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

IN THE MATTER OF NON-FILING OF 2018 AND 2019 ANNUAL REPORT (SEC FORM 17-A)

PHILEQUITY STRATEGIC GROWTH FUND, INC.,
Appellant,

- versus -

SEC En Banc Case No. 02-20-469
SEC En Banc Case No. 03-20-473
Promulgated: 23 January 2025

CORPORATE GOVERNANCE AND FINANCE DEPARTMENT,
Appellee.

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DECISION

Before this Commission are the Appeal Memorandum dated 5 February 2020 docketed as SEC En Banc Case No. 02-20-469, and the Appeal Memorandum dated 5 March 2020 docketed as SEC En Banc Case No. 03-20-473 (collectively referred to as the "Appeals"), filed by Appellant Philequity Strategic Growth Fund, Inc. (Philequity), seeking the reversal of (a) the Letter-Decision dated 10 January 2020, which imposed the penalty of "reprimand" for its first violation of Rule 17 of the 2015 Implementing Rules and Regulations of the Securities Regulation Code (SRC-IRR); and (b) the Letter-Decision dated 21 January 2020, which imposed a monetary penalty in the amount of One Hundred Ninety-Four Thousand Five Hundred Pesos (PhP194,500.00) for its second violation of Rule 17 of the 2015 SRC-IRR, both issued by the Corporate Governance and Finance Department (CGFD) on the basis of a finding that Philequity failed to file its Quarterly and Annual Reports for the years 2017 and 2018.

Considering that the two (2) Appeals present the same question of law, and proceed from the same or similar acts/omissions which constitute violations of Rule 17 of the 2015 SRC-IRR, the consolidation of the same is warranted pursuant to Section 1 Rule 31[1] of the Rules of Court, which is applicable suppletorily.[2]

THE PARTIES

Philequity is a domestic corporation duly organized and existing under Philippine laws, having been issued a Certificate of Incorporation, with SEC Registration No. CS200805288, on 9 April 2008. As stated in its Articles of Incorporation, the primary purpose for which Philequity was incorporated is "*[t]o subscribe for, invest and reinvest in, sell, transfer or otherwise dispose of securities of all kinds, including all types of stocks, bonds, debentures, notes, mortgages, or other obligations, commercial papers, acceptances, scrip, investment contracts, voting trust certificates, certificates of interest, and any receipts, warrants, certificates, or other instruments representing rights to receive, purchase, subscribe to the same, or representing any other rights or interests therein, or in any property or assets created or issued by any and all persons, firms, associations, corporations, organizations, government agencies or instrumentalities thereof; to acquire, hold, invest and reinvest in, sell, transfer or otherwise dispose of, real properties of all kinds; and generally to carry on the business of an Open-End Investment Company in all the elements and details thereof prescribed by law.*"

In 2011, Philequity filed with the Commission an application to act as an investment company under the Investment Company Act (ICA), together with its Registration Statement covering One Hundred Million (100,000,000) common shares with par value of One Centavo (PhP0.01) per share.[3]

In an Order dated 9 September 2011[4] issued by the then Corporation Finance Department (now the CGFD), Philequity was informed that (a) the Commission approved its application to act as an investment company under the ICA and its Implementing Rules and Regulations, and (b) its Registration Statement covering One Hundred Million (100,000,000) common shares with par value of One Centavo (PhP0.01) per share was rendered effective. Consequently, the

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[1] "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 costs or delay.*"

[2] SEC. 1-6, Rule I Part I of the 2016 Rules of Procedure of the Securities and Exchange Commission provides that: "*The pertinent provisions of the Rules of Court may, in the interest of expeditious dispensation of justice and whenever practicable, be applied by analogy or in a suppletory character and effect.*"

[3] *Appeal Memorandum* dated 5 February 2020. Par. 14

[4] *Comment to the Appeal Memorandum*, see Annex "A"

Commission issued in favor of Philequity a Certificate of Permit to Offer Securities for Sale.[5]

Philequity thereafter filed a Notification of Suspension of Duty to File Reports (SEC Form 17-EX) under Section 17 of the SRC for each of the years 2012 to 2017, where it disclosed the number of shareholders and the peso value held by the registrant for each relevant year.[6]

In compliance with Rule 35-1 of the implementing rules of the Investment Company Act, Philequity filed on 9 September 2013 a notarized Sales Report for the Month of August 2013 (the "Sales Report"), where it disclosed that it sold one (1) share in August 2013.[7]

In June 2019, the CGFD issued show cause letters which required Philequity to explain why it should not be held liable for violation of Rules 17.1.1 and 17.1.1.1.2 of the 2015 SRC-IRR, consequent to its non-filing of the required Quarterly Reports for the year 2018, to wit:

(a) Show-Cause Letter dated 7 June 2019 Re: Non-filing of Quarterly Report (SEC Form 17-Q) for the period ended 31 March 2018[8];
(b) Show-Cause Letter dated 10 June 2019 Re: Non-filing of Quarterly Report (SEC Form 17-Q) for the period ended 30 June 2018[9]; and
(c) Show-Cause Letter dated 11 June 2019 Re: Non-filing of Quarterly Report (SEC Form 17-Q) for the period ended 30 September 2018 (collectively the "June Show-Cause Letters").[10]

In its letter dated 28 August 2019 (the "First Letter-Reply") which addressed the June Show-Cause Letters of the CGFD, Philequity denied having violated Rule 17 of the 2015 SRC-IRR. It argued that not being a public or a reporting company, it is not required to file the reports mentioned in Rule 17 of the 2015 SRC-IRR.[11]

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[5] *Id.* See Annex "B"
[6] *Id.* see Annexes "C-1", "C-2", "C-3", "C-4", "C-5", and "C-6".
[7] *Id.* par. 12 (see Annex "D").
[8] *Appeal* dated 5 February 2020. See Annex "G-1".
[9] *Ibid.* Annex "G-2".
[10] *Ibid.* Annex "G-2".
[11] *Ibid.* Annex "H".

In September 2019, the CGFD again issued show-cause letters which required Philequity to explain why it should not be held liable for violation of Rules 17.1.1 and 17.1.1.1.2 of the 2015 SRC-IRR, consequent to the non-filing of its Annual Reports and Quarterly Reports for the years 2017, 2018, and 2019[12], to wit:

(a) Show-Cause Letter dated 12 September 2019 Re: Non-filing of 2017 Annual Report (SEC Form 17-A)[13];
(b) Show-Cause Letter dated 10 September 2019 Re: Non-filing of 2018 Annual Report (SEC Form 17-A)[14];
(a) Show-Cause dated 11 September 2019 Letter Re: Non-filing of Quarterly Report (SEC Form 17-Q) for the period ended 31 March 2019[15]; and
(b) Show-Cause Letter dated 10 September 2019 Re: Non-filing of Quarterly Report (SEC Form 17-Q) for the period ended 30 June 2019[16] (collectively the "September Show Cause Letters").

In its letter dated 7 November 2019 (the "Second Letter-Reply") which addressed the September Show-Cause Letters, Philequity, citing Rule 17.1.1 in relation to Rule 3 of the 2015 SRC-IRR, maintained that (a) it is not a reporting company as it had not sold any of its securities pursuant to its Permit to Offer Securities; or (b) it is not a public company as its assets and holders of securities with more than 100 shares each, did not exceed PhP50,000,000 and 200, respectively.[17] Thus, Philequity is not under obligation to file Form 17-EX or any of the reports required under Rule 17 of the 2015 SRC-IRR.

The CGFD found the arguments of Philequity in its Second Letter-Reply to be without merit, and reiterated its finding that Philequity is a reporting company.[18] Thus, in its Letter-Decision dated 10 January 2020 (the "First CGFD Decision"), the CGFD reprimanded Philequity for its first violation of Rule 17 of the 2015 SRC-IRR, and directed it to submit the required reports, including its 2017 Annual Report.[19]

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[12] Appeal dated 5 March 2020. Par. 14.
[13] *Comment to Appeal Memorandum* dated 9 June 2020. See Annex "G".
[14] *Ibid.* see Annex "H".
[15] *Ibid.* see Annex "E".
[16] *Ibid.* see Annex "F".
[17] Appeal dated 5 March 2020. Pars 15 and 16 (see Annex "I").
[18] Appeal dated 5 February 2020. see Annex "A" (CGFD Letter dated 7 October 2019).
[19] *Ibid.* Annex "E".

Philequity eventually elevated the First CGFD Decision to this Commission via the Appeal dated 5 February 2020 which was docketed as SEC *En Banc* Case No. 03-20-473 (the "First Appeal"), where it prayed for the reversal and the setting aside thereof.

The CGFD found the arguments of Philequity in its First Letter-Reply to be similarly bereft of merit. Thus, on 21 January 2020, the CGFD issued another Letter-Decision (the "Second CGFD Decision") where it imposed a monetary penalty in the amount of One Hundred Ninety-Four Thousand Five Hundred Pesos (PhP194,500.00) for Philequity's second violation of Rule 17 of the 2015 SRC-IRR, consequent to its failure to file its 2018 Annual Report.[20]

Philequity again elevated the Second CGFD Decision to this Commission via the Appeal dated 5 March 2020 which was docketed as SEC *En Banc* Case No. 02-20-469 (the "Second Appeal"). Considering that the CGFD essentially adopted the same legal bases and position which it used in imposing the penalty of "reprimand" in the First CGFD Decision and in imposing the monetary penalty in the Second CGFD Decision, Philequity has also adopted in the Second Appeal, its arguments in support of the position that it has not violated Rule 17 of the 2015 SRC-IRR to all findings of non-filing of Annual and Quarterly Reports for 2019. Philequity now prays for the consolidation of the First and Second Appeals which present the same question of law, and for the reversal and setting-aside of the First CGFD Decision and the Second CGFD Decision (collectively the "Assailed Decisions") for want of merit and basis.

In its Comment to the Appeal Memorandum dated 27 July 2020, the CGFD reiterated its arguments in support of its assailed Orders. The CGFD essentially maintained that Philequity is a reporting company under Rule 17 of the 2015 SRC-IRR, which is required to file the reports prescribed in the said rules.

ISSUE

Whether the CGFD was correct in finding that Philequity is a reporting company, and in imposing the penalties prescribed under Memorandum Circular No. 6, series of 2005 (Consolidated Scale of Fines), for its failure to file the Quarterly Reports and Annual Reports.

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[20] *Ibid.* see Annex "J".

RULING

The Appeals are bereft of merit.

Philequity insists that it is not a "reporting company" contemplated under Rule 17 of the 2015 SRC-IRR, which is required to submit, among others, quarterly and annual reports. Citing the definition of a "reporting company" in Rule 3.1.19 of the 2015 SEC-IRR, Philequity claims that CGFD committed reversible error in requiring it to file quarterly and annual reports, and in penalizing it for its failure to do so, considering that it has allegedly not sold any share.[21]

Rule 17.2 of the 2015 SRC-IRR (Subjects of the Reportorial Requirements), which essentially mirrors Sec. 17.2 of the SRC, specifically identifies the persons/entities that are required to comply with the reportorial requirements, thus:

> The reportorial requirements of Subsection 17.1 **shall** apply to the following:
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> 17.2.1. **An issuer which has sold a class of its securities pursuant to registration under Section 12 of the Code**: *Provided, however*, That the obligation of such issuer to file reports shall be suspended for any fiscal year after the year such registration became effective if such issuer, as of the first day of any such fiscal year, has less than one hundred (100) holders of such class of securities or such other number as the Commission shall prescribe and it notifies the Commission of such;
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> 17.2.2. An issuer with a class of securities listed for trading on an Exchange;
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> 17.2.3. An issuer with assets of at least Fifty million pesos (P50,000,000.00) or such other amount as the Commission shall prescribe, and having Two hundred (200) or more holders each holding at least One hundred (100) shares of a class of its equity securities; Provided, however, That the obligation of such issuer to file reports shall be terminated ninety (90) days after notification to the Commission by the issuer that the number of its holders holding at least one hundred (100) shares is reduced to less than One hundred (100). (Emphasis supplied)

The persons/entities mentioned in the afore-quoted provision of the 2015 SRC-IRR are technically referred to as a "public company" and

[21] Appeal Memorandum dated 5 March 2020. Par. 27(a).

"reporting company" defined under Rule 3.1.16 and Rule 3.1.19 of the 2015 SRC-IRR, respectively, to wit:

> Rule 3.1.16. **Public company** means any corporation with a class of equity securities listed on an Exchange, or with assets in excess of Fifty Million Pesos (PhP50,000,000.00) and has two hundred (200) or more holders each holding at least one hundred (100) shares of a class of its equity securities."
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> "Rule 3.1.19. **Reporting company is a corporation that has sold a class of its securities pursuant to a registration under Section 12 of the Code**, or a public company, as defined under SRC Rule 3.1.16. (Emphasis supplied)

Rule 17.1.1.1. of the 2015 SRC-IRR expressly provides that public and reporting companies are subject of, and are required to file reports prescribed under the SRC and the 2015 SRC-IRR. These reports include, among others, an annual report and the quarterly report, to wit:

> 17.1.1.1.1. An **annual report** on SEC Form 17-A for the fiscal year in which the registration statement was rendered effective by the Commission, and for each fiscal year thereafter, within one hundred five (105) calendar days after the end of the fiscal year.
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> 17.1.1.1.2. A **quarterly report** on SEC Form 17-Q within forty-five calendar days after the end of the first three quarters of each fiscal year. The first quarterly report of the Issuer shall be filed within forty-five (45) calendar days after the effective date of the registration statement or, on or before the date on which such report would have been required to be filed if the Issuer had been required previously to file reports on SEC Form 17-Q, whichever is later.

Prescinding from the afore-quoted provisions of the 2015 SRC-IRR which are clear and straightforward, a reporting company, which refers to a corporation that has sold a class of its securities pursuant to a registration under Section 12 of the SRC, is required to file with the Commission an annual report and a quarterly report, among others. Similarly, a public company, which refers to corporation with a class of equity securities listed on an Exchange, or with assets in excess of Fifty Million Pesos (PhP50,000,000.00) and has two hundred (200) or more holders each holding at least one hundred (100) shares of a class of its equity securities, is likewise mandated an annual report and a quarterly report, among others.

In relation to a reporting company, the SRC and the 2015 SRC-IRR does not qualify the number of securities that must be sold, which means that the sale of even a single security renders the issuer duty-bound to file a quarterly and annual reports, among others. Be that as it may, Rule 17.2.1. of the 2015 SRC-IRR provides that a reporting company's obligation to file annual and quarterly reports is suspended if its holders of securities fall below one hundred (100) and it notifies the Commission of such fact. The exception under Rule 17.2.1. of the 2015 SRC-IRR is not automatic. The use of the word "and" in the said provision means that the suspension of the duty to file annual and quarterly reports is conditioned on the reporting company's act of notifying the Commission of such fact, given that it is in the best position and has the information on the exact number of the holders of its securities. In other words, even if the number of the holders of securities falls below one hundred (100), the reporting company's obligation to file annual and quarterly reports **until** it formally informs the Commission of such fact.

In the instant case, the evidence on record affirms the position of both the CGFD and Philequity that the latter is **not** a public company considering that none of its securities are listed on the Exchange; and its assets did not exceed Fifty Million Pesos (PhP50,000,000.00),[22] and none of the holders of its securities which is less than two hundred (200), holds at least one hundred (100) shares.

The CGFD and Philequity however differ in their position relating to the status of Philequity as a reporting company. Philequity insists that it is not a reporting company because it has not sold any class of its securities from the time of the effectivity of its registration statement.[23] The CGFD maintains otherwise on the basis of the Sales Report which Philequity filed with the Commission.

We affirm the finding and position of the CGFD.

It is undisputed that this Commission approved Philequity's application to act as an investment company under the ICA together with its Registration Statement[24], and issued in its favor a Certificate of Permit to Offer Securities for Sale (the "Certificate").[25] The CGFD submitted in evidence the notarized Sales Report filed by Philequity filed on 9 September 2013, where it disclosed to this Commission that it sold one

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[22] The CGFD confirmed that the total assets reported by Philequity for 2018 is only P25,892,060.00 (see *Comment to the Appeal Memorandum* dated 27 July 2020. Page 6); see also *Appeal Memorandum* dated 5 March 2020. par. 27(2) and (3).

[23] *Appeal Memorandum* dated 5 March 2020. par. 27(1).

[24] *Comment to the Appeal Memorandum.* see Annex "A".

[25] *Ibid.* see Annex "B".

(1) share in August 2013.[26] Except for its bare allegation that it did not sell any security, Philequity did not submit any evidence to support the same. The Sales Report constitutes substantial evidence that Philequity sold a security after it was issued the Certificate. This rendered Philequity a reporting company under 17.2.1 of the SRC-IRR, which is required to file quarterly and annual reports.

Be that as it may, the evidence on record shows that while Philequity filed a Notification of Suspension of Duty to File Reports (SEC Form 17-EX) under Section 17 of the SRC for each of the years 2012 to 2017[27] which disclosed that the number of its shareholders from 2011 to 2016 (the period covered in the said notifications) was less than one hundred (100), no such notification was filed for the years 2018 and 2019 (covering the years 2017 and 2018). Thus, the exemption or suspension from complying with the reportorial requirements was not triggered and cannot not be invoked by Philequity. Verily, Philequity's failure to file its annual and quarterly reports for the years 2017 and 2018 constituted a violation of Rule 17 of the 2015 SRC-IRR.

On account thereof, We find and so hold that the CGFD correctly imposed the penalty of "reprimand" as well as the monetary penalty on the basis of its finding that Philequity failed to file its annual and quarterly reports for the years 2017 and 2018.

Granting *ex gratia*, that Philequity has not sold any security after it was issued the Certificate, the same does not operate to remove its duty to file the reportorial requirements prescribed under the SRC and the 2015 SRC-IRR, because such duty is anchored on its status as being a grantee of a secondary license to offer/sell securities to the public. In other words, it is the issuance of the Certificate which authorized Philequity to offer/sell securities to the public that gave rise to its duty to file the required reports.

When a secondary license is issued, authorizing an issuer to offer/sell securities to the public, such authority stands until the same is suspended or revoked by the Commission, and the grantee/licensee has the discretion to use and fully enjoy the benefits thereof, or not to use the same. The duty of a registered issuer of securities to comply with the reportorial requirements under the SRC and the 2015 SRC-IRR is not dependent on the decision of the issuer to offer/sell or not to offer/sell

[26] *Ibid.* par. 12 (see Annex "D").
[27] *Id.* see Annexes "C-1", "C-2", "C-3", "C-4", "C-5", and "C-6".

securities. To sanction a contrary position will render nugatory the purpose and objectives of the SRC which include ensuring full and fair disclosure of securities to promote the development of the capital market, the protection of investors and elimination of fraudulent or manipulative devices and practices.

The reason for this lies in the importance of the reports that are required to be filed, first and foremost, to the investing public (which includes existing and potential investors) who will have to make investment decisions on whether to buy, hold or dispose of the securities of the issuer corporation. Thus, this Commission has consistently implemented the policy that compliance with the reportorial requirements, especially for issuers that are grantees of a secondary licenses, is mandatory and absolute. In one case, We ruled as follows:

> Maximum efficiency in the capital markets is achieved when people can make rational investment decisions. And, people make decisions based on what they know. Thus, it is crucial that all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it, and so long as they hold it. The steady flow of timely, comprehensive and accurate information allows investors to make sound decisions that facilitates efficient capital formation that is important to a national economy.
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> xxx xxx xxx
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> Thus, Section 2 of the SRC provides that it is the policy of the State to, among others, 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.
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> xxx xxx xxx
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> Thus, the requirements for timely disclosure are absolute, and do not admit of any exceptions, otherwise, the rationale for the requirements would obviously be defeated, or easily circumvented.[28]

The importance and mandatory nature of complying with the reportorial requirements were emphasized in *SEC v. Universal Rightfield Property Holdings, Inc.*,[29] where the Supreme Court sustained the Commission's revocation of Universal Rightfield's Registration of Securities and Permit to Sell Securities to the Public for its repeated

[28] Decision dated on 10 October 2017. Sumitomo Metal Mining Philippine Holding Corporation vs. Corporation Finance Department (SEC EB Case No. 07-11-241).
[29] G.R. No. 181381, July 20, 2015.

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failure to timely file its annual and quarterly reports. The Supreme Court ruled that the filing of reports is essential in the realization of state policies declared in Section 2 of the SRC, where investor protection stands at the center,[30] to wit:

> Therefore, notwithstanding the belated filing of the said reports, as well as the claim that public interest would be better served if the SEC will merely impose penalties and allow it to continue in order to become profitable again, the **SEC cannot be faulted for revoking once again URPHI's registration of securities and permit to sell them to the public due to its repeated failure to timely submit such reports. Needless to state, such continuing reportorial requirements are pursuant to the state policies declared in Section 2 of the SRC of protecting investors and ensuring full and fair disclosure of information about securities and their issuer.** (Emphasis supplied)

Moreover, from a regulatory perspective, the filing of reports is essential regardless of whether an issuer has actually offered/sold securities because it is intended as a tool or effective mechanism to promptly inform the Commission about the operations of the grantee or if it is in fact operational, how it is using the license granted to it, or how it is dealing with the securities covered by the license. This is consistent with the grant to, and exercise by the Commission of absolute jurisdiction over corporations with the intent, among other of ensuring compliance with the SRC and the 2015 SRC-IRR.[31] Significantly, the Supreme Court has held that:

> [t]he Securities and Exchange Commission is organized in line with the policy of encouraging and protecting investments. It also administers the Securities Regulation Code, which was enacted to "promote the development of the capital market, protect investors, ensure full and fair disclosure about securities, [and] minimize if not totally eliminate insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market." **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.**[32] (Emphasis supplied)

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[30] "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 disclosure, investor protection, and the elimination of fraudulent or manipulative devices and practices." (Palanca IV vs RCBC Securities, Inc., G.R. No. 241905, [March 11, 2020)

[31] Sec. 5(a) and (d) of the SRC

[32] *Securities and Exchange Commission v. Subic Bay Golf and Country Club, Inc.* (G.R. No. 179047, March 11, 2015)

On account thereof, We find no cogent reason to disturb the Assailed Decisions of the CGFD.

WHEREFORE, premises considered, the Appeal Memorandum dated 5 February 2020 in SEC En Banc Case No. 02-20-469, and the Appeal Memorandum dated 5 March 2020 in SEC En Banc Case No. 03-20-473 are hereby **DENIED** for lack of merit. The Assailed Decisions of the Corporate Governance and Finance Department are hereby **AFFIRMED**.

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

*On Official Business