its license. Thus, VSI's compliance or non-compliance with the SRC and the SRC-IRR will be determined solely on the basis of the manner by which it handled, dealt with, and acted upon the transactions involving the Sulapas VSI Account, without regard to the other accounts of Mr. Sulapas with other broker/dealers which are within the domain and control of the latter.

Prescinding from the foregoing, We do not agree with VSI that just because the fraudulent transactions and/or theft of the shares of the clients of R&L were completed and consummated wholly within R&L, it is already impossible for VSI to violate the SRC/SRC-IRR. While VSI cannot be held liable, directly or indirectly, for transactions covering and/or involving the Sulapas account(s) with R&L, VSI will have to take full responsibility, and be accountable for its actions on the Sulapas VSI Accounts if they are shown to be violative of the SRC/SRC-IRR, even if they are not the proximate cause of the losses that befell on the clients of R&L. The opposite is true. VSI cannot be held liable if it is able to show that in acting on the Sulapas VSI Accounts, it fully complied with the SRC/SRC-IRR, even if the same, on its own, might have contributed and completed the chain which caused the losses of R&L's clients.

The principle of proximate causality which the SHP used in establishing the violation of VSI, and which the latter, in turn, used to support its position that it cannot be held liable since the violation was consummated within R&L, does not and will not be applied. For purposes of the instant Appeal, this Commission will only look into and consider the actions of VSI on the Sulapas VSI Accounts, and determine based thereon, if VSI has fully complied with the SRC/SRC-IRR, or has failed to do the same. The matter relating to R&L's violation of the SRC/SRC-IRR in relation to Sulapas account(s) in R&L, the CMIC's (and even the MSRD's) alleged gross negligence and incompetence, are matters that were are not the subject of the instant Appeal.

In making such determination and in passing upon the issues presented in the Appeal, this Commission will be guided by, and will implement the rules obtaining in administrative proceedings that

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technical rules of procedure and evidence are not strictly applied⁷², and that the quantum of proof necessary to sustain a finding is merely substantial evidence⁷³, or that amount of relevant evidence a reasonable mind might accept as adequate to support a conclusion.

I. The relaxation of the technical rules of procedure and evidence justifies giving due course to the Appeal.

VSI maintains that the Appeal is dismissible for its failure to comply with the relevant provisions of the 2016 Rules of Procedure of the Securities and Exchange Commission (the "2016 Rules"), in relation to the 2019 Amended Rules of Civil Procedure (the "Rules of Court"). In particular, VSI claimed that (a) the Verification did not comply with the requirements under Section 4, Rule 7 of the Rules of Court, thus, rendering the appeal improperly verified;⁷⁴ (b) no Certification of Non-Forum Shopping was attached to the Appeal which is required under Part V, Rule III, Section 3-4 of the 2026 Rules;⁷⁵ and (c) the Appeal failed to attach material portions of the record which allegedly rendered the allegations in the appeal "nothing but mere allegations".⁷⁶

The Commission does not agree with VSI.

Section 1-4(a) Rule I Part I of the 2016 Rules categorically provides for the standard to be used in interpreting its provisions, thus:

⁷² "Further, **administrative bodies are not bound by the technical niceties of law and procedure and the rules obtaining in courts of law.** Administrative tribunals exercising quasi-judicial powers are unfettered by the rigidity of certain procedural requirements, subject to the observance of fundamental and essential requirements of due process in justiciable cases presented before them. **In administrative proceedings, technical rules of procedure and evidence are not strictly applied** and administrative due process cannot be fully equated with due process in its strict judicial sense." (*Samalio vs Court of Appeals*. G.R. No. 140079. March 31, 2005)

⁷³ "Administrative proceedings are governed by the "substantial evidence rule." A finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that the respondent has committed the acts stated in the complaint or formal charge. As defined, substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. This is different from the quantum of proof required in criminal proceedings which necessitates a finding of guilt of the accused beyond reasonable doubt. The Ombudsman, in ordering the withdrawal of the criminal complaints against respondent was simply saying that there is no evidence sufficient to establish her guilt beyond reasonable doubt which is a condition *sine qua non* for conviction. Ergo, the dismissal of the criminal case will not foreclose administrative action against respondent." (*Velasquez vs Hernandez*. G.R. No. 150732. August 31, 2004)

⁷⁴ *Comment /Opposition* dated 8 June 2022. See pages 110 to 112

⁷⁵ *Ibid.* See page. 112

⁷⁶ *Ibid.* See page 113

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“These rules shall be liberally construed and administered to promote public interest, to secure a just, prompt, expeditious, and inexpensive determination of every action and proceeding before the Commission and to carry out the objectives of the laws it is mandated to implement.” (Emphasis supplied)

The afore-quote provision of the 2016 Rules implements the well-established jurisprudential rule that administrative agencies exercising quasi-judicial functions are not bound by the strict application of the rules of procedure and evidence, to wit:

“At the outset, it bears stressing that the proceeding involved in the present case is administrative in nature. Although trial courts are enjoined to observe strict enforcement of the rules on evidence, the same does not hold true for administrative bodies. **The Court has consistently held that technical rules applicable to judicial proceedings are not exact replicas of those in administrative investigations.** Recourse to discovery procedures as sanctioned by the Rules of Court is then not mandatory for the OGCLSBSP. Hence, We cannot subscribe to Norlina's tenacious insistence for the OGCLS-BSP to strictly adhere to the Rules of Court so as not to purportedly defeat her rights.

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The rationale and purpose of the summary nature of administrative proceedings is to achieve an expeditious and inexpensive determination of cases without regard to technical rules. As such, in proceedings before administrative or quasi-judicial bodies, like the OGCLS-BSP, **decisions may be reached on the basis of position papers or other documentary evidence only.** They are not bound by technical rules of procedure and evidence. To require otherwise would negate the summary nature of the proceedings which could defeat its very purpose.”⁷⁷ (Emphasis supplied)

Moreover, to ensure that the Commission remains unfettered by the technical rules of procedure, Sec. 5-1 Rule I Part I of the 2016 Rules specifically grants the Commission the power and authority to suspend

⁷⁷ *Sibayan vs Alda*. G.R. No. 233395. January 17, 2018

the application of the Rules to ensure the effective implementation of the laws that it is tasked to implement, thus:

“In the broader interest of justice and in order to best serve public interest, the Commission may, in any particular manner, exempt it from these Rules in exceptional cases and apply such suitable, fair and reasonable procedure to improve the delivery of public service and to assist the parties in obtaining a speedy and judicious disposition of cases.” (Emphasis supplied)

The policy of the 2016 Rules which finds affirmation in jurisprudence is very clear: The implementation and enforcement of the laws administered by the Commission which are carried out in the proceedings before it are paramount and essential, and the 2016 Rules should be considered and used as an effective and efficient tool/mechanism to further the same. Hence, if, at any time and in any proceeding, the provisions of the 2016 Rules will (or might) prevent the Commission from performing its mandate, the Commission is authorized, and can exercise its power to suspend its application. This is justified by the principle established in jurisprudence that a litigation is not a game of technicalities.⁷⁸

In relation to the manner of verifying a pleading, jurisprudence has consistently applied Rule 7 Section 4 of the Rules of Court which allows the veracity of an allegation therein to be affirmed either on the basis of personal knowledge, or on authentic records, or both.⁷⁹ An allegation which relies heavily on documentary evidence can best be verified based on authentic records, and not by personal knowledge;⁸⁰ in like manner, the truth/correctness of an allegation which is anchored on factual circumstances can be affirmed by the affiant who attests that the same proceeds from his/her personal knowledge.⁸¹ After all, the purpose of a verification is to ensure that the allegations in the pleading are not merely products of the verifier’s imagination, to wit:

⁷⁸ “The Rules of Court were conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts, in rendering justice have always been, as they in fact ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat to substantive rights, and not the other way around. As applied to [the] instant case, in the language of Justice Makalintal, technicalities “should give way to the realities of the situation.” (*Pimentel vs Adiao*, G.R. No. 222678, October 17, 2018)

⁷⁹ See *Victoriano vs Dominguez*. (G.R. No. 214794, July 23, 2018)

⁸⁰ *Ibid.*

⁸¹ *Ibid.* “Resultantly, Victoriano’s failure to indicate that the allegations are true and correct based on authentic records, may be excused, inasmuch as he already attested to the truth and correctness of the allegations based on his personal knowledge.”

“Verification is merely intended to secure an assurance that the allegations in the pleading are true and correct, and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith.”⁸²

The fact that the Appeal was verified by Atty. Varelie C. Vargas who represented the members of the Committee, is established in the records of the case. The said verification states, in part, that “*have caused the above Appeal Memorandum to be prepared and has read and knows the contents thereof, that the allegations therein are true of his own knowledge.*” It is readily evident that when the Committee, through Atty. Vargas, verified the Appeal, they essentially declared that the contents thereof were not merely products of their imagination.

Be that as it may, this Commission holds that the defect in the verification of the Appeal does not justify the dismissal thereof, the same not being jurisdictional and fatal. This established rule was reiterated in *Singson vs Iñaki Larazzabal Enterprises*⁸³, thus:

“An affiant verifies a pleading to indicate that he or she has read it and that to his or her knowledge and belief, its allegations are true and correct and that it has been prepared in good faith and not out of mere speculation. **Jurisprudence has considered the lack of verification as a mere formal, rather than a jurisdictional, defect that is not fatal. Thus, courts may order the correction of a pleading or act on an unverified pleading, if the circumstances would warrant the dispensing of the procedural requirement to serve the ends of justice.**” (Emphasis supplied)

Anent the requirement to include a certification against forum shopping to the Appeal, the doctrinal pronouncements of the Supreme Court uniformly emphasize that the evil that it seeks to curtail and/or penalize is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes, and grant the same or substantially the same reliefs and, in the process, creates the possibility of conflicting decisions being rendered by the different fora upon the same issues.⁸⁴

⁸² *Joven vs Spouses Tulio*. (G.R. No. 204567, August 04, 2021)

⁸³ G.R. No. 199107, August 30, 2017

⁸⁴ See *Heirs of Mapo vs Morada* (G.R. No. 214526, November 3, 2020)

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Relative to its implementation, it is equally settled in jurisprudence that the rule on forum shopping is a tool to facilitate the orderly administration of justice, and should not be used to stifle the ultimate objective of dispensing justice, to wit:

“The Court has often stressed that rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within our power to suspend the rules or except a particular case from its operation.”⁸⁵ (Emphasis supplied)

Hence, in *Azucena Locsin-Garcia vs. AZ 17/31 Realty, Inc.*⁸⁶, the Supreme Court sustained the act of the Commission in taking cognizance of, and resolving the complaint despite the lack of certificate of non-forum shopping, stating that the requirement, though mandatory, is not jurisdictional, thus:

“Though mandatory, the requirement of certification against forum shopping is not jurisdictional. Unquestionably, procedural rules are not to be simply disregarded as they insure an orderly and speedy administration of justice. But the rule on non-forum shopping should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective or the goal of all rules of procedure — which is to achieve substantial justice as expeditiously as possible. A liberal application of the rule may be justified where special circumstances or compelling reasons are present.” (Emphasis Supplied)

On account thereof, this Commission finds and so holds that the defects in the Appeal which were pointed out by VSI are not fatal that will warrant the dismissal thereof. In the interest of fully disposing of the issues presented therein, which, in effect, relate to the determination on whether VSI fully complied with the relevant provisions of the SRC/SRC-

⁸⁵ *Torres vs Republic of the Philippines* (G.R. No. 247490. March 2, 2022)

⁸⁶ G.R. No. 240888, July 6, 2022

IRR, this Commission hereby sustains giving due course to the Appeal.

II. VSI was not denied of its constitutional right to due process.

VSI claims that its constitutional right to due process has been, and is being violated. In this regard, VSI bewails (a) the alleged introduction by the Committee of new matters in the Appeal for the first time;⁸⁷ (b) the denial to it of access to exculpatory facts which allegedly confirmed that the crime was committed and consummated wholly within R&L, where it had no participation in the same;⁸⁸ and (c) the Committee's reliance on the statements of Mr. Sulapas which are allegedly unreliable, perjurious and hearsay statements, all of which constituted a violation of its right to due process.

The documents on record negate the claim of VSI that it was denied of its constitutional right to due process.

The rule established in jurisprudence is that administrative due process is satisfied where the notice requirement and the opportunity to be heard, either through oral arguments or pleadings, are complied with,⁸⁹ and the respondent is given an opportunity to explain his/her side, or the opportunity to seek reconsideration of the action/ruling that is being assailed, thus:

"Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of."⁹⁰

In the instant case, VSI was fully informed of the charges against it

⁸⁷ *Comment /Opposition* dated 8 June 2022. See page 118

⁸⁸ *Ibid.* pages 129 and 134

⁸⁹ *Vivo vs Philippine Amusement and Gaming Corporation* (G.R. No. 187854, November 12, 2013)

⁹⁰ *Ledesma v. Court of Appeals*. G.R. No. 166780, December 27, 2007, 541 SCRA 444.

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and was provided the amplest opportunity to address the same, and to present evidence in support of its defenses. In fact, the records will show that VSI's Motion for Reconsideration dated 28 June 2021 consisting of fifty-five (55) pages, excluding attachments, and its Comment/Opposition dated 8 June 2022 consisting of two hundred fifty-three (253) pages, both of which were prepared by reputable law firms of the country, embodies a comprehensive and exhaustive presentation and discussion of the allegations, defenses and legal bases which it invoked in support of its claim that it did not violate the SRC/SRC-IRR.

Moreover, We do not agree with VSI that the Committee changed its theory in the Appeal *"from alleged willful violations of the SRC to a now alleged failure to supervise."* We note how the Committee assailed the modification in the Assailed Resolution of the original penalties imposed upon VSI in the Decision. In this regard, the Commission is cognizant of the fact that the Committee maintained its position that VSI violated the various provisions of the SRC/SRC-IRR, including Rule 30.2.6 (Supervision), where the penalties provided in Sec. 29 of the SRC include, among others, the suspension or revocation of the broker-dealer's license, to wit:

"As extensively discussed in the 11 June 2021 Decision of the Special Hearing Panel, and reiterated in the Comments and Opposition of the Appellants to the Appellee's Motion for Reconsideration, **the acts and omissions committed by the Appellee constituted violations of the various provisions of the SRC and SRC IRR in such a level that they indispensably contributed, if not have been the proximate cause to the losses incurred by the clients of R&L Investments, Inc. Xxx**"⁹¹

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"Section 29(a) of the SRC provides that the penalty of revocation of registration may be granted if the Commission determines that the registrant **'has willfully violated the provisions of this Code, any rule, regulation or order made hereunder, or any other law administered by the Commission,** or in the case of a registered broker, dealer or associated persons has failed to supervise, with a view to preventing such violation, another person who commits such

⁹¹ Appeal Memorandum (Partial Appeal). Par. 27

violation.”⁹²

Relative thereto, it must be pointed out that Section 29 of the SRC provides for the grounds that will justify the suspension or revocation, among others, of the registration/license granted to broker/dealers. Section 29 of the SRC, *per se*, cannot be a source of violation as it does not prescribe an act to be done, or lays down those that are prohibited. Section 29 of the SRC merely provides for the consequences of the acts or omissions constituting a violation of the SRC which are specifically contained in the various provisions thereof. This explains why the Formal Charge only provided for the specific provisions of the SRC/SRC-IRR which VSI was found to have violated, which included Rule 30.2.6 (Supervision). It would have been absurd to find in the Formal Charge a charge for violation of Sec. 29 of the SRC which, for obvious reasons, is only invoked to justify the penalty imposed on the basis of a finding that the ground(s) enumerated therein are present.

Be that as it may, it does not escape the attention of this Commission that in its Motion for Reconsideration, VSI extensively presented and discussed how the SHP erred in finding that it failed properly supervise, alleging, among others, that:

“3.119.1. The KYC procedures for the account opening of Mr. Sulapas was conducted by Ms. Grace Machacon, the officer-in-charge and head of Venture Securities at that time. Xxx.

3.119.4. Ms. Aguilar required Mr. Sulapas to correct and update his information in the CAIF. Xxx.

3.119.5. Venture Securities required Mr. Sulapas to submit a written transfer request for his “transfer out” transactions. As for the “transfer in” transactions, Venture Securities verified through verbal or written confirmation from the transferring broker/dealer. Xxx.

3.119.6. The credit line agreement of Mr. Sulapas complies with the requirements of margin accounts under the SRC-IRR, and there was no intention to evade the requirements thereof. Xxx.

3.119.8. Venture Securities submitted all reportable transactions of Mr. Sulapas in accordance with its Anti-

⁹² *Ibid.* par. 49

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Money Laundering Policies as provided in its Anti-Money Laundering Manual. Xxx.”⁹³

Also, We equally note how VSI used the finding of the SHP in the Assailed Resolution to support its position that it implemented adequate supervisory procedures, to wit:

“In the Questioned SHP Resolution, the Special Hearing Panel correctly rejected the theory of petitioner Investigation Committee and held that with respect to appellee Venture Securities, there is no bad faith and the revocation of its license to operate as a broker dealer is not warranted. Among others, it was held that:

- (1) Appellee Venture Securities has put in place adequate supervisory control procedures to enforce SEC Rules and securities laws and regulations; Xxx.”

The afore-quoted statements which are extant in the pleadings submitted by VSI negate its claim of having been denied of the right to due process. On the contrary, they clearly show that VSI (a) was well informed of the charges against it for violation of Rule 30.2.6 of the SRC-IRR, for which reason, (b) it was able to present its defense comprehensively and exhaustively. Thus, granting *ex gratia* that the Committee changed its theory in the Appeal “*from alleged willful violations of the SRC to a now alleged failure to supervise*”, VSI cannot claim that it was denied of the right to due process because it was given the opportunity to refute the same, and present contrary evidence.

Anent the allegation of VSI that it was denied access to exculpatory facts which allegedly confirmed that the crime was committed and consummated wholly within R&L, the Commission finds the same to be irrelevant in the instant proceeding where the matters/issues which We will pass upon are limited to the transactions involving the Sulapas VSI Account in VSI. In other words, VSI cannot claim that it was, or will be, denied due process because the matter on whether its actions on the transactions involving the Sulapas VSI Account violated the SRC/SRC-IRR will be resolved not on the basis of the principle of proximate causality, but solely on the basis of its compliance with the SRC/SRC-IRR. The Commission will not consider the violations or even the crime that was committed in R&L, as they are a subject of another case.

⁹³ Motion for Reconsideration. See pages 39 to 40

III. The matters subject of the Appeal are not barred by laches.

In the Appeal, the Committee assailed the modification by the SHP of the penalties which it imposed upon VSI in the Assailed Decision, specifically the setting aside of the revocation of the latter's license/registration, and the reduction of the monetary penalties. The Committee argued that since the failure of VSI to supervise has been proven, this justifies the revocation of the license of VSI since under Section 29 of the SRC, such failure need not be willfully carried out.

VSI disagrees with the Committee, and maintains that the latter is already barred from praying for the reinstatement of the revocation of its license/registration, and the monetary penalties that were originally imposed upon it, on the ground that laches has set it. In support thereof, VSI argued that the anomalous transactions that have occurred in R&L which are being imputed against it have been occurring since 2012,⁹⁴ and yet, it was only in 2019 that these transactions were discovered by the CMIC after the "principal conspirators Lees provided the information, which resulted in the filing of the Formal Charge by the Committee.⁹⁵ According, to VSI, had the CMIC performed its job, it would have discovered from the documents that were submitted that the fraudulent transactions in R&L had been going on since 2012. This makes the CMIC, not VSI, the proximate cause of the losses suffered by the clients of R&L.

VSI is in effect saying that the applicable penalties for its violation of the relevant provisions of the SRC/SRC-IRR can no longer be imposed upon it because the CMIC is now barred by laches consequent to its belated discovery of the fraudulent transactions in R&L in 2019.

Again, this Commission does not agree with VSI.

The Supreme Court discussed the concept of laches in *Republic vs Sundiam*⁹⁶, as follows:

"Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier. Stated differently, it is negligence or omission to assert a right within a reasonable time, warranting a presumption that

⁹⁴ *Comment /Opposition* dated 8 June 2022. See par 1 of Item III (page 166)

⁹⁵ *Ibid.* see page 168-169

⁹⁶ G.R. No. 236381. August 27, 2020

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the party entitled to assert it either has abandoned it or declined to assert it. The doctrine of laches or of "stale demands" is **based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims**, and is not a mere question of time but is principally **a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.**" (Emphasis supplied)

In applying the principle of laches, due consideration must be made of the fact that the same is a recourse given in equity, and does not automatically apply in any and all circumstances where there is delay.⁹⁷ In addition to the requisites of laches which must be shown to be present, the Supreme Court has, in *Agra vs PNB*⁹⁸, emphasized that the person invoking the same must be able to show that its application will not contravene a statutory provision, thus:

"Assailing the CA ruling that laches was inapplicable because the claim was brought within the ten-year prescriptive period, petitioners stress that the defense of laches differs from and is applied independently of prescription. In support, they cite, among others, *Nielson & Co., Inc. v. Lepanto Consolidated Mining Co.*, in which the Supreme Court ruled:

[T]he defense of laches applies independently of prescription. Laches is different from the statute of limitations. Prescription is concerned with the fact of delay, whereas laches is concerned with the effect of delay. Prescription is a matter of time; laches is principally a question of inequity of permitting a claim to be enforced, this inequity being founded on some change in the condition of the property or the relation of the parties. Prescription is statutory; laches is not. Laches applies in equity; whereas prescription applies at law. Prescription is based on fixed time, laches is not.

True, prescription is different from laches, but petitioners' reliance on *Nielson* is misplaced. As held in the afore-cited case, laches is principally a question of equity. **Necessarily,**

⁹⁷ In any event, "the fact of delay, standing alone, is insufficient to constitute laches." (see *Chavez vs Bonto-Perez* (242 SCRA 73. March 1, 1995)

⁹⁸ G.R. No. 133317. June 29, 1999

"there is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances. The question of laches is addressed to the sound discretion of the court and since laches is an equitable doctrine, its application is controlled by equitable considerations." Petitioners, however, failed to show that the collection suit against herein sureties was inequitable. **Remedies in equity address only situations tainted with inequity, not those expressly governed by statutes."** (Emphasis supplied)

The SRC expressly authorizes the Commission to regulate and investigate the activities of persons to ensure compliance, to impose sanctions, including the revocation of the license/registration issued to corporations, for violation of the SRC/SRC-IRR.⁹⁹ Relative thereto, the doctrine in *Citibank N.A. and the Citigroup Private Bank v. Tanco-Gabaldon, et al.*,¹⁰⁰ recognizes and allows a person subject of an administrative proceeding(s) for violation of the SRC/SRC-IRR to invoke the equitable principle of laches by proving that that Commission has failed or neglected, for an unreasonable and unexplained length of time, to institute and/prosecute an appropriate case, which engenders a presumption on the part of the person/corporation concerned that the Commission has abandoned the performance of its functions.

Did the Committee fail/neglect, for an unreasonable and unexplained length of time, to issue the Formal Charge which started the administrative investigation on VSI's alleged violations of the SRC/SRC-IRR in relation to the Sulapas VSI Accounts?

We rule in the negative as the four (4) requisites of laches¹⁰¹ are not present.

⁹⁹ Sec. 5 (d), (f), and (m) of the SRC

¹⁰⁰ "Section 54 of the SRC provides for the administrative sanctions to be imposed against persons or entities violating the Code, its rules or SEC orders. Just as the SRC did not provide a prescriptive period for the filing of criminal actions, it likewise omitted to provide for the period until when complaints for administrative liability under the law should be initiated. On this score, it is a well-settled principle of law that laches is a recourse in equity, which is, applied only in the absence of statutory law. And though laches applies even to imprescriptible actions, its elements must be proved positively. Ultimately, the question of laches is addressed to the sound discretion of the court and, being an equitable doctrine, its application is controlled by equitable considerations." (Emphasis and underscoring supplied) [G.R. No. 198444, 4 September 2013.]

¹⁰¹ "As in the *Gamponia* case, the four elements of laches are present in the case at bar, namely: (a) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complaint seeks a remedy; (b) delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit; (c) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (d) injury or

First, the transactions involving the Sulapas VSI Accounts were all processed and even granted incentives by VSI, who is now claiming that the same did not violate the SRC/SRC-IRR;

Second, the Formal Charge was issued in 2019, the same year when the Commission, through the Committee, discovered the fraudulent transactions using the accounts of Mr. Sulapas in R&L, which triggered a separate inquiry (leading to the instant Appeal) on VSI's alleged violation of the SRC/SRC-IRR in relation to its actions/treatment of the Sulapas VSI Accounts. Similar to the claim of VSI, the Committee could not have known the fraudulent transactions or the theft of the shares in R&L on its own; and it was only after the same was discovered in 2019 when a **separate** investigation on VSI's compliance with the SRC/SRC-IRR in relation to the Sulapas VSI Accounts was triggered. In fact, the Formal Charge was immediately issued soon after it became clear to the Committee that Mr. Sulapas, who was actively trading/transacting using the Sulapas VSI Accounts, might have resulted in a similar violation by VSI of the SRC/SRC-IRR;

Third, it is unreasonable on the part of VSI to expect that the Committee will not pursue an appropriate action upon finding that it has probably violated the SRC/SRC-IRR; and

Fourth, VSI cannot validly and legally claim that it will be prejudiced or damaged if the appropriate penalties will be imposed on the basis of a finding of violation of the SRC/SRC-IRR. It bears emphasis that its continued use of the license granted by the State is merely a privilege, and by accepting such concession, VSI has effectively agreed that it will take responsibility, and be accountable for any violation that the Commission will find.

Moreover, it bears to reiterate that what is being evaluated, and will be passed upon in the instant case, are the actions, systems or processes that VSI made and/or failed to make in dealing with the Sulapas VSI Accounts. They will determine if VSI has complied with the mandatory requirements of the SRC/SRC-IRR, and if it is still deserving of such license. Thus, granting *ex gratia* that there was a delay in the issuance of the Formal Charge, the same is irrelevant since the fraudulent

prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred." (*Miguel vs Catalino*. G.R. No. L-23072. November 29, 1968)

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transactions in R&L will not be considered, nor the same will be used as basis in determining if VSI complied with the SRC/SRC-IRR.

Be that as it may, even if we assume that laches has already set in, the same will not bar the State, through this Commission, from imposing the appropriate sanction upon VSI for its violation of the SRC/SRC-IRR. This doctrine was emphasized by the Supreme Court in the case of *New Coast Hotel, Inc. vs Securities and Exchange Commission*,¹⁰² to wit:

“Third, even *assuming arguendo* that the elements of laches were present in the instant case, **the State is not barred from penalizing New Coast for its violation of the FIA.** Generally, the State cannot be put in estoppel by omissions, mistakes, or errors of its officials or agents. In *Republic vs Court of Appeals*, this Court discussed the exception of the foregoing rule:

“The general rule is that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. However, like all general rules, this is also subject to exception, viz:

Estoppels against the public are little favored. They should not be invoked except in a rare and unusual circumstances, and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens and must not play an ignoble part do a shabby thing; and subject to limitations...,the doctrine of equitable estoppel may be invoked against public authorities as well as against public individuals [.]

Here, it is cannot be gainsaid that the interest of justice will not in any way be served by absolving New Coast from its administrative offense. Thus, there is no basis

¹⁰² G.R. No. 264667. November 28, 2023

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for this Court to waive the State's immunity from estoppel." (Emphasis supplied)

IV. VSI violated Rule 30.2.1. of the SRC-IRR (Ethical Standards Rules), including Rule 30.2.1.2.3. (Capabilities), and 30.2.1.2.4. (Information About Clients) in relation to Rule 52.1.6 (Customer Account Information Rule).

In the Assailed Decision, the SHP found that VSI violated the Ethical Standards Rule, and the related provisions therein on Capabilities and Information about Clients, in relation to the Customer Account Information Rule. The SHP found that while VSI was able to show that it has Supervisory Procedures and Compliance Manual, as well as Risk Management Manual, it willfully failed to maintain and implement the same.¹⁰³ This, according to the SHP, constitutes a failure on the part of VSI to observe high standards of commercial honor; the just and equitable principles of trade; and to act honestly and fairly for the integrity of the capital market.¹⁰⁴

This Commission notes that while the SHP sustained its finding of violation by VSI of the Ethical Standards Rule, and the related provisions therein on Capabilities (Rule 30.2.1.2.3.), Information About Clients (Rule 30.2.1.2.4.) and Customer Account Information Rule (Rule 52.1.6), the SHP found that same was not attended by bad faith for which reason, it reduced the monetary penalty to P200,000.00 for each provision that was violated from the original P1,000,000.00.

VSI disagrees with the SHP and maintained that it has not violated the Ethical Standards Rule, and the related provisions therein on Capabilities, and Information About Clients in relation to the Customer Account Information Rule. VSI enumerated the incidents which allegedly showed a clear intent on its part to ensure compliance with its supervisory control procedures, as well as the SRC/SRC-IRR.¹⁰⁵ VSI claimed that it took reasonable steps to establish the true and full identity of Mr. Sulapas,¹⁰⁶ and adopted a KYC procedure that is more than sufficiently compliant with the VSI Internal Rules on Opening of

¹⁰³ *Decision.* see pages 189 and 205

¹⁰⁴ *Ibid.* page 209

¹⁰⁵ *Comment/Opposition.* see pages 177 to 180

¹⁰⁶ *Ibid.* pages 192 to 200

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Customer Accounts and Documentary Requirements.¹⁰⁷ Finally, VSI also enumerated the circumstances which showed that it fully complied with, or adhered to the Ethical Standards Rule¹⁰⁸, and the Rules on Capabilities.¹⁰⁹

Rule 30.2 of the SRC-IRR covers Transactions and Responsibilities of Broker Dealers, which includes and lays down the Ethical Standards Rule (Rule 30.2.1.), a portion of which reads, thus:

“30.2.1. Ethical Standards Rule

30.2.1.1. Every Broker Dealer, Associated Person and salesman of a Broker Dealer (hereinafter referred to as a “registered person”), **in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.**

30.2.1.2. In considering whether a registered person is conducting his business in an ethical and fair manner, the Commission, in addition to the requirements imposed under other SRC rules, **will be guided by the following principles and requirements** which incorporate International Organization of Securities Commission (IOSCO) standards:

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30.2.1.2.3. Capabilities

A registered person **shall** have and **employ** effectively the resources and procedures which are needed for the proper performance of his business activities.

30.2.1.2.3.1. A registered person shall ensure at all times that any person he employs or appoints to conduct business for or with clients or other registered persons is qualified, including having relevant training or experience to act in the capacity so employed or appointed in compliance with SRC Rules 28.1 and 28.2.

¹⁰⁷ *Ibid.* pages 200 to 201

¹⁰⁸ *Ibid.* pages 231 to 234

¹⁰⁹ *Ibid.* pages 235 to 238

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30.2.1.2.3.2. A registered person shall ensure that at all times, pursuant to SRC Rule 30.2.6, he has:

30.2.1.2.3.2.1. Adequate resources to diligently supervise **and does diligently supervise his employees and all persons appointed** by him to conduct business for or with clients or any other registered persons; and

30.2.1.2.3.2.2. **Satisfactory internal control procedures** and financial **and operational capabilities which can be reasonably expected to protect his operations**, his clients and other registered persons **from financial loss arising from theft, fraud, and other dishonest acts**, or professional misconduct or omissions of all company officers, employees and authorized representatives.

30.2.1.2.4. Information About Clients

30.2.1.2.4.1. A registered person should seek from his clients, information about their financial situation, investment experience and investment objectives regarding the services to be provided pursuant to Rule 52.1.6 and other applicable laws. If the client refuses to disclose reasonable information about his financial situation, the registered person shall make the necessary estimate based on his initial evaluation of the information given by client.

30.2.1.2.4.2. Information obtained from clients shall be treated with utmost confidentiality and shall not be disclosed to unauthorized persons; Provided that, such treatment of confidentiality shall not apply to the Commission. SROs, Exchanges, clearing agencies, depositories and other authorized representatives that exercise regulatory and supervisory responsibilities, or to any order issued by the Commission pursuant to SRC Rule 30.2.9. This confidentiality treatment and all the exceptions shall be stated in the Client Agreement.

All requests for information by the Commission about trading activities shall be complied with strictly by the registered persons in a form and style prescribed by the Commission, notwithstanding any confidentiality agreement between and among the registered persons and their clients.

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The submission of the registered persons referred to above shall not be made in codes, cyphers or internal descriptions, or any other means that may hinder the Commission's ability to expeditiously conduct surveillance, examination or investigation pursuant to this Rule.

30.2.1.2.4.3. A registered person **shall take all reasonable steps to establish** the true and full identity of each of his clients, **their financial situation, investment experience, and investment objectives.**

30.2.1.2.4.4. Having regard to information disclosed by a client which the registered person is or should be aware of through the exercise of due diligence, the registered person shall ensure that such recommendation or solicitation for that client is reasonable and suitable in all circumstances pursuant to Suitability Rule under SRC Rule 30.2..4.

30.2.1.2.4.5. A registered person providing services to any client, in relation to derivatives, including options and warrants, structured products, or any leveraged transaction, shall assure himself that the client understands the nature and risks of these instruments and has sufficient net worth and financial sophistication to be able to assume the risks and bear the potential losses of trading in such investments.

30.2.1.2.4.6. A registered person shall be **reasonably satisfied about the identity, address and contact details of the person ultimately responsible for originating the instruction in relation to a transaction, the person who stands to gain the commercial or economic benefit of the transaction and/or bears the commercial economic risk;** Provided however that in relation to an investment company, or discretionary account, the person referred to above is the investment company or the account, not those who hold a beneficial interest therein.

30.2.1.2.4.7. A registered person shall keep in the Philippines a record of the details referred to above and provide the Commission with access to those records upon request pursuant to Section 52 of the Code and SRC Rule 52.1.1.

30.2.1.2.4.8. A registered person **shall not do anything to effect a transaction unless he has first complied with the**

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requirements of this rule, as required by the Suitability Rule under SRC Rule 30.2.4.” (Emphasis supplied)

The relevant provisions of the Customer Account Information Rule, on the other hand, provides:

“52.1.6. Customer Account Information Rule

52.1.6.1. Every Broker Dealer shall maintain for **each account, the following information and requirements:**

52.1.6.1.1. Customer’s name, residence address, office address, principal business address and their corresponding phone numbers and email addresses, mobile phone number;

52.1.6.1.2. Trading Account Code;

52.1.6.1.3. Occupation of customer, and the name, address and phone number of employer, if employed;

52.1.6.1.4. At least one (1) of the following: Social Security Number, Government Service and Insurance System Number, Passport Number, Driver’s License Number, Senior Citizen’s ID Number, Voter’s ID Number or any government issued identification card number;

52.1.6.1.5. Sources of funds;

52.1.6.1.6. Nationality;

52.1.6.1.7. Signature of the salesman introducing the account and signature of the partner, officer or manager who accepts the account;”

The Ethical Standards Rule embodied in the SRC/SRC-IRR is a best practice in securities regulation that was adopted from the securities laws of the United States, specifically the Securities Exchange Act of 1934 which was specifically designed to extend greater protection to the investing public, and to elevate business practices within the securities brokerage industry. The Ethical Standards Rule which makes it mandatory for broker/dealers to observe “*high standards of commercial honor*” and “*just and equitable principles of trade*” relates to the transcendental goal of protecting investors and promoting public

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interest, resulting in the restoration of investor confidence in the capital markets.¹¹⁰

Notably, the Ethical Standards Rule in Rule 30.2.1. of SRC mandates broker/dealers to observe “*high standards of commercial honor*” and “*just and equitable principles of trade*”. These general principles does not, *per se*, make broker/dealers ethical in the conduct of their business. They only serve as guide to specific actions, systems and processes prescribed under the SRC/IRR which, if carried out, may result in the broker/dealer being considered as observing “*high standards of commercial honor*” and “*just and equitable principles of trade*”, and thus compliant with the Ethical Standards Rule.

Relative thereto, the measures used under the SRC-IRR in determining compliance with the Ethical Standards Rule are: (a) honesty and fairness;¹¹¹ (b) diligence;¹¹² (c) capabilities; (d) information about clients;¹¹³ (e) information for clients;¹¹⁴ (f) conflicts of interest;¹¹⁵ and (g) compliance.¹¹⁶ In this regard, Rule 30.2.1.2. expressly directs the Commission to be guided by the said provisions, specifically the standards on capabilities and information about clients, in determining, as to what the instant case requires, if VSI was conducting its business in an ethical and fair manner *viz* the Sulapas VSI Accounts.

As regards the standards on “capabilities”, the SRC-IRR requires broker/dealers to employ adequate resources for the purpose of actually diligently supervising¹¹⁷ its employees, and in implementing internal control procedures and financial and operational capabilities that are reasonably expected to protect his operations, his clients and other registered persons from financial loss. The use in Rule 30.2.1.2.3.2.2 of the word “*satisfactory*” means that the intent of the Rule is to ensure that the internal control procedures and financial and operational capabilities are actually implemented; as it is in the implementation thereof that its effectiveness is determined. Considering that the securities brokerage/dealership business is imbued with public interest, the mere

¹¹⁰ Ramirez, Steven, The Professional Obligations of Securities Brokers Under Federal Law: An Antidote for Bubbles? 70 U. Cin. L. Rev. 527 (2002). Accessed at: <https://lawecommons.luc.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1276&context=facpubs>

¹¹¹ Rule 30.2.1.2.1. SRC-IRR

¹¹² Rule 30.2.1.2.2. SRC IRR

¹¹³ Rule 30.2.1.2.4 SRC IRR

¹¹⁴ Rule 30.2.1.2.5 SRC IRR

¹¹⁵ Rule 30.2.1.2.6. SRC IRR

¹¹⁶ Rule 30.2.1.2.7. SRC IRR

¹¹⁷ Rule 30.2.1.2.3.2.1 states: “Adequate resources to diligently supervise and **does diligently supervise** his employees...” (Emphasis supplied)

submission of manuals and procedures will not suffice as they will not, by themselves, result in the protection of investors and the integrity of the capital market, which are the main objectives of the SRC/SRC-IRR. Thus, the maintenance of a perfectly crafted operations or compliance manual that is not actually or properly implemented, or which provisions do not induce compliance with the SRC/SRC-IRR, will not render a broker/dealer compliant with the Ethical Standards Rule.

Anent the Ethical Standards Rule covering Information About Clients which is essentially related to the Customer Account Information Rule, the SRC-IRR requires broker/dealers to take all reasonable steps to establish, among others, the financial situation of, investment experience, and investment objectives of their clients. Aside from ensuring that broker/dealers are able to provide appropriate recommendations to its investor-clients pursuant to the Suitability Rule, these Rules are also intended to enable broker/dealers to decide whether to allow a prospective client to trade using its facilities/services, or to continue trading using their platform, in case of an existing client. This protects investors, especially those who are not sophisticated, or who does not have enough resources, from the risk of financial loss by gambling, among others, through the stock market. The Suitability Rule (Rule 30.2.4.) supplements and provides added protection to investors by ensuring that they are properly/adequately advised on the transactions that they are carrying out.

At this juncture, it is worth emphasizing that like the securities brokerage business, trading in securities is not a right that a person can demand from the State; and considering that such an activity is imbued with public interest, broker/dealers are duty-bound to ensure that only persons/investors who have fully complied with the requirements of the SRC/SRC-IRR are able to avail of their services.

The requirement to conduct a KYC is not merely a mechanical act that one can claim to have complied with after the prospective client has accomplished the CAIF, as what VSI is suggesting. From the perspective of the SRC/SRC-IRR, what is important/critical is how a broker/dealer appreciates and uses the information/data provided by the prospective client, as they determine compliance with the relevant provisions of the SRC/SRC-IRR. The Suitability Rule, for instance, is only relevant and will make sense if broker/dealers have complete and accurate information on the financial situation of a client. In the same manner, the Rules intended to curtail money laundering will only be effective if broker/dealers are able to obtain information (and are satisfied) on the true identity and personal circumstances of clients.

Thus, in assessing/determining if broker/dealers have fully complied with the requirements of the SRC/SRC-IRR, it is not sufficient that they have the manuals, procedures, the applications documents, agreements or CAIF. Broker/dealers will have to prove, to the satisfaction of the Commission, that in the performance of their responsibilities under the SRC/SRC-IRR, they have **actually implemented** such manuals/procedures by properly considering and acting on the information/data obtained from clients. This is how the SRC/SRC-IRR makes sure that the objectives of protecting investors and promoting the integrity of the capital market are accomplished. A contrary position will promote the principle of *caveat emptor* which our securities laws have long abandoned.

In the instant case, while VSI was able to show that it has a Risk Management Manual and Internal Control Policy, a Supervisory Procedures and Compliance Manual, and has followed its KYC procedures resulting in the accomplishment by Mr. Sulapas of his CAIF, the following admitted facts and circumstances show that VSI fell short of actually diligently supervising, and in implementing internal control procedures and financial and operational capabilities that are reasonably expected to protect his operations, his clients and other registered persons from financial loss, and in establishing the financial situation, investment experience, and investment objectives of Mr. Sulapas:

First, VSI fully relied on the CAIFs purportedly accomplished by Mr. Sulapas in acting and/or processing all the transactions of the Sulapas VSI Accounts. Nothing in the records will show that VSI made any further verification on the financial status or capability of Mr. Sulapas despite being aware of the sheer number of transactions, and huge amount involved therein. VSI justified the foregoing by invoking and capitalizing on Rule 30.2.1.2.4.1. of the SRC-IRR which allegedly allowed it to make the necessary estimate based on initial evaluation of the information given.¹¹⁸ VSI however, clearly ignored the directive in Rule 30.2.1.2.4.8. i.e. prohibiting any transaction that does not comply with the provisions of the rules, which underpins the entire Ethical Standards Rule as it is intended to protect investors and promote the integrity of the capital market;

Second, VSI processed and effected all transactions of the Sulapas VSI Account from day one in 2012, in utter disregard of the financial

¹¹⁸ *Comment/Opposition*. See pages 194 and 203

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capacity of Mr. Sulapas who declared in his CAIF that he only had a liquid net worth and annual income of less than PhP1,000,000.00.¹¹⁹ The records show that the first two (2) buy transactions for CAL shares of Mr. Sulapas on 30 May 2012 (the very same month when the Sulapas VSI Accounts were opened), which VSI acted upon and effected, amounted to PhP2,210,759.23.¹²⁰ Moreover, despite having barely opened his account in May 2012, and with the same declared annual income, VSI effected a buy transaction of 1 Million MEG shares in the amount of PhP2,252,800.00 on 2 July 2012. These two (2) transactions of Mr. Sulapas should have already raised doubts on his capacity to sustain the same, and yet VSI effected and even defended the same (as well as the subsequent numerous transactions) as regular and consistent with his financial capability. If VSI was not interested in the commissions that it will get from such sheer volume of transactions, this Commission can only think of the other possible reason why VSI executed all the transactions of the Sulapas VSI Accounts;

Third, on the basis of the CAIFs purportedly accomplished by Mr. Sulapas, VSI facilitated and effected all transactions of the Sulapas VSI Accounts during the Covered Period, and used the same in coming up with its own conclusion on Mr. Sulapas as a day trader, and in adamantly defending his trading pattern/activities as consistent with his financial capacity *i.e.* VSI claimed that the Committee's conclusion on the trading activities vis the financial capacity of Mr. Sulapas is faulty and premised on a myopic focus on the "buy" transactions only;

Fourth, VSI clearly disregarded the entry in Mr. Sulapas' CAIF which declared that he did not have other account with other broker(s). Being fully aware that the considerable amount of shares from the Sulapas R&L were being transferred to the Sulapas VSI Accounts, VSI even went to the extent of justifying that it was normal to have accounts with other B/D¹²¹, instead of asking/confronting Mr. Sulapas that the same was contrary to the declaration in his CAIF. This, undoubtedly exposed VSI, its clients, and other registered persons to the risk of financial loss, not to mention the fact that a falsity, misrepresentation or fraud is despised, abhorred, and punished under the SRC/SRC-IRR;

¹¹⁹ *Ibid.* par. 8 (page 16)

¹²⁰ See Decision. Page 40

¹²¹ Answer par. 4.16

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Fifth, VSI clearly failed to establish the true and full identity, financial situation, investment experience and investment objectives of Mr. Sulapas.¹²² VSI admitted that: (a) Mr. Sulapas opened an account with VSI on 29 May 2012;¹²³ (b) it had monitored the EQ trades, and the gradual increase of trades and balances of Mr. Sulapas over the years;¹²⁴ (c) consistent with his profile as a day trader, there was nothing unusual in the transactions of Mr. Sulapas during the Covered Period;¹²⁵ (d) it was Mr. Sulapas who primarily transacted in his account with VSI. However, VSI appears to have been blinded by the number, and the aggregate amount involved in the transactions that it effected for the Sulapas VSI Accounts, as shown by how it staunchly defended and justified them as reasonable and regular. In this regard, VSI confidently claimed that “[t]he buying and/or selling of the shares were not executed through a one-time transaction but a result of a very long series of transactions over the years”. VSI obviously failed to consider that Mr. Sulapas himself negated its position and conclusion. In 2017 (or five [5] years after the Sulapas VSI Accounts were opened, and continuously traded actively), Mr. Sulapas accomplished and submitted an updated CAIF where he expressly declared therein that his liquid net worth and annual income remained at less than PhP1,000,000.00. The updated CAIF showed that Mr. Sulapas was an inexperience or a newbie investor who is not knowledgeable of his financial position, or VSI risked taking the cudgels by offering a justification for its failure to comply with the Ethical Standards, Rule;

Sixth, VSI processed and effected all transactions of the Sulapas VSI Account from day one in 2012, in utter disregard of the financial situation and investment experience of Mr. Sulapas. The record

¹²² “KYC is the bedrock of financial advice. It is a form of due diligence to ascertain relevant client information before doing business with them. Advisers must be careful that they are not taken along for the ride; taking time to challenge appropriately is a must if the customer is to get value for money and your firm is to build a successful relationship with that customer. For too long there have been large blank spaces in fact finds or simple notes that state “does not wish to disclose” or “not applicable”. It is an adviser’s duty to get to know the customer in front of them.” (<https://www.huntswood.com/insights/reducing-investments-mis-selling-at-home-2>);

“There are many reasons why financial institutions do customer due diligence and commit time and effort to ‘know their customers’:

- To ensure the organization remains compliant with the regulations and laws of the regions or markets they are operating in
- To help make sure the customer is really who they say they are
- To guard against fraudulent activity such as identity fraud or impersonation

So that the financial institution can assist law enforcement” (<https://www.swift.com/your-needs/financial-crime-cyber-security/know-your-customer-kyc/customer-due-diligence-cdd>)

¹²³ Answer dated 21 September 2020. Par. 3.8.1

¹²⁴ *Ibid.* pars. 3.9.2., 3.14

¹²⁵ *Ibid.* pars. 3.11, 3.13

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shows that from day one, Mr. Sulapas, an investor with less than PhP1 Million liquid net worth and annual income, was trading CAL, EW, VMC, LCB, RFM, OV, NI, MEG, MER, CHIB, ABS, EAGLE, SECB, DIZ, GERI, ABA, ELI,CPG, TDY, CMT, BHI, MAB, SFI, PX and, EG, to name a few. It is a recognized industry practice, which this Commission takes administrative notice of, that trading in securities requires and demands a certain degree of knowhow and experience in analyzing the performance, financial and projections of issuers whom one intends to invest his money on. The records are bereft of anything that showed VSI even making a further inquiry on how Mr. Sulapas, with his lowly financial status, knew of these issuers and decided to invest practically his entire net worth with them. VSI plainly executed all the trades of the Sulapas VSI Accounts without question;

Seventh, VSI failed to carry out its duty of recommending to Mr. Sulapas the purchase of securities that are commensurate to his declared liquid net worth and annual income of less than PhP1,000,000.00. The records are bereft of any showing that VSI cautioned, tempered and/or provided the appropriate advice to Mr. Sulapas. What is extant in the evidence are documents showing Mr. Sulapas' unabated transactions during the Covered Period. This policy certainly exposes VSI, its clients, and other registered persons to the risk of financial loss;

Eighth, VSI executed all the transactions of the Sulapas VSI Accounts during the Covered Period despite full knowledge that the requirements prescribed under the relevant provisions of the Ethical Standards Rules, in relation to the Suitability Rule, have not been complied with; and

Ninth, VSI extended credit to the Sulapas VSI Accounts notwithstanding full awareness that by their classification as a cash accounts, they were not entitled to the same. Again, this policy and practice exposed VSI, its clients, and other registered persons to the risk of financial loss.

The foregoing factual circumstances disclose that the policies, procedures and practices which VSI implemented in dealing with the Sulapas VSI Accounts, clearly fell short in complying with the provisions of the Ethical Standards Rule, which included the Rules on Capabilities and Information About Clients, in relation to the Customer Account Information Rule. While this Commission cannot speculate that the same policies and practices are also currently being implemented by VSI in the

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existing accounts of its other clients, one thing is certain: the Board of Directors and management of VSI allowed the full/continued implementation of these policies, procedures and practices during the entire period that the Sulapas VSI Accounts were actively trading. There is nothing in the records of the case which show that the Board and/or management of VSI evaluated its existing policies, procedures and practices for purposes, among others, of improving and/or correcting the same to ensure full compliance with the SRC/SRC-IRR. This justifies the imposition of the appropriate penalties on VSI as separate juridical entity that have been granted the privilege to operate a securities brokerage/dealership business.

**V. VSI violated Rules 48.1.
(Margin) and 48.2
(Prohibitions on Extension of
Credit) of the SRC-IRR, in
relation to Rule 50.1
(Purchases and Sales in Cash
Account) of the SRC-IRR.**

In the Assailed Decision, the SHP ruled that VSI violated Rule 50.1 of the SRC-IRR after finding that five hundred fifty-nine (559) transactions of the Sulapas VSI Accounts, which are classified as a cash accounts, were not paid in cash within T+3, and were not liquidated. The SHP further ruled that VSI violated Rule 48.1 of the SRC-IRR after finding that it resorted to the credit line granted to Mr. Sulapas under the Credit Line Agreement (the "Agreement"), and applied the same in paying the Sulapas VSI Accounts' buy transactions, instead of liquidating the same. The SHP also ruled that the act of VSI in extending credit to Mr. Sulapas also violated Rule 48.2 of the SRC-IRR.

We note however that while the SHP sustained its finding of violation by VSI of the Rules on Margin, Prohibition on Extension of Credit, and Purchases and Sales in Cash Account, the SHP found that same was not attended by bad faith for which reason, it reduced the monetary penalty to P200,000.00 for each provision that was violated from the original P1,000,000.00.

VSI disagrees with the SHP and maintained that the extension of credit to Mr. Sulapas fully complied with the requirements prescribed under Rule 48.1 of the SRC-IRR *i.e.* it did not exceed fifty percent (50%) of the current market value of his securities at the time of the transactions. VSI also claimed that for all his transactions where he did not avail of the Credit Line Agreement, Mr. Sulapas was allegedly able to

settle his purchases within T+3 days. Thus, according to VSI, the SHP erred in finding that it violated the Rules on Margin, Prohibition on Extension of Credit, and Purchases and Sales in Cash Account.

The relevant provisions in the SRC-IRR on the Rules on Margin, Prohibition on Extension of Credit, and Purchases and Sales in Cash Account states:

“Rule 48.1 – Margin

48.1.1. A broker Dealer shall not extend credit to a customer in an amount that exceeds fifty percent (50%) of the current market value of the security at the time of the transaction. In no event shall new or additional credit be extended to an account in which the equity is less than fifty thousand pesos (Php50,000.00).”

“Rule 48.2 – Prohibition on Extension of Credit

No member of an Exchange or **broker or dealer shall, directly or indirectly extend or maintain credit** or arrange for the extension or maintenance of credit to or for any customer on the following:

48.2.1. **On any security unless** such credit is extended and maintained **in accordance with the rules and regulations** which the Commission shall prescribe under this Section including rules setting credit in relation to net capital of such member, broker or dealer;

48.2.2. **Without collateral or on any collateral other than securities**, except (i) to maintain a credit initially extended in conformity with the rules and regulations of the Commission and (ii) in cases where the extension or maintenance of credit is not for the purpose of purchasing or carrying securities or evading or circumventing the provisions of SRC Rule 48.2.1.”

“Rule 50 – Purchases and Sales in Cash Account

50.1. **Purchases** by a customer in a **cash account** shall be paid in full within three (3) business days after the trade date.

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50.2 If full payment is not received within the required time period, the Broker Dealer shall cancel or liquidate the transaction, or the unsettled portion thereof, starting on the next business day but not beyond ten (10) business days following the last day for the customer to pay, unless such sale cannot be effected within said period for justifiable reasons in which case, notification in writing shall be made with the Exchange and the Commission.” (Emphasis supplied)

It is recognized in practically all jurisdictions around the world, including the US where our securities laws were patterned, that a brokerage account, through which investors can buy and sell various types of investments, consists of either a cash account or a margin account. In other words, an investor who wishes to open a brokerage account has to choose between the two (2) main options of opening either a cash account or a margin account. Owing to their unique characteristics, purposes, advantages and risks, a cash account cannot be treated as a margin account and *vice versa*. Thus, an investor who has a cash account but wants to avail of credit has the option to open and maintain a margin account, which is separate from the former.

In the interest of providing a proper context and better appreciation of the afore-quoted provisions of the SRC-IRR, We will discuss the basic concepts of cash account and margin account.

As the name suggest, a cash account is a brokerage account where an investor who has deposited funds (which is required in opening such account) to buy securities, pay the full cost of an investment with funds actually existing in his account. A cash account has been considered to be a more conservative investment choice since transactions in securities, as well as the potential losses, are necessarily limited to the cash in his account or the total amount invested; and since buying on margin is not allowed with cash accounts.¹²⁶ In an Investor Bulletin issued by the Office of Investor Education and Advocacy of the US Securities and Exchange Commission, it was emphasized that existing regulations prohibit an investor using a cash account from borrowing funds from his/her broker-dealer in order to pay for transactions in the account.¹²⁷ The reason for this is found in Regulation T Section 220.8 (Cash Account) of the US which

¹²⁶ Indeed Editorial Team. Cash Accounts vs Margin Accounts: What's the Difference. 16 August 2024. Accessed at: <https://www.indeed.com/career-advice/career-development/cash-account>

¹²⁷ US SEC, Office of the Investor Education and Advocacy. Accessed at: https://www.sec.gov/investor/alerts/ib_marginaccounts.pdf. See also the Notice to Members, Credit Extension/Day Trading Requirements, issued by FINRA (May 2024). Accessed at: <https://www.finra.org/sites/default/files/NoticeDocument/p003091.pdf>

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requires full payment of the securities purchased in a cash account. In our jurisdiction, we find this rule embodied in Rule 50.1 of the SRC-IRR.

A margin account, on the other hand, is a brokerage account in which the broker/dealer lends the investor cash, using the account as collateral, to purchase securities. An investor who buys securities using credit extended by the broker/dealer is known as **trading on margin**. Investors may purchase up to 50% of stock on margin. An investor who maintains a margin account must own at least 25% of assets in the said account. The broker/dealer will charge the investor interest on the borrowed portion of the investment, and use the value of his stocks and other investments as collateral. Moreover, the investor is required to maintain a specific margin ratio, or minimum balance, after a securities purchase; and stands to forfeit all his assets if his/her account falls below that limit, and fails to add more cash or securities to the account. Thus, while a margin account increases an investor's purchasing power, it also exposes such investor to the potential for bigger losses. It is recognized in the securities brokerage industry, and even by regulators, that margin accounts can be very risky and are not appropriate for everyone, as they are subject to more stringent regulations.

From the foregoing, it becomes readily clear that Rules 48.1 and 48.2 (Margin) apply only to margin accounts i.e. those that are pending approval and those that are existing. **The Rules on Margin have no application, and must not be applied, to cash accounts.** The Rules on Margin expressly prohibit any broker/dealer from extending credit to a customer without a collateral which must consist of securities, unless the same falls under the exceptions provided in Rule 48.2.2 of the SRC-IRR. Moreover, the Rules on Margin requires that a credit extended to a margin account shall not exceed fifty percent (50%) of the current market value of the security at the time of the transaction. In all circumstances where a credit is extended on securities under a margin account, Rule 48.2.1 requires the all broker/dealers to fully comply with the Rules on Margin, as well as the other applicable rules and regulations issued by the Commission.

It is equally readily apparent from the discussion on cash vs margin accounts that Rules 50, 50.1 and 50.2 (Purchases and Sales in Cash Account) of the SRC-IRR only applies to cash accounts. The said Rules expressly require customers maintaining a cash account to pay in full, any and all purchases of securities, within three (3) business days after the trade date. If the customer fails to comply with the same i.e. if the account is not funded, the broker/dealer is directed to cancel or liquidate the

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transaction starting on the next business day, but not beyond ten (10) business days.

In the instant case, VSI expressly admitted that the Sulapas VSI Accounts were cash accounts. VSI also expressly admitted that notwithstanding such classification, it extended credit, through a Credit Line Agreement, to clients, including Mr. Sulapas, with good trading and credit profile, to wit:

“The account of Mr. Sulapas is a cash account with certain features that are extended to clients with good trading and credit profile with the Company such as the Credit Line Agreement.”¹²⁸ (Emphasis supplied)

The afore-quoted admission of VSI, which partakes of the nature of a judicial admission,¹²⁹ discloses a policy of VSI that allows the grant of credit to cash accounts maintained by its clients who have good trading and credit profile. Thus, in VSI, a client becomes qualified to enjoy a credit line not on the basis of the type of account that he/she maintains i.e. margin account as required by the SRC/SRC-IRR. Using the standard of “good trading and credit profile”, VSI has, in effect, allowed Mr. Sulapas and all of its existing clients (and this Commission can only imagine how many they are, as well as the aggregate amount of credit that VSI has agreed to extend, which is the extent of its exposure to risk of loss) who are maintaining cash accounts, to trade on margin.

The Rule on Margin is clear that its provisions are only applicable to margin accounts, which are created and determined at the time of the opening thereof. VSI (together with the client) has no discretion to modify the features of a cash account or create a hybrid cash account (and accord the account holder the benefits and/or the inherent risks attendant therein) by the simple expedient of executing a Credit Line Agreement

¹²⁸ Motion for Reconsideration dated 28 June 2021. Par. 3.34

¹²⁹ “A judicial admission is an admission, verbal or written, made by a party in the course of the proceedings in the same case, which dispenses with the need for proof with respect to the matter or fact admitted. It may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

A party who judicially admits a fact cannot later challenge [the] fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. **A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and is cannot be controverted by the party making such admission and is conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not.** The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary to or inconsistent with what was pleaded.” (*Gonzales-Saldana vs Niamatali*. G.R. No. 226587. November 21, 2018)

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after determining that a client is qualified to enjoy credit because he/she has a "*good trading and credit profile*". By extending credit to, and allowing clients with cash accounts to trade on margin, VSI has clearly violated the purpose of the margin requirements in the SRC/SRC-IRR, which was emphasized by the Supreme Court in *Abacus Securities Corporation vs Ampil*,¹³⁰ to wit:

"The main purpose is to give a [g]overnment credit agency an effective method of reducing the aggregate amount of the nation's credit resources which can be directed by speculation into the stock market and out of other more desirable uses of commerce and industry x x x."

A related purpose of the governmental regulation of margins is the stabilization of the economy. Restrictions on margin percentages are imposed "in order to achieve the objectives of the government with due regard for the promotion of the economy and prevention of the use of excessive credit."

Otherwise stated, the margin requirements set out in the RSA are **primarily intended to achieve a macroeconomic purpose -- the protection of the overall economy from excessive speculation in securities. Their recognized secondary purpose is to protect small investors.**" (Emphasis supplied)

On the basis thereof, it is therefore immaterial that Mr. Sulapas has, by his "*good trading and credit profile*", qualified to be granted credit under the Rules on Margin, or has not availed of his credit line for all his transactions, contrary to the insistence of VSI. The fact that Mr. Sulapas were maintaining cash accounts made him unqualified to trade on margin; and the fact that VSI allowed Mr. Sulapas to trade on margin renders it liable for violation of the Rule on Margin.

In the same vein, by allowing Mr. Sulapas to settle five hundred fifty-nine (559) transactions during the Covered Period using his credit line beyond T+3,¹³¹ instead of cancelling or liquidating the same, when the Rule is clear that the same had to be paid in full within three (3) business days after the trade date, VSI clearly violated Rule 50 of the SRC-IRR. The

¹³⁰ G.R. No. 160016. February 27, 2006

¹³¹ See pages 66 to 183 of the Decision.

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contention of VSI that “*Mr. Sulapas was able to settle his obligations eventually within a reasonable amount of time*”¹³² does not suffice for purposes of complying with Rule 50.1. of the SRC-IRR which requires full payment within three (3) business days after the trade date.

**VI. VSI violated Rule 52.1.1
(Books and Records Rule) of
the SRC-IRR.**

In the Assailed Decision, the SHP found that VSI violated Rule 52.1.1. (Books and Records Rule) of the SRC-IRR (a) after it facilitated the “transfer in” and “transfer out” transactions of the Sulapas VSI Accounts sans the written request of Mr. Sulapas; and (b) by its failure to keep current the books and records relating to its business as shown by the discrepancies in the number of shares in the stock (In) CM and EQ Trade Forms of Mr. Sulapas. Again, this Commission notes that, similar to the other violations discussed earlier, the SHP modified the amount of the fine imposed for this violation in the Assailed Resolution on the basis of a finding of absence of bad faith on the part of VSI.

In its defense, VSI maintained that the SHP erred in finding that it violated the Books and Records Rule, arguing that the evidence on record allegedly showed that it maintained adequate records and information. VSI insists that since it was able to show that (a) the transactions of the Sulapas VSI Accounts were duly documented in an Account Ledger; (b) the “transfer-in” EQ Trades of Mr. Sulapas were documented by Stock Credit Memos; and (c) the “transfer-out” EQ Trades of Mr. Sulapas were duly documented by Stock Out Credit Memos, VSI is deemed to have complied with the requirements of the Books and Records Rule.¹³³ As regards the discrepancies in the Stock-in Credit Memos and EQ Trade Forms of Mr. Sulapas, VSI maintained that the same are “*miniscule and dwarfed in comparison to the total buy and sell transactions*” of the Sulapas VSI Accounts, which allegedly negates the finding that it failed to properly record the transactions.¹³⁴

We do not agree with VSI.

The relevant provisions of the Books and Records Rule under the SRC-IRR provides:

“52.1.1. Books and Records Rule

¹³² *Comment/Opposition*. par. 4.39

¹³³ *Comment/Opposition*. see page 214

¹³⁴ *Ibid*. see page 223

52.1.1.1. A Broker Dealer shall make, keep current and maintain in its principal office the following books and records relating to its business:

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52.1.1.1.1.2. An In/Out Receipts Book setting forth the receipt and delivery of the securities to and from other Broker Dealers and securities depository in case of stock dividend distribution, including information on the date of receipt or delivery of the securities to or from Broker Dealers, the In/Out Receipt number, name of security, number of shares, and description of such receipt and delivery of securities (e.g. lodgment or upliftment of shares, transfer request by a customer). **If the receipt and delivery of shares refer to a transfer of shares by a customer from/to his account with the Broker Dealer to/from his other account with another Broker Dealer, the Broker Dealer should obtain a written transfer request from the customer prior to executing the transfer and keep the documents on file.** (Emphasis supplied)

The Books and Records Rule imposes upon broker/dealers the general obligation to keep current, among others, the books and documents covered under Rule 52.1.1 which include the In/Out Receipts Book.

As regards the In/Out Receipts Book, Rule 52.1.1.1.1.2. of the SRC-IRR requires from broker/dealers the performance of two (2) obligations (the performance of the second obligation is on a case-to-case basis). The *first* relates to general obligation to keep and maintain an In/Out Receipts book which contains the information required under the rule. The *second* obligation applies in all instances when the receipt and delivery of shares refer to a transfer of shares by a customer (a) from his account with a Broker Dealer to his other account with another Broker Dealer (Outward Transfer), or (b) to his account with a Broker Dealer from his other account with another Broker Dealer (Inward Transfer). In either case, the rule specifically requires the broker/dealer to obtain a written transfer request from the customer prior to executing the transfer, in addition to the obligation of keeping the documents on file.

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The foregoing negates the argument of VSI that Rule 52.1.1.1.1.2. only requires broker/dealers to keep a record of the receipt and delivery of securities to and from other broker/dealers.¹³⁵ Moreover, the use of the words "Broker Dealer" in the second portion of Rule 52.1.1.1.1.2. of the SRC-IRR without any qualification only means that in both Inward Transfer and Outward Transfer, the broker dealers involved in the transaction are required to obtain a written transfer request from the customer prior to executing the transfer. **This is a regulatory mechanism which the SRC/IRR is using to ensure that the Books and Records, specifically the entries in the In/Out Receipts Book of all broker/dealers are current.**

In the instant case, the Committee and the SHP both found that VSI executed "transfer-out" transactions without the written request of Mr. Sulapas. This finding was impliedly admitted by VSI, who maintained that the duty to secure the consent of Mr. Sulapas in transfer-out transactions was with R&L, the "transfer-out Broker Dealer".¹³⁶ This, clearly constituted a failure on the part of VSI to comply with a clear provision of the SRC-IRR which warrants the imposition of the appropriate penalties.

Moreover, We agree with the SHP that the discrepancies which it found in the number of shares in the stock (In) CM and EQ Trade Forms of Mr. Sulapas constitute a violation of the Books and Records Rules inasmuch as they show VSI's failure in complying with the general obligation of keeping current its books and records. In this regard, the claim of VSI that the entries showing a discrepancy are "*miniscule and dwarfed in comparison to the total buy and sell transactions*" of the Sulapas VSI Accounts, will not operate to negate its violation, which it in effect admitted. It bears emphasis that acts/omissions violative of the SRC/SRC-IRR, being special laws, are classified as *malum prohibitum*, and if shown to have been committed, justifies the imposition of the appropriate sanctions.

If this Commission is to sustain the proposition of VSI that minor violations of the law or regulations by market participants should simply be ignored, the same will result in catastrophic consequences as it will certainly compromise the integrity of the

¹³⁵ "Clearly, what is required is that a Broker Dealer keeps a record of the "receipt and delivery of securities to and from other Broker Dealers" including the In/Out Receipt Number, the name of security, number of shares and description of the mode of receipt/delivery." (see Comment/Opposition. page 214)

¹³⁶ *Ibid.* see page 216

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capital market, and the capability of this Commission to implement and enforce the laws and regulations; more importantly, it will negate the core objective of our securities laws, which is to protect investors.

**VII. VSI violated Rule 52.1.6.16.
(Customer Account
Information Rule) of the SRC-
IRR**

In the Assailed Decision, the SHP, giving due weight to the Report of the CMIC, found that VSI violated Rule 52.1.6.16. (Customer Account Information Rule) of the SRC/IRR, when it failed to report as suspicious transactions to the Anti-Money Laundering Council, the transactions involving the Sulapas VSI Accounts.¹³⁷ The SHP ruled that again, on the basis of its finding that VSI's violation was not attended by bad faith/fraud, the SHP modified the amount of the fine in the Assailed Resolution with the reduction of the same to PhP200,000.00.

VSI maintained that it did not violate Rule 52.1.6.16. (Customer Account Information Rule) of the SRC/IRR, reasoning out that the absence of facts or circumstances known to it, which could have caused apprehension or mistrust of the Sulapas VSI Account, did not warrant the tagging of the transactions as "suspicious transactions".

Rule 52.1.6.16. (Customer Account Information Rule) of the SRC-IRR provides:

"52.1.6.16. The Broker Dealer, its directors, officers, and associated persons are required to report any suspicious client transaction to the Anti-Money Laundering Council, pursuant to the provisions of the Anti-Money Laundering Act (RA 9160, as amended).

For purposes of this section, a **suspicious client transaction** shall mean **any transaction which causes any ordinary person** to have a feeling of apprehension or mistrust about the transaction considering (a) its unusual nature or circumstances, or (b) the person or group of persons with whom they are dealing, and based on the bringing together of all relevant factors including knowledge or the person's or

¹³⁷ Decision. Pages 58 to 59

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person's business or background (as well as behavioral factors)." (Emphasis supplied)

The afore-quoted provision is clearly intended to supplement the Anti-Money Laundering Act (AMLA)¹³⁸, by recognizing the important contribution that broker/dealers can make in effectively preventing or curtailing money laundering and other financial crimes which can be carried out through the brokerage industry. The use of the phrase "*pursuant to the provisions of the Anti-Money Laundering Act*" highlights the fact that the securities regulations in the country is aligned with the primary objective of the AMLA of protecting and preserving the integrity and stability of the Philippine financial system by making it difficult for criminals to disguise illegally obtained funds as legitimate income.

Thus, while the foregoing rule provides for a guideline in determining suspicious transactions, this Commission holds that in the application and implementation of the said rule, due regard and consideration should always be made to the applicable regulations of the AMLC for after all, the purpose of this regulation is to prevent or curtail money laundering and other financial crimes.

In this regard, the Commission is cognizant, and can take administrative notice, of that fact that all broker/dealers are covered persons under the AMLA and its IRR, and are complying with its provisions. Broker dealers are thus familiar, or even well-versed with the provisions and requirements of AMLA and its IRR.

The 2018 Implementing Rules and Regulations of Republic Act No. 9160 (AMLA-IRR) defines a "**suspicious transaction**" as referring to "*a transaction, **regardless of the amount, where any of the suspicious circumstances, as herein defined, is determined, based on suspicion or, if available, reasonable grounds, to be existing.***" In the AMLA-IRR, the following circumstances, among others, are considered "suspicious circumstance" which must be reported as a suspicious transaction: (i) the amount involved is not commensurate with the business or financial capacity of the client; and (b) taking into account all known circumstances, it may be perceived that the client's transaction is structured in order to avoid being the subject of reporting requirements under the AMLA.

¹³⁸ R.A. No. 9160

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Applying Rule 52.1.6.16. (Customer Account Information Rule) of the SRC-IRR, in relation to the foregoing provisions of the AMLA-IRR, this Commission finds and so holds that VSI violated Rule 52.1.6.16.

There is not an instance, and the records are bereft of any evidence showing that VSI reported a single transaction involving the Sulapas VSI Accounts as a suspicious transaction. However, the circumstances and the pieces of evidence on record, considered in their totality, will readily tell an “**ordinary person**” that the transactions of the Sulapas VSI Accounts are suspicious from the start. The following factual circumstances support the finding of this Commission:

First, Mr. Sulapas, who declared in his CAIF that he only had a liquid net worth and annual income of less than PhP1,000,000.00, effected on 30 May 2012 (the very same month when the Sulapas VSI Accounts were opened) his first two (2) buy transactions for CAL shares which amounted to PhP2,210,759.23.¹³⁹ On 2 July 2012 (or barely 2 months from the time that he first traded), Mr. Sulapas effected a buy transaction for 1 Million MEG shares in the amount of PhP2,252,800.00, in addition to his other numerous transactions in between. The amount involved in such transactions was clearly not commensurate with the business or financial capacity of Mr. Sulapas. It is not ordinary for a person who has a declared liquid net worth and annual income of less than PhP1,000,000.00 to invest everything (and more) that he/she has in securities;

Second, Mr. Sulapas expressly declared that he did not have other account with other broker(s). However, the records show that a considerable amount of shares from the Sulapas R&L Account which had huge price tags when traded, were being transferred to the Sulapas VSI Accounts. Had VSI seriously considered Mr. Sulapas’ declaration that he had no other account with other brokers, coupled with the fact that there was practically no instance that Mr. Sulapas requested for a check payment resulting from his trades in excess of PhP500,000.00, it would have realized that from the start, such transfers were already suspicious and it should have made the proper report to the AMLC. An ordinary person would have easily seen, very much like how this Commission sees it, that Mr. Sulapas’ transactions were structured in order to avoid being the subject of reporting requirements under the AMLA;

¹³⁹ See Decision. Page 40

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Third, Mr. Sulapas, who declared in his CAIF that he only had a liquid net worth and annual income of less than PhP1,000,000.00, was trading from day one (1) in shares that only a sophisticated or an institutional investor would consider i.e. CAL, EW, VMC, LCB, RFM, OV, NI, MEG, MER, CHIB, ABS, EAGLE, SECB, DIZ, GERI, ABA, ELI,CPG, TDY, CMT, BHI, MAB, SFI, PX and, EG, to name a few. How could these circumstances have escaped the attention of VSI, a seasoned broker/dealer?; and

Fourth, Mr. Sulapas, who declared in his CAIF that he only had a liquid net worth and annual income of less than PhP1,000,000.00, didn't secure, even once during the Covered Period, an investment advice from VSI (and there is no evidence to that effect), and yet he was transacting shares worth hundreds of thousands and even millions.

What is worse, by ignoring the foregoing red flags and staunchly defending Mr. Sulapas' transactions as regular, VSI has effectively prevented the AMLC, which has the necessary capability and expertise, from performing its job. VSI, in effect, took it upon itself to determine (and firmly stood by that belief) that there was nothing wrong with the transactions of the Sulapas VSI Accounts; and as a result, prevented the AMLA from stopping money laundering which had been perpetrated during the Covered Period. Thus, VSI should be held liable for violating Rule 52.1.6.16. (Customer Account Information Rule) of the SRC-IRR.

VIII. The SHP erred in modifying the amount of the monetary penalties.

In the Assailed Decision and the Assailed Resolution, the SHP applied Section 54.1 of the SRC in determining and imposing the monetary penalties on VSI. In modifying the amount of the monetary penalties imposed upon VSI, with the reduction thereof to PhP200,000.00 for each violation from PhP1,000,000.00, the SHP ruled that the absence of bad faith on the part of VSI justified the same.

VSI however, remains resolute in positing that the SHP erred in imposing even the reduced amount of PhP200,000.00 per violation, arguing that the same is contrary to Memorandum Circular No. 6, series of 2005 (MC No. 6) which provides for the Consolidated Scale of Penalties for violation of the SRC/SRC-IRR.¹⁴⁰ VSI maintains that the Commission is

¹⁴⁰ Comment/Opposition. page 238

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absolutely bound to implement MC No. 6, impliedly suggesting that Sec. 54.1 of the SRC is subservient to the same.

We do not agree with both the SHP and VSI.

Section 54 of the SRC provides for the administrative sanctions which the Commission, after notice and hearing, is mandated to impose if there is a finding that the provisions of the SRC/SRC-IRR, or even its orders, have been violated, to wit:

“Section 54. Administrative Sanctions. – 54.1. If, after due notice and hearing, the Commission finds that: (a) There is a violation of this Code, its rule, or its orders; (b) Any registered broker or dealer, associated person thereof has failed reasonably to supervise, with a view to preventing violations, another person subject to supervision who commits any such violation; (c) Any registrant or other person has, in a registration statement or in other reports, applications, accounts, records or documents required by law or rules to be filed with the Commission, made any untrue statement of a material fact, or omitted to state any material fact required to be stated their or necessary to make the statements therein not misleading; or, in the case of an underwriter, has failed to conduct an inquiry with reasonable diligence to insure that a registration statement is accurate and complete in all material respects; or (d) Any person has refused to permit any lawful examinations into its affairs, it shall, in its discretion, and subject only to the limitations hereinafter prescribed, impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances:

- (i) Suspension, or revocation of any registration for the offering of securities;
- (ii) **A fine of no less than Ten thousand pesos (P10,000.00) nor more than One million pesos (P1,000,000.00) plus not more than Two thousand pesos (P2,000.00) for each day of continuing violation;**
- (iii) In the case of a violation of Sections 19.2, 20, 24, 26 and 27, disqualification from being an officer, member of the Board of Directors, or person performing similar functions, of an issuer required to file reports under

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Section 17 of this Code or any other act, rule or regulation administered by the Commission;

- (iv) In the case of a violation of Section 34, a fine of no more than three (3) times the profit gained or loss avoided as result of the purchase, sale or communication proscribed by such Section, and
- (v) Other penalties within the power of the Commission to impose.

54.2. The imposition of the foregoing administrative sanctions shall be without prejudice to the filing of criminal charges against the individuals responsible for the violation.”
(Emphasis supplied)

It bears emphasis that the afore-quoted provision, which, under Sec. 72¹⁴¹ of the SRC, is self-executory, is the source and legal basis for the Commission’s actual exercise of the power and authority to impose sanctions (including suspension and revocation of franchise), for violation of laws, rules and regulations granted in Section 5 (f) and (m) of the SRC. Thus, consistent with the hierarchy of authority, the following provision in MC 6 itself expressly recognizes the discretion of the Commission to impose administrative penalties provided in Section 54 of the SRC, to wit:

“The imposition of the foregoing penalties shall be without prejudice to the imposition of **other administrative sanctions** or to the filing of criminal charges against person/s responsible for the violation.” (Emphasis supplied)

The use of the words “other administrative sanctions” in the afore-quoted provision can only refer to the sanctions provided in Section 54 of the SRC, being the only other source of imposable sanctions.

Thus, in *Securities and Exchange Commission vs G. Cosmos Philippines, Inc.*,¹⁴² the Supreme Court sustained the application of Sec. 54

¹⁴¹ “**Section 72. Rules and Regulations; Effectivity.** – 72.1. This Code shall be self-executory. To effect the provisions and purposes of this Code, the Commission may issue, amend, and rescind such rules and regulations and orders necessary or appropriate, including rules and regulations defining accounting, technical, and trade terms used in this Code, and prescribing the form or forms in which information required in registration statements, applications, and reports to the Commission shall be set forth. For purposes of its rules or regulations, the Commission may classify persons, securities, and other matters within its jurisdiction, prescribe different requirements for different classes of persons, securities, or matters, and by rule or order, conditionally or unconditionally exempt any person, security, or transaction, or class or classes of persons, securities or transactions, from any or all provisions of this Code.”

¹⁴² G.R. No. 167435. April 20, 2015

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of the SRC notwithstanding the fact that on the year of its promulgation i.e. 2015, MC 6 was already in effect.

Section 54 of the SRC expressly grants the Commission full discretion to determine the appropriate penalties to be imposed upon the persons found to have violated its provisions. Thus, if the Commission decides that appropriate penalty to be imposed is a fine, Sec. 54 of the SRC directs the Commission to consider the attendant facts and circumstances which disclose the seriousness and/or gravity of the violation, and to limit the amount thereof within the range provided therein i.e. a base fine of not less than Ten thousand pesos (P10,000.00) nor more than One million pesos (P1,000,000.00), plus an incremental fine of not more than Two thousand pesos (P2,000.00) for each day of continuing violation.

Applying the foregoing standards to the instant case, this Commission finds and so holds that the SHP committed reversible error in modifying the amount of fine imposed upon VSI. We cannot overemphasize the gravity and seriousness of the violations committed by VSI which were exhaustively discussed above. The number of the provisions of the SRC/IRR that were violated, all of which are crucial in promoting the integrity of the capital market and protecting investors, the number of transactions as well as the aggregate amount involved, and the long period when these violations were committed, convinces this Commission that the maximum amount of PhP1,000,000.00 per violation is the appropriate fine to be imposed upon VSI.

IX. The violations by VSI of the SRC/SRC-IRR were not attended by bad faith or fraud.

In the Assailed Resolution, the SHP, after re-examining the facts and circumstances, found that the revocation of the license of VSI was not warranted on the ground that bad faith, which is required under Section 29 of the SRC, did not attend the commission of the violation. In this regard, the SHP enumerated the circumstances which showed the absence of bad faith on the part of the Board of Directors of VSI (the "Board"), as well as the absence of participation in, or toleration by the latter of the handling of the Sulapas VSI Accounts.¹⁴³

We agree with the SHP.

¹⁴³ Resolution. see pages 32 and 33

VSI is a corporate entity with a personality separate and distinct from that of its shareholders or directors. As a juridical entity having been granted a license to operate and conduct business as a broker/dealer, VSI essentially made a commitment, and was duty-bound to fully comply with the SRC/SRC-IRR, and other securities laws. Necessarily, VSI is equally deemed to have agreed to assume liability for any violation that will be proven to have been committed by it in the course of its operation.

Relative thereto, it bears emphasis that Section 22 of the Revised Corporation Code¹⁴⁴ vests in the board of directors the power to bind a corporation by its exercise of corporate powers, the conduct of all business, and control of all its properties. A corporation that benefits, and is allowed to profit from the proper exercise and discharge of corporate powers by its board, may equally be exposed to the risk of liability for violation of applicable laws, rules or regulations resulting from negligence, fraud or even bad faith of the board. Thus, in determining if a corporation can be held liable for violation of a law, rule or regulation, and can be validly made to answer for the same, it is important to examine the relevant resolutions and/or actions of its board of directors which resulted in, or relates to the commission of such violation.

In the instant case, the evidence showed that the Board of VSI approved policies and standards which, to its mind, were compliant with existing laws, rules and regulations. This was shown by the (Board) approved written manuals, codes and procedures which management implemented in operating the company. The evidence however, equally showed that VSI carried out policies and practices that clearly violated the SRC/SRC-IRR i.e. allowing clients with cash account to trade on margin, using and implementing a self-made standard on who becomes eligible to obtain credit, executing a transaction sans compliance with the requirements of the Information About Clients Rule and the Books and Records Rule, etc.

It is important for this Commission to determine if the violations of the relevant provisions of the SRC/SRC-IRR which have been established was attended with bad faith as to warrant the imposition of the penultimate penalty of revocation of its registration/license as broker/dealer. In doing so, We need to determine from the evidence on record if the Board of VSI consciously, deliberately, and willfully approved and/or assented to the implementation of the policies, practices and processes that violated the SRC/SRC-IRR.

¹⁴⁴ Republic Act No. 11232

After a careful and meticulous review of the evidence on record, this Commission finds nothing therein that would show the Board expressly approving and/or assenting to the implementation of the policies, practices and processes that violated the SRC/SRC-IRR. In other words, the evidence on record suggests that these policies, practices and processes that violated the SRC/SRC-IRR, while fully known to the management (and employees involved in the process), being operational in nature, may not have reached, or have been properly/accurately reported to the Board.

Be that as it may, this Commission is cognizant that one of the essential, if not critical, functions of the board is to effectively monitor management, and oversee risk management systems and mechanisms designed to ensure compliance with applicable laws, rules and regulations,¹⁴⁵ The evidence on record shows that the Board of VSI was clearly remiss in performing this important function. While the Board of VSI can argue that management failed to voluntarily provide it with the relevant information or report, the Board could have nonetheless obtained the same had it proactively and conscientiously performed its function of effectively monitoring management, as well as the risk management systems and mechanisms being implemented by VSI. As discussed earlier, mere approval and submission of manuals, codes and procedures are not enough. VSI, through its Board, is duty-bound to regularly evaluate the same (or cause the evaluation of the same by management, subject to its final determination) to ensure its

¹⁴⁵ *"The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.*

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Together with guiding corporate strategy, **the board is chiefly responsible for monitoring managerial performance and achieving an adequate return for shareholders**, while preventing conflicts of interest and balancing competing demands on the corporation. In order for boards to effectively fulfil their responsibilities, they must be able to exercise objective and independent judgement. **Another important board responsibility is to oversee the risk management system and mechanisms designed to ensure that the corporation obeys applicable laws, including relating to tax, competition, labour, human rights, environmental, equal opportunity, digital security, data privacy and personal data protection, and health and safety.** In some jurisdictions, companies have found it useful to explicitly articulate the responsibilities that the board assumes and those for which management is accountable.

The board is not only accountable to the company and its shareholders but also has a duty to act in their best interests. In addition, boards are expected to take account of, and deal fairly with, stakeholder interests including those of the workforce, creditors, customers, suppliers and affected communities." (Principle V. Responsibilities of the Board. OECD/G20 Principles of Corporate Governance 2023.) Accessed at: <https://www.oecd-ilibrary.org/sites/ed750b30-en/1/2/5/index.html?itemId=/content/publication/ed750b30-en&csp=7a1eca165fad928a70a0300d1e07c36f&itemIGO=oecd&itemContentType=book>

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effectiveness which ultimately results in compliance by the corporation with the applicable laws, rules and regulations. All of these, VSI failed to do.

Does such failure on the part of the Board of VSI constitute or amount to bad faith or willful violation of the SRC/SRC-IRR that will warrant the revocation of VSI's registration or license under Section 29 of the SRC?

We answer in the negative.

It is settled in jurisprudence that bad faith does not simply connotes negligence, but is attended by a dishonest purpose or some moral obliquity and conscious doing of a wrong, which partakes of the nature of a fraud¹⁴⁶, to wit:

"The legal concept of bad faith denotes a dishonest purpose, moral deviation, and a conscious commission of a wrong. It includes *"a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud. It is, therefore, a question of intention, which can be inferred from one's conduct and/or contemporaneous xxx statements"*. Bad faith under the law cannot be presumed; it must be established by clear and convincing evidence."¹⁴⁷

In the instant case, the abject neglect by the Board of VSI to perform its function of effectively monitoring management, and overseeing the risk management systems and mechanisms of the company, while clearly reprehensible as the same is *reasonably* expected to result in compromised performance or even violation of the SRC/SRC-IRR, does not amount to bad faith as defined by jurisprudence. Thus, the revocation of the license of VSI, which the Appellant is arguing to be the correct penalty, appears to have no legal basis. On account thereof, We therefore sustain the Assailed Resolution.

WHEREFORE, premised considered, the Memorandum of Appeal filed by the Investigating Committee is **PARTIALLY GRANTED**. The Assailed Resolution is hereby **REVERSED** and **SET ASIDE** in so far as it modified the amount of the fine imposed upon VSI. The monetary penalties imposed upon VSI in the Assailed Decision are hereby reinstated as follows:

¹⁴⁶ *Suba vs Sandiganbayan* (G.R. No. 235418. March 3, 2021);

¹⁴⁷ *Tocom's Philippines, Inc. vs Philips Electronics and Lighting, Inc.* (G.R. No. 214046. February 5, 2020)

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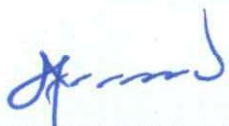
- (1) A fine of One Million Pesos (P1,000,000.00) for violation of Rule 30.2.1. (Ethical Standards Rules)
- (2) A fine of One Million Pesos (P1,000,000.00) for violation of Rule 30.2.1.1.2.3 (Capabilities)
- (3) A fine of One Million Pesos (P1,000,000.00) for violation of Rule 30.2.1.2.4 (Information About Clients)
- (4) A fine of One Million Pesos (P1,000,000.00) for violation of Section 48.2 and SRC Rule 48.2 (Prohibition on Extension of Credit)
- (5) A fine of One Million Pesos (P1,000,000.00) for violation of Section 50 of the SRC and SRC Rule 50 (Purchases and Sales in Cash Account)
- (6) A fine of One Million Pesos (P1,000,000.00) for violation of Rule 52.1.1 (Books and Records Rule)
- (7) A fine of One Million Pesos (P1,000,000.00) for violation of Rule 52.1.6 (Customer Account Information Rule)
- (8) A fine of One Million Pesos (P1,000,000.00) for violation of Rule 30.2.6. (Supervision)

The Assailed Resolution is however **AFFIRMED** in so far as it set aside the penalty of revocation of the registration/license of VSI.

SO ORDERED.

Makati City, Philippines.


EMILIO B. AQUINO
Chairperson


JAVEY PAUL D. FRANCISCO
Commissioner


KARLO S. BELLO
Commissioner


MCJILL BRYANT T. FERNANDEZ
Commissioner


ROGELIO V. QUEVEDO
Commissioner