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SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Velasco, Jr., and *Brion, JJ.,* concur.

SECOND DIVISION

[G.R. No. 183905. April 16, 2009]

GOVERNMENT SERVICE INSURANCE SYSTEM, *petitioner, vs.* **THE HON. COURT OF APPEALS, (8TH DIVISION), ANTHONY V. ROSETE, MANUEL M. LOPEZ, FELIPE B. ALFONSO, JESUS F. FRANCISCO, CHRISTIAN S. MONSOD, ELPIDIO L. IBAÑEZ, and FRANCIS GILES PUNO,** *respondents.*

[G.R. No. 184275. April 16, 2009]

SECURITIES AND EXCHANGE COMMISSION, COMMISSIONER JESUS ENRIQUE G. MARTINEZ in his capacity as officer-in-charge of THE SECURITIES AND EXCHANGE COMMISSION and HUBERT G. GUEVARA in his capacity as director of THE COMPLIANCE AND ENFORCEMENT DEPT. OF SECURITIES, *petitioners, vs.* **ANTHONY V. ROSETE, MANUEL M. LOPEZ, FELIPE B. ALFONSO, JESUS F. FRANCISCO, CHRISTIAN S. MONSOD, ELPIDIO L. IBAÑEZ, and FRANCIS GILES PUNO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; SECURITIES AND EXCHANGE COMMISSION (SEC) COMMISSIONERS MARTINEZ AND GUEVARRA ARE NOT REAL PARTIES-IN-INTEREST TO THE DISPUTE AND

THUS BEREFT OF CAPACITY TO FILE THE PETITION.— We agree that the petitioners therein, namely: the SEC, Commissioner Martinez and Guevarra, are not real parties-in-interest to the dispute and thus bereft of capacity to file the petition. By way of simple illustration, to argue otherwise is to say that the trial court judge, the National Labor Relations Commission, or any quasi-judicial agency has the right to seek the review of an appellate court decision reversing any of their rulings. That prospect, as any serious student of remedial law knows, is zero. The Court, through the Resolution of the Third Division dated 2 September 2008, had resolved to treat the petition in G.R. No. 184275 as a petition for review on *certiorari*, but withheld giving due course to it. Under Section 1 of Rule 45, which governs appeals by *certiorari*, the right to file the appeal is restricted to "a party," meaning that only the real parties-in-interest who litigated the petition for *certiorari* before the Court of Appeals are entitled to appeal the same under Rule 45. The SEC and its two officers may have been designated as respondents in the petition for *certiorari* filed with the Court of Appeals, but under Section 5 of Rule 65 they are not entitled to be classified as real parties-in-interest. Under the provision, the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person to whom grave abuse of discretion is imputed (the SEC and its two officers in this case) are denominated only as public respondents. The provision further states that "public respondents shall not appear in or file an answer or comment to the petition or any pleading therein."

2. ID.; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; IT WOULD BE FACETIOUS TO ASSUME THAT THE SEC HAD ANY REAL INTEREST OR STAKE IN THE INTRA-CORPORATE DISPUTE WITH MERALCO.— Rule 65 does recognize that the SEC and its officers should have been designated as public respondents in the petition for *certiorari* filed with the Court of Appeals. Yet their involvement in the instant petition is not as original party-litigants, but as the quasi-judicial agency and officers exercising the adjudicative functions over the dispute between the two contending factions within Meralco. From the onset, neither the SEC nor Martinez or Guevarra has been considered as a real party-in-interest. Section 2, Rule 3 of the 1997 Rules of Civil Procedure provides that every action must be prosecuted or defended in the name of the real party in interest, that is "the party who stands to

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be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit." It would be facetious to assume that the SEC had any real interest or stake in the intra-corporate dispute within Meralco.

3. ID.; ID.; ID.; THE EXPUNCTION OF THE PETITION IN G.R. NO. 184275 IS IN ORDER; THERE IS SIMPLY NO PLAUSIBLE REASON FOR THE COURT TO DEVIATE FROM A TIME-HONORED RULE THAT PRESERVES THE PURITY OF OUR JUDICIAL AND QUASI-JUDICIAL OFFICES TO ACCOMMODATE THE SEC'S DISTRUST AND RESENTMENT OF THE APPELLATE COURT'S DECISION.— We find our ruling in *Hon. Santiago v. Court of Appeals* quite opposite to the question at hand. Petitioner therein, a trial court judge, had presided over an expropriation case. The litigants had arrived at an amicable settlement, but the judge refused to approve the same, even declaring it invalid. The matter was elevated to the Court of Appeals, which promptly reversed the trial court and approved the amicable settlement. The judge took the extraordinary step of filing in his own behalf a petition for review on *certiorari* with this Court, assailing the decision of the Court of Appeals which had reversed him. Justice Isagani Cruz added, in a Concurring Opinion in *Santiago*: "The judge is not an active combatant in such proceeding and must leave it to the parties themselves to argue their respective positions and for the appellate court to rule on the matter without his participation." Note that in *Santiago*, the Court recognized the good faith of the judge, who perceived the amicable settlement "as a manifestly iniquitous and illegal contract." The SEC could have similarly felt in good faith that the assailed Court of Appeals decision had unduly impaired its prerogatives or caused some degree of hurt to it. Yet assuming that there are rights or prerogatives peculiar to the SEC itself that the appellate court had countermanded, these can be vindicated in the petition for *certiorari* filed by GSIS, whose legal capacity to challenge the Court of Appeals decision is without question. There simply is no plausible reason for this Court to deviate from a time-honored rule that preserves the purity of our judicial and quasi-judicial offices to accommodate the SEC's distrust and resentment of the appellate court's decision. The expunction of the petition in G.R. No. 184275 is accordingly in order.

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4. ID.; EVIDENCE; JUDICIAL NOTICE; THE COURT TAKES COGNIZANCE OF ITS RESOLUTION IN A.M. NO. 08-8-11-CA DATED 9 SEPTEMBER 2008 WHICH DULY RECITED THE VARIOUS ANOMALOUS OR UNBECOMING ACTS IN RELATION TO THE CASE PERFORMED BY SEVERAL JUSTICES OF THE COURT OF APPEALS IN ORDER TO SQUARELY AND SATISFACTORILY ADDRESS THE QUESTIONS OF LAW RAISED IN THE PETITION.— With the objective to resolve the key questions of law raised in the petition, some of the issues raised diminish as peripheral. For example, petitioners raise arguments tied to the behavior of individual justices of the Court of Appeals, particularly former Justice Vicente Roxas, in relation to this case as it was pending before the appellate court. The Court takes cognizance of our Resolution in A.M. No. 08-8-11-CA dated 9 September 2008, which duly recited the various anomalous or unbecoming acts in relation to this case performed by two of the justices who decided the case in behalf of the Court of Appeals—former Justice Roxas (the *ponente*) and Justice Bienvenido L. Reyes (the Chairman of the 8th Division) – as well as three other members of the Court of Appeals. At the same time, the consensus of the Court as it deliberated on A.M. No. 08-8-11-CA was to reserve comment or conclusion on the assailed decision of the Court of Appeals, in recognition of the reality that however stigmatized the actions and motivations of Justice Roxas are, the decision is still the product of the Court of Appeals as a collegial judicial body, and not of one or some rogue justices. The penalties levied by the Court on these appellate court justices, in our estimation, redress the unwholesome acts which they had committed. At the same time, given the jurisprudential importance of the questions of law raised in the petition, any result reached without squarely addressing such questions would be unsatisfactory, perhaps derelict even.

5. MERCANTILE LAW; SECURITIES REGULATION CODE (R.A. NO. 8799); PROXY SOLICITATIONS; A PROCEDURE THAT ANTECEDES PROXY VALIDATION, THE FORMER INVOLVES THE SECURING AND SUBMISSION OF PROXIES, WHILE THE LATTER CONCERNS THE VALIDATION OF SUCH SECURED AND SUBMITTED PROXIES.— The right of a stockholder to vote by proxy is generally established by

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the Corporation Code, but it is the SRC which specifically regulates the form and use of proxies, more particularly the procedure of proxy solicitation, primarily through Section 20. AIRR-SRC Rule 20 defines the terms **solicit** and **solicitation:** The terms solicit and solicitation include: A. any request for a proxy whether or not accompanied by or included in a form of proxy B. any request to execute or not to execute, or to revoke, a proxy; or C. the furnishing of a form of proxy or other communication to security holders under circumstance reasonably calculated to result in the procurement, withholding or revocation of a proxy. It is plain that proxy solicitation is a procedure that antecedes proxy validation. The former involves the securing and submission of proxies, while the latter concerns the validation of such secured and submitted proxies. GSIS raises the sensible point that there was no election yet at the time it filed its petition with the SEC, hence no proper election contest or controversy yet over which the regular courts may have jurisdiction. And the point ties its cause of action to alleged irregularities in the proxy solicitation procedure, a process that precedes either the validation of proxies or the annual meeting itself.

6. ID.; ID.; ID.; THE LINCHPIN IN DECIDING THE ISSUE OF SEC'S JURISDICTION TO INVESTIGATE ALLEGED VIOLATIONS ON THE RULES OF PROXY SOLICITATIONS IS WHETHER OR NOT THE CAUSE OF ACTION OF PETITIONER GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) IS INTIMATELY TIED TO AN ELECTION CONTROVERSY UNDER SECTION 5 (c) OF THE PRESIDENTIAL DECREE NO. 902-A.— There is an interesting point, which neither party raises, and it concerns Section 6(g) of Presidential Decree No. 902-A, which states: SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers: xxx (g) To pass upon the validity of the issuance and use of proxies and voting trust agreements for absent stockholders or members; xxx As promulgated then, the provision would confer on the SEC the power to adjudicate controversies relating not only to proxy solicitation, but also to proxy validation. Should the proposition hold true up to the present, the position of GSIS would have merit, especially since Section 6 of Presidential Decree No. 902-A was not expressly repealed or abrogated by the SRC. Yet a closer reading of the provision

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indicates that such power of the SEC then was incidental or ancillary to the "exercise of such jurisdiction." Note that Section 6 is immediately preceded by Section 5, which originally conferred on the SEC "original and exclusive jurisdiction to hear and decide cases" involving "controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations." The cases referred to in Section 5 were transferred from the jurisdiction of the SEC to the regular courts with the passage of the SRC, specifically Section 5.2. Thus, the SEC's power to pass upon the validity of proxies in relation to election controversies has effectively been withdrawn, tied as it is to its abrogated jurisdictional powers. Based on the foregoing, it is evident that the linchpin in deciding the question is whether or not the cause of action of GSIS before the SEC is intimately tied to an election controversy, as defined under Section 5(c) of Presidential Decree No. 902-A. To answer that, we need to properly ascertain the scope of the power of trial courts to resolve controversies in corporate elections.

7. ID.; PRESIDENTIAL DECREE NO. 902-A; THE JURISDICTION OF THE REGULAR COURTS OVER THE SO CALLED ELECTION CONTEST OR CONTROVERSIES UNDER SECTION 5 (c) DOES NOT EXTEND TO EVERY POTENTIAL SUBJECT THAT MAY BE VOTED ON BY SHAREHOLDERS, BUT ONLY TO THE ELECTION OF DIRECTORS OR TRUSTEES, IN WHICH STOCKHOLDERS ARE AUTHORIZED TO PARTICIPATE UNDER SECTION 24 OF THE CORPORATION CODE.— Under Section 5(c) of Presidential Decree No. 902-A, in relation to the SRC, the jurisdiction of the regular trial courts with respect to election-related controversies is specifically confined to "controversies in the election or appointment of directors, trustees, officers or managers of corporations, partnerships, or associations." **Evidently, the jurisdiction of the regular courts over so-called election contests or controversies under Section 5(c) does not extend to every potential subject that may be voted on by shareholders, but only to the election of directors or trustees, in which stockholders are authorized to participate under Section 24 of the Corporation Code.**

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8. ID.; ID.; ID.; WHEN PROXIES ARE SOLICITED IN RELATION TO THE ELECTION OF CORPORATE DIRECTORS, THE RESULTING CONTROVERSY, EVEN IF IT OSTENSIBLY RAISED THE VIOLATION OF THE SEC RULES ON PROXY SOLICITATION, SHOULD BE PROPERLY SEEN AS AN ELECTION CONTROVERSY WITHIN THE ORIGINAL AND EXCLUSIVE JURISDICTION OF THE TRIAL COURTS BY VIRTUE OF SECTION 5.2 OF THE SECURITIES REGULATION CODE IN RELATION TO SECTION 5 (c) OF PRESIDENTIAL DECREE NO. 902-A.— This qualification allows for a useful distinction that gives due effect to the statutory right of the SEC to regulate proxy solicitation, and the statutory jurisdiction of regular courts over election contests or controversies. The power of the SEC to investigate violations of its rules on proxy solicitation is unquestioned when proxies are obtained to vote on matters unrelated to the cases enumerated under Section 5 of Presidential Decree No. 902-A. **However, when proxies are solicited in relation to the election of corporate directors, the resulting controversy, even if it ostensibly raised the violation of the SEC rules on proxy solicitation, should be properly seen as an election controversy within the original and exclusive jurisdiction of the trial courts by virtue of Section 5.2 of the SRC in relation to Section 5(c) of Presidential Decree No. 902-A.**

9. ID.; ID.; ID.; IT IS INDUBITABLE FROM THE LANGUAGE OF SECTION 5 (c) OF PRESIDENTIAL DECREE NO. 902-A THAT CONTROVERSIES AS TO THE QUALIFICATION OF VOTING SHARES, OR THE VALIDITY OF VOTES CAST IN FAVOR OF A CANDIDATE FOR ELECTION TO THE BOARD OF DIRECTORS ARE PROPERLY COGNIZABLE AND ADJUDICABLE BY THE REGULAR COURTS EXERCISING ORIGINAL AND EXCLUSIVE JURISDICTION OVER ELECTION CASES AND QUESTIONS RELATING TO THE PROPER SOLICITATION OF PROXIES USED IN SUCH ELECTION ARE INDISPUTABLY RELATED TO SUCH ISSUES.— The conferment of original and exclusive jurisdiction on the regular courts over such controversies in the election of corporate directors must be seen as intended to confine to one body the adjudication of all related claims and controversy arising from the election of such directors. For that reason, the

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aforequoted Section 2, Rule 6 of the Interim Rules broadly defines the term "election contest" as encompassing all plausible incidents arising from the election of corporate directors, including: (1) any controversy or dispute involving title or claim to any elective office in a stock or nonstock corporation, (2) **the validation of proxies,** (3) the manner and validity of elections and (4) the qualifications of candidates, including the proclamation of winners. If all matters anteceding the holding of such election which affect its manner and conduct, such as the proxy solicitation process, are deemed within the original and exclusive jurisdiction of the SEC, then the prospect of overlapping and competing jurisdictions between that body and the regular courts becomes frighteningly real. From the language of Section 5(c) of Presidential Decree No. 902-A, it is indubitable that controversies as to the qualification of voting shares, or the validity of votes cast in favor of a candidate for election to the board of directors are properly cognizable and adjudicable by the regular courts exercising original and exclusive jurisdiction over election cases. Questions relating to the proper solicitation of proxies used in such election are indisputably related to such issues, yet if the position of GSIS were to be upheld, they would be resolved by the SEC and not the regular courts, even if they fall within "controversies in the election" of directors.

10. ID.; ID.; ID.; IT IS UNDISPUTED THAT THE PROXY CHALLENGE RAISED BY PETITIONER GSIS RELATED TO THE ELECTION OF THE DIRECTORS OF THE MANILA ELECTRIC COMPANY (MERALCO) AND FALL WITHIN THE CONTEMPLATION OF AN ELECTION CONTROVERSY PROPERLY WITHIN THE JURISDICTION OF THE REGULAR COURTS.— That the proxy challenge raised by GSIS relates to the election of the directors of Meralco is undisputed. The controversy was engendered by the looming annual meeting, during which the stockholders of Meralco were to elect the directors of the corporation. Under the circumstances, we do not see it feasible for GSIS to posit that its challenge to the solicitation or validation of proxies bore no relation at all to the scheduled election of the board of directors of Meralco during the annual meeting. GSIS very well knew that the controversy falls within the contemplation of an election controversy properly within

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the jurisdiction of the regular courts. Otherwise, it would have never filed its original petition with the RTC of Pasay. GSIS may have withdrawn its petition with the RTC on a new assessment made in good faith that the controversy falls within the jurisdiction of the SEC, yet the reality is that the reassessment is precisely wrong as a matter of law.

11. ID.; ID.; ID.; THE LACK OF JURISDICTION OF THE SEC OVER THE SUBJECT MATTER OF GSIS'S PETITION NECESSARILY INVALIDATES THE CEASE AND DESIST ORDER (CDO) AND SHOW CAUSE ORDER (SCO) ISSUED BY THE BODY; THE ERROR OF THE SEC IN GRANTING THE CDO WITHOUT STATING WHICH KIND OF CDO IT WAS ISSUING IS MORE UNPARDONABLE, AS IT IS AN ACT THAT CONTRAVENES DUE PROCESS OF LAW.— The lack of jurisdiction of the SEC over the subject matter of GSIS's petition necessarily invalidates the *CDO* and *SDO* issued by that body. However, especially with respect to the *CDO*, there is need for this Court to squarely rule on the question pertaining to its validity, if only for jurisprudential value and for the guidance of the SEC. The Court of Appeals cited the *CDO* as having been issued in violation of the constitutional provision on due process, which requires both prior notice and prior hearing. Yet interestingly, the *CDO* as contemplated in Section 53.3 or in Section 64, may be issued "*ex-parte*" (under Section 53.3) or "without necessity of hearing" (under Section 64.1). Nothing in these provisions impose a requisite hearing before the *CDO* may be issued thereunder. Nonetheless, there are identifiable requisite actions on the part of the SEC that must be undertaken before the *CDO* may be issued either under Section 53.3 or Section 64. In the case of Section 53.3, the SEC must make two findings: (1) that such person has engaged in any such act or practice, and (2) that there is a reasonable likelihood of continuing, (or engaging in) further or future violations by such person. In the case of Section 64, the SEC must adjudge that the act, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public." Noticeably, the *CDO* is not precisely clear whether it was issued on the basis of Section 5.1, Section 53.3 or Section 64 of the SRC. The *CDO* actually refers and cites all three provisions, yet it is apparent that a singular *CDO*

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could not be founded on Section 5.1, Section 53.3 and Section 64 collectively. At the very least, the *CDO* under Section 53.3 and under Section 64 have their respective requisites and terms. GSIS was similarly cagey in its petition before the SEC, it demurring to state whether it was seeking the *CDO* under Section 5.1, Section 53.3, or Section 64. Considering that injunctive relief generally avails upon the showing of a clear legal right to such relief, the inability or unwillingness to lay bare the precise statutory basis for the prayer for injunction is an obvious impediment to a successful application. Nonetheless, the error of the SEC in granting the *CDO* without stating which kind of *CDO* it was issuing is more unpardonable, as it is an act that contravenes due process of law. We have particularly required, in administrative proceedings, that the body or tribunal "in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered." This requirement is vital, as its fulfillment would afford the adverse party the opportunity to interpose a reasoned and intelligent appeal that is responsive to the grounds cited against it. The *CDO* extended by the SEC fails to provide the needed reasonable clarity of the rationale behind its issuance.

12. ID.; ID.; ID.; ANY RESPONDENT TO A CDO WHICH CITES BOTH SECTION 53.3 AND SECTION 64 WOULD NOT HAVE AN INTELLIGENT OR ADEQUATE BASIS TO RESPOND TO THE SAME AS THE RESPONDENT WOULD NOT KNOW WHETHER THE CDO WOULD HAVE A DETERMINATE LIFESPAN OF TEN (10) DAYS, AS IN SECTION 53.3, OR WOULD NECESSITATE A FORMAL REQUEST FOR LIFTING WITHIN FIVE DAYS AS REQUIRED UNDER SECTION 64.1.— The citation in the *CDO* of Section 5.1, Section 53.3 and Section 64 together may leave the impression that it is grounded on all three provisions, and that may very well have been the intention of the SEC. Assuming that is so, it is legally impermissible for the SEC to have utilized both Section 53.3 and Section 64 as basis for the *CDO* at the same time. The *CDO* under Section 53.3 is premised on distinctly different requisites from the *CDO* under Section 64. Even more crucially, the lifetime of the *CDO* under Section 53.3 is confined to a definite span of ten (10) days, which is not the case with the *CDO* under Section 64.

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This *CDO* under Section 64 may be the object of a formal request for lifting within five (5) days from its issuance, a remedy not expressly afforded to the *CDO* under Section 53.3. Any respondent to a *CDO* which cites both Section 53.3 and Section 64 would not have an intelligent or adequate basis to respond to the same. Such respondent would not know whether the *CDO* would have a determinate lifespan of ten (10) days, as in Section 53.3, or would necessitate a formal request for lifting within five (5) days, as required under Section 64.1. This lack of clarity is to the obvious prejudice of the respondent, and is in clear defiance of the constitutional right to due process of law. Indeed, the veritable mélange that the assailed *CDO* is, with its jumbled mixture of premises and conclusions, the antithesis of due process. Had the *CDO* issued by the SEC expressed the length of its term, perhaps greater clarity would have been offered on what Section of the SRC it is based. However, the *CDO* is precisely silent as to its lifetime, thereby precluding much needed clarification. In view of the statutory differences among the three *CDO*s under the SRC, it is essential that the SEC, in issuing such injunctive relief, identify the exact provision of the SRC on which the *CDO* is founded. Only by doing so could the adversely affected party be able to properly evaluate whatever his responses under the law.

13. ID.; ID.; ID.; THE FACT THAT THE CDO WAS SIGNED, MUCH LESS APPARENTLY DELIBERATED UPON, BY ONLY ONE COMMISSIONER, CONSIDERING THAT THE SEC IS A COLLEGIAL BODY COMPOSED OF A CHAIRPERSON AND FOUR (4) COMMISSIONERS, RENDERS THE ORDER FATALLY INFIRM.— To make matters worse for the SEC, the fact that the *CDO* was signed, much less apparently deliberated upon, by only by one commissioner likewise renders the order fatally infirm. The SEC is a collegial body composed of a Chairperson and four (4) Commissioners. In order to constitute a quorum to conduct business, the presence of at least three (3) Commissioners is required. In the leading case of *GMCR v. Bell*, we definitively explained the nature of a collegial body, and how the act of one member of such body, even if the head, could not be considered as that of the entire body itself. Thus: We hereby declare that the NTC is a collegial body requiring a majority vote out of the three members of the commission in order to validly decide a case or any incident therein. Corollarily,

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the vote alone of the chairman of the commission, as in this case, the vote of Commissioner Kintanar, absent the required concurring vote coming from the rest of the membership of the commission to at least arrive at a majority decision, is not sufficient to legally render an NTC order, resolution or decision. Simply put, Commissioner Kintanar is not the National Telecommunications Commission. He alone does not speak for and in behalf of the NTC. The NTC acts through a three-man body, and the three members of the commission each has one vote to cast in every deliberation concerning a case or any incident therein that is subject to the jurisdiction of the NTC. When we consider the historical milieu in which the NTC evolved into the quasi-judicial agency it is now under Executive Order No. 146 which organized the NTC as a three-man commission and expose the illegality of all memorandum circulars negating the collegial nature of the NTC under Executive Order No. 146, we are left with only one logical conclusion: the NTC is a collegial body and was a collegial body even during the time when it was acting as a one-man regime. We can adopt a virtually word-for-word observation with respect to former Commissioner Martinez and the SEC. Simply put, Commissioner Martinez is not the SEC. He alone does not speak for and in behalf of the SEC. The SEC acts through a five-person body, and the five members of the commission each has one vote to cast in every deliberation concerning a case or any incident therein that is subject to the jurisdiction of the SEC.

14. ID.; ID.; THE ISSUANCE OF THE CDO IS AN ACT OF THE SEC ITSELF DONE IN THE EXERCISE OF ITS ORIGINAL JURISDICTION TO REVIEW ACTUAL CASES OR CONTROVERSIES; IF IT IS NOT CLEAR TO THE SEC BEFORE, IT SHOULD BE CLEAR NOW THAT ITS POWER TO ISSUE A CDO CAN NOT, UNDER THE SECURITIES REGULATION CODE, BE DELEGATED TO A SINGLE COMMISSIONER.— It is clear that Martinez was designated as OIC because of the official travel of only one member, Chairperson Fe Barin. Martinez was not commissioned to act as the SEC itself. At most, he was to act in place of Chairperson Barin in the exercise of her duties as Chairperson of the SEC. Under Section 4.3 of the SRC, the Chairperson is the chief executive officer of the SEC, and thus empowered to "execute

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and administer the policies, decisions, orders and resolutions approved by the Commission," as well as to "have the general executive direction and supervision of the work and operation of the Commission." It is in relation to the exercise of these duties of the Chairperson, and not to the functions of the Commission, that Martinez was "authorized to sign all documents and papers and perform all other acts and deeds as may be necessary in the day-to-day operation of the Commission." GSIS likewise cites, as authority for Martinez's unilateral issuance of the *CDO*, Section 4.6 of the SRC, which states that the SEC "may, for purposes of efficiency, delegate any of its functions to any department or office of the Commission, an individual Commissioner or staff member of the Commission except its review or appellate authority and its power to adopt, alter and supplement any rule or regulation." Reliance on this provision is inappropriate. First, there is no convincing demonstration that the SEC had delegated to Martinez the authority to issue the *CDO*. The SEC Order designating Martinez as OIC only authorized him to exercise the functions of the absent Chairperson, and not of the Commission. If the Order is read as enabling Martinez to issue the *CDO* in behalf of the Commission, it would be akin to conceding that the SEC Chairperson, acting alone, can issue the *CDO* in behalf of the SEC itself. That again contravenes our holding in *GMCR v. Bell*. In addition, it is clear under Section 4.6 that the ability to delegate functions to a single commissioner does not extend to the exercise of the review or appellate authority of the SEC. The issuance of the *CDO* is an act of the SEC itself done in the exercise of its original jurisdiction to review actual cases or controversies. If it has not been clear to the SEC before, it should be clear now that its power to issue a *CDO* can not, under the SRC, be delegated to an individual commissioner.

15. ID.; ID.; ID.; RELIEFS SOUGHT BY PETITIONER GSIS HAVE NO BASIS IN LAW.— In the end, even assuming that the events narrated in our Resolution in A.M. No. 08-8-11-CA constitute sufficient basis to nullify the assailed decision of the Court of Appeals, still it remains clear that the reliefs GSIS seeks of this Court have no basis in law. Notwithstanding the black mark that stains the appellate court's decision, the first paragraph of its *fallo*, to the extent that it dismissed the complaint of GSIS with the SEC for lack of jurisdiction and

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consequently nullified the *CDO* and *SDO*, defies unbiased scrutiny and deserves affirmation.

16. ID.; ID.; ID.; AS A MATTER OF LAW, SANCTIONS ON THE LAWYERS OF PETITIONER GSIS ARE UNWARRANTED; THE LAW CLEARLY VESTS UNTO GSIS, THE DISCRETION, RATHER THAN THE DUTY, TO ASSIGN CASES TO THE OFFICE OF THE GOVERNMENT CORPORATE COUNSELS (OGCC) FOR LEGAL ACTION, WHILE DESIGNATING THE PRESENT LEGAL SERVICES GROUP OF PETITIONER GSIS AS "IN HOUSE LEGAL COUNSEL.".— We find that as a matter of law the sanctions are unwarranted. The charter of GSIS is unique among government owned or controlled corporations with original charter in that it allocates a role for its internal legal counsel that is in conjunction with or complementary to the Office of the Government Corporate Counsel (OGCC), which is the statutory legal counsel for GOCCs. Section 47 of GSIS charter reads: SEC. 47. Legal Counsel.—The Government Corporate Counsel shall be the legal adviser and consultant of GSIS, but GSIS may assign to the Office of the Government Corporate Counsel (OGCC) cases for legal action or trial, issues for legal opinions, preparation and review of contracts/ agreements and others, as GSIS may decide or determine from time to time: Provided, however, That the present legal services group in GSIS shall serve as its in-house legal counsel. The GSIS may, subject to approval by the proper court, deputize any personnel of the legal service group to act as special sheriff in the enforcement of writs and processes issued by the court, quasi-judicial agencies or administrative bodies in cases involving GSIS. The designation of the OGCC as the legal counsel for GOCCs is set forth by statute, initially by Rep. Act No. 3838, then reiterated by the Administrative Code of 1987. Given that the designation is statutory in nature, there is no impediment for Congress to impose a different role for the OGCC with respect to particular GOCCs it may charter. Congress appears to have done so with respect to GSIS, designating the OGCC as a "legal adviser and consultant," rather than as counsel to GSIS. Further, the law clearly vests unto GSIS the discretion, rather than the duty, to assign cases to the OGCC for legal action, while designating the present legal services group of GSIS as "in-house legal counsel." This situates GSIS differently from the Land Bank of the Philippines, whose own in-house

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lawyers have persistently argued before this Court to no avail on their alleged right to file petitions before us instead of the OGCC. Nothing in the Land Bank charter vested it with the discretion to choose when to assign cases to the OGCC, notwithstanding the establishment of its own Legal Department. Congress is not bound to retain the OGCC as the primary or exclusive legal counsel of GSIS even if it performs such a role for other GOCCs. To bind Congress to perform in that manner would be akin to elevating the OGCC's statutory role to irrepealable status, and it is basic that Congress is barred from passing irrepealable laws.

17. ID.; ID.; ID.; WHILE DUE PUNISHMENT HAS BEEN METED ON THE ERRANT MAGISTRATES, THE CORPORATE WORLD MAY VERY WELL BE REMINDED THAT THE MEMBERS OF THE JUDICIARY ARE NOT TO BE VIEWED OR TREATED AS MERE PAWNS OR PUPPETS IN THE INTERNECINE FIGHTS BUSINESSMEN AND THEIR ASSOCIATES WAGE AGAINST OTHER BUSINESSMEN IN THE QUEST FOR CORPORATE DOMINANCE.— We close by acknowledging that the surrounding circumstances behind these petitions are unfortunate, given the events as narrated in A.M. No. 08-8-11-CA. While due punishment has been meted on the errant magistrates, the corporate world may very well be reminded that the members of the judiciary are not to be viewed or treated as mere pawns or puppets in the internecine fights businessmen and their associates wage against other businessmen in the quest for corporate dominance. In the end, the petitions did afford this Court to clarify consequential points of law, points rooted in principles which will endure long after the names of the participants in these cases have been forgotten.

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Quiason Makalintal Barot Torres Ibarra & Sison and *Villaraza Cruz Marcelo & Angangco* for Anthony V. Rosete, *et al.*

D E C I S I O N

TINGA, *J.*:

These are the undisputed facts.

The annual stockholders' meeting (annual meeting) of the Manila Electric Company (Meralco) was scheduled on 27 May 2008.[1] In connection with the annual meeting, proxies[2] were required to be submitted on or before 17 May 2008, and the proxy validation was slated for five days later, or 22 May.[3]

In view of the resignation of Camilo Quiason,[4] the position of corporate secretary of Meralco became vacant.[5] On 15 May 2008, the board of directors of Meralco designated Jose Vitug[6] to act as corporate secretary for the annual meeting.[7] However, when the proxy validation began on 22 May, the proceedings were presided over by respondent Anthony Rosete (Rosete), assistant corporate secretary and in-house chief legal counsel of Meralco.[8] Private respondents nonetheless argue that Rosete was the acting corporate secretary of Meralco.[9] Petitioner Government Service Insurance System (GSIS), a major shareholder in Meralco, was distressed over the proxy validation proceedings, and the resulting certification of proxies in favor of the Meralco management.[10]

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[1] *Rollo* (G.R. No. 183905) (hereinafter, "*rollo*"), pp. 24, 884.

[2] See CORPORATION CODE, Sec. 58.

[3] *Rollo*, pp. 24, 889.

[4] Retired Associate Justice of the Supreme Court.

[5] *Rollo*, pp. 24, 886.

[6] Also a retired Associate Justice of this Court.

[7] *Rollo*, pp. 24, 886.

[8] *Id.* at 24, 893. Petitioner alleges that Justice Vitug had tendered his resignation on the previous day, 21 May 2008, see *id.* at 24, but that this was not formally accepted by the Meralco board of directors until 26 May 2008, see *id.* at 25.

[9] *Id.* at 893.

[10] *Id.* at 25-26, 893-896.

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On 23 May 2008, GSIS filed a complaint with the Regional Trial Court (RTC) of Pasay City, docketed as R-PSY-08-05777-C4 seeking the declaration of certain proxies as invalid.[11] Three days later, on 26 May, GSIS filed a *Notice* with the RTC manifesting the dismissal of the complaint.[12] On the same day, GSIS filed an *Urgent Petition*[13] with the Securities and Exchange Commission (SEC) seeking to restrain Rosete from "recognizing, counting and tabulating, directly or indirectly, notionally or actually or in whatever way, form, manner or means, or otherwise honoring the shares covered by" the proxies in favor of respondents Manuel Lopez,[14] Felipe Alfonso,[15] Jesus Francisco,[16] Oscar Lopez, Christian Monsod,[17] Elpidio Ibañez,[18] Francisco Giles-Puno[19] "or any officer representing MERALCO Management," and to annul and declare invalid said proxies.[20] GSIS also prayed for the issuance of a *Cease and Desist Order* (*CDO*) to restrain the use of said proxies during the annual meeting scheduled for the following day.[21] A *CDO*[22] to that effect signed by SEC Commissioner Jesus Martinez was issued

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[11] *Id.* at 26, 896.

[12] *Id.* at 159-160, 899.

[13] The records do not show that the petition was given a docket number.

[14] Chairman of the Board of Directors and Chief Executive Officer of Meralco. See *rollo*, p. 20.

[15] Identified by GSIS in its petition as President and Chief Operating Officer of Meralco, and also a member of the Meralco board of directors. See *id.*

[16] Also identified by GSIS in its petition as President and Chief Operating Officer of Meralco, and also a member of the Meralco board of directors. See *id.*

[17] A member of the board of directors of Meralco. See *id.* at 21.

[18] President and Chief Operating Office of First Philippine Holdings Corporation. See *id.*

[19] Chief Finance Officer, Treasurer, and Executive Vice President, First Philippine Holdings Corporation. See *id.*

[20] *Id.* at 182-183. The available records do not indicate that the petition filed with the SEC was ever supplied its own case number.

[21] *Id.* at 193.

[22] *Id.* at 185-191.

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on 26 May 2008, the same day the complaint was filed. During the annual meeting held on the following day, Rosete announced that the meeting would push through, expressing the opinion that the *CDO* is null and void.[23]

On 28 May 2008, the SEC issued a *Show Cause Order* (*SCO*)[24] against private respondents, ordering them to appear before the Commission on 30 May 2008 and explain why they should not be cited in contempt. On 29 May 2008, respondents filed a petition for *certiorari* with prohibition[25] with the Court of Appeals, praying that the *CDO* and the *SCO* be annulled. The petition was docketed as CA-G.R. SP No. 103692.

Many developments involving the Court of Appeals' handling of CA-G.R. SP No. 103692 and the conduct of several of its individual justices are recounted in our Resolution dated 9 September 2008 in A.M. No. 08-8-11-CA (*Re: Letter Of Presiding Justice Conrado M. Vasquez, Jr. On CA-G.R. SP No. 103692*).[26] On 23 July 2008, the Court of Appeals Eighth Division promulgated a decision in the case with the following dispositive portion:

> WHEREFORE, premises considered, the May 26, 2008 complaint filed by GSIS in the SEC is hereby DISMISSED due to SEC's lack of jurisdiction, due to forum shopping by respondent GSIS, and due to splitting of causes of action by respondent GSIS. Consequently, the SEC's undated cease and desist order and the SEC's May 28, 2008 show cause order are hereby DECLARED VOID *AB INITIO* and without legal effect and their implementation are hereby permanently restrained.
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> The May 26, 2008 complaint filed by GSIS in the SEC is hereby barred from being considered, out of equitable considerations, as an election contest in the RTC, because the prescriptive period of 15 days from the May 27, 2008 Meralco election to file an election

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[23] *Id.* at 28, 903-905.

[24] *Id.* at 192-193.

[25] *Id.* at 194-251.

[26] See http://sc.judiciary.gov.ph/jurisprudence/2008/october2008/08-8-11-CA.htm for Resolution as published in the Supreme Court website.

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contest in the RTC had already run its course, pursuant to Sec. 3, Rule 6 of the interim Rules of Procedure Governing Intra-Corporate Controversies under R.A. No. 8799, due to deliberate act of GSIS in filing a complaint in the SEC instead of the RTC.

Let seventeen (17) copies of this decision be officially TRANSMITTED to the Office of the Chief Justice and three (3) copies to the Office of the Court Administrator:

(1) for sanction by the Supreme Court against the "GSIS LAW OFFICE" for unauthorized practice of law,

(2) for sanction and discipline by the Supreme Court of GSIS lawyers led by Atty. Estrella Elamparo-Tayag, Atty. Marcial C. Pimentel, Atty. Enrique L. Tandan III, and other GSIS lawyers for violation of Sec. 27 of Rule 138 of the Revised Rules of Court, pursuant to *Santayana v. Alampay*, A.C. No. 5878, March 21, 2005 454 SCRA 1, and pursuant to *Land Bank of the Philippines v. Raymunda Martinez*, G.R. No. 169008, August 14, 2007:

   (a) for violating express provisions of law and defying public policy in deliberately displacing the Office of the Government Corporate Counsel (OGCC) from its duty as the exclusive lawyer of GSIS, a government owned and controlled corporation (GOCC), by admittedly filing and defending cases as well as appearing as counsel for GSIS, without authority to do so, the authority belonging exclusively to the OGCC;

   (b) for violating the lawyer's oath for failing in their duty to act as faithful officers of the court by engaging in forum shopping;

   (c) for violating express provisions of law most especially those on jurisdiction which are mandatory; and

   (d) for violating Sec. 3, Rule 2 of the 1997 Rules of Civil Procedure by deliberately splitting causes of action in order to file multiple complaints: (i) in the RTC of Pasay City and (ii) in the SEC, in order to ensure a favorable order.[27]

The promulgation of the said decision provoked a searing controversy, as detailed in our Resolution in A.M. No. 08-8-

[27] *Rollo*, pp. 141-142.

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11-CA. Nonetheless, the appellate court's decision spawned three different actions docketed with their own case numbers before this Court. One of them, G.R. No. 183933, was initiated by a *Motion for Extension of Time to File Petition for Review* filed by the Office of the Solicitor General (OSG) in behalf of the SEC, Commissioner Martinez in his capacity as officer-in-charge of the SEC, and Hubert Guevarra in his capacity as Director of the Compliance and Enforcement Department of the SEC.[28] However, the OSG did not follow through with the filing of the petition for review adverted to; thus, on 19 January 2009, the Court resolved to declare G.R. No. 183933 closed and terminated.[29]

The two remaining cases before us are docketed as G.R. No. 183905 and 184275. G.R. No. 183905 pertains to a petition for *certiorari* and prohibition filed by GSIS, against the Court of Appeals, and respondents Rosete, Lopez, Alfonso, Francisco, Monsod, Ibañez and Puno, all of whom serve in different corporate capacities with Meralco or First Philippines Holdings Corporation, a major stockholder of Meralco and an affiliate of the Lopez Group of Companies. This petition seeks of the Court to declare the 23 July 2008 decision of the Court of Appeals null and void, affirm the SEC's jurisdiction over the petition filed before it by GSIS, and pronounce that the *CDO* and the *SCO* orders are valid. This petition was filed in behalf of GSIS by the "GSIS Law Office;" it was signed by the Chief Legal Counsel and Assistant Legal Counsel of GSIS, and three self-identified "Attorney[s]," presumably holding lawyer positions in GSIS.[30]

The OSG also filed the other petition, docketed as G.R. No. 184275. It identifies as its petitioners the SEC, Commissioner Martinez in his capacity as OIC of the SEC, and Hubert Guevarra in his capacity as Director of the Compliance and Enforcement Department of the SEC – the same petitioners in the aborted petition for review initially docketed as G.R. No. 183933. Unlike

[28] See *id.* at 2200.

[29] *Id.* at 2201.

[30] *Id.* at 80.

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what was adverted to in the motion for extension filed by the same petitioners in G.R. No. 183933, the petition in G.R. No. 184275 is one for *certiorari* under Rule 65 as indicated on page 3 thereof,[31] and not a petition for review. Interestingly, save for the first page which leaves the docket number blank, all 86 pages of this petition for *certiorari* carry a header wrongly identifying the pleading as the non-existent petition for review under G.R. No. 183933. This petition seeks the "reversal" of the assailed decision of the Court of Appeals, the recognition of the jurisdiction of the SEC over the petition of GSIS, and the affirmation of the *CDO* and *SCO*.

II.

Private respondents seek the expunction of the petition filed by the SEC in G.R. No. 184275. We agree that the petitioners therein, namely: the SEC, Commissioner Martinez and Guevarra, are not real parties-in-interest to the dispute and thus bereft of capacity to file the petition. By way of simple illustration, to argue otherwise is to say that the trial court judge, the National Labor Relations Commission, or any quasi-judicial agency has the right to seek the review of an appellate court decision reversing any of their rulings. That prospect, as any serious student of remedial law knows, is zero.

The Court, through the Resolution of the Third Division dated 2 September 2008, had resolved to treat the petition in G.R. No. 184275 as a petition for review on *certiorari*, but withheld giving due course to it.[32] Under Section 1 of Rule 45, which governs appeals by *certiorari*, the right to file the appeal is restricted to "a party," meaning that only the real parties-in-interest who litigated the petition for *certiorari* before the Court of Appeals are entitled to appeal the same under Rule 45. The SEC and its two officers may have been designated as respondents in the petition for *certiorari* filed with the Court of Appeals, but under Section 5 of Rule 65 they are not entitled to be classified

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[31] "This is a petition for *certiorari* under Rule 65 of the Revised Rules of Court x x x." *Rollo* (G.R. No. 184275), p. 4.

[32] *Id.* at 377.

as real parties-in-interest. Under the provision, the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person to whom grave abuse of discretion is imputed (the SEC and its two officers in this case) are denominated only as public respondents. The provision further states that "public respondents shall not appear in or file an answer or comment to the petition or any pleading therein."[33] Justice Regalado explains:

> [R]ule 65 involves an original special civil action specifically directed against the person, court, agency or party *a quo* which had committed not only a mistake of judgment but an error of jurisdiction, hence should be made public respondents in that action brought to nullify their invalid acts. It shall, however be the duty of the party litigant, whether in an appeal under Rule 45 or in a special civil action in Rule 65, to defend in his behalf and the party whose adjudication is assailed, as he is the one interested in sustaining the correctness of the disposition or the validity of the proceedings.
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> xxx The party interested in sustaining the proceedings in the lower court must be joined as a co-respondent and he has the duty to defend in his own behalf and in behalf of the court which rendered the questioned order. While there is nothing in the Rules that prohibit the presiding judge of the court involved from filing his own answer and defending his questioned order, **the Supreme Court has reminded judges of the lower courts to refrain from doing so unless ordered by the Supreme Court.[34] The judicial norm or mode of conduct to be observed in trial and appellate courts is now prescribed in the second paragraph of this section.**
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> **x x x x x x x x x**
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> **A person not a party to the proceedings in the trial court or in the Court of Appeals cannot maintain an action for *certiorari* in the Supreme Court to have the judgment reviewed.**[35]

Rule 65 does recognize that the SEC and its officers should have been designated as public respondents in the petition for *certiorari* filed with the Court of Appeals. Yet their involvement

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[33] See Rule 65, Sec. 5.

[34] Citing *Turquenza v. Hernando, et al.*, G.R. No. 51626, 30 April 1980.

[35] F. REGALADO, *I REMEDIAL LAW COMPENDIUM* (1999 ed.) at 723-724.

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in the instant petition is not as original party-litigants, but as the quasi-judicial agency and officers exercising the adjudicative functions over the dispute between the two contending factions within Meralco. From the onset, neither the SEC nor Martinez or Guevarra has been considered as a real party-in-interest. Section 2, Rule 3 of the 1997 Rules of Civil Procedure provides that every action must be prosecuted or defended in the name of the real party in interest, that is "the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit." It would be facetious to assume that the SEC had any real interest or stake in the intra-corporate dispute within Meralco.

We find our ruling in *Hon. Santiago v. Court of Appeals*[36] quite apposite to the question at hand. Petitioner therein, a trial court judge, had presided over an expropriation case. The litigants had arrived at an amicable settlement, but the judge refused to approve the same, even declaring it invalid. The matter was elevated to the Court of Appeals, which promptly reversed the trial court and approved the amicable settlement. The judge took the extraordinary step of filing in his own behalf a petition for review on *certiorari* with this Court, assailing the decision of the Court of Appeals which had reversed him. In disallowing the judge's petition, the Court explained:

> While the issue in the Court of Appeals and that raised by petitioner now is whether the latter abused his discretion in nullifying the deeds of sale and in proceeding with the expropriation proceeding, that question is eclipsed by the concern of whether Judge Pedro T. Santiago may file this petition at all.
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> **And the answer must be in the negative, Section 1 of Rule 45 allows a party to appeal by *certiorari* from a judgment of the Court of Appeals by filing with this Court a petition for review on *certiorari*. But petitioner judge was not a party either in the expropriation proceeding or in the *certiorari* proceeding in the Court of Appeals. His being named as respondent in the Court of Appeals was merely to comply with the rule that in original petitions for *certiorari*, the court or the judge, in his capacity as such, should be named as party respondent because the question in such a proceeding is the**

[36] G.R. No. 46845, 27 April 1990, 184 SCRA 690.

jurisdiction of the court itself (See *Mayol v. Blanco*, 61 Phil. 547 [19351, cited in Comments on the Rules of Court, Moran, Vol. II, 1979 ed., p. 471). **"In special proceedings, the judge whose order is under attack is merely a nominal party; wherefore, a judge in his official capacity, should not be made to appear as a party seeking reversal of a decision that is unfavorable to the action taken by him. A decent regard for the judicial hierarchy bars a judge from suing against the adverse opinion of a higher court,. . . .**" (*Alcasid v. Samson*, 102 Phil. 785, 740 [1957])

ACCORDINGLY, this petition is DENIED for **lack of legal capacity to sue** by the petitioner.[37]

Justice Isagani Cruz added, in a Concurring Opinion in *Santiago*: "The judge is not an active combatant in such proceeding and must leave it to the parties themselves to argue their respective positions and for the appellate court to rule on the matter without his participation."[38]

Note that in *Santiago*, the Court recognized the good faith of the judge, who perceived the amicable settlement "as a manifestly iniquitous and illegal contract."[39] The SEC could have similarly felt in good faith that the assailed Court of Appeals decision had unduly impaired its prerogatives or caused some degree of hurt to it. Yet assuming that there are rights or prerogatives peculiar to the SEC itself that the appellate court had countermanded, these can be vindicated in the petition for *certiorari* filed by GSIS, whose legal capacity to challenge the Court of Appeals decision is without question. There simply is no plausible reason for this Court to deviate from a time-honored rule that preserves the purity of our judicial and quasi-judicial offices to accommodate the SEC's distrust and resentment of the appellate court's decision. The expunction of the petition in G.R. No. 184275 is accordingly in order.

At this point, only one petition remains—the petition for *certiorari* filed by GSIS in G.R. No. 183905. Casting off the

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[37] *Id.* at 692-693.

[38] *Id.* at 693, J. CRUZ, concurring.

[39] *Id.* at 692.

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uncritical and unimportant aspects, the two main issues for adjudication are as follows: (1) whether the SEC has jurisdiction over the petition filed by GSIS against private respondents; and (2) whether the *CDO* and *SCO* issued by the SEC are valid.

II.

It is our resolute inclination that this case, which raises interesting questions of law, be decided solely on the merits, without regard to the personalities involved or the well-reported drama preceding the petition. To that end, the Court has taken note of reports in the media that GSIS and the Lopez group have taken positive steps to divest or significantly reduce their respective interests in Meralco.[40] These are developments that certainly ease the tension surrounding this case, not to mention reason enough for the two groups to make an internal reassessment of their respective positions and interests in relation to this case. Still, the key legal questions raised in the petition do not depend at all on the identity of any of the parties, and would obtain the same denouement even if this case was lodged by unknowns as petitioners against similarly obscure respondents.

With the objective to resolve the key questions of law raised in the petition, some of the issues raised diminish as peripheral. For example, petitioners raise arguments tied to the behavior of individual justices of the Court of Appeals, particularly former Justice Vicente Roxas, in relation to this case as it was pending before the appellate court. The Court takes cognizance of our Resolution in A.M. No. 08-8-11-CA dated 9 September 2008, which duly recited the various anomalous or unbecoming acts in relation to this case performed by two of the justices who decided the case in behalf of the Court of Appeals—former Justice Roxas (the *ponente*) and Justice Bienvenido L. Reyes

[40] See *e.g., Philippine Star's and Daily Inquirer's* issues of 28 October 2008, reporting that GSIS had sold its remaining 27% stake in Meralco to San Miguel Corp. for ₱30 billion, and issues of 14 March 2009 reporting that the PLDT Group had acquired a 20% stake of the Lopez Group in Meralco for ₱20.07 billion increasing the former's stake to 30.17% and reducing the latter's stake to 13.4%.

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(the Chairman of the 8th Division) – as well as three other members of the Court of Appeals. At the same time, the consensus of the Court as it deliberated on A.M. No. 08-8-11-CA was to reserve comment or conclusion on the assailed decision of the Court of Appeals, in recognition of the reality that however stigmatized the actions and motivations of Justice Roxas are, the decision is still the product of the Court of Appeals as a collegial judicial body, and not of one or some rogue justices. The penalties levied by the Court on these appellate court justices, in our estimation, redress the unwholesome acts which they had committed. At the same time, given the jurisprudential importance of the questions of law raised in the petition, any result reached without squarely addressing such questions would be unsatisfactory, perhaps derelict even.

III.

We now examine whether the SEC has jurisdiction over the petition filed by GSIS. To recall, SEC has sought to enjoin the use and annul the validation, of the proxies issued in favor of several of the private respondents, particularly in connection with the annual meeting.

A.

Jurisdiction is conferred by no other source but law. Both sides have relied upon provisions of Rep. Act No. 8799, otherwise known as the Securities Regulation Code (SRC), its implementing rules (Amended Implementing Rules or AIRR-SRC), and other related rules to support their competing contentions that either the SEC or the trial courts has exclusive original jurisdiction over the dispute.

GSIS primarily anchors its argument on two correlated provisions of the SRC. These are Section 53.1 and Section 20.1, which we cite:

SEC. 53. *Investigations, Injunctions and Prosecution of Offenses*. - 53.1. The Commission may, in its discretion, **make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange,**

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registered securities association, clearing agency, other self-regulatory organization, and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the Commission shall determine, as to all facts and circumstances concerning the matter to be investigated. The Commission may publish information concerning any such violations, **and to investigate any fact, condition, practice or matter which it may deem necessary or proper to aid in the enforcement of the provisions of this Code, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this Code relates**: xxx (emphasis supplied)

SEC. 20. *Proxy Solicitations*. – 20.1. Proxies must be issued and proxy solicitation must be made in accordance with rules and regulations to be issued by the Commission;

The argument, stripped of extravagance, is that since proxy solicitations following Section 20.1 have to be made in accordance with rules and regulations issued by the SEC, it is the SEC under Section 53.1 that has the jurisdiction to investigate alleged violations of the rules on proxy solicitations. The GSIS petition invoked AIRR-AIRR-SRC Rule 20, otherwise known as "The Proxy Rule," which enumerates the requirements as to form of proxy and delivery of information to security holders. According to GSIS, the information statement Meralco had filed with the SEC in connection with the annual meeting did not contain any proxy form as required under AIRR-SRC Rule 20.

On the other hand, private respondents argue before us that under Section 5.2 of the SRC, the SEC's jurisdiction over all cases enumerated in Section 5 of Presidential Decree No. 902-A was transferred to the courts of general jurisdiction or the appropriate regional trial court. The two particular classes of cases in the enumeration under Section 5 of Presidential Decree No. 902-A which private respondents especially refer to are as follows:

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(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders,

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members, or associates; or association of which they are stockholders, members, or associates, respectively;

(3) Controversies in the election or appointment of directors, trustees, officers or managers of corporations, partnerships, or associations;

x x x x x x x x x

In addition, private respondents cite the Interim Rules on Intra-Corporate Controversies (Interim Rules) promulgated by this Court in 2001, most pertinently, Section 2 of Rule 6 (on Election Contests), which defines "election contests" as follows:

SEC. 2. *Definition*. – An election contest refers to any controversy or dispute involving title or claim to any elective office in a stock or nonstock corporation, **the validation of proxies**, the manner and validity of elections and the qualifications of candidates, including the proclamation of winners, to the office of director, trustee or other officer directly elected by the stockholders in a close corporation or by members of a nonstock corporation where the articles of incorporation or bylaws so provide. (emphasis supplied)

The correct answer is not clear-cut, but there is one. In private respondents' favor, the provisions of law they cite pertain directly and exclusively to the statutory jurisdiction of trial courts acquired by virtue of the transfer of jurisdiction following the passage of the SRC. In contrast, the SRC provisions relied upon by GSIS do not immediately or directly establish that body's jurisdiction over the petition, since it necessitates the linkage of Section 20 to Section 53.1 of the SRC before the point can bear on us.

On the other hand, the distinction between "proxy solicitation" and "proxy validation" cannot be dismissed offhand. The right of a stockholder to vote by proxy is generally established by the Corporation Code,[41] but it is the SRC which specifically regulates the form and use of proxies, more

[41] See CORPORATION CODE, Sec. 24, which reads in part: "xxx In stock corporations, every stockholder entitled to vote shall have the right to vote in person or by proxy the number of shares of stock standing xxx," and Section 58, which states: "*Proxies*.—Stockholders and members may vote in person or by proxy in all meetings of stockholders or members. Proxies shall be in writing, signed by the stockholder or member and field before the scheduled

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particularly the procedure of proxy solicitation, primarily through Section 20.[42] AIRR-SRC Rule 20 defines the terms **solicit** and **solicitation**:

> The terms solicit and solicitation include:
>
> A. any request for a proxy whether or not accompanied by or included in a form of proxy
>
> B. any request to execute or not to execute, or to revoke, a proxy; or
>
> C. the furnishing of a form of proxy or other communication to security holders under circumstance reasonably calculated to result in the procurement, withholding or revocation of a proxy.

It is plain that proxy solicitation is a procedure that antecedes proxy validation. The former involves the securing and submission of proxies, while the latter concerns the validation of such secured and submitted proxies. GSIS raises the sensible point that there was no election yet at the time it filed its petition with the SEC, hence no proper election contest or controversy yet over which the regular courts may have jurisdiction. And the point ties its cause of action to alleged irregularities in the proxy solicitation procedure, a process that precedes either the validation of proxies or the annual meeting itself.

Under Section 20.1, the solicitation of proxies must be in accordance with rules and regulations issued by the SEC, such as AIRR-SRC Rule 4. And by virtue of Section 53.1, the SEC has the discretion "to make such investigations as it deems necessary to determine whether any person has violated" any rule issued by it, such as AIRR-SRC Rule 4. The investigatory power of the SEC established by Section 53.1 is central to its regulatory authority, most crucial to the public interest especially as it may pertain to corporations with publicly traded shares.

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meeting with the corporate secretary. Unless otherwise provided in the proxy, it shall be valid only for the meeting for which it is intended. No proxy shall be valid and effective for a period longer than five (5) years at any one time.

[42] The now-abrogated Revised Securities Act had also imposed limitations on the use of proxies. See Sec. 34, Revised Securities Act.

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For that reason, we are not keen on pursuing private respondents' insistence that the GSIS complaint be viewed as rooted in an intra-corporate controversy solely within the jurisdiction of the trial courts to decide. It is possible that an intra-corporate controversy may animate a disgruntled shareholder to complain to the SEC a corporation's violations of SEC rules and regulations, but that motive alone should not be sufficient to deprive the SEC of its investigatory and regulatory powers, especially so since such powers are exercisable on a *motu proprio* basis.

At the same time, Meralco raises the substantial point that nothing in the SRC empowers the SEC to annul or invalidate improper proxies issued in contravention of Section 20. It cites that the penalties defined by the SEC itself for violation of Section 20 or AIRR-SRC Rule 20 are limited to a reprimand/ warning for the first offense, and pecuniary fines for succeeding offenses.[43] Indeed, if the SEC does not have the power to invalidate proxies solicited in violation of its promulgated rules, serious questions may be raised whether it has the power to adjudicate claims of violation in the first place, since the relief it may extend does not directly redress the cause of action of the complainant seeking the exclusion of the proxies.

There is an interesting point, which neither party raises, and it concerns Section 6(g) of Presidential Decree No. 902-A, which states:

SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

x x x x x x x x x

(g) To pass upon the validity of the issuance and use of proxies and voting trust agreements for absent stockholders or members;

x x x x x x x x x

As promulgated then, the provision would confer on the SEC the power to adjudicate controversies relating not only to proxy

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[43] *Rollo*, p. 933; citing SEC Memorandum Circular No. 6, Series of 2005, which may also be found at http://www.sec.gov.ph/circulars/cy,2005/sec-memo-6,s2005.pdf (Last visited, 8 April 2009).

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solicitation, but also to proxy validation. Should the proposition hold true up to the present, the position of GSIS would have merit, especially since Section 6 of Presidential Decree No. 902-A was not expressly repealed or abrogated by the SRC.[44]

Yet a closer reading of the provision indicates that such power of the SEC then was incidental or ancillary to the "exercise of such jurisdiction." Note that Section 6 is immediately preceded by Section 5, which originally conferred on the SEC "original and exclusive jurisdiction to hear and decide cases" involving "controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations." The cases referred to in Section 5 were transferred from the jurisdiction of the SEC to the regular courts with the passage of the SRC, specifically Section 5.2. Thus, the SEC's power to pass upon the validity of proxies in relation to election controversies has effectively been withdrawn, tied as it is to its abrogated jurisdictional powers.

Based on the foregoing, it is evident that the linchpin in deciding the question is whether or not the cause of action of GSIS before the SEC is intimately tied to an election controversy, as defined under Section 5(c) of Presidential Decree No. 902-A. To answer that, we need to properly ascertain the scope of the power of trial courts to resolve controversies in corporate elections.

B.

Shares of stock in corporations may be divided into voting shares and non-voting shares, which are generally issued as "preferred" or "redeemable" shares.[45] Voting rights are exercised during regular or special meetings of stockholders; regular meetings to be held annually on a fixed date, while special meetings may be held at any time necessary or as provided in the by-laws, upon due notice.[46] The Corporation Code provides for a whole range of matters which can be voted upon by stockholders, including a limited set on which even non-voting stockholders

[44] See SRC, Sec. 76.

[45] CORPORATION CODE, Sec. 6.

[46] CORPORATION CODE, Sec. 50.

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are entitled to vote on.[47] On any of these matters which may be voted upon by stockholders, the proxy device is generally available.[48]

Under Section 5(c) of Presidential Decree No. 902-A, in relation to the SRC, the jurisdiction of the regular trial courts with respect to election-related controversies is specifically confined to "controversies in the election or appointment of directors, trustees, officers or managers of corporations, partnerships, or associations." **Evidently, the jurisdiction of the regular courts over so-called election contests or controversies under Section 5(c) does not extend to every potential subject that may be voted on by shareholders, but only to the election of directors or trustees, in which stockholders are authorized to participate under Section 24 of the Corporation Code.[49]**

This qualification allows for a useful distinction that gives due effect to the statutory right of the SEC to regulate proxy solicitation, and the statutory jurisdiction of regular courts over election contests or controversies. The power of the SEC to investigate violations of its rules on proxy solicitation is unquestioned when proxies are obtained to vote on matters unrelated to the cases enumerated under Section 5 of Presidential

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[47] See *supra* note 45.

[48] See J. CAMPOS & M. CAMPOS, *I CORPORATION CODE OF THE PHILIPPINES* (1990 ed.) at 515.

[49] This observation should be viewed as confined to Section 5(c) of Pres. Decree No. 902-A alone. We are cognizant of potential arguments over the use of proxies in relation to non-election related matters voted upon by the stockholders when such matters concern intra-corporate controversies as defined in Section 5(a) of Pres. Decree No. 902-A. It is apparent that intra-corporate controversies fall within the jurisdiction of the regular trial courts and that issues related to proxy voting that are intimately related to intra-corporate controversies would necessarily fall within such jurisdiction as well. Nonetheless, the precise jurisdictional parameters with respect to Section 5(a) proxy-related issues are not susceptible to allocation through this case, which involves an election-related dispute under Section 5(c), and best await a more suitable case or controversy.

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Decree No. 902-A. **However, when proxies are solicited in relation to the election of corporate directors, the resulting controversy, even if it ostensibly raised the violation of the SEC rules on proxy solicitation, should be properly seen as an election controversy within the original and exclusive jurisdiction of the trial courts by virtue of Section 5.2 of the SRC in relation to Section 5(c) of Presidential Decree No. 902-A.**

The conferment of original and exclusive jurisdiction on the regular courts over such controversies in the election of corporate directors must be seen as intended to confine to one body the adjudication of all related claims and controversy arising from the election of such directors. For that reason, the aforequoted Section 2, Rule 6 of the Interim Rules broadly defines the term "election contest" as encompassing all plausible incidents arising from the election of corporate directors, including: (1) any controversy or dispute involving title or claim to any elective office in a stock or nonstock corporation, (2) **the validation of proxies**, (3) the manner and validity of elections and (4) the qualifications of candidates, including the proclamation of winners. If all matters anteceding the holding of such election which affect its manner and conduct, such as the proxy solicitation process, are deemed within the original and exclusive jurisdiction of the SEC, then the prospect of overlapping and competing jurisdictions between that body and the regular courts becomes frighteningly real. From the language of Section 5(c) of Presidential Decree No. 902-A, it is indubitable that controversies as to the qualification of voting shares, or the validity of votes cast in favor of a candidate for election to the board of directors are properly cognizable and adjudicable by the regular courts exercising original and exclusive jurisdiction over election cases. Questions relating to the proper solicitation of proxies used in such election are indisputably related to such issues, yet if the position of GSIS were to be upheld, they would be resolved by the SEC and not the regular courts, even if they fall within "controversies in the election" of directors.

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The Court recognizes that GSIS's position flirts with the abhorrent evil of split jurisdiction,[50] allowing as it does both the SEC and the regular courts to assert jurisdiction over the same controversies surrounding an election contest. Should the argument of GSIS be sustained, we would be perpetually confronted with the spectacle of election controversies being heard and adjudicated by both the SEC and the regular courts, made possible through a mere allegation that the anteceding proxy solicitation process was errant, but the competing cases filed with one objective in mind – to affect the outcome of the election of the board of directors. There is no definitive statutory provision that expressly mandates so untidy a framework, and we are disinclined to construe the SRC in such a manner as to pave the way for the splitting of jurisdiction.

Unlike either Section 20.1 or Section 53.1, which merely alludes to the rule-making or investigatory power of the SEC, Section 5 of Pres. Decree No. 902-A sets forth a definitive rule on jurisdiction, expressly granting as it does "original and exclusive jurisdiction" first to the SEC, and now to the regular courts. The fact that the jurisdiction of the regular courts under Section 5(c) is confined to the voting on election of officers, and not on all matters which may be voted upon by stockholders, elucidates that the power of the SEC to regulate proxies remains extant and could very well be exercised when stockholders vote on matters other than the election of directors.

That the proxy challenge raised by GSIS relates to the election of the directors of Meralco is undisputed. The controversy was engendered by the looming annual meeting, during which the stockholders of Meralco were to elect the directors of the corporation. GSIS very well knew of that fact. On 17 March 2008, the Meralco board of directors adopted a board resolution stating:

RESOLVED that the board of directors of the Manila Electric Company (MERALCO) delegate, as it hereby delegates to the

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[50] "[T]he Court has consistently refused to sanction split jurisdiction." *Southern Cross Cement Corporation v. Philcemcor*, G.R. No. 158540, 8 July 2004; citing *ALU v. Gomez*, 125 Phil. 717, 722 (1967).

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Nomination & Governance Committee the authority to approve and adopt appropriate rules on: (1) **nomination of candidates for election to the board of directors; (2) appreciation of ballots during the election of members of the board of directors**; and (3) validation of proxies for regular or special meetings of the stockholders.[51]

In addition, the *Information Statement/Proxy* form filed by First Philippine Holdings Corporation with the SEC pursuant to Section 20 of the SRC, states:

REASON FOR SOLICITATION OF VOTES

The Solicitor is soliciting proxies from stockholders of the Company **for the purpose of electing the directors named under the subject headed 'Directors' in this Statement** as well as to vote the matters in the agenda of the meeting as provided for in the Information Statement of the Company. All of the nominees are current directors of the Company.[52]

Under the circumstances, we do not see it feasible for GSIS to posit that its challenge to the solicitation or validation of proxies bore no relation at all to the scheduled election of the board of directors of Meralco during the annual meeting. GSIS very well knew that the controversy falls within the contemplation of an election controversy properly within the jurisdiction of the regular courts. Otherwise, it would have never filed its original petition with the RTC of Pasay. GSIS may have withdrawn its petition with the RTC on a new assessment made in good faith that the controversy falls within the jurisdiction of the SEC, yet the reality is that the reassessment is precisely wrong as a matter of law.

IV.

The lack of jurisdiction of the SEC over the subject matter of GSIS's petition necessarily invalidates the *CDO* and *SDO* issued by that body. However, especially with respect to the *CDO*, there is need for this Court to squarely rule on the question

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[51] *Rollo*, p. 884. Emphasis supplied.

[52] *Id.* at 889. Emphasis supplied.

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pertaining to its validity, if only for jurisprudential value and for the guidance of the SEC.

To recount the facts surrounding the issuance of the *CDO*, GSIS filed its petition with the SEC on 26 May 2008. The *CDO*, six (6) pages in all with three (3) pages devoted to the tenability of granting the injunctive relief, was issued on the very same day, 26 May 2008, without notice or hearing. The *CDO* bore the signature of Commissioner Jesus Martinez, identified therein as "Officer-in-Charge," and nobody else's.

The provisions of the SRC relevant to the issuance of a *CDO* are as follows:

> SEC. 5. Powers and Functions of the Commission.- 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:
>
> x x x x x x x x x
>
> (i) Issue cease and desist orders to prevent fraud or injury to the investing public;
>
> x x x x x x x x x
>
> [SEC.] 53.3. Whenever it shall appear to the Commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency or other self-regulatory organization, it may issue an order to such person to desist from committing such act or practice: Provided, however, That the Commission shall not charge any person with violation of the rules of an Exchange or other self regulatory organization unless it appears to the Commission that such Exchange or other self-regulatory organization is unable or unwilling to take action against such person. After finding that such person has engaged in any such act or practice and that there is a reasonable likelihood of continuing, further or future violations by such person, the Commission may issue *ex-parte* a cease and desist order for a maximum period of ten (10) days,

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enjoining the violation and compelling compliance with such provision. The Commission may transmit such evidence as may be available concerning any violation of any provision of this Code, or any rule, regulation or order thereunder, to the Department of Justice, which may institute the appropriate criminal proceedings under this Code.

SEC. 64. Cease and Desist Order. – 64.1. The Commission, after proper investigation or verification, *motu proprio*, or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

64.2. Until the Commission issues a cease and desist order, the fact that an investigation has been initiated or that a complaint has been filed, including the contents of the complaint, shall be confidential. Upon issuance of a cease and desist order, the Commission shall make public such order and a copy thereof shall be immediately furnished to each person subject to the order.

64.3. Any person against whom a cease and desist order was issued may, within five (5) days from receipt of the order, file a formal request for a lifting thereof. Said request shall be set for hearing by the Commission not later than fifteen (15) days from its filing and the resolution thereof shall be made not later than ten (10) days from the termination of the hearing. If the Commission fails to resolve the request within the time herein prescribed, the cease and desist order shall automatically be lifted.

There are three distinct bases for the issuance by the SEC of the *CDO*. The first, allocated by Section 5(i), is predicated on a necessity "to prevent fraud or injury to the investing public". No other requisite or detail is tied to this *CDO* authorized under Section 5(i).

The second basis, found in Section 53.3, involves a determination by the SEC that "any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency or other self-regulatory organization." The

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provision additionally requires a finding that "there is a reasonable likelihood of continuing [or engaging in] further or future violations by such person." The maximum duration of the *CDO* issued under Section 53.3 is ten (10) days.

The third basis for the issuance of a *CDO* is Section 64. This *CDO* is founded on a determination of an act or practice, which unless restrained, "will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public". Section 64.1 plainly provides three segregate instances upon which the SEC may issue the *CDO* under this provision: (1) after proper investigation or verification, (2) *motu proprio*, or (3) upon verified complaint by any aggrieved party. While no lifetime is expressly specified for the *CDO* under Section 64, the respondent to the *CDO* may file a formal request for the lifting thereof, which the SEC must hear within fifteen (15) days from filing and decide within ten (10) days from the hearing.

It appears that the *CDO* under Section 5(i) is similar to the *CDO* under Section 64.1. Both require a common finding of a need to prevent fraud or injury to the investing public. At the same time, no mention is made whether the *CDO* defined under Section 5(i) may be issued *ex-parte*, while the *CDO* under Section 64.1 requires "grave and irreparable" injury, language absent in Section 5(i). Notwithstanding the similarities between Section 5(i) and Section 64.1, it remains clear that the *CDO* issued under Section 53.3 is a distinct creation from that under Section 64.

The Court of Appeals cited the *CDO* as having been issued in violation of the constitutional provision on due process, which requires both prior notice and prior hearing.[53] Yet interestingly, the *CDO* as contemplated in Section 53.3 or in Section 64, may be issued "*ex-parte*" (under Section 53.3) or "without necessity of hearing" (under Section 64.1). Nothing in these provisions impose a requisite hearing before the *CDO* may be issued thereunder. Nonetheless, there are identifiable requisite

[53] *Id.* at 131.

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actions on the part of the SEC that must be undertaken before the *CDO* may be issued either under Section 53.3 or Section 64. In the case of Section 53.3, the SEC must make two findings: (1) that such person has engaged in any such act or practice, and (2) that there is a reasonable likelihood of continuing, (or engaging in) further or future violations by such person. In the case of Section 64, the SEC must adjudge that the act, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public."

Noticeably, the *CDO* is not precisely clear whether it was issued on the basis of Section 5.1, Section 53.3 or Section 64 of the SRC. The *CDO* actually refers and cites all three provisions, yet it is apparent that a singular *CDO* could not be founded on Section 5.1, Section 53.3 and Section 64 collectively. At the very least, the *CDO* under Section 53.3 and under Section 64 have their respective requisites and terms.

GSIS was similarly cagey in its petition before the SEC, it demurring to state whether it was seeking the *CDO* under Section 5.1, Section 53.3, or Section 64. Considering that injunctive relief generally avails upon the showing of a clear legal right to such relief, the inability or unwillingness to lay bare the precise statutory basis for the prayer for injunction is an obvious impediment to a successful application. Nonetheless, the error of the SEC in granting the *CDO* without stating which kind of *CDO* it was issuing is more unpardonable, as it is an act that contravenes due process of law.

We have particularly required, in administrative proceedings, that the body or tribunal "in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered."[54] This requirement is vital, as its fulfillment would afford the adverse party the opportunity to interpose a reasoned and intelligent appeal that is responsive to the grounds cited against it. The *CDO* extended by the SEC fails to provide the needed reasonable clarity of the rationale behind its issuance.

[54] *Ang Tibay v. CIR*, 69 Phil. 635, 642-644 (1940).

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The subject *CDO* first refers to Section 64, citing its provisions, then stating: "[p]rescinding from the aforequoted, there can be no doubt whatsoever that the Commission is in fact mandated to take up, if expeditiously, any verified complaint praying for the provisional remedy of a cease and desist order."[55] The *CDO* then discusses the nature of the right of GSIS to obtain the *CDO*, as well as "the urgent and paramount necessity to prevent serious damage because the stockholders' meeting is scheduled on May 28, 2008 x x x" Had the *CDO* stopped there, the unequivocal impression would have been that the order is based on Section 64.

But the *CDO* goes on to cite Section 5.1, quoting paragraphs (i) and (n) in full, ratiocinating that under these provisions, the SEC had "the power to issue cease and desist orders to prevent fraud or injury to the public and such other measures necessary to carry out the Commission's role as regulator."[56] Immediately thence, the *CDO* cites Section 53.3 as providing "that whenever it shall appear to the Commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision, any rule, regulation or order thereunder, the Commission may issue *ex-parte* a cease and desist order for a maximum period of ten (10) days, enjoining the violation and compelling compliance therewith."[57]

The citation in the *CDO* of Section 5.1, Section 53.3 and Section 64 together may leave the impression that it is grounded on all three provisions, and that may very well have been the intention of the SEC. Assuming that is so, it is legally impermissible for the SEC to have utilized both Section 53.3 and Section 64 as basis for the *CDO* at the same time. The *CDO* under Section 53.3 is premised on distinctly different requisites than the *CDO* under Section 64. Even more crucially, the lifetime of the *CDO* under Section 53.3 is confined to a definite span of ten (10) days, which is not the case with the *CDO* under Section

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[55] *Rollo*, pp. 186-187.

[56] *Id.* at 187.

[57] *Id.* at 188.

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64. This *CDO* under Section 64 may be the object of a formal request for lifting within five (5) days from its issuance, a remedy not expressly afforded to the *CDO* under Section 53.3.

Any respondent to a *CDO* which cites both Section 53.3 and Section 64 would not have an intelligent or adequate basis to respond to the same. Such respondent would not know whether the *CDO* would have a determinate lifespan of ten (10) days, as in Section 53.3, or would necessitate a formal request for lifting within five (5) days, as required under Section 64.1. This lack of clarity is to the obvious prejudice of the respondent, and is in clear defiance of the constitutional right to due process of law. Indeed, the veritable mélange that the assailed *CDO* is, with its jumbled mixture of premises and conclusions, the antithesis of due process.

Had the *CDO* issued by the SEC expressed the length of its term, perhaps greater clarity would have been offered on what Section of the SRC it is based. However, the *CDO* is precisely silent as to its lifetime, thereby precluding much needed clarification. In view of the statutory differences among the three *CDO*s under the SRC, it is essential that the SEC, in issuing such injunctive relief, identify the exact provision of the SRC on which the *CDO* is founded. Only by doing so could the adversely affected party be able to properly evaluate whatever his responses under the law.

To make matters worse for the SEC, the fact that the *CDO* was signed, much less apparently deliberated upon, by only one commissioner likewise renders the order fatally infirm.

The SEC is a collegial body composed of a Chairperson and four (4) Commissioners.[58] In order to constitute a quorum to conduct business, the presence of at least three (3) Commissioners is required.[59] In the leading case of *GMCR v. Bell*,[60] we definitively explained the nature of a collegial body, and how the act of one

[58] See SRC, Sec. 4.1.

[59] See SRC, Sec. 4.5.

[60] G.R. No. 126496, 30 April 1997, 271 SCRA 790.

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member of such body, even if the head, could not be considered as that of the entire body itself. Thus:

> We hereby declare that the NTC is a collegial body requiring a majority vote out of the three members of the commission in order to validly decide a case or any incident therein. Corollarily, the vote alone of the chairman of the commission, as in this case, the vote of Commissioner Kintanar, absent the required concurring vote coming from the rest of the membership of the commission to at least arrive at a majority decision, is not sufficient to legally render an NTC order, resolution or decision.
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> Simply put, Commissioner Kintanar is not the National Telecommunications Commission. He alone does not speak for and in behalf of the NTC. The NTC acts through a three-man body, and the three members of the commission each has one vote to cast in every deliberation concerning a case or any incident therein that is subject to the jurisdiction of the NTC. When we consider the historical milieu in which the NTC evolved into the quasi-judicial agency it is now under Executive Order No. 146 which organized the NTC as a three-man commission and expose the illegality of all memorandum circulars negating the collegial nature of the NTC under Executive Order No. 146, we are left with only one logical conclusion: the NTC is a collegial body and was a collegial body even during the time when it was acting as a one-man regime.[61]

We can adopt a virtually word-for-word observation with respect to former Commissioner Martinez and the SEC. Simply put, Commissioner Martinez is not the SEC. He alone does not speak for and in behalf of the SEC. The SEC acts through a five-person body, and the five members of the commission each has one vote to cast in every deliberation concerning a case or any incident therein that is subject to the jurisdiction of the SEC.

GSIS attempts to defend former Commissioner Martinez's action, but its argument is without merit. It cites SEC Order No. 169, Series of 2008, whereby Martinez was designated as "Officer-in-Charge of the Commission for the duration of the official travel of the Chairperson to Paris, France, to attend the 33rd Annual Conference of the [IOSCO] from May 26-30,

[61] *Id.* at 804-805.

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2008."[62] As officer-in-charge (OIC), Martinez was "authorized to sign all documents and papers and perform all other acts and deeds as may be necessary in the day-to-day operation of the Commission."

It is clear that Martinez was designated as OIC because of the official travel of only one member, Chairperson Fe Barin. Martinez was not commissioned to act as the SEC itself. At most, he was to act in place of Chairperson Barin in the exercise of her duties as Chairperson of the SEC. Under Section 4.3 of the SRC, the Chairperson is the chief executive officer of the SEC, and thus empowered to "execute and administer the policies, decisions, orders and resolutions approved by the Commission," as well as to "have the general executive direction and supervision of the work and operation of the Commission."[63] It is in relation to the exercise of these duties of the Chairperson, and not to the functions of the Commission, that Martinez was "authorized to sign all documents and papers and perform all other acts and deeds as may be necessary in the day-to-day operation of the Commission."

GSIS likewise cites, as authority for Martinez's unilateral issuance of the *CDO*, Section 4.6 of the SRC, which states that the SEC "may, for purposes of efficiency, delegate any of its functions to any department or office of the Commission, an individual Commissioner or staff member of the Commission except its review or appellate authority and its power to adopt, alter and supplement any rule or regulation." Reliance on this provision is inappropriate. First, there is no convincing demonstration that the SEC had delegated to Martinez the authority to issue the *CDO*. The SEC Order designating Martinez as OIC only authorized him to exercise the functions of the absent Chairperson, and not of the Commission. If the Order is read as enabling Martinez to issue the *CDO* in behalf of the Commission, it would be akin to conceding that the SEC Chairperson, acting alone, can issue the *CDO* in behalf of the SEC itself. That again contravenes our holding in *GMCR v. Bell*.

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[62] *Rollo*, p. 63.

[63] SRC, Sec. 4.3.

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In addition, it is clear under Section 4.6 that the ability to delegate functions to a single commissioner does not extend to the exercise of the review or appellate authority of the SEC. The issuance of the *CDO* is an act of the SEC itself done in the exercise of its original jurisdiction to review actual cases or controversies. If it has not been clear to the SEC before, it should be clear now that its power to issue a *CDO* can not, under the SRC, be delegated to an individual commissioner.

V.

In the end, even assuming that the events narrated in our Resolution in A.M. No. 08-8-11-CA constitute sufficient basis to nullify the assailed decision of the Court of Appeals, still it remains clear that the reliefs GSIS seeks of this Court have no basis in law. Notwithstanding the black mark that stains the appellate court's decision, the first paragraph of its *fallo*, to the extent that it dismissed the complaint of GSIS with the SEC for lack of jurisdiction and consequently nullified the *CDO* and *SDO*, defies unbiased scrutiny and deserves affirmation.

A.

In its dispositive portion, the Court of Appeals likewise pronounced that the complaint filed by GSIS with the SEC should be barred from being considered "as an election contest in the RTC", given that the fifteen (15) day prescriptive period to file an election contest with the RTC, under Section 3, Rule 6 of the Interim Rules, had already run its course.[64] Yet no such relief was requested by private respondents in their petition for *certiorari* filed with the Court of Appeals.[65] Without disputing the legal predicates surrounding this pronouncement, we note that its tenor, if not the text, unduly suggests an unwholesome pre-emptive strike. Given our observations in A.M. No. 08-8-11-CA of the "undue interest" exhibited by the author of the appellate court decision, such declaration is best deleted. Nonetheless, we do trust that any court or tribunal that may be

[64] *Rollo*, p. 141.

[65] *Id.* at 246.

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confronted with that premise adverted to by the Court of Appeals would know how to properly treat the same.

B.

Finally, we turn to the sanction on the lawyers of GSIS imposed by the Court of Appeals.

Nonetheless, we find that as a matter of law the sanctions are unwarranted. The charter of GSIS[66] is unique among government owned or controlled corporations with original charter in that it allocates a role for its internal legal counsel that is in conjunction with or complementary to the Office of the Government Corporate Counsel (OGCC), which is the statutory legal counsel for GOCCs. Section 47 of GSIS charter reads:

> SEC. 47. Legal Counsel.—The Government Corporate Counsel shall be the legal adviser and consultant of GSIS, but GSIS may assign to the Office of the Government Corporate Counsel (OGCC) cases for legal action or trial, issues for legal opinions, preparation and review of contracts/agreements and others, as GSIS may decide or determine from time to time: Provided, however, That the present legal services group in GSIS shall serve as its in-house legal counsel.
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> The GSIS may, subject to approval by the proper court, deputize any personnel of the legal service group to act as special sheriff in the enforcement of writs and processes issued by the court, quasi-judicial agencies or administrative bodies in cases involving GSIS.[67]

The designation of the OGCC as the legal counsel for GOCCs is set forth by statute, initially by Rep. Act No. 3838, then reiterated by the Administrative Code of 1987.[68] Given that the designation is statutory in nature, there is no impediment for Congress to impose a different role for the OGCC with respect to particular GOCCs it may charter. Congress appears to have done so with respect to GSIS, designating the OGCC as a "legal adviser and consultant," rather than as counsel to GSIS. Further, the law clearly vests unto GSIS the discretion, rather than the

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[66] P.D. No. 1146, as amended by Rep. Act No. 8291 (1997).

[67] P.D. No. 1146, Sec. 47, as amended by Rep. Act No. 8291 (1997).

[68] See *Phividec v. Capitol Steel*, 460 Phil. 493, 500-501 (2003).

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duty, to assign cases to the OGCC for legal action, while designating the present legal services group of GSIS as "in-house legal counsel." This situates GSIS differently from the Land Bank of the Philippines, whose own in-house lawyers have persistently argued before this Court to no avail on their alleged right to file petitions before us instead of the OGCC.[69] Nothing in the Land Bank charter[70] vested it with the discretion to choose when to assign cases to the OGCC, notwithstanding the establishment of its own Legal Department.[71]

Congress is not bound to retain the OGCC as the primary or exclusive legal counsel of GSIS even if it performs such a role for other GOCCs. To bind Congress to perform in that manner would be akin to elevating the OGCC's statutory role to irrepealable status, and it is basic that Congress is barred from passing irrepealable laws.[72]

C.

We close by acknowledging that the surrounding circumstances behind these petitions are unfortunate, given the events as narrated in A.M. No. 08-8-11-CA. While due punishment has been meted on the errant magistrates, the corporate world may very well be reminded that the members of the judiciary are not to be viewed or treated as mere pawns or puppets in the internecine fights businessmen and their associates wage against other businessmen in the quest for corporate dominance. In the end,

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[69] See *e.g.*, the Resolutions dated 27 April 2005 & 13 July 2005, *Land Bank v. Luciano*, G.R. No. 165428.

[70] Rep. Act No. 3844 (1963).

[71] See Section 91, Rep. Act No. 3844 (1963). "SECTION 91. *Legal Counsel*.—The Secretary of Justice shall be *ex-officio* legal adviser of the Bank. Any provision of law to the contrary notwithstanding, the Land Bank shall have its own Legal Department, the chief and members of which shall be appointed by the Board of Trustees. The composition, budget and operating expenses of the Office of the Legal Counsel and the salaries and traveling expenses of its officers and employees shall be fixed by the Board of Trustees and paid by the Bank."

[72] See *City of Davao v. Regional Trial Court of Davao City, Branch XII*, G.R. No. 127383, 18 August 2005, 467 SCRA 280.

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the petitions did afford this Court to clarify consequential points of law, points rooted in principles which will endure long after the names of the participants in these cases have been forgotten.

WHEREFORE, the petition in G.R. No. 184275 is *EXPUNGED* for lack of capacity of the petitioner to bring forth the suit.

The petition in G.R. No. 183905 is *DISMISSED* for lack of merit except that the second and third paragraphs of the *fallo* of the assailed decision dated 23 July 2008 of the Court of Appeals, including subparagraphs (1), (2), 2(a), 2(b), 2(c) and 2(d) under the second paragraph, are hereby *DELETED*.

No pronouncements as to costs.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Velasco, Jr., and *Brion, JJ.,* concur.

THIRD DIVISION

[G.R. No. 184791. April 16, 2009]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PEDRO NOGPO, JR. a.k.a. "TANDODOY",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; SWEETHEART THEORY; NOT CREDIBLE ON THE BARE TESTIMONY OF THE ACCUSED; SUCH THEORY MUST BE STRONGLY CORROBORATED BY CLEAR AND CONVINCING EVIDENCE.— Not denying having carnal knowledge of private complainant, accused-appellant seeks to establish that said act was free and voluntary on their part, as they were lovers.