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

THE PHILIPPINE STOCK EXCHANGE, INC.,
Appellant,

-*versus*-

MARKETS AND SECURITIES REGULATION DEPARTMENT OF THE SECURITIES AND EXCHANGE COMMISSION,
Appellee.

SEC En Banc Case No. 05-19-456
Promulgated: 25 April 2024

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D E C I S I O N

Before the Commission *En Banc* (the "Commission") is the Appeal Memorandum dated 22 April 2019 (the "Appeal") filed by The Philippine Stock Exchange, Inc.[1] ("PSE") assailing the Resolution dated 03 April 2019[2] (the "Assailed Resolution") issued by the Markets and Securities Regulation Department ("MSRD"), the dispositive portion of which reads, thus:

> "In view of the foregoing, the motion for reconsideration is hereby denied and our reprimand letter dated 02 March 2018 is affirmed.
>
> This resolution is without prejudice to the prerogative of the Exchange to submit for the approval of the Commission, in accordance with Rule 39.1.1.3.1 in relation to Rule 40.3 of the 2015 SRC Rules, any proposed amendments or modification to the enforcement for the present Revised Trading Rules to allow exemption or relaxation of the application of the Block Sales rules to certain types of clients, such as fund managers, investment companies and foreign brokers."

[1] Also referred to as "Exchange" under the PSE Revised Trading Rules.
[2] Dated 3 April 2019

PARTIES

The PSE is a corporation duly organized and existing under Philippine laws. It is a self-regulatory organization ("SRO") registered with the Commission[3] to operate as an exchange for securities.

The MSRD is one of the departments of the Commission which supervises all market participants including Exchanges and SROs, to ensure compliance with the SRC and the SRC-IRR.[4]

RELEVANT FACTS

On 02 February 2018, the MSRD issued a Show Cause Letter directing the PSE to show cause why it should not be penalized under Section 40.2 of the Securities Regulation Code ("SRC") for its failure to enforce compliance with Article VI, Section 3 (e) of the PSE Revised Trading Rules which provides for block sales transactions involving one or two trading participants, but which requires different clients for the buying and selling side (the "Block Sale Rule"). The MSRD found, based on PSE block sale request forms that were audited, that the PSE acted upon the application for block sales of certain participants which showed the same buying and selling clients with the same account code, allegedly in violation of the Block Sale Rule.[5]

The trading participants whose block sales application were acted upon by the PSE are: (a) BDO Trust VTA – Makati, (b) Citigroup Global Markets, Inc., (c) Citigroup Global Mkt, Inc. FAO Client, (d) CLSA Ltd., (e) Credit Suisse Hong Kong, (f) Daiwa Hong Kong, (g) DBS Vickers FAO Morgan Stanley Hong Kong, (h) Deutsche Securities Asia Ltd. FAO Client, (i) Instinet Pacific Limited FAO Client, (j) ITG Australia Limited, (k) J.P. Morgan Securities (Asia Pacific) Ltd., (l) Macquarie Bank Hong Kong Limited – FAO Various Client, (m) Maybank Kim Eng Securities PTE LTD A/C Client, (n) Merryll Lynch International, (o) Morgan Stanley, (p) Morgan Stanley & Co. International FAO Client, and (q) UBS Securities Asia Ltd. (collectively referred to as the "Trading Participants")

In its letter dated 07 February 2018, the PSE explained that the Trading Participants involved in the subject block sale transactions are fund managers and regional offices of local Trading Participants who placed orders on behalf of different clients. Considering that these types of transactions are part of a global practice where institutional clients

[3] CN201809280.
[4] Sec. 4.2.1 of the 2015 SRC-IRR
[5] See MSRD Letter dated 03 April 2019, page 2

(*e.g.* fund managers, investment houses, and foreign brokers) aggregate the orders of several clients and place bundled orders, PSE sent another letter to MSRD on 12 February 2018 proposing changes to the PSE Block Sale Request Form (the "Block Sale Form") to recognize these transactions.[6]

On 02 March 2018, the MSRD issued a Letter-Order (the "MSRD Letter-Order") finding PSE to have violated Sec. 40.2 of the SRC-IRR and imposed upon the latter the penalty of "Reprimand" pursuant to SEC MC No. 6, series of 2005 (Consolidated Scale of Fines).

In its letter dated 20 March 2018, the PSE sought the reconsideration of the MSRD Letter-Order, essentially arguing that the types of investors involved in the transactions, as well as the interest of efficiency demanded the aggregation of the orders of their various clients and the placement of bundled orders. This, according to the PSE, is an accepted global practice in the capital market. The PSE also argued that it has taken additional measures to ensure that the buying and selling entities are different, and submitted certifications issued by the Trading Participants which attested that the block sales executed through the block sale facility of PSE were for different buyers and sellers, and involve a change in beneficial ownership.

On 03 April 2019, the MSRD issued the Assailed Resolution. In denying PSE's motion for reconsideration, the MSRD maintained that there is nothing in the Revised Trading Rules which provides for a special treatment of the Trading Participants who executed the block sales. Moreover, the MSRD ruled that even if the certifications executed by the Trading Participants subsequently show that the buying and selling clients are different, the same will not negate the finding of violation since the issue relates to PSE's failure to ensure that block sales transactions have different buying and selling clients.

Hence, the instant Appeal.

On 11 June 2019, the MSRD filed its Comment/Opposition (To Appellant's Appeal Memorandum dated 22 April 2019) therein praying for the outright denial of the Appeal for lack of merit. The MSRD maintained its position that the PSE failed to perform its duties to ensure that the block sales transactions have different buying and selling clients since at the time of their execution, there was no document that will support PSE's conclusion that the subject transactions involved different buying and selling clients.[7]

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[6] *Appeal Memorandum*. Pars. 7 and 8
[7] *Assailed Resolution*. Pars. 11 and 15

On 20 January 2023, the PSE filed its Manifestation where it argued that it did not fail to enforce compliance with Article VI, Sec. 3(e) of the Revised Trading Rules. In support thereof, the PSE argued that a finding of violation of the said provision must be anchored on a factual showing that it executed the subject block sales with the same clients for the buying and selling side, which is allegedly absent in the instant case.[8]

On 20 April 2023, the MSRD filed its Manifestation informing the Commission of the absence of any supervening event or circumstance relevant to the instant case. The MSRD then prayed for the case to be deemed submitted for decision.

ISSUE

The sole issue presented for the determination of the Commission is whether or not the MSRD committed reversible error in penalizing the PSE based on its finding that the latter failed to enforce compliance with Article VI, Section 3 (e) of the Revised Trading Rules.

RULING

We grant the Appeal.

The MSRD maintains that the PSE failed to enforce the Block Sales Rules, arguing that it acted favorably on the application of different investors despite the absence of any proof that there were different clients for the buying and selling side.

The PSE, on the other hand, claims that the MSRD committed reversible error because the Article VI, Section 3 (e) of the PSE Revised Trading Rules was not violated. In support thereof, the PSE submitted the certifications executed by the trading participants which showed that the buying and selling clients are different.

To provide the parties herein with the proper perspective which this Commission took into consideration in passing upon the issue presented in the instant case, emphasis should be made of the fact that the SRC expressly recognizes and encourages self-regulation as a policy

[8] *Manifestation.* Pars. 3 and 4

of the State.[9] In *Palanca IV v. RCBC Securities, Inc*.[10] (the "RCBC Case"), the Supreme Court provided us with the factual backdrop that necessitated SROs, thus:

> "From their earliest inception in the United States, stock exchanges and securities markets have always exercised some form of control over their own regulatory affairs. It has been generally recognized that due to the large number of market participants and the lack of resources, full government regulation of securities markets is impractical. As such, stock exchanges and securities markets are allowed to regulate their own operations, subject to the control and supervision of the government regulatory authority. This principle is known as *self-regulation*; and is embodied in the SRCs declaration of policy, which states *inter alia* that "the State shall establish a socially conscious, free **market that regulates itself** xxx."

This made possible the establishment, registration and operation of SROs, the PSE being one of them.

Be that as it may, the privilege granted by the State to establish and operate an SRO, however, is regulated and requires full and faithful compliance by the SRO and its members with the securities laws, rules and regulations, as well as its own rules.[11] The purpose is to promote/maintain the integrity of the capital markets and to protect the investing public.[12] The definition of an SRO under Rule 3.1.22 of the 2015 SRC-IRR captures the foregoing, thus:

> "**Self-Regulatory Organization**, or **SRO**, means an organized Exchange, registered clearing agency, organization or association registered as an SRO under Section 39 of the Code, and which has been authorized by the Commission to: (1) **enforce compliance with relevant provisions of the Code and rules and regulations adopted thereunder**; (2) **promulgate and enforce its own rules** which have been approved by the Commission, **by their members and/or participants**; and, (3) enforce fair, ethical and efficient practices in the securities and commodity futures industries including securities and commodities exchanges." (Emphasis supplied)

We cannot over-emphasize the fact that in our regulatory regime, SROs play an essential role in implementing securities laws, rules and

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[9] "**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. To achieve these ends, this Securities Regulation Code is hereby enacted." (Emphasis supplied)
[10] G.R. No. 241905, March 11, 2020.
[11] See Sections 39.3(a) and 40.2 of the SRC
[12] See Sec. 40.5 of the SRC

regulations, and in the achievement of objectives that they seek to accomplish. This finds support in the RCBC Case[13] where the Supreme Court explained that the regulatory structure under the SRC involves a two-tiered scheme, with the SROs acting as the first-level regulatory entities, subject to the review, regulation and supervision of the Commission as the second-level regulatory entity, thus:

> "In lieu of direct regulation by the SEC of Exchanges and other securities-related organizations, the statutory scheme involves, in the first instance, the adoption by SROs of rules that are subject to SEC review and approval, and the enforcement of such rules by the SROs against their members. Under this SEC-supervised self-regulation, the SEC will step in only if the SROs are unable to perform properly their functions. In the process, the SEC is able to conserve its own resources, since the SROs effectively serve as its instrumentalities in the surveillance of the markets.
>
> xxx xxx xxx
>
> The regulatory structure under the SRC is therefore a two-tiered scheme, with the SROs as the first-level regulatory entities, subject to the review, regulation, and supervision of the SEC as the second-level regulatory entity. The regulatory jurisdiction of SROs is defined in Section 40.2 of the SRC, which mandates SROs to "comply with the provisions of this Code, the rules and regulations thereunder, and its own rules, and enforce compliance therewith xxx."

Thus, Section 40.2 of the 2015 SRC-IRR provides:

> "*Every self-regulatory organization shall comply with the provisions of this Code, the rules and regulations thereunder, and its own rules, and* ***enforce compliance therewith****, notwithstanding any provision of the Corporation Code to the contrary,* ***by its members, persons associated with its members or its participants****.*" (Emphasis supplied)

The afore-quoted provision, which mirrors Sec. 40.2 of the SRC, essentially mandates the PSE, being an SRO, to ensure that its members comply with the PSE Trading Rules (the "Trading Rules"), among others, and to impose the appropriate sanctions should there be a finding of violation. The failure on the part of the PSE to implement the Trading Rules and/or to act on any violation thereof by its members is what constitutes a violation of the afore-quoted provision. In other words, in the absence of any evidence showing that its members have violated a provision of the Trading Rules, any allegation that PSE has failed to enforce compliance with its Trading Rules will have no basis.

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[13] G.R. No. 241905, March 11, 2020.

On account thereof, it is imperative for this Commission to determine if the block sales transactions executed by the Trading Participants violated the Block Sales Rule.

The evidence on record yields a negative answer.

The Block Sales Rule embodied in Article VI, Section 3 (e) of the PSE Revised Trading Rules, provides:

> "*Block sales may involve one or two trading participants, but shall have different clients for the buying and the selling side*."

The afore-quoted provision is clear and leaves no room for interpretation; only application.[14] It allows block sales involving one or more trading participants, under the condition that the transaction shall have different clients for the buying and selling side. What is essential in determining if the Block Sales Rule has been complied with is to look at the clients for the buying and selling side. If there are different clients on each side, the Block Sales Rule is complied with. On the other hand, a showing that the clients for the buying and selling side are the same clearly violates the Block Sales Rule.

In the instant case, the PSE submitted in evidence the Certifications issued by the Trading Participants, all of which contained a declaration that the block sales transactions which each of them executed in the Exchange are from different underlying buying and selling clients. These Certifications, to the mind of the Commission, constitute substantial evidence which proved that the block sales transactions executed by the Trading Participants fully complied with the Block Sales Rule. Perforce, there is no legal basis to penalize PSE for an alleged violation which is anchored on transactions that fully complied with the Block Sales Rule. A contrary position would sanction a policy that penalizes SROs sans any finding of violation by its members of the Block Sales Rule, or any applicable law, rule or regulation for that matter.

We also note how the MSRD interpreted and considered the submission by the PSE of the Certifications as an effort to cure the alleged violation of the Block Sales Rule. In this regard, the MSRD ruled that the *post facto* submission of evidence showing compliance with the Block Sales Rule did not cure the PSE's failure to enforce compliance with its

[14] "Time and time again, it has been repeatedly declared by this Court that where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application. Where the language of a statute is clear and unambiguous, the law is applied according to its express terms, and interpretation should be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice." (Rama vs Spouses Nogra. G.R. No. 219556. September 14, 2021)

rules, because when it acted on the block sales transactions of the Trading Participants sans the said Certifications and/or other documents, the PSE already violated Section 40.2 of the 2015 SRC-IRR in relation to the Block Sales Rule.

We do not agree.

We find that the Certifications which the PSE submitted in evidence in fact confirm that the block sales transactions executed by the Trading Participants did not violate the Block Sales Rule. **The Certifications were submitted in evidence not to cure a violation but to show that no violation was committed**. The Certifications effectively disputed the finding of the MSRD that on the face of the Block Sale Request Form, there "*appears a violation of the Block Sales Rule.*" In this regard, We take cognizance of the acceptance by the MSRD of the modification introduced by the PSE to the Block Sale Request Form, i.e., the submission of a warranty by trading participants that the block sales transactions subject of the application involve different buying and selling parties and that the execution of the sale will result to a change of beneficial owner of the subject shares. The purpose and function of this warranty is essentially the same as that of the certifications issued by the Trading Participants, i.e., to show that clients for the buying and selling side are different. The only difference between them is that while the warranty is issued prior to the execution of the block sales transaction, the certification is issued after the transaction.

Thus, with the Block Sales Rule having been complied with by the Trading Participants, We find no basis to sustain a finding that PSE failed to enforce compliance with its own rules.

Finally, We take cognizance of the initiative which the PSE effected to provide a higher level of assurance that the requirements of the Block Sales Rule are complied with every time a block sales transaction is executed. The PSE has revised the Block Sale Request Form which now includes a warranty from trading participants that the block sales transactions subject of the application involve different buying and selling parties and that the execution of the sale will result to a change of beneficial owner of the subject shares. This warranty will effectively remove the requirement to submit certifications *post facto*, on the part of the trading participants in the event that the block sales transaction is questioned. Moreover, it is worth pointing out that this initiative is in addition to the existing mechanism being implemented in the system which automatically rejects a block sale transaction that involves the same buying and selling client whose account code does not fall among those exempt from wash sales.[15] With these mechanisms in place, the allegation that the PSE has assumed, and has not verified, that the buying and selling clients are different, appears to be without basis. In fact, before it allows any block sales transaction to proceed, the PSE conducts a verification to check that the client account codes are owned by institutional clients and included in the list of account codes that trading participants have previously requested to be exempted from wash sale.[16]

WHEREFORE, premises considered, the *Appeal Memorandum* filed by The Philippine Stock Exchange, Inc. is hereby **GRANTED**. The Resolution dated 03 April 2019 of the Markets and Securities Regulation Department is hereby **REVERSED**.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

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[15] *Appeal*. Par. 18
[16] *Ibid.*