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

**IN THE MATTER OF:**

**SECURITIES AND EXCHANGE COMMISSION'S MARKETS & SECURITIES REGULATION DEPARTMENT DIRECTIVE FOR HSBC SECURITIES TO AMEND ITS ARTICLES OF INCORPORATION**

**SEC En Banc Case No.** 02-18-439

**HSBC SECURITIES (PHILIPPINES), INC.**

*Appellant.*

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# DECISION

Before the Commission is the Appeal Memorandum (the "Appeal") dated 27 February 2018 filed by HSBC Securities (Philippines), Inc. ("HSBC Securities") on 28 February 2018, seeking the nullification and setting aside of the Letters[1] (collectively, "Assailed Letters") issued by the Markets and Securities Regulation Department ("MSRD") which directed HSBC Securities to immediately amend its Articles of Incorporation (AoI) by changing its corporate name and excluding brokering as part of its activities. The Assailed Letters were issued by the MSRD as a consequence of the Philippine Stock Exchange's (PSE) revocation of HSBC Securities' license as a trading participant on 13 December 2017.

In its Appeal, HSBC Securities maintained that the MSRD committed reversible error in issuing the Assailed Letters on the ground that the same violated its right to due process considering that the Letter-Order dated 6 December 2017 of the PSE has not yet attained finality and that there is no provision in the Securities Regulation Code (SRC) that requires a dormant broker to amend its AoI under pain of revocation of its primary franchise.

## RELEVANT FACTS

Pursuant to its Memorandum dated 2 June 2017 requiring Trading Participants and Trading Right Owners who have not been operating since 24 May 2012 or earlier to submit an undertaking that they will commence/resume

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[1] Dated 17 January 2018 and 13 February 2018.

brokerage operations and increase their unimpaired capital to PhP100 Million, the PSE issued a letter dated 20 October 2017 informing HSBC Securities of its failure to comply and that involuntary revocation proceedings will forthwith commence.

The PSE thereafter issued a letter dated 6 December 2017 revoking the license of HSBC Securities as a Trading Participant and declared that its Trading Right has *ipso facto* become vacant and invested in the PSE Board of Directors. HSBC Securities filed a Motion for Reconsideration with PSE.

During the pendency of the case before the PSE, the MSRD issued a letter dated 17 January 2017 (the "January 2017 Letter") directing HSBC Securities to amend its AoI by changing its corporate name and excluding brokering as part of its activities pursuant to Resolution No. 9, series of 2009 (SEC Resolution No. 9) which was allegedly reaffirmed by the Commission on 11 January 2018.

In its letter-reply, HSBC Securities moved for (a) the recall and cancellation of the January 2017 Letter on the ground that the proceedings before the PSE are still on-going, and (b) the deferment of the implementation of SEC Resolution No. 9 until PSE has finally disposed of the pending incident. The MSRD denied the same in its 13 February 2018 letter.

On 25 July 2019, HSBC Securities filed an application to amend its AoI with the Company Registration and Monitoring Department ("CRMD") to effect (a) the shortening of its corporate term until 30 September 2020; and (b) the change of its principal address. In its letter dated 5 July 2019, the MSRD did not interpose any objection on the proposed amendments as HSBC Securities was no longer registered as a broker of securities.[2]

On 10 June 2020, an Order was issued directing the MSRD to submit its Comment on HSBC Securities' Appeal.

In its Comment, the MSRD maintained that its action in the Assailed Letters did not violate HSBC Securities' right to due process as the latter was given the opportunity to be heard and to explain its side through the letters/communications that it filed with MSRD. The MSRD also argued that it directed HSBC Securities to amend its AoI on the basis of the fact that the latter had no more secondary license to engage as a broker or dealer of securities and it has suspended its operations since 31 December 2001.[3] The MSRD posited that an inactive broker-dealer cannot hold itself out and

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[2] Paragraph 2 of the Motion to Withdraw (Re: *Appeal Memorandum* dated 27 February 2018)
[3] Paragraph 15 of MSRD's Comment.

represent to the public that it is a broker-dealer if it does not have a secondary license and the intention to engage in the said business.[4]

On 2 August 2020, the Commission approved the application to amend its AoI which shortened HSBC Securities' corporate term until 30 September 2020.

On 14 September 2020, a *Motion To Withdraw Appeal* ("*Motion*") was filed by HSBC Securities praying that the Appeal be withdrawn as it is no longer interested in the resolution of the case considering that its corporate term is set to expire on 30 September 2020.

In its Comment/Opposition to the Motion to Withdraw, the MSRD did not interpose any objection on the Motion.

## ISSUE

Whether the dismissal of the instant case on the basis of the *Motion* is warranted.

## DECISION

The supervening events attendant in the instant case justify the grant of the Motion and the dismissal of the instant case.

The 2016 Rules of Procedure (the "2016 Rules") of the Commission do not contain a provision prohibiting parties to an existing case from withdrawing any pleading filed with it. However, considering that Appellant's *Motion to Withdraw Appeal* was filed after the MSRD has filed its Comment, Section 3, Rule 51 of the 1997 Rules on Civil Procedure can be applied suppletorily.[5] The said provision states that:

> "SECTION 3. *Withdrawal of appeal*. — An appeal may be withdrawn as of right at any time before the filling of the Appellee's brief. Thereafter, the ***withdrawal may be allowed in the discretion of the court***." (Emphasis supplied)

The consequence of the withdrawal of an appeal was explained by the Supreme Court in the case *Central Luzon Drug Corporation vs CIR,*[6] thus:

> "By withdrawing the appeal, petitioner is deemed to have accepted the decision of the CTA. And since the CTA had already denied petitioner's request for the issuance of a tax credit certificate in the amount of

[4] Paragraph 16 of MSRD's Comment.
[5] Section 1-6, Rule I, Part I of the 2016 SEC Rules of Procedure
[6] G.R. No. 181371, March 02, 2011

> P32,170,409 for insufficiency of evidence, it may no longer be included in petitioner's future claims. Petitioner cannot be allowed to circumvent the denial of its request for a tax credit by abandoning its appeal and filing a new claim. To reiterate, "an appellant who withdraws his appeal x x x must face the consequence of his withdrawal, such as the decision of the court *a quo* becoming final and executory." (Emphasis supplied)

In the instant case, the filing of and the subsequent approval of the Amended AoI warranted the filing of the Motion because the same will necessarily have the effect of abandoning the Appeal and mooting the instant case. Consequently, the expiration of the corporate term of HSBC Securities on 30 September 2020 warrants the grant of the *Motion*. More importantly, HSBC Securities deemed acceptance of the directive of MSRD in the Assailed Letters have been mooted by the expiration of its corporate term which warrants the dismissal of the instant case. Thus, any decision that the Commission will have on the instant case would provide no practical use or value[7] because the entity upon whom the directive to comply is addressed has already ceased to exist.

**WHEREFORE,** premises considered, the Motion to Withdraw Appeal is hereby **GRANTED**. The Appeal Memorandum dated 27 February 2018 is hereby **DISMISSED** for having become moot and academic.

**SO ORDERED.**
Pasay City, Philippines; 25 May 2021.

**EMILIO B. AQUINO**
Chairperson

**EPHYRO LUIS B. AMATONG**
Commissioner

**JAVEY PAUL D. FRANCISCO**
Commissioner

**KELVIN LESTER K. LEE**
Commissioner

**KARLO S. BELLO**
Commissioner

[7] Republic vs Moldex Realty, Inc., G.R. No. 171041, February 10, 2016