Republic of the Philippines
Department of Finance
Securities and Exchange Commission
PICC Secretariat Building, PICC Complex, Pasay City

IN RE: URGENT PETITION FOR THE ISSUANCE OF A TAKE OVER ORDER PURSUANT TO ARTICLE X SECTION 8 AND 9 OF THE CMIC RULES, IN RELATION TO RULE 33.1(D)2 OF THE 2015 IRR OF THE SECURITIES REGULATION CODE, AGAINST DW CAPITAL, INC.

SEC Case No. 08-17-429

CAPITAL MARKETS INTEGRITY CORPORATION
Petitioner.
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ORDER

This resolves the following: (1) The Verified Petition filed by the Capital Markets Integrity Corporation ("CMIC") with the Commission on 18 August 2017 for the Issuance of a Take-Over Order against DW Capital, Inc. ("DW"), pursuant to Sections 8 and 9, Article X of the Capital Markets Integrity Corporation Rules ("CMIC Rules"), in relation to Rule 33.1(d) of the 2015 SRC Rules; and (2) The Investigation Report & Recommendation dated 04 December 2017 of the Special Hearing Panel which was created to continue the investigation and/or verification of the allegations contained in the Petition filed by the CMIC to take–over the operations of DW Capital, Inc.; and investigate the alleged unauthorized, fraudulent and deceitful acts of DW as contained in the complaint of Valerie Gaisano–Sebastian and other "Gaisano–related accounts" complaint(s) for allegedly selling complainant's shares of stocks without her knowledge and consent, pursuant to Rule 33.1(d) and Rule 36.5.3 of the 2015 SRC Rules.

FACTUAL ANTECEDENTS

The CMIC filed the instant Petition based on the following grounds, among others, that:

1. Based on the audit conducted by the CMIC, the records gathered from DW and the documentary evidence submitted by the complaining clients of DW, Judy Sia Gaisano, Henry Sia Gaisano II, Valerie Gaisano-Sebastian and Eda Sia Gaisano through their counsel, Gica Del Socorro Espinoza Villarmia Fernandez & Tan that there is a clear ground for the issuance by the

Commission of a take-over order against DW for its failure to readily meet the demands of its customers for the delivery of securities and/or payment of sales proceeds which is the principal ground for the issuance of a take-over order against DW; and

2. That it has been contended by such clients that DW has engaged in unauthorized trading of the various securities owned by them; and

3. That CMIC has reconciled the number of shares being claimed by the clients as evidenced by the stock position of the claimants, the Statements of Account and buy and sell invoices with the number of shares available in DW based on the data from Philippine Depository and Trust Corporation ("PDTC") as of 28 July 2017.

Acting on the Petition, the Commission, through its Office of the General Counsel ("OGC") in an Order dated 18 August 2017, ordered the Markets and Securities Regulation Department ("MSRD") to conduct an investigation and/or verification on the allegations contained in the instant Petition.

The MSRD also on 18 August 2017, in order to establish the financial condition and ability of DW to meet the demands of its customers, issued a *Subpoena Duces Tecum* to the latter requiring the production of certain documents.

On 25 August 2017, CMIC filed a Manifestation and Motion alleging that voluminous records have been removed from the office premises of DW from 18-19 August 2017. Likewise, Petitioner submits for the Commission's consideration the affidavit of Valerie Gaisano-Sebastian narrating the circumstances of the alleged loss under Account No. 0945 totalling Php. 2,076,795,691.90 accompanied by photocopies of transaction documents from DW and reiterating its prayer for the issuance of a takeover-order, among others, from the Commission. Ms. Sebastian claimed the unauthorized, fraudulent and deceitful acts of DW by selling her shares of stock without her knowledge and consent.

On 29 August 2017, DW complied with the *Subpoena Duces Tecum* and submitted all the documents enumerated therein to the MSRD.

On 30 August 2017, MSRD received a copy of the complaint affidavit (with annexes/supporting documents) executed by Ms. Sebastian claiming unauthorized, fraudulent and deceitful acts of DW by selling her shares of stock without her knowledge and consent.

On 31 August 2017, the Commission resolved to constitute a Special Hearing Panel ("SHP") principally tasked with, among others:

- Continue the investigation and/or verification of the allegations contained in the Petition filed by the Capital Markets Integrity Corporation to take–over the operations of DW Capital, Inc.; and

- Investigate the alleged unauthorized, fraudulent and deceitful acts of DW as contained in the complaint of Valerie Gaisano–Sebastian and other "Gaisano–related accounts" complaint(s) for allegedly selling complainant's shares of stocks without her knowledge and consent.

The SHP on 20 September 2017, directed Henry S. Gaisano II, through counsel Cruz, Enverga & Lucero, to substantiate his allegation in his letter to Chairperson Teresita J. Herbosa -- that his stocks were traded by DW without his authority and the proceeds of which were misappropriated -- by filing a complaint–affidavit with the Commission.

On 25 September 2017, DW through its counsel, Rivera Santos & Maranan filed its *Comment* to the Petition and Manifestation of CMIC in compliance with the 18 September 2017 Order of the SHP. It emphasized, among others, that: (1) the so–called "Statement of Accounts" attached to the Petition are merely spreadsheets and not statements of account – "there appears to be no covering letter from the Gaisano Family or their counsel for these spreadsheet, so there is no way of verifying who exactly prepared and sent them to CMIC and through what mode of service or delivery;" and (2) that the claim of billions of pesos in stock short is ludicruous – "The Gaisano family has been trading through DW since at least 2008. No one noticed, in a decades' worth of trades, that billions' worth of stocks were missing? And what is apparent from the attachments to the Petition is that the claimed stock shorts are not based on PSE generated data, but on Gaisano Family projections."

On 28 September 2017, in compliance with the letter of SHP dated 20 September 2017, Mr. Henry S. Gaisano II through his counsel Cruz Enverga & Lucero filed a letter reiterating his request to be allowed to intervene and be furnished, among others, with copies of pleadings, notices and orders in the proceedings before the Commission. The law firm also attached the affidavit of Mr. Henry S. Gaisano II in relation to the unauthorized trading of shares by DW Capital, Inc, stating, among others that: "during the earlier years, DW used to send /fax an invoice or receipt confirming transactions, however, about five years ago they stopped sending invoices and receipts and would just email a report of new stock positions whenever an order has been placed or whenever an update of stock position is requested and since we trusted them, my wife and I did not question the change in procedure."

DW's Associated Person, Dianne Wong, Assistant Manager, Lucy Chua and Accountant, Liwayway Padua appeared for a clarificatory confrence/hearing before the SHP on 02 October 2017 together with their counsel, Rivera Santos & Maranan and proferred their explanations to the alleged unauthorized selling of shares. DW undertook to submit certified true copies of the following documents: (i) individual customer ledgers of the Gaisano–related account, (ii) Customer Account Information Form of all Gaisano–accounts, and (iii) Trade transactions per issue of the contested stocks, no later than 10 October 2017.

On 09 October 2017 in compliance with the order of the SHP dated 02 October 2017, Jinky A. Alora of the Philippine Stock Exchange, Inc. appeared for a clarificatory conference/hearing before the SHP. She narrated the audit she conducted on DW together with the auditors of CMIC and how she obtained relevant records such as PDTC Report, and Inventory Report by Stock. Based on the reports obtained, she prepared a stock reconciliation report on the Gaisano–related accounts. She furnished the SHP copies of said documents.

On 10 October 2017, DW through Rivera Santos & Maranan filed an *Ex-Parte Motion and Submission* in compliance with the order of SHP to submit the trade transaction per issue of the contested stocks and its supporting documents.

On 20 October 2017 in compliance with the order of SHP dated October 2, 2017, DW through its counsel, filed its *Comment* on the allegations of Mr. Henry S. Gaisano II's Affidavit dated 14 September 2017. It states, among others, that: (1) Henry Gaisano's claim in his Affidavit is a claim made without a single supporting document; (2) all the checks attached in relation to Henry Gaisano's claims categorically proved that Henry lied since not a single check was issued either to Derwin Wong or to "cash;" and (3) in relation to CMIC's claim that it is entitled to take–over DW's operation because, in its opinion, DW's financial condition has so deterioratied that it is unable to meet the demands of its clients, DW reiterated that it is not in financial distress and that there are no debts or obligations owed to Valerie Gaisano-Sebastian or Henry Gaisano or any of the Gaisanos on the basis of their personal computations and forecasts.

Pursuant to the Order of the SHP dated 07 November 2017, Derwin Wong together with his counsel, Atty. Stephanie Reyes of Paredes Garcia & Golez Law Office, personally appeared for a clarificatory conference/hearing on 27 November 2017 to explain. When confronted with several checks issued to him as part of the proceeds of the Judy Gaisano and/or Valerie Gaisano-Sebastian account, he said that such occurence is upon instruction of the Gaisanos. As to the two promissory notes he executed, he said that he executed them on duress, as the Gaisanos were blackmailing him that he will not see his children anymore and that the Gaisanos will file a criminal complaint against him. He also said that DW sends buy/sell invoices in bulk upon the express instruction of the Gaisanos. He also said that he personally prepares the Excel file with the number of shares with projections that the Gaisano's mistakenly attribute as the Statement of Account. Lastly, according to Derwin Wong, collectively, the Gaisanos is the Company's biggest client.

On 28 November 2017 in compliance with the SHP order, spouses Henry S. Gaisano II and Jhezarie Gaisano and mother and daughter, Judy Gaisano and Valerie Gaisano-Sebastian, together with their respective counsels, personally appeared before the SHP for separate conferences. The Gaisano's refuted the allegation that they instructed DW to issue checks in favor of Derwin Wong or any member of the family; that they do not receive any Statement of Account from DW but only an Excel file (Stock Position Report); that except for a few years when they receive buy/sell invoices sent by DW via email, they no longer receive them; that when confronted by the SHP that a person (whose signature corresponds to a certain "Linda Ramos") apparently receives on their behalf, the buy and sell invoices allegedly being sent to them by DW, they vehemently denied knowing any person by the name of Linda Ramos, let alone authorizing any person to receive the invoices on their behalf; that they relied upon the statement of stock positions that Derwin Wong or DW staff sends to them via email; that certain selling transactions allegedly attributed to their particular instructions were unauthorized such as SMPH as they are fond of their SM-group related stocks since they are in the same retail business; and that when they ordered to sell some stocks, DW through its VP, Dianne Wong confessed that they can no longer sell because of the short position.

In an Investigation Report submitted by the SHP to the Commission, it was highlighted that numerous checks supposedly issued in favor of the beneficial owner of the Judy and/or Valerie account (Account No. 0945), as proceeds of their supposed selling transactions, were issued instead to other persons or entities, namely: Derwin Wong, DW and to Cash as follows:

- 256 checks issued starting from July 2010 to November 2014 payable to Derwin Wong in an aggregate amount of Php. 1,567,486,622.06;
- 5 checks issued from July 2014 to March 2016 payable to DW Capital, Inc. in an aggregate amount of Php. 40,262,247.62;
- 12 checks issued from May 2010 to July 2010 payable to Cash in an aggregate amount of Php. 9,697,546.90;

All told, just for the Judy and/or Valerie account, evidence gathered by the SHP show that DW issued checks not to such rightful beneficial owner in the total amount of a whopping Php.1,627,446,416.58.

Investigation also disclosed that the Gaisanos only regularly received via email from Derwin Wong or other DW staff, an Excel document with a subject of "Stock Position Report" with number of shares per listed company accompanied by forecast projections per price range should the clients wish to sell.

The issue is whether there are legal and factual grounds that would warrant the issuance of a "Take Over Order" against DW Capital, Inc.

We rule in the affirmative.

Section 33.1 (d) of the Securities Regulation Code (SRC) provides that "when the Exchange shall have found that the financial condition of its member firm has so deteriorated that it cannot readily meet the demands of customers for the delivery of securities and/or payment of sales proceeds, the Exchange shall, upon order of the Commission, take over the operation of the insolvent firm and immediately proceed to settle the member firm's liabilities to its customers."

Moreover, Rule 33.1(d) of the 2015 SRC Rules provides:

> *Section Rule 33.1(d) - Protection of Customer Accounts in Case of Business Failure of an Exchange Trading Participant*
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> *33.1(d).1. When a Trading Participant has filed or is the subject of a petition for insolvency, suspension of payment and/or rehabilitation or when an Exchange or pertinent SRO determines that the Trading Participant's financial condition has so deteriorated that it cannot readily meet the demands of its customers for the delivery of securities and/or payment of sales proceeds, the Commission may issue ex parte an order compelling the insolvent or failed Trading Participant and the Exchange or pertinent SRO to take the necessary action to protect customer accounts including, but not limited to, the preservation of the failed Trading Participant's books and records. Said order shall remain in effect until lifted by the Commission motu proprio or upon petition of the failed Trading Participant.*
>
> *33.1(d).2. Based on any of the grounds mentioned in the preceding SRC Rule,* ***the Commission, after proper investigation or verification, motu proprio*** *or upon verified complaint by any party,* ***order an Exchange or pertinent SRO to take over the operation of the failed Trading Participant for the purpose of preserving and protecting the failed Trading Participant's books, records, customer accounts, trade-related assets and settling its liabilities to its customers.*** (Emphasis supplied)
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> *33.1(d).3.Where the Commission has ordered an Exchange or pertinent SRO to take over the operations of a failed Trading Participant, an Exchange or pertinent SRO shall:*
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> *33.1(d).3.1. Suspend such failed Trading Participant and immediately arrange for another Trading Participant to take over the outstanding contracts relating to securities,and simultaneously notify the Commission of such suspension and takeover;*
>
> *33.1(d).3.2. Promptly notify customers of the failed Trading Participant that their accounts have been transferred to another Trading Participant and provide such customers with the opportunity to transfer anew their accounts to another Trading Participant of their choice;*
>
> *33.1(d).3.3. Settle the failed Trading Participant's liabilities to customers through the sale of the Trading Participant's trading rights and other trade-related assets as may be prescribed by the Commission; the liquidation of paid up capital; and/or the supervision of payment of claims against the surety bond;*

33.1(d).3.4. Simultaneously inform the Accredited Trust Fund referred to in Section 36.5 of the Code, where such failed Trading Participant is a Participant, of such takeover and inform the customers that they may also claim compensation for losses from the Trust Fund, subject to the validation of their claims by the Exchange or pertinent SRO and the Trust Fund;

33.1(d).3.5. Where after such settlement and liquidation of the failed Trading Participant's trade-related assets, there are outstanding liabilities to customers of the failed Trading Participant, refer the same to the Accredited Trust Fund and inform the customers of the further steps necessary for claiming compensation for unsatisfied losses; and

33.1(d).3.6. The Accredited Trust Fund, based on its rules and regulations or upon order of the Commission, shall release payments to the failed Trading Participant's customers even before the Exchange or pertinent SRO has finalized the settlement of the failed Trading Participant's liabilities, subject to the validation as provided in SRC Rule 33.I(d).3.4 herein; Provided, however, that the Trust Fund shall be subrogated to the customers' rights to claim before the Exchange or pertinent SRO to the extent that it has paid the customers' claims before final settlement of the failed Trading Participant's liabilities.

33.1(d).4. In the determination of business failure, SRC Rule 36.5.1 on accredited trust funds for Broker Dealer customers shall be taken into account.

Also, Rule 36.5.3 of the 2015 SRC-IRR, expressly states that the Commission itself can make a determination of the business failure of a Broker Dealer, as follows:

36.5.3. Business failure of the Broker Dealer shall be established upon a determination that the financial condition of the Broker Dealer has so deteriorated that the Broker Dealer cannot readily meet the demands of its customers for the delivery of securities and/or the payment of sales proceeds; provided, however, that such determination shall not be dependent upon a judicial declaration of insolvency. Such determination will be made by: a. the Exchange or the pertinent SRO; or b. ***the Commission**, **when the Exchange or the pertinent SRO fails or does not exercise such timely determination.*** (Emphasis supplied)

As to whether DW's financial condition has so deteriorated such that the company cannot readily meet the demands of the customer for delivery of securities and/or payment of sales proceeds, presented below is the impact of sales proceeds accounted not named to accountholder:

I. DW's Financial Condition

Total Assets of DW Capital Inc. as of 8/31/2017	162,691,146.57
Total Checks Accounted not Named to Accountholder	1,627,446,416.58
Deficit	**(1,464,755,270.01)**

II. Unimpaired Paid–Up Capital ("UPC")

Checks representing sales proceeds allegedly for Judy and/or Valerie account which were issued not in the name of the beneficial owner of the account would result to a negative unimpaired paid-up capital, as follows:

Paid Up Capital of DW Capital Inc. as of 8/31/2017	90,000,000.00
Negative Retained Earnings After Adjustment	(1,566,912,768.94)
Unimpaired Paid Up Capital After Adjustment	**(1,476,912,768.94)**

Under Rule 28.1.2.5.2(b).2. of the 2015 SRC Rules, "other existing Broker Dealer applicants not meeting the One Hundred Million (PhP 100,000,000.00) capitalization and not seeking authorization to engage in market making transactions shall **maintain a Thirty Million Pesos (PhP 30,000,000.00) unimpaired paid up capital**, xxx."

On the other hand, SEC Memorandum Circular No. 16, Series of 2004, states that the term "Unimpaired Paid Up Capital" shall refer to the firm's Total Paid-Up Capital less any deficiency in the Retained Earnings account.

III. Risk Based Capital Adequacy ("RBCA") Ratio

	AS REPORTED August 31, 2017	AFTER ADJUSTMENT
Assets	162,691,147	162,691,147
Liabilities	7,432,658	1,634,879,075
Equity as per books	155,258,488	(1,472,187,928)
Net Liquid Capital (NLC)	38,912,940	(1,588,533,477)
Net Risk-based Capital Excess / (Deficiency)	33,912,940	(1,670,145,685)
RBCA Ratio (NLC / TRCR)	683%	-27880%

Under SEC Memorandum Circular No. 16 Series of 2004, broker dealers are required to maintain an RBCA ratio of at least 1.1 and an NLC of at least Five Million Pesos (P5,000,000.00) or five percent (5%) of its aggregate indebtedness whichever is higher. And should the RBCA ratio or NLC requirement be breached, a broker dealer shall immediately cease doing business.

Based on the computation above, recognizing the proceeds of sales not received by the account holder would result to a negative RBCA ratio, as well as a negative net liquid capital. Further, the negative figures in equity indicates that the total liabilities of the Company exceed its total assets and therefore, the Company's financial condition has indeed deteriorated.

Accordingly, the Commission, through the investigation conducted by the SHP, has established that the financial condition of DW Capital Inc. has so deteriorated that it failed to readily meet the demands of its clients, the Gaisano's, for the delivery of latter's securities and the payment of their sales proceeds.

WHEREFORE, premises considered, the Philippine Stock Exchange, Inc. is hereby ordered to:

1. Take-over the operations of DW Capital, Inc., the failed Trading Participant, pursuant to Rule 33.1(d) of the 2015 SRC Rules;

2. To implement the provisions of Rule 33.1(d), to include when appropriate, the following:

   a) Suspend DW Capital Inc. as a Trading Participant and immediately arrange for another Trading Participant to take over the outstanding contracts relating to securities,and simultaneously notify the Commission of such suspension and takeover;

   b) Promptly notify customers of DW Capital Inc. that their accounts have been transferred to another Trading Participant and provide such customers with the opportunity to transfer anew their accounts to another Trading Participant of their choice;

   c) Settle DW Capital Inc.'s liabilities to customers through the sale of the Trading Participant's trading rights and other trade-related assets including PSE shares as may be prescribed by the Commission; the liquidation of paid up capital; and/or the supervision of payment of claims against the surety bond;

   d) Inform the Accredited Trust Fund referred to in Section 36.5 of the Code, where such failed Trading Participant is a Participant, of such takeover and inform the customers that they may also claim compensation for losses from the Trust Fund, subject to the validation of their claims by the Exchange or pertinent SRO and the Trust Fund; and

   e) Where after such settlement and liquidation of the failed Trading Participant's trade-related assets, there are outstanding liabilities to customers of the failed Trading Participant, refer the same to the Accredited Trust Fund and inform the customers of the further steps necessary for claiming compensation for unsatisfied losses.

3. To take necessary actions to protect customer accounts including, but not limited to the preservation of the assets and books and records of DW Capital Inc.

4. To execute such acts or documents necessary or appropriate in carrying out the foregoing powers.

The PSE is hereby directed to determine the various violations of the provisions of the Securities Regulation Code and its Implementing Rules and Regulations allegedly committed by DW Capital, Inc., its officers and employees and to submit its report and recommendation to the MSRD, within fifteen (15) days from receipt hereof for the purpose of instituting administrative or criminal action against responsible persons when warranted. This does not, however, preclude the Commission from continuing its own examination, investigation, or filing of any action against respondent DW Capital, Inc. and its responsible officers and employees.

Finally, this Order renders moot and academic the instant Petition filed by Capital Markets and Integrity Corporation for takeover of DW Capital Inc..

SO ORDERED.

Pasay City, Philippines, 05 December 2017.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

EMILIO B. AQUINO
Commissioner