Republic of the Philippines
Department of Finance
Securities and Exchange Commission

CARLOS PALANCA IV,
Appellant,

- versus -

RCBC SECURITIES, INC.,
Appellee.

SEC *En Banc* Case No. 07-15-378
FOR: Request for Trading Records

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COGNATIO HOLDINGS, INC.
Appellant,

- versus -

RCBC SECURITIES, INC.,
Appellee.

SEC *En Banc* Case No. 07-15-379
FOR: Request for Trading Records

x---------------------------------------x

DECISION

Pending consideration of the Commission *En Banc* are the following: (i) the *Appeal Memorandum* filed on 7 July 2015 by appellant Carlos Palanca IV (Palanca IV) against RCBC Securities, Inc. (RSI) in SEC *En Banc* Case No. 07-15-378;[1] and (ii) the *Appeal Memorandum* filed on 7 July 2015 by appellant Cognatio Holdings, Inc. (Cognatio) against RSI in SEC *En Banc Case* No. 07-15-379.[2] Both appeals assail the Letter-Decision of the Capital Markets Integrity Corporation (CMIC), dated 4 December 2014, denying the request of appellants Palanca IV and Cognatio for their trading records with RSI, on the grounds of prescription and res judicata.

Factual Antecedents

From 2007 to 2011, appellant Palanca IV was a client of RSI, which is a corporation registered with the Commission[3] and engaged in the brokerage business for the purchase

[1] Appeal Memorandum of appellant Palanca dated 1 July 2015.
[2] Appeal Memorandum of appellant Cognatio dated 1 July 2015.
[3] Company Registration No. 52457 (Reply Memorandum, Annex "1" [Certificate of Filing of Amended Articles of Incoporation issued by the Commission on 7 June 2012]).

and sale of shares and securities;[4] while appellant Cognatio was a client of RSI from 2009 to 2011. Appellants Palanca IV and Cognatio coursed their trading orders through Mary Grace "MG" Valbuena, who was RSI's then Sales Director. As clients of RSI, appellants Palanca IV and Cognatio deposited their funds to the bank account of RSI, for credit to their trading accounts. In turn, appellants Palanca IV and Cognatio received the payment of the stocks sold by RSI when it is remitted directly to their bank accounts[5].

Sometime in December 2011, RSI learned that Ms. Valbuena was allegedly involved in questionable trade transactions, hence, the former terminated her. Thereafter, RSI held several conferences and meetings with clients who came forward claiming to have been allegedly "duped" by Ms. Valbuena.[6]

On 26 December 2011, appellants Palanca IV and Cognatio learned that RSI terminated Ms. Valbuena based on her questionable trade transactions. In a meeting facilitated by the representatives of RSI on 28 December 2011, RSI gave appellants Palanca IV and Cognatio copies of their purported Statements of Accounts. RSI informed appellants Palanca IV and Cognatio that most of the Confirmation Slips and all of the Statements of Accounts received from Ms. Valbuena were spurious.[7]

In a Letter dated 5 June 2012, appellants Palanca IV and Cognatio requested for the following from RSI: (i) immediate return of their alleged cash balances of Php 3,919,676.14 and Php 10,261,992.25, respectively; and (ii) delivery of their "stock position" as of 31 December 2011.[8]

However, RSI stated, in a Letter dated 27 July 2012, the following: (i) that it has no outstanding liabilities and/or unpaid claims in favor of appellants Palanca IV and Cognatio; (ii) appellant Palanca IV, who is the president of appellant Cognatio, being a "sophisticated investor", abetted Ms. Valbuena's deviations from the normal trading procedure in the handling of the account and appellant Palanca IV should have been more vigilant in dealing with Ms. Valbuena; (iii) appellant Palanca IV NEVER REQUESTED for any official document, such as invoices, Statements of Account, or Trade Confirmations, from RSI relating to the investments with Ms. Valbuena; (iv) appellant Palanca IV did not question RSI on his trading account until RSI conducted a reconciliation of his trading account on 23 December 2011; (v) Had appellant Palanca IV, a seasoned trader, exercised even ordinary diligence in managing his financial matters, the fraud would not have been perpetrated by Ms. Valbuena; (vi) Palanca IV must suffer the consequences of his transactions with Ms.

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[4] Reply Memorandum dated 30 July 2015, par. 1 and Annex "1" [Second Article of the Amended Articles of Incorporation of RSI]).

[5] Appeal Memorandum of appellant Palanca, par. 4; and Appeal Memorandum of appellant Cognatio, par. 4;

[6] Reply Memorandum, pars. 2 and 3.

[7] Appeal Memorandum of appellant Palanca, pars. 5 and 6; and Appeal Memorandum of appellant Cognatio, pars. 5 and 6.

[8] Reply Memorandum, par. 5 and Annex "2" (Letter of RSI addressed to Cognatio dated 27 July 2012).

Valbuena; and (vii) Carlos Palanca Group of Accounts already recovered and even profited from their investments with RSI.[9]

Thereafter, appellants Cognatio and Palanca IV requested, in order to reconcile their records with RSI, for copies from the latter, or to provide information on, the following:

(i) Confirmation Slips of their transactions, as appearing in the Statements of Accounts, and who received the same;
(ii) Application or utilization of their deposits to RSI's bank account for its buying transactions, which did not appear in the Statements of Account;
(iii) Sources of deposits to their account, as appearing in the Statements of Account; and
(iv) Identity of the person(s) who received money withdrawn from their account, based on the Statements of Accounts, and who gave instructions for the said withdrawals.[10]

When RSI failed to act on the request of appellants Palanca IV and Cognatio, the latter sought assistance, in their *Letter-Request*, for the procurement of the above-mentioned documents from the PSE. The letter also indicated, among others, the circumstances leading to the request for such documents. Then, the PSE referred the matter to the CMIC.[11]

After a submission of pleadings from RSI and the appellants, the CMIC issued the assailed Decision stating, among others: (i) the Letter-Request of appellants Palanca IV and Cognatio requesting for assistance is treated as a complaint for investigation since such request is grounded on – or in the view of – the alleged violations by RSI of pertinent securities laws; (ii) in other words, the alleged securities laws violations cannot be made separate from requests for assistance, which are resultant reliefs for purported violations; (iii) considering that it is a complaint, the request of appellants Palanca IV and Cognatio is barred by *prescription* since the said complaint is filed beyond six (6) months from the knowledge of commission; (iv) further, the action is barred by *res judicata*, since the issues contained in the Letter-Request were already ruled upon by the then PSE-MRD (now the CMIC) and there is a substantial similarity in the issues presented, parties involved and reliefs sought as to the resolution issued by PSE-MRD and the request for assistance.[12] Thus, the request for assistance of appellants Palanca IV and Cognatio were denied by the CMIC.

After the CMIC denied the request of appellants Palanca IV and Cognatio for a reconsideration, the latter filed their separate instant appeals with the Commission arguing following: (i) a simple request for assistance is not subject to prescription since it is not a

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[9] Id.
[10] *Id.*
[11] Appeal Memorandum, par. 8, and Annex "C" (Letter-Request of Cognatio dated 14 August 2014).
[12] Id, Annex "A" (Assailed Decision dated 4 December 2014).

written complaint; (ii) the request for assistance only provided details of the transactions to show a context, as regards the refusal of RSI to provide the foregoing documents; (iii) as principals, appellants Palanca IV and Cognatio have the right, at any time and with or without cause, to be apprised of the details of its trading account, since their brokerage relationship with RSI is a contract for employment of an agent pursuant to Article 1891 of the Civil Code; and (iv) res judicata does not apply since the request for assistance for the production of documents and information, on one hand, and a complaint for the delivery of various shares of stock and money entrusted to an agent, on the other, are TWO ENTIRELY DIFFERENT MATTERS predicated on separate causes of action.

In response, RSI requests, in its Reply Memorandum,[13] for the dismissal of the appeal on the following grounds: (i) the CMIC correctly observed that the Letter-Request for assistance is technically a complaint disguised as a supposedly innocuous request for assistance; (ii) the CMIC Rules defines complaint as a written statement alleging: [1] a grievance or [2] a violation of the Securities Laws; (iii) the Letter-Request for assistance reveals that appellants Palanca IV and Cognatio are expressing their grievance; (iv) the Letter-Request for assistance indicates an intent of forcing the CMIC to adjudicate its trading transactions with RSI, and to determine whether or not Securities Laws were violated; (v) the CMIC correctly ruled that prescription of six (6) months has set in; (vi) the matter is barred by res judicata; (vii) the application of the Civil Code as to the principal-agent relationship is not within the competence of the CMIC, a self regulatory agency; (viii) forum shopping is present since appellants Palanca and Cognatio IV are merely looking for a favorable forum when they filed the Letter-Request for assistance during the pendency of a case before the Commission's Enforcement and Investor Protection Department (for revocation of permit to sell securities) and failing to obtain relief from the RTC (Specific performance for payment of money and delivery of stock).

Issue

The main issue to be resolved is whether appellants Palanca IV and Cognatio are entitled to the trading records from RSI.

Ruling

Before we begin resolving the main issue, we deem it necessary to consolidate the appeals of appellants Palanca IV and Cognatio pursuant to Section 1, Rule 31 of the Rules of Court.[14] The Supreme Court, in the case entitled *Unicapital, Inc., et al. v. Consing, Jr.*,[15] stated that it is hornbook principle that when or two or more cases involve the same parties and

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[13] Dated 30 July 2015.

[14] Section 1. Consolidation. - When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary cost or delay.

[15] G.R. Nos. 175277 & 175285, 11 September 2013.

affect closely related subject matters, the same must be consolidated and jointly tried, in order to serve the best interest of the parties and to settle the issues between them promptly, thus, resulting in a speedy and inexpensive determination of cases. In addition, consolidation serves the purpose of avoiding the possibility of conflicting decisions rendered by the courts in two or more cases, which otherwise could be disposed of in a single suit. In this case, the letter decision of the CMIC, which is assailed by appellants Palanca IV and Cognatio, involves the same parties (i.e., appellants) and the same subject matter. Thus, the appeals are consolidated in order to avoid the possibility of conflicting decisions by the Commission.

As to the main issue, the CMIC denied the request of appellants Palanca IV and Cognatio for their trading records from RSI, on the ground that their "complaint" is barred by prescription and res judicata. However, appellants Palanca IV and Cognatio argue that their Letter-Request is not a complaint but just a simple request for assistance in obtaining such records.

The title of Section 4, Article II of the CMIC Rules states the following:

> "**Section 4.** ***Procedure for the <u>Investigation</u> of Complaints against Market Participants.*** An aggrieved or interested party may file a written Complaint with the CMIC against any Trading Participant for Trading-related Irregularities or other violations of the Securities Laws within six (6) months from knowledge of its commission x x x." (Underline ours)

As can be seen, the title of Section 4, Article II of the CMIC Rules states the procedure for the "investigation" of complaints against market participants. The Supreme Court, in the case entitled *Republic of the Philippines v. Transunion Corporation,*[16] recently discussed "investigation" to wit:

> "an *'investigation'* commonly understood, means to examine, explore, inquire or delve or probe into, research on, study. The dictionary definition of 'investigate' is 'to observe or study closely; inquire into systematically: 'to search or inquire into' x x x to subject to an official probe x x x: to conduct an official inquiry.' The purpose of [an] investigation, of course is to discover, to find out, to learn, obtain information. Nowhere included or intimated is the notion of settling, deciding or resolving a controversy involved in the facts inquired into by application of the law to the facts established by the inquiry.
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> The legal meaning of "investigate" is essentially the same: '(t)o follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry;' 'to inquire; to make an investigation,' 'investigation' being in turn described as '(a)n administrative function, the exercise of which ordinarily does not require a hearing. 2 Am J2d Adm

[16] G.R. No. 191590, 21 April 2014.

L Sec. 257; x x x an inquiry, judicial or otherwise, for the discovery and collection of facts concerning a certain matter or matters.'"

In this case, appellants Palanca IV and Cognatio did not pray for an investigation to be conducted by the CMIC for any trading-related irregularities or any violation of securities laws committed by RSI, pursuant to Section 4, Article II of the CMIC Rules. No complaint for an investigation was made by the appellants for the CMIC to find out, to obtain information or collect facts concerning any trading-related irregularities or any securities laws violations committed by RSI. Instead, appellants Palanca IV and Cognatio merely requested the CMIC for assistance in obtaining trading records from RSI. Further, contrary to the interpretation of the CMIC, the Letter-Request only indicated, as a background, the circumstances regarding any alleged trading-related irregularity. Thus, Letter-Request of RSI cannot be deemed to be a complaint for investigation.

Instead, the CMIC should have entertained the request of appellants Palanca IV and Cognatio pursuant to Article IX, Section 1 of the CMIC Rules, to wit:

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

As can be seen, considering that the CMIC has the authority to direct RSI to readily and promptly provide the trading records or any part thereof pursuant to Article IX, Section 1 of the CMIC Rules, it should have entertained the request of appellants Palanca IV and Cognatio instead of denying it on the ground of prescriptive and res judicata. In fact, the CMIC must be reminded of its role in reinforcing confidence in the investing public.[17] The CMIC obviously contravenes such role since the investing public will no longer have the confidence in placing their investments in the equity securities market if they know that a regulatory body, such as the CMIC, will not assist them when the rules clearly authorize it to do so.

Article IX, Section 1 of the CMIC Rules likewise authorizes *any other party*, who may be legally entitled to the books and records, to be PROMPTLY AND READILY PROVIDED a copy of such books and records by the trading participant. In which case, RSI should have immediately produced the trading records or any part thereof when appellants Palanca IV

[17] http://www.cmic.com.ph/main/aboutUs.html (last accessed on 15 October 2016).

and Cognatio made such demand, instead of failing to act on their request. In fact, RSI stated that appellants Palanca IV and Cognatio should have made such demand in its Reply Letter dated 27 July 2012.

It must be noted that appellants Palanca IV and Cognatio are legally entitled to the trading records from RSI considering their principal-agent relationship. In *Abacus Securities Corp. v. Ampil*,[18] the Supreme Court stated that a brokerage relationship is essentially a contract for the employment of an agent. In which case, based on this relationship, appellants Palanca IV and Cognatio are entitled to such records, under Article 1891 of the Civil Code, considering that every agent is bound to render an account of his transactions and to deliver to the principal whatever he may have received by virtue of the agency. In the case of *Domingo v. Domingo*, the Supreme Court stated that Article 1891 of the Civil Code imposes upon the agent the absolute obligation to make a full disclosure or complete account to his principal of all his transactions and other material facts relevant to the agency, so much so that the law as amended does not countenance any stipulation exempting the agent from such an obligation and considers such an exemption as void. The duty of an agent is likened to that of a trustee. This is not a technical or arbitrary rule but a rule founded on the highest and truest principle of morality as well as of the strictest justice.[19] Clearly, appellants Palanca IV and Cognatio are legally entitled to the trading records based on their relationship.

Lastly, it must be noted that Article IX, Section 1 of the CMIC Rules is substantially similar to Rule 52.1.1.13, SRC Rule 52 of the 2015 Implementing Rules and Regulations (IRR) of the Securities Regulation Code[20]. Rule 52.1.1.13, SRC Rule 52 of the IRR provides the following

> "**Rule 52.1.1.13.** With the prior approval of the Commission and in addition to the computerized and effective recording and accounting system mandated by SRC 28.1, a Broker Dealer may make, keep current and maintain the books and records in electronic form and/or medium (including electronic records, which the exchange trading system may allow to be so made, kept current and maintained), Provided that, **upon DIRECTIVE by the Commission, the Exchange, or any other party, who may be legally entitled or authorized to access said books and records, the Broker Dealer SHALL PROMPTLY AND READILY PROVIDE a comprehensible and certified true printed and/or electronic copy of the books and records or any part thereof. FAILURE TO DO SO shall result in *immediate suspension* of the Broker Dealer's registration.** Such suspension shall continue until such time as the books and records are made available to the requesting organization and the said organization has satisfied itself that the books and records have not been modified or otherwise changed or altered during the period of suspension." (Emphasis ours)

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[18] 483 SCRA 315 (2006), citing 42 12 Am Jur 2d.
[19] 42 SCRA 131 (1971).
[20] Republic Act No. 8799 (2000).

As can be seen, the Commission also has the authority to direct brokers and dealers to promptly and readily produce their books and records. Failure on the part of the brokers and dealers to produce such books and records shall result in the immediate suspension of their registration. Pursuant to this authority under the IRR, the Commission now DIRECTS RSI to produce the documents that appellants Palanca IV and Cognatio requested, and failure to promptly and readily to do so will result in the immediate suspension of the registration of RSI.

WHEREFORE, premises considered, the Letter-Decision of the Capital Markets Integrity Corporation is hereby **REVERSED**, and the Commission now hereby **DIRECTS** RCBC Securities, Inc. (RSI), pursuant to Rule 52.1.1.13, SRC Rule 52 of the Implementing Rules and Regulations of the Securities Regulation Code, to produce the following documents: (i) Confirmation Slips of the transactions of appellants Carlos Palanca IV and Cognatio Holdings, Inc., as appearing in the Statements of Accounts, and who received the same; (ii) application or utilization of deposits to RSI's bank account for its buying transactions, which did not appear in the Statements of Account; (iii) sources of deposits to the account of appellants Carlos Palanca IV and Cognatio, as appearing in the Statements of Account; and (iv) identity of the person(s) who received money withdrawn from its account, based on the Statements of Accounts, and who gave instructions for the said withdrawals. FAILURE TO DO SO is a ground for the SUSPENSION of the broker dealer registration of RSI.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Pasay City, 6 December 2016.

TERESITA J. HERBOSA *
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

Antonieta Fortuna-Ibe

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

*Inhibited