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[G.R. No. 135808. October 6, 2008]

SECURITIES AND EXCHANGE COMMISSION, *petitioner, vs.* **INTERPORT RESOURCES CORPORATION, MANUEL S. RECTO, RENE S. VILLARICA, PELAGIO RICALDE, ANTONIO REINA, FRANCISCO ANONUEVO, JOSEPH SY and SANTIAGO TANCHAN, JR.,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; REVISED SECURITIES ACT; THE MERE ABSENCE OF IMPLEMENTING RULES CANNOT EFFECTIVELY INVALIDATE PROVISIONS OF LAW WHERE A REASONABLE CONSTRUCTION THAT WILL SUPPORT THE LAW MAY BE GIVEN; SUSTAINED. — In the absence of any constitutional or statutory infirmity, which may concern Sections 30 and 36 of the Revised Securities Act, this Court upholds these provisions as legal and binding. It is well settled that every law has in its favor the presumption of validity. Unless and until a specific provision of the law is declared invalid and unconstitutional, the same is valid and binding for all intents and purposes. The mere absence of implementing rules cannot effectively invalidate provisions of law, where a reasonable construction that will support the law may be given. The necessity for vesting administrative authorities with power to make rules and regulations is based on the impracticability of lawmakers' providing general regulations for various and varying details of management. To rule that the absence of implementing rules can render ineffective an act of Congress, such as the Revised Securities Act, would empower the administrative bodies to defeat the legislative will by delaying the implementing rules. To assert that a law is less than a law, because it is made to depend on a future event or act, is to rob the Legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know. It is well established that administrative authorities have the power to promulgate rules

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and regulations to implement a given statute and to effectuate its policies, provided such rules and regulations conform to the terms and standards prescribed by the statute as well as purport to carry into effect its general policies. Nevertheless, it is undisputable that the rules and regulations cannot assert for themselves a more extensive prerogative or deviate from the mandate of the statute. Moreover, where the statute contains sufficient standards and an unmistakable intent, as in the case of Sections 30 and 36 of the Revised Securities Act, there should be no impediment to its implementation. In all, this Court rules that no implementing rules were needed to render effective Sections 8, 30 and 36 of the Revised Securities Act; nor was the PED Rules of Practice and Procedure invalid, prior to the enactment of the Securities Regulations Code, for failure to provide parties with the right to cross-examine the witnesses presented against them. Thus, the respondents may be investigated by the appropriate authority under the proper rules of procedure of the Securities Regulations Code for violations of Sections 8, 30, and 36 of the Revised Securities Act.

2. ID.; ID.; INSIDER'S DUTY TO DISCLOSE WHEN TRADING; EXPLAINED. — *Section 30 of the Revised Securities Act* Section 30 of the Revised Securities Act reads: Sec. 30. **Insider's duty to disclose when trading.** — (a) It shall be unlawful for an insider to sell or buy a security of the issuer, if he knows a fact of special significance with respect to the issuer or the security that is not generally available, unless (1) the insider proves that the fact is generally available or (2) if the other party to the transaction (or his agent) is identified, (a) the insider proves that the other party knows it, or (b) that other party in fact knows it from the insider or otherwise. (b) "Insider" means (1) the issuer, (2) a director or officer of, or a person controlling, controlled by, or under common control with, the issuer, (3) a person whose relationship or former relationship to the issuer gives or gave him access to a fact of special significance about the issuer or the security that is not generally available, or (4) a person who learns such a fact from any of the foregoing insiders as defined in this subsection, with knowledge that the person from whom he learns the fact is such an insider. (c) A fact is "of special significance" if (a) in addition to being material it would be likely, on being made generally available, to affect the market price of a security to a significant extent, or (b) a reasonable person would consider

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it especially important under the circumstances in determining his course of action in the light of such factors as the degree of its specificity, the extent of its difference from information generally available previously, and its nature and reliability. (d) This section shall apply to an insider as defined in subsection (b) (3) hereof only to the extent that he knows of a fact of special significance by virtue of his being an insider. The provision explains in simple terms that the insider's misuse of nonpublic and undisclosed information is the gravamen of illegal conduct. The intent of the law is the protection of investors against fraud, committed when an insider, using secret information, takes advantage of an uninformed investor. Insiders are obligated to disclose material information to the other party or abstain from trading the shares of his corporation. This duty to disclose or abstain is based on two factors: first, the existence of a relationship giving access, directly or indirectly, to information intended to be available only for a corporate purpose and not for the personal benefit of anyone; and second, the inherent unfairness involved when a party takes advantage of such information knowing it is unavailable to those with whom he is dealing. Under the law, what is required to be disclosed is a ***fact of "special significance"*** which may be (a) a material fact which would be likely, on being made generally available, to affect the market price of a security to a significant extent, or (b) one which a reasonable person would consider especially important in determining his course of action with regard to the shares of stock.

3. ID.; ID.; BENEFICIAL OWNER; DEFINED AND CONSTRUED. — Section 36(a) of the Revised Securities Act is a straightforward provision that imposes upon (1) a beneficial owner of more than ten percent of any class of any equity security or (2) a director or any officer of the issuer of such security, the obligation to submit a statement indicating his or her ownership of the issuer's securities and such changes in his or her ownership thereof. x x x Section 36(a) refers to the "beneficial owner." *Beneficial owner* has been defined in the following manner: *[F]irst*, to indicate the interest of a beneficiary in trust property (also called "equitable ownership"); and *second*, to refer to the power of a corporate shareholder to buy or sell the shares, though the shareholder is not registered in the corporation's books as the owner. Usually, beneficial ownership is distinguished from naked ownership, which is

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the enjoyment of all the benefits and privileges of ownership, as against possession of the bare title to property. Even assuming that the term "beneficial ownership" was vague, it would not affect respondents' case, where the respondents are directors and/or officers of the corporation, who are specifically required to comply with the reportorial requirements under Section 36(a) of the Revised Securities Act. The validity of a statute may be contested only by one who will sustain a direct injury as a result of its enforcement.

4. ID.; ID.; PURPOSE FOR THE ENACTMENT OF THE SPECIFIC PROVISIONS THEREOF, CLARIFIED. — Sections 30 and 36 of the Revised Securities Act were enacted to promote full disclosure in the securities market and prevent unscrupulous individuals, who by their positions obtain non-public information, from taking advantage of an uninformed public. No individual would invest in a market which can be manipulated by a limited number of corporate insiders. Such reaction would stifle, if not stunt, the growth of the securities market. To avert the occurrence of such an event, Section 30 of the Revised Securities Act prevented the unfair use of non-public information in securities transactions, while Section 36 allowed the SEC to monitor the transactions entered into by corporate officers and directors as regards the securities of their companies. The Revised Securities Act was approved on 23 February 1982. The fact that the Full Disclosure Rules were promulgated by the SEC only on 24 July 1996 does not render ineffective in the meantime Section 36 of the Revised Securities Act. It is already unequivocal that the Revised Securities Act requires full disclosure and the Full Disclosure Rules were issued to make the enforcement of the law more consistent, efficient and effective. It is equally reasonable to state that the disclosure forms later provided by the SEC, do not, in any way imply that no compliance was required before the forms were provided. The effectivity of a statute which imposes reportorial requirements cannot be suspended by the issuance of specified forms, especially where compliance therewith may be made even without such forms. The forms merely made more efficient the processing of requirements already identified by the statute. For the same reason, the Court of Appeals made an evident mistake when it ruled that no civil, criminal or administrative actions can possibly be had against the respondents in connection with Sections 8, 30 and 36 of

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the Revised Securities Act due to the absence of implementing rules. These provisions are sufficiently clear and complete by themselves. Their requirements are specifically set out, and the acts which are enjoined are determinable. In particular, Section 8 of the Revised Securities Act is a straightforward enumeration of the procedure for the registration of securities and the particular matters which need to be reported in the registration statement thereof. The Decision, dated 20 August 1998, provides no valid reason to exempt the respondent IRC from such requirements. The lack of implementing rules cannot suspend the effectivity of these provisions. Thus, this Court cannot find any cogent reason to prevent the SEC from exercising its authority to investigate respondents for violation of Section 8 of the Revised Securities Act.

5. ID.; ID.; INVESTIGATIVE DISTINGUISHED FROM ADJUDICATIVE FUNCTIONS. — In *Cariño v. Commission on Human Rights*, this Court sets out the distinction between investigative and adjudicative functions, thus: "Investigate," commonly understood, means to examine, explore, inquire or delve or probe into, research on, study. The dictionary definition of "investigate" is "to observe or study closely; inquire into systematically: "to search or inquire into" x x x to subject to an official probe x x x: to conduct an official inquiry." The purpose of an investigation, of course is to discover, to find out, to learn, obtain information. Nowhere included or intimated is the notion of settling, deciding or resolving a controversy involved in the facts inquired into by application of the law to the facts established by the inquiry. The legal meaning of "investigate" is essentially the same: "(t)o follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry;" "to inquire; to make an investigation," "investigation" being in turn described as "(a)n administrative function, the exercise of which ordinarily does not require a hearing. 2 Am J2d Adm L Sec. 257; x x x an inquiry, judicial or otherwise, for the discovery and collection of facts concerning a certain matter or matters." "Adjudicate," commonly or popularly understood, means to adjudge, arbitrate, judge, decide, determine, resolve, rule on, settle. The dictionary defines the term as "to settle finally (the rights and duties of parties to a court case) on the merits of issues raised: x x x to pass

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judgment on: settle judicially: x x x act as judge." And "adjudge" means "to decide or rule upon as a judge or with judicial or quasi-judicial powers: x x x to award or grant judicially in a case of controversy x x x." In a legal sense, "adjudicate" means: "To settle in the exercise of judicial authority. To determine finally. Synonymous with *adjudge* in its strictest sense;" and "adjudge" means: "To pass on judicially, to decide, settle, or decree, or to sentence or condemn. x x x Implies a judicial determination of a fact, and the entry of a judgment." There is no merit to the respondent's averment that the sections under Chapter 3, Book VII of the Administrative Code, do not distinguish between investigative and adjudicatory functions. Chapter 3, Book VII of the Administrative Code, is unequivocally entitled "Adjudication."

6. POLITICAL LAW; ADMINISTRATIVE LAW; DUE PROCESS; REQUIRES ONLY THAT EVERY LITIGANT BE GIVEN REASONABLE OPPORTUNITY TO APPEAR AND DEFEND HIS RIGHT AND TO INTRODUCE RELEVANT EVIDENCE IN HIS FAVOR; APPLICATION IN CASE AT BAR. — This is not to say that administrative bodies performing adjudicative functions are required to strictly comply with the requirements of Chapter 3, Rule VII of the Administrative Code, particularly, the right to cross-examination. It should be noted that under Section 2.2 of Executive Order No. 26, issued on 7 October 1992, abbreviated proceedings are prescribed in the disposition of administrative cases: 2. *Abbreviation of Proceedings*. All administrative agencies are hereby directed to adopt and include in their respective Rules of Procedure the following provisions: x x x 2.2 Rules adopting, unless otherwise provided by special laws and without prejudice to Section 12, Chapter 3, Book VII of the Administrative Code of 1987, the mandatory use of affidavits in lieu of direct testimonies and the preferred use of depositions whenever practicable and convenient. As a consequence, in proceedings before administrative or quasi-judicial bodies, such as the National Labor Relations Commission and the Philippine Overseas Employment Agency, created under laws which authorize summary proceedings, decisions may be reached on the basis of position papers or other documentary evidence only. They are not bound by technical rules of procedure and evidence. In fact, the hearings before such agencies do not connote full adversarial proceedings. Thus, it is not necessary

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for the rules to require affiants to appear and testify and to be cross-examined by the counsel of the adverse party. To require otherwise would negate the summary nature of the administrative or quasi-judicial proceedings. In *Atlas Consolidated Mining and Development Corporation v. Factoran, Jr.*, this Court stated that: [I]t is sufficient that administrative findings of fact are supported by evidence, or negatively stated, it is sufficient that findings of fact are not shown to be unsupported by evidence. Substantial evidence is all that is needed to support an administrative finding of fact, and substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." In order to comply with the requirements of due process, what is required, among other things, is that every litigant be given reasonable opportunity to appear and defend his right and to introduce relevant evidence in his favor.

7. ID.; ID.; ABSOLUTE REPEAL OF LAW GENERALLY DEPRIVED THE COURT OF ITS AUTHORITY TO PENALIZE THE PERSON CHARGED WITH THE VIOLATION OF THE OLD LAW PRIOR TO ITS REPEAL; EXCEPTION. — The Securities Regulations Code absolutely repealed the Revised Securities Act. While the absolute repeal of a law generally deprives a court of its authority to penalize the person charged with the violation of the old law prior to its appeal, an exception to this rule comes about when the repealing law punishes the act previously penalized under the old law. The Court, in *Benedicto v. Court of Appeals*, sets down the rules in such instances: As a rule, an absolute repeal of a penal law has the effect of depriving the court of its authority to punish a person charged with violation of the old law prior to its repeal. This is because an unqualified repeal of a penal law constitutes a legislative act of rendering legal what had been previously declared as illegal, such that the offense no longer exists and it is as if the person who committed it never did so. There are, however, **exceptions** to the rule. One is the inclusion of a saving clause in the repealing statute that provides that the repeal shall have no effect on pending actions. Another exception is where the repealing act **reenacts** the former statute and punishes the act previously penalized under the old law. In such instance, the act committed before the reenactment continues to be an offense in the statute books and pending

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cases are not affected, regardless of whether the new penalty to be imposed is more favorable to the accused.

8. MERCANTILE LAW; SECURITIES REGULATIONS CODE; SECURITIES AND EXCHANGE COMMISSION; RETAINS LIMITED INVESTIGATORY POWERS; CLARIFIED. — Section 53 of the Securities Regulations Code clearly provides that criminal complaints for violations of rules and regulations enforced or administered by the SEC shall be referred to the Department of Justice (DOJ) for preliminary investigation, while the SEC nevertheless retains limited investigatory powers. Additionally, the SEC may still impose the appropriate administrative sanctions under Section 54 of the aforementioned law. In *Morato v. Court of Appeals*, the cases therein were still pending before the PED for investigation and the SEC for resolution when the Securities Regulations Code was enacted. The case before the SEC involved an intra-corporate dispute, while the subject matter of the other case investigated by the PED involved the schemes, devices, and violations of pertinent rules and laws of the company's board of directors. The enactment of the Securities Regulations Code did not result in the dismissal of the cases; rather, this Court ordered the transfer of one case to the proper regional trial court and the SEC to continue with the investigation of the other case. Under Section 45 of the Revised Securities Act, which is entitled *Investigations, Injunctions and Prosecution of Offenses*, the Securities Exchange Commission (SEC) has the authority to "make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Act x x x." After a finding that a person has violated the Revised Securities Act, the SEC may refer the case to the DOJ for preliminary investigation and prosecution. While the SEC investigation serves the same purpose and entails substantially similar duties as the preliminary investigation conducted by the DOJ, this process cannot simply be disregarded. In *Baviera v. Paglinawan*, this Court enunciated that a criminal complaint is first filed with the SEC, which determines the existence of **probable cause**, before a preliminary investigation can be commenced by the DOJ. In the aforecited case, the complaint filed directly with the DOJ was dismissed on the ground that it should have been filed first with the SEC. Similarly, the offense was a violation of the Securities Regulations Code, wherein the procedure for

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criminal prosecution was reproduced from Section 45 of the Revised Securities Act. This Court affirmed the dismissal, which it explained thus: The Court of Appeals held that under the above provision, a criminal complaint for violation of any law or rule administered by the SEC must first be filed with the latter. If the Commission finds that there is probable cause, then it should refer the case to the DOJ. Since petitioner failed to comply with the foregoing procedural requirement, the DOJ did not gravely abuse its discretion in dismissing his complaint in I.S. No. 2004-229. A criminal charge for violation of the Securities Regulation Code is a specialized dispute. Hence, it must first be referred to an administrative agency of special competence, *i.e.*, the SEC. Under the doctrine of primary jurisdiction, courts will not determine a controversy involving a question within the jurisdiction of the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the specialized knowledge and expertise of said administrative tribunal to determine technical and intricate matters of fact. The Securities Regulation Code is a special law. Its enforcement is particularly vested in the SEC. Hence, all complaints for any violation of the Code and its implementing rules and regulations should be filed with the SEC. Where the complaint is criminal in nature, the SEC shall indorse the complaint to the DOJ for preliminary investigation and prosecution as provided in Section 53.1 earlier quoted. We thus agree with the Court of Appeals that petitioner committed a fatal procedural lapse when he filed his criminal complaint directly with the DOJ. Verily, no grave abuse of discretion can be ascribed to the DOJ in dismissing petitioner's complaint. The said case puts in perspective the nature of the investigation undertaken by the SEC, which is a requisite before a criminal case may be referred to the DOJ. The Court declared that it is imperative that the criminal prosecution be initiated before the SEC, the administrative agency with the special competence.

9. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; INTERRUPTS THE PRESCRIPTION PERIOD; APPLICATION IN CASE AT BAR. — It is an established doctrine that a preliminary investigation interrupts the prescription period. A preliminary investigation is essentially a determination whether an offense has been committed, and whether there is probable cause for the accused to have committed an offense: A preliminary investigation is

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merely inquisitorial, and it is often the only means of discovering the persons who may be reasonably charged with a crime, to enable the fiscal to prepare the complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed or whether there is probable cause to believe that the accused is guilty thereof. To reiterate, the SEC must first conduct its investigations and make a finding of probable cause in accordance with the doctrine pronounced in *Baviera v. Paglinawan*. In this case, the DOJ was precluded from initiating a preliminary investigation since the SEC was halted by the Court of Appeals from continuing with its investigation. Such a situation leaves the prosecution of the case at a standstill, and neither the SEC nor the DOJ can conduct any investigation against the respondents, who, in the first place, sought the injunction to prevent their prosecution. All that the SEC could do in order to break the impasse was to have the Decision of the Court of Appeals overturned, as it had done at the earliest opportunity in this case. Therefore, the period during which the SEC was prevented from continuing with its investigation should not be counted against it. The law on the prescription period was never intended to put the prosecuting bodies in an impossible bind in which the prosecution of a case would be placed way beyond their control; for even if they avail themselves of the proper remedy, they would still be barred from investigating and prosecuting the case. Indubitably, the prescription period is interrupted by commencing the proceedings for the prosecution of the accused. In criminal cases, this is accomplished by initiating the preliminary investigation. The prosecution of offenses punishable under the Revised Securities Act and the Securities Regulations Code is initiated by the filing of a complaint with the SEC or by an investigation conducted by the SEC *motu proprio*. Only after a finding of probable cause is made by the SEC can the DOJ instigate a preliminary investigation. Thus, the investigation that was commenced by the SEC in 1995, soon after it discovered the questionable acts of the respondents, effectively interrupted the prescription period. Given the nature and purpose of the investigation conducted by the SEC, which is equivalent to the preliminary investigation conducted by the DOJ in criminal cases, such investigation would surely interrupt the prescription period.

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TINGA, *J., concurring opinion*:

1. MERCANTILE LAW; SECURITIES ACT; SECURITIES REGULATION; RATIONALE. — The securities market is imbued with public interest and as such it is regulated. Specifically, the reasons given for securities regulation are (1) to protect investors, (2) to supply the informational needs of investors, (3) to ensure that stock prices conform to the fundamental value of the companies traded, (4) to allow shareholders to gain greater control over their corporate managers, and (5) to foster economic growth, innovation and access to capital.

2. ID.; ID.; ID.; DISCLOSURE REGULATION; JUSTIFIED. — Disclosure regulation requires issuers of securities to make public a large amount of financial information to actual and potential investors. The standard justification for disclosure rules is that the managers of the issuing firm have more information about the financial health and future of the firm than investors who own or are considering the purchase of the firm's securities. Financial activity regulation consists of rules about traders of securities and trading on or off the stock exchange. A prime example of this form of regulation is the set of rules against trading by insiders.

3. ID.; ID.; INSIDER TRADING; CONSTRUED. — In its barest essence, insider trading involves the trading of securities based on knowledge of material information not disclosed to the public at the time. Such activity is generally prohibited in many jurisdiction, including our own, though the particular scope and definition of "insider trading" depends on the legislation or case law of each jurisdiction. In the United States, the rule has been stated as "that anyone who, for trading for his own account in the securities of a corporation has 'access, directly or indirectly, to information intended to be available only for a corporate purpose and not for the personal benefit of anyone' may not take 'advantage of such information knowing it is unavailable to those with whom he is dealing,' *i.e.*, the investing public."

4. ID.; ID.; SECURITIES AND EXCHANGE COMMISSION; FUNCTION TO PROTECT THE INTEREST OF ORDINARY STOCKHOLDERS AND INVESTORS, JUSTIFIED. — The

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ability of the SEC to effectively regulate the securities market depends on the breadth of its discretion to undertake regulatory activities. The intractable adherents of *laissez-faire* absolutism may decry the fact that there exists an SEC in the first place, yet it is that body which assures the protection of interest of ordinary stockholders and investors in the capital markets, interests which may be overlooked by the issuers of securities and their corporate overseers whose own interest may not necessarily align with that of the investing public. A "free market" that is not a "fair market" is not truly free, even if left unshackled by the Stated as it would in fact be shackled by the uninhibited greed of only the largest players. Respondents essentially contend that the SEC is precluded from enforcing its statutory powers unless it first translates the statute into a more comprehensive set of rules. Without denigrating the SEC's delegated rule-making power, each provision of the law already constitutes an executable command from the legislature. Any refusal on the part of the SEC to enforce the statute on the premise that it had yet to undergo the gauntlet of administrative interpretation is derelict to that body's legal mandate. By no means is the Congress impervious to the concern that certain statutory provisions are best enforced only after an administrative regulation implementing the same is promulgated. In such cases, the legislature is solicitous enough to specifically condition the enforcement of the statute upon the promulgation of the relevant administrative rules. Yet in cases where the legislature does not see fit to impose such a conditionality, the body tasked with enforcing the law has no choice but to do so. Any quibbling as to the precise meaning of the statutory language would be duly resolved through the exercise of judicial review. The revised Securities Act was later superseded by the Securities Regulation Code of 2000 (Rep. Act. No. 8799), a law which is admittedly more precise and ambitious in its regulation of such activity. The passage of that law is praiseworthy insofar as it strengthens the State's commitment to combat insider trading. And the promulgation of this decision confirms that the judiciary will not hesitate in performing its part in seeing to it that our securities laws are properly implemented and enforced.

5. ID.; ID.; ID.; INVESTIGATORY POWER THEREOF AKIN TO PRELIMINARY INVESTIGATION; UPHELD. — It should be emphasized that Sec. 45 of the Revised Securities Act

invests the SEC with the power to "make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Act or any rule or regulation thereunder, 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" and to refer criminal complaints for violations of the Act to the Department of Justice for preliminary investigation and prosecution before the proper court. The SEC's investigatory powers are obviously akin to the preliminary examination stage mentioned in *People v. Olarte.* The SEC's investigation and determination that there was indeed a violation of the provisions of the Revised Securities Act would set the stage for any further proceedings, such as preliminary investigation, that may be conducted by the DOJ after the case is referred to it by the SEC.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; FILING OF COMPLAINT FOR THE PURPOSE OF PRELIMINARY INVESTIGATION INTERRUPTS THE PERIOD OF PRESCRIPTION OF CRIMINAL RESPONSIBILITY; SUSTAINED. — This Court, in ruling in *Baviera v. Paglinawan* that the Department of Justice cannot conduct a preliminary investigation for the determination of probable cause for offenses under the Revised Securities Code, without an investigation first had by the SEC, essentially underscored that the exercise is a two-stage process. The procedure is similar to the two-phase preliminary investigation prior to the prosecution of a criminal case in court under the old rules. The venerable J.B.L. Reyes in *People v. Olarte* finally settled a long standing jurisprudential conflict at the time by holding that the **filing of the complaint in the Municipal Court, even if it be merely for purposes of preliminary examination or investigation, should, and does, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on its merits.** The court gave three reasons in support of its decision, thus: x x x Several reasons buttress this conclusions: First the text of Article 91 of the Revised Penal Code, in declaring that the period of prescription "shall be interrupted by the filing of the complaint or information" without distinguishing whether the complaint is

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filed in the court for preliminary examination or investigation merely, or for action on the merits. Second, even if the court where the complaint or information is filed may only proceed to investigate the case its actuations already represent the initial step of the proceedings against the offender. Third, it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control. All that the victim of the offense may do not on his part to initiate the prosecution is to file the requisite complaint.

CARPIO, *J., dissenting opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; PRESCRIPTION OF ACTIONS; ONLY THE INSTITUTION OF JUDICIAL PROCEEDINGS CAN INTERRUPT THE RUNNING OF THE PRESCRIPTIVE PERIOD. — In *Zaldivia v. Reyes, Jr.,* the Court ruled that the proceedings referred to in Section 2 of Act No. 3326 are **judicial proceedings and not administrative proceedings**. The Court held: x x x **This means that the running of the prescriptive period shall be halted on the date the case is actually filed in court and not on any date before that.** This interpretation is in consonance with the afore-quoted Act No. 3326 which says that the period of prescription shall be suspended "when proceedings are instituted against the guilty party." **The proceedings referred to in Section 2 thereof are "judicial proceedings," ** contrary to the submission of the Solicitor General that they include administrative proceedings. His contention is that we must not distinguish as the law does not distinguish. As a matter of fact, it does. Indeed, Section 2 of Act No. 3326 expressly refers to the **"institution of judicial proceedings."** Contrary to the majority opinion's claim that "a preliminary investigation interrupts the prescriptive period," **only the institution of judicial proceedings can interrupt the running of the prescriptive period**. Thus, in the present case, since no criminal case was filed in any court against respondents since 1994 for violation of the Code, the prescriptive period of twelve years under Section 1 of Act No. 3326 has now expired.

2. MERCANTILE LAW; SECURITIES REGULATION CODE; SECURITIES AND EXCHANGE COMMISSION; EMPOWERS ONLY TO CONDUCT ADMINISTRATIVE INVESTIGATIONS AND TO IMPOSE FINES AND OTHER ADMINISTRATIVE

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SANCTIONS; CONSTRUED. — The SEC has no jurisdiction to institute judicial proceedings against respondents for criminal violation of the Code. Even if the Court of Appeals did not issue the injunction, the SEC could still not have instituted any judicial proceedings against respondents for criminal violation of the Code. The Code empowers the SEC to conduct **only administrative investigations and to impose fines and other administrative sanctions** against violators of the Code. Section 54.2 of the Code states that the "imposition of x x x administrative sanctions shall be without prejudice to the filing of criminal charges against the individuals responsible for the violation." **Thus, the criminal charges may proceed separately and independently of the administrative proceedings.** Under Section 53.1 of the Code, jurisdiction to institute judicial proceedings against respondents for criminal violation of the Code **lies exclusively** with the Department of Justice (DOJ). Section 53.1 of the Code expressly states that **"all criminal complaints for violations of this Code x x x shall be referred to the Department of Justice for preliminary investigation and prosecution before the proper court."** No court ever enjoined the DOJ to institute judicial proceedings against respondents for criminal violation of the Code. Nothing prevented the DOJ's National Bureau of Investigation from investigating the alleged criminal violations of the Code by respondents. Thereafter, the DOJ could have conducted a preliminary investigation and instituted judicial proceedings against respondents. The DOJ did not and prescription has now set in.

APPEARANCES OF COUNSEL

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D E C I S I O N

CHICO-NAZARIO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision,[1] dated 20 August 1998, rendered by the Court of Appeals in C.A.-G.R. SP No. 37036, enjoining petitioner Securities and Exchange Commission (SEC) from taking cognizance of or initiating any action against the respondent corporation Interport Resources Corporation (IRC) and members of its board of directors, respondents Manuel S. Recto, Rene S. Villarica, Pelagio Ricalde, Antonio Reina, Francisco Anonuevo, Joseph Sy and Santiago Tanchan, Jr., with respect to Sections 8, 30 and 36 of the Revised Securities Act. In the same Decision of the appellate court, all the proceedings taken against the respondents, including the assailed SEC Omnibus Orders of 25 January 1995 and 30 March 1995, were declared void.

The antecedent facts of the present case are as follows.

On 6 August 1994, the Board of Directors of IRC approved a Memorandum of Agreement with Ganda Holdings Berhad (GHB). Under the Memorandum of Agreement, IRC acquired 100% or the entire capital stock of Ganda Energy Holdings, Inc. (GEHI),[2] which would own and operate a 102 megawatt (MW) gas turbine power-generating barge. The agreement also stipulates that GEHI would assume a five-year power purchase contract with National Power Corporation. At that time, GEHI's power-generating barge was 97% complete and would go on-line by mid-September of 1994. In exchange, IRC will issue to GHB 55% of the expanded capital stock of IRC amounting to 40.88 billion shares which had a total par value of ₱488.44 million.[3]

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[1] Penned by Associate Justice Emeterio C. Cui with Associate Justices Angelina Sandoval-Gutierrez and Conrado M. Vasquez, Jr., concurring. *Rollo*, pp. 31-38.

[2] GEHI is a subsidiary wholly owned by GHB. CA *rollo*, p. 51.

[3] *Id.* at 46-49.

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On the side, IRC would acquire 67% of the entire capital stock of Philippine Racing Club, Inc. (PRCI). PRCI owns 25.724 hectares of real estate property in Makati. Under the Agreement, GHB, a member of the Westmont Group of Companies in Malaysia, shall extend or arrange a loan required to pay for the proposed acquisition by IRC of PRCI.[4]

IRC alleged that on 8 August 1994, a press release announcing the approval of the agreement was sent through facsimile transmission to the Philippine Stock Exchange and the SEC, but that the facsimile machine of the SEC could not receive it. Upon the advice of the SEC, the IRC sent the press release on the morning of 9 August 1994.[5]

The SEC averred that it received reports that IRC failed to make timely public disclosures of its negotiations with GHB and that some of its directors, respondents herein, heavily traded IRC shares utilizing this material insider information. On 16 August 1994, the SEC Chairman issued a directive requiring IRC to submit to the SEC a copy of its aforesaid Memorandum of Agreement with GHB. The SEC Chairman further directed all principal officers of IRC to appear at a hearing before the Brokers and Exchanges Department (BED) of the SEC to explain IRC's failure to immediately disclose the information as required by the Rules on Disclosure of Material Facts.[6]

In compliance with the SEC Chairman's directive, the IRC sent a letter dated 16 August 1994 to the SEC, attaching thereto copies of the Memorandum of Agreement. Its directors, Manuel Recto, Rene Villarica and Pelagio Ricalde, also appeared before the SEC on 22 August 1994 to explain IRC's alleged failure to immediately disclose material information as required under the Rules on Disclosure of Material Facts.[7]

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[4] *Id.*

[5] *Id.* at 5-6.

[6] *Rollo*, pp. 9-10.

[7] CA *rollo*, p. 6; Rules Requiring Disclosure of Material Facts by Corporations Whose Securities Are Listed in Any Stock Exchange or Registered/ Licensed Under the Securities Act, issued by the Securities and Exchange Commission on 8 February 1973; see *rollo*, p. 65.

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On 19 September 1994, the SEC Chairman issued an Order finding that IRC violated the Rules on Disclosure of Material Facts, in connection with the Old Securities Act of 1936, when it failed to make timely disclosure of its negotiations with GHB. In addition, the SEC pronounced that some of the officers and directors of IRC entered into transactions involving IRC shares in violation of Section 30, in relation to Section 36, of the Revised Securities Act.[8]

Respondents filed an Omnibus Motion, dated 21 September 1994, which was superseded by an Amended Omnibus Motion, filed on 18 October 1994, alleging that the SEC had no authority to investigate the subject matter, since under Section 8 of Presidential Decree No. 902-A,[9] as amended by Presidential Decree No. 1758, jurisdiction was conferred upon the Prosecution and Enforcement Department (PED) of the SEC. Respondents also claimed that the SEC violated their right to due process when it ordered that the respondents appear before the SEC and "show cause why no administrative, civil or criminal sanctions should be imposed on them," and, thus, shifted the burden of proof to the respondents. Lastly, they sought to have their cases tried jointly given the identical factual situations surrounding the alleged violation committed by the respondents.[10]

Respondents also filed a Motion for Continuance of Proceedings on 24 October 1994, wherein they moved for

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[8] *Rollo*, p. 10.

[9] SEC. 8. The Prosecution and Enforcement Department shall have, subject to the Commission's control and supervision, the exclusive authority to investigate, on complaint or *motu proprio*, any act or omission of the Board of Directors/ Trustees of corporations, or of partnerships, or of other associations, or of their stockholders, officers or partners, including any fraudulent devices, schemes or representations, in violation of any law or rules and regulations administered and enforced by the Commission; to file and prosecute in accordance with law and rules and regulations issued by the Commission and in appropriate cases, the corresponding criminal or civil case before the Commission or the proper court or body upon *prima facie* finding of violation of any laws or rules and regulations administered and enforced by the Commission; and to perform such other powers and functions as may be provided by law or duly delegated to it by the Commission.

[10] CA *rollo*, pp. 68-94.

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discontinuance of the investigations and the proceedings before the SEC until the undue publicity had abated and the investigating officials had become reasonably free from prejudice and public pressure.[11]

No formal hearings were conducted in connection with the aforementioned motions, but on 25 January 1995, the SEC issued an Omnibus Order which thus disposed of the same in this wise:[12]

WHEREFORE, premised on the foregoing considerations, the Commission resolves and hereby rules:

1. To create a special investigating panel to hear and decide the instant case in accordance with the Rules of Practice and Procedure Before the Prosecution and Enforcement Department (PED), Securities and Exchange Commission, to be composed of Attys. James K. Abugan, Medardo Devera (Prosecution and Enforcement Department), and Jose Aquino (Brokers and Exchanges Department), which is hereby directed to expeditiously resolve the case by conducting continuous hearings, if possible.

2. To recall the show cause orders dated September 19, 1994 requiring the respondents to appear and show cause why no administrative, civil or criminal sanctions should be imposed on them.

3. To deny the Motion for Continuance for lack of merit.

Respondents filed an Omnibus Motion for Partial Reconsideration,[13] questioning the creation of the special investigating panel to hear the case and the denial of the Motion for Continuance. The SEC denied reconsideration in its Omnibus Order dated 30 March 1995.[14]

The respondents filed a petition before the Court of Appeals docketed as C.A.-G.R. SP No. 37036, questioning the Omnibus

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[11] *Id.* at 95-107.

[12] *Id.* at 39-43.

[13] *Id.* at 152-162.

[14] *Id.* at 44.

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Orders dated 25 January 1995 and 30 March 1995.[15] During the proceedings before the Court of Appeals, respondents filed a Supplemental Motion[16] dated 16 May 1995, wherein they prayed for the issuance of a writ of preliminary injunction enjoining the SEC and its agents from investigating and proceeding with the hearing of the case against respondents herein. On 5 May 1995, the Court of Appeals granted their motion and issued a writ of preliminary injunction, which effectively enjoined the SEC from filing any criminal, civil or administrative case against the respondents herein.[17]

On 23 October 1995, the SEC filed a Motion for Leave to Quash SEC Omnibus Orders so that the case may be investigated by the PED in accordance with the SEC Rules and Presidential Decree No. 902-A, and not by the special body whose creation the SEC had earlier ordered.[18]

The Court of Appeals promulgated a Decision[19] on 20 August 1998. It determined that there were no implementing rules and regulations regarding disclosure, insider trading, or any of the provisions of the Revised Securities Acts which the respondents allegedly violated. The Court of Appeals likewise noted that it found no statutory authority for the SEC to initiate and file any suit for civil liability under Sections 8, 30 and 36 of the Revised Securities Act. Thus, it ruled that no civil, criminal or administrative proceedings may possibly be held against the respondents without violating their rights to due process and equal protection. It further resolved that absent any implementing rules, the SEC cannot be allowed to quash the assailed Omnibus Orders for the sole purpose of re-filing the same case against the respondents.[20]

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[15] *Id.* at 1-37.

[16] *CA rollo*, pp. 214-230.

[17] *Id.* at 237-238.

[18] *Id.* at 269-270.

[19] Penned by Associate Justice Emeterio C. Cui with Associate Justices Angelina Sandoval-Gutierrez and Conrado M. Vasquez, Jr., concurring. *Rollo*, pp. 31-38.

[20] *Id.* at 35-36.

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The Court of Appeals further decided that the Rules of Practice and Procedure Before the PED, which took effect on 14 April 1990, did not comply with the statutory requirements contained in the Administrative Code of 1997. Section 8, Rule V of the Rules of Practice and Procedure Before the PED affords a party the right to be present but without the right to cross-examine witnesses presented against him, in violation of Section 12(3), Chapter 3, Book VII of the Administrative Code.[21]

In the dispositive portion of its Decision, dated 20 August 1998, the Court of Appeals ruled that[22]:

> WHEREFORE, [herein petitioner SEC's] Motion for Leave to Quash SEC Omnibus Orders is hereby DENIED. The petition for *certiorari*, prohibition and *mandamus* is GRANTED. Consequently, all proceedings taken against [herein respondents] in this case, including the Omnibus Orders of January 25, 1995 and March 30, 1995 are declared null and void. **The writ of preliminary injunction is hereby made permanent and, accordingly, [SEC] is hereby prohibited from taking cognizance or initiating any action**, be they civil, criminal, or administrative against [respondents] with respect to Sections 8 (Procedure for Registration), 30 (Insider's duty to disclose when trading) and 36 (Directors, Officers and Principal Stockholders) in relation to Sections 46 (Administrative sanctions) 56 (Penalties) 44 (Liabilities of Controlling persons) and 45 (Investigations, injunctions and prosecution of offenses) of the Revised Securities Act and Section 144 (Violations of the Code) of the Corporation Code. (Emphasis provided.)

The SEC filed a Motion for Reconsideration, which the Court of Appeals denied in a Resolution[23] issued on 30 September 1998.

Hence, the present petition, which relies on the following grounds[24]:

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[21] *Id.* at 36.

[22] *Id.* at 37.

[23] *Id.* at 40-41.

[24] *Id.* at 14.

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I

THE COURT OF APPEALS ERRED WHEN IT DENIED PETITIONER'S MOTION FOR LEAVE TO QUASH THE ASSAILED SEC OMNIBUS ORDERS DATED JANUARY 25 AND MARCH 30, 1995.

II

THE COURT OF APPEALS ERRED WHEN IT RULED THAT THERE IS NO STATUTORY AUTHORITY WHATSOEVER FOR PETITIONER SEC TO INITIATE AND FILE ANY SUIT BE THEY CIVIL, CRIMINAL OR ADMINISTRATIVE AGAINST RESPONDENT CORPORATION AND ITS DIRECTORS WITH RESPECT TO SECTION 30 (INSIDER'S DUTY TO DISCOLSED [sic] WHEN TRADING) AND 36 (DIRECTORS OFFICERS AND PRINCIPAL STOCKHOLDERS) OF THE REVISED SECURITIES ACT; AND

III

THE COURT OF APPEALS ERRED WHEN IT RULED THAT RULES OF PRACTICE AND PROSECUTION BEFORE THE PED AND THE SICD RULES OF PROCEDURE ON ADMINISTRATIVE ACTIONS/ PROCEEDINGS[25] ARE INVALID AS THEY FAIL TO COMPLY WITH THE STATUTORY REQUIREMENTS CONTAINED IN THE ADMINISTRATIVE CODE OF 1987.

The petition is impressed with merit.

Before discussing the merits of this case, it should be noted that while this case was pending in this Court, Republic Act No. 8799, otherwise known as the Securities Regulation Code, took effect on 8 August 2000. Section 8 of Presidential Decree No. 902-A, as amended, which created the PED, was already repealed as provided for in Section 76 of the Securities Regulation Code:

SEC. 76. *Repealing Clause*. — The Revised Securities Act (Batas Pambansa Blg. 178), as amended, in its entirety, and Sections 2, 4 and 8 of Presidential Decree 902-A, as amended, are hereby repealed. All other laws, orders, rules and regulations, or parts thereof,

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[25] The Securities Investigation and Clearing Department (SICD) Rules of Procedure on Administrative Actions/Proceedings took effect on 29 December 1996, after the violations allegedly took place.

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inconsistent with any provision of this Code are hereby repealed or modified accordingly.

Thus, under the new law, the PED has been abolished, and the Securities Regulation Code has taken the place of the Revised Securities Act.

The Court now proceeds with a discussion of the present case.

I. Sections 8, 30 and 36 of the Revised Securities Act do not require the enactment of implementing rules to make them binding and effective.

The Court of Appeals ruled that absent any implementing rules for Sections 8, 30 and 36 of the Revised Securities Act, no civil, criminal or administrative actions can possibly be had against the respondents without violating their right to due process and equal protection, citing as its basis the case *Yick Wo v. Hopkins*.[26] This is untenable.

In the absence of any constitutional or statutory infirmity, which may concern Sections 30 and 36 of the Revised Securities Act, this Court upholds these provisions as legal and binding. It is well settled that every law has in its favor the presumption of validity. Unless and until a specific provision of the law is declared invalid and unconstitutional, the same is valid and binding for all intents and purposes.[27] The mere absence of implementing rules cannot effectively invalidate provisions of law, where a reasonable construction that will support the law may be given. In *People v. Rosenthal*,[28] this Court ruled that:

In this connection we cannot pretermit reference to the rule that "legislation should not be held invalid on the ground of uncertainty

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[26] 118 U.S. 356.

[27] *Secretary of the Department of Transportation and Communications v. Mabalot*, 428 Phil. 154, 164 (2002); *Larin v. Executive Secretary*, 345 Phil. 962, 979 (1997).

[28] 68 Phil. 328, 348 (1939).

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if susceptible of any reasonable construction that will support and give it effect. An Act will not be declared inoperative and ineffectual on the ground that it furnishes no adequate means to secure the purpose for which it is passed, if men of common sense and reason can devise and provide the means, and all the instrumentalities necessary for its execution are within the reach of those intrusted therewith." (25 R.C.L., pp. 810, 811)

In *Garcia v. Executive Secretary*,[29] the Court underlined the importance of the presumption of validity of laws and the careful consideration with which the judiciary strikes down as invalid acts of the legislature:

The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers which enjoins upon each department a becoming respect for the acts of the other departments. The theory is that as the joint act of Congress and the President of the Philippines, a law has been carefully studied and determined to be in accordance with the fundamental law before it was finally enacted.

The necessity for vesting administrative authorities with power to make rules and regulations is based on the impracticability of lawmakers' providing general regulations for various and varying details of management.[30] To rule that the absence of implementing rules can render ineffective an act of Congress, such as the Revised Securities Act, would empower the administrative bodies to defeat the legislative will by delaying the implementing rules. To assert that a law is less than a law, because it is made to depend on a future event or act, is to rob the Legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know.[31] It is well established that administrative authorities have the

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[29] G.R. No. 100883, 2 December 1991, 204 SCRA 516, 523.

[30] *Geukeko v. Araneta*, 102 Phil. 706, 712-713 (1957).

[31] *Calalang v. Williams*, 70 Phil. 726, 733 (1940).

power to promulgate rules and regulations to implement a given statute and to effectuate its policies, provided such rules and regulations conform to the terms and standards prescribed by the statute as well as purport to carry into effect its general policies. Nevertheless, it is undisputable that the rules and regulations cannot assert for themselves a more extensive prerogative or deviate from the mandate of the statute.[32] Moreover, where the statute contains sufficient standards and an unmistakable intent, as in the case of Sections 30 and 36 of the Revised Securities Act, there should be no impediment to its implementation.

The reliance placed by the Court of Appeals in *Yick Wo v. Hopkins*[33] shows a glaring error. In the cited case, this Court found unconstitutional an ordinance which gave the board of supervisors authority to refuse permission to carry on laundries located in buildings that were not made of brick and stone, because it violated the equal protection clause and was highly discriminatory and hostile to Chinese residents and not because the standards provided therein were vague or ambiguous.

This Court does not discern any vagueness or ambiguity in **Sections 30 and 36 of the Revised Securities Act**, such that the acts proscribed and/or required would not be understood by a person of ordinary intelligence.

Section 30 of the Revised Securities Act

Section 30 of the Revised Securities Act reads:

> Sec. 30. **Insider's duty to disclose when trading**. — (a) It shall be unlawful for an insider to sell or buy a security of the issuer, if he knows a fact of special significance with respect to the issuer or the security that is not generally available, unless (1) the insider proves that the fact is generally available or (2) if the other party to the transaction (or his agent) is identified, (a) the insider proves that the other party knows it, or (b) that other party in fact knows it from the insider or otherwise.

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[32] *Del Mar v. The Philippine Veterans Administration*, 151-A Phil. 792, 802 (1973).

[33] *Supra* note 23.

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(b) "Insider" means (1) the issuer, (2) a director or officer of, or a person controlling, controlled by, or under common control with, the issuer, (3) a person whose relationship or former relationship to the issuer gives or gave him access to a fact of special significance about the issuer or the security that is not generally available, or (4) a person who learns such a fact from any of the foregoing insiders as defined in this subsection, with knowledge that the person from whom he learns the fact is such an insider.

(c) A fact is "of special significance" if (a) in addition to being material it would be likely, on being made generally available, to affect the market price of a security to a significant extent, or (b) a reasonable person would consider it especially important under the circumstances in determining his course of action in the light of such factors as the degree of its specificity, the extent of its difference from information generally available previously, and its nature and reliability.

(d) This section shall apply to an insider as defined in subsection (b) (3) hereof only to the extent that he knows of a fact of special significance by virtue of his being an insider.

The provision explains in simple terms that the insider's misuse of nonpublic and undisclosed information is the gravamen of illegal conduct. The intent of the law is the protection of investors against fraud, committed when an insider, using secret information, takes advantage of an uninformed investor. Insiders are obligated to disclose material information to the other party or abstain from trading the shares of his corporation. This duty to disclose or abstain is based on two factors: first, the existence of a relationship giving access, directly or indirectly, to information intended to be available only for a corporate purpose and not for the personal benefit of anyone; and second, the inherent unfairness involved when a party takes advantage of such information knowing it is unavailable to those with whom he is dealing.[34]

In the United States (U.S.), the obligation to disclose or abstain has been traditionally imposed on corporate "insiders," particularly officers, directors, or controlling stockholders, but that definition

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[34] *In the Matter of Cady, Roberts & Co.,* 40 S.E.C. 907 (1961).

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has since been expanded.[35] The term "insiders" now includes persons whose relationship or former relationship to the issuer gives or gave them access to a fact of special significance about the issuer or the security that is not generally available, and one who learns such a fact from an insider knowing that the person from whom he learns the fact is such an insider. Insiders have the duty to disclose material facts which are known to them by virtue of their position but which are not known to persons with whom they deal and which, if known, would affect their investment judgment. In some cases, however, there may be valid corporate reasons for the nondisclosure of material information. Where such reasons exist, an issuer's decision not to make any public disclosures is not ordinarily considered as a violation of insider trading. At the same time, the undisclosed information should not be improperly used for non-corporate purposes, particularly to disadvantage other persons with whom an insider might transact, and therefore the insider must abstain from entering into transactions involving such securities.[36]

Respondents further aver that under Section 30 of the Revised Securities Act, the SEC still needed to define the following terms: ***"material fact," "reasonable person," "nature and reliability"*** and ***"generally available."*** [37] In determining whether or not these terms are vague, these terms must be evaluated in the context of Section 30 of the Revised Securities Act. To fully understand how the terms were used in the aforementioned provision, a discussion of what the law recognizes as a *fact of special significance* is required, since the duty to disclose such fact or to abstain from any transaction is imposed on the insider only in connection with a *fact of special significance*.

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[35] *Id.* citing H.R. Rep. No. 1383, 73rd Cong., 2d Sess. 13 (1934); S. Rep. No.792, 73rd Cong., 2d Sess. 9 (1934). A significant purpose of the Exchange Act was to eliminate the idea that the use of inside information for personal advantage was a normal emolument of corporate office.

[36] *In the Matter of Investors Management Co., Inc.*, 44 SEC 633, 29 July 1971; *Securities and Exchange Commission v. Texas Gulf Sulfur Co.*, 401 F. 2d 833, 13 August 1968.

[37] *Rollo*, p. 459.

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Under the law, what is required to be disclosed is a ***fact of "special significance"*** which may be (a) a material fact which would be likely, on being made generally available, to affect the market price of a security to a significant extent, or (b) one which a reasonable person would consider especially important in determining his course of action with regard to the shares of stock.

(a) ***Material Fact*** — The concept of a "material fact" is not a new one. As early as 1973, the Rules Requiring Disclosure of Material Facts by Corporations Whose Securities Are Listed In Any Stock Exchange or Registered/Licensed Under the Securities Act, issued by the SEC on 29 January 1973, explained that "[a] fact is material if it induces or tends to induce or otherwise affect the sale or purchase of its securities." Thus, Section 30 of the Revised Securities Act provides that if a fact affects the sale or purchase of securities, as well as its price, then the insider would be required to disclose such information to the other party to the transaction involving the securities. This is the first definition given to a "fact of special significance."

(b.1) ***Reasonable Person*** — The second definition given to a fact of special significance involves the judgment of a "reasonable person." Contrary to the allegations of the respondents, a "reasonable person" is not a problematic legal concept that needs to be clarified for the purpose of giving effect to a statute; rather, it is the standard on which most of our legal doctrines stand. The doctrine on negligence uses the discretion of the "reasonable man" as the standard.[38] A purchaser in good faith must also take into account facts which put a "reasonable man" on his guard.[39]

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[38] Negligence is defined as the omission to do something which a *reasonable man*, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and *reasonable man* would not do. (Emphasis provided.) *McKee v. Intermediate Appellate Court*, G.R. Nos. 68102-03, 16 July 1992, 211 SCRA 517, 539, citing *Layugan v. Intermediate Appellate Court*, G.R. No 73998, 14 November 1988, 167 SCRA 363, 373.

[39] *Dela Cruz v. Intermediate Appellate Court*, G.R. No. 72981, 29 January 1988, 157 SCRA 660, 671 and *Balatbat v. Court of Appeals*, 329 Phil. 858, 874 (1996).

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In addition, it is the belief of the reasonable and prudent man that an offense was committed that sets the criteria for probable cause for a warrant of arrest.[40] This Court, in such cases, differentiated the reasonable and prudent man from "a person with training in the law such as a prosecutor or a judge," and identified him as "the average man on the street," who weighs facts and circumstances without resorting to the calibrations of our technical rules of evidence of which his knowledge is nil. Rather, he relies on the calculus of common sense of which all reasonable men have in abundance.[41] In the same vein, the U.S. Supreme Court similarly determined its standards by the actual significance in the deliberations of a "reasonable investor," when it ruled in *TSC Industries, Inc. v. Northway, Inc.*,[42] that the determination of materiality "requires delicate assessments of the inferences a 'reasonable shareholder' would draw from a given set of facts and the significance of those inferences to him."

(b.2) ***Nature and Reliability*** — The factors affecting the second definition of a "fact of special significance," which is of such importance that it is expected to affect the judgment of a reasonable man, were substantially lifted from a test of materiality pronounced in the case *In the Matter of Investors Management Co., Inc.*[43]:

> Among the factors to be considered in determining whether information is material under this test are the degree of its specificity, the extent to which it differs from information previously publicly disseminated, and its reliability in light of its nature and source and the circumstances under which it was received.

It can be deduced from the foregoing that the "nature and reliability" of a significant fact in determining the course of action a reasonable person takes regarding securities must be

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[40] *Webb v. Hon. de Leon*, 317 Phil. 758, 779 (1995).

[41] *Id.* at 780.

[42] 48 L ed 2d 757, 766 (1976).

[43] *Supra* note 33.

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clearly viewed in connection with the particular circumstances of a case. To enumerate all circumstances that would render the "nature and reliability" of a fact to be of special significance is close to impossible. Nevertheless, the proper adjudicative body would undoubtedly be able to determine if facts of a certain "nature and reliability" can influence a reasonable person's decision to retain, sell or buy securities, and thereafter explain and justify its factual findings in its decision.

(c) ***Materiality Concept*** — A discussion of the "materiality concept" would be relevant to both a material fact which would affect the market price of a security to a significant extent and/or a fact which a reasonable person would consider in determining his or her cause of action with regard to the shares of stock. Significantly, what is referred to in our laws as a *fact of special significance* is referred to in the U.S. as the "materiality concept" and the latter is similarly not provided with a precise definition. In *Basic v. Levinson*,[44] the U.S. Supreme Court cautioned against confining materiality to a rigid formula, stating thus:

> A bright-line rule indeed is easier to follow than a standard that requires the exercise of judgment in the light of all the circumstances. But ease of application alone is not an excuse for ignoring the purposes of the Securities Act and Congress' policy decisions. Any approach that designates a single fact or occurrence as always determinative of an inherently fact-specific finding such as materiality, must necessarily be overinclusive or underinclusive.

Moreover, materiality "will depend at any given time upon a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity."[45] In drafting the Securities Act of 1934, the U.S. Congress put emphasis on the limitations to the definition of materiality:

> Although the Committee believes that ideally it would be desirable to have absolute certainty in the application of the materiality concept,

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[44] 99 L ed 2d 194, 211 (1988).

[45] *Securities and Exchange Commission v. Texas Gulf Sulphur Co.*, 401 F.2d 833, 849 (1968).

it is its view that such a goal is illusory and unrealistic. **The materiality concept is judgmental in nature and it is not possible to translate this into a numerical formula. The Committee's advice to the [SEC] is to avoid this quest for certainty and to continue consideration of materiality on a case-by-case basis as disclosure problems are identified.**" House Committee on Interstate and Foreign Commerce, Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, 95th Cong., 1st Sess., 327 (Comm.Print 1977). (Emphasis provided.)[46]

(d) ***Generally Available*** — Section 30 of the Revised Securities Act allows the insider the defense that in a transaction of securities, where the insider is in possession of facts of special significance, such information is "generally available" to the public. Whether information found in a newspaper, a specialized magazine, or any cyberspace media be sufficient for the term "generally available" is a matter which may be adjudged given the particular circumstances of the case. The standards cannot remain at a standstill. A medium, which is widely used today was, at some previous point in time, inaccessible to most. Furthermore, it would be difficult to approximate how the rules may be applied to the instant case, where investigation has not even been started. Respondents failed to allege that the negotiations of their agreement with GHB were made known to the public through any form of media for there to be a proper appreciation of the issue presented.

Section 36(a) of the Revised Securities Act

As regards Section 36(a) of the Revised Securities Act, respondents claim that the term "beneficial ownership" is vague and that it requires implementing rules to give effect to the law. Section 36(a) of the Revised Securities Act is a straightforward provision that imposes upon (1) a beneficial owner of more than ten percent of any class of any equity security or (2) a director or any officer of the issuer of such security, the obligation to submit a statement indicating his or her ownership of the issuer's securities and such changes in his or her ownership thereof. The said provision reads:

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[46] *Basic v. Levinson, supra* note 41 at 211.

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Sec. 36. **Directors, officers and principal stockholders**. — (a) Every person who is directly or indirectly the beneficial owner of more than ten per centum of any [class] of any equity security which is registered pursuant to this Act, or who is [a] *director or an officer* of the issuer of such security, shall file, at the time of the registration of such security on a securities exchange or by the effective date of a registration statement or within ten days after he becomes such a beneficial owner, director or officer, a statement with the Commission and, if such security is registered on a securities exchange, also with the exchange, of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission, and if such security is registered on a securities exchange, shall also file with the exchange, a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month. (Emphasis provided.)

Section 36(a) refers to the "beneficial owner." *Beneficial owner* has been defined in the following manner:

[F]irst, to indicate the interest of a beneficiary in trust property (also called "equitable ownership"); and *second*, to refer to the power of a corporate shareholder to buy or sell the shares, though the shareholder is not registered in the corporation's books as the owner. Usually, beneficial ownership is distinguished from naked ownership, which is the enjoyment of all the benefits and privileges of ownership, as against possession of the bare title to property.[47]

Even assuming that the term "beneficial ownership" was vague, it would not affect respondents' case, where the respondents are directors and/or officers of the corporation, who are specifically required to comply with the reportorial requirements under Section 36(a) of the Revised Securities Act. The validity of a statute may be contested only by one who will sustain a direct injury as a result of its enforcement.[48]

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[47] *La Bugal-B'Laan Tribal Association, Inc. v. Ramos*, G.R. No. 127882, 1 December 2004, 445 SCRA 1, 155-156, citing Black's *Law Dictionary*, 5th edition.

[48] *Gonzales v. Hon. Narvasa*, 392 Phil. 518, 528 (2000), citing *Sanidad v. Commission on Elections*, G.R. No. L-44640, 12 October 1976, 73 SCRA 333, 358.

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Sections 30 and 36 of the Revised Securities Act were enacted to promote full disclosure in the securities market and prevent unscrupulous individuals, who by their positions obtain non-public information, from taking advantage of an uninformed public. No individual would invest in a market which can be manipulated by a limited number of corporate insiders. Such reaction would stifle, if not stunt, the growth of the securities market. To avert the occurrence of such an event, Section 30 of the Revised Securities Act prevented the unfair use of non-public information in securities transactions, while Section 36 allowed the SEC to monitor the transactions entered into by corporate officers and directors as regards the securities of their companies.

In the case *In the Matter of Investor's Management Co.*,[49] it was cautioned that "the broad language of the anti-fraud provisions," which include the provisions on insider trading, should not be "circumscribed by fine distinctions and rigid classifications." The ambit of anti-fraud provisions is necessarily broad so as to embrace the infinite variety of deceptive conduct.[50]

In *Tatad v. Secretary of Department of Energy*,[51] this Court brushed aside a contention, similar to that made by the respondents in this case, that certain words or phrases used in a statute do not set determinate standards, declaring that:

> Petitioners contend that the words "as far as practicable," "declining" and "stable" should have been defined in R.A. No. 8180 as they do not set determinate and determinable standards. This stubborn submission deserves scant consideration. The dictionary meanings of these words are well settled and cannot confuse men of reasonable intelligence. x x x. The fear of petitioners that these words will result in the exercise of executive discretion that will run riot is thus groundless. To be sure, the Court has sustained the validity of similar, if not more general standards in other cases.

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[49] *Supra* note 33.

[50] *Securities and Exchange Commission v. Capital Gains Research Bureau, Inc.*, 11 L ed 2d 237, 247 (1963).

[51] 346 Phil. 321, 362 (1997).

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Among the words or phrases that this Court upheld as valid standards were "simplicity and dignity,"[52] "public interest,"[53] and "interests of law and order."[54]

The Revised Securities Act was approved on 23 February 1982. The fact that the Full Disclosure Rules were promulgated by the SEC only on 24 July 1996 does not render ineffective in the meantime Section 36 of the Revised Securities Act. It is already unequivocal that the Revised Securities Act requires full disclosure and the Full Disclosure Rules were issued to make the enforcement of the law more consistent, efficient and effective. It is equally reasonable to state that the disclosure forms later provided by the SEC, do not, in any way imply that no compliance was required before the forms were provided. The effectivity of a statute which imposes reportorial requirements cannot be suspended by the issuance of specified forms, especially where compliance therewith may be made even without such forms. The forms merely made more efficient the processing of requirements already identified by the statute.

For the same reason, the Court of Appeals made an evident mistake when it ruled that no civil, criminal or administrative actions can possibly be had against the respondents in connection with Sections 8, 30 and 36 of the Revised Securities Act due to the absence of implementing rules. These provisions are sufficiently clear and complete by themselves. Their requirements are specifically set out, and the acts which are enjoined are determinable. In particular, Section 8[55] of the Revised Securities Act is a straightforward enumeration of the procedure for the

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[52] *Balbuna v. Hon. Secretary of Education*, 110 Phil. 150, 154 (1960).

[53] *People v. Rosenthal*, 68 Phil. 328, 342 (1939).

[54] *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660, 702 (1919).

[55] Sec. 8. **Procedure for registration.** — (a) All securities required to be registered under subsection (a) of Section four of this Act shall be registered through the filing by the issuer or by any dealer or underwriter interested in the sale thereof, in the office of the Commission, of a sworn registration statement with respect to such securities, containing or having attached thereto, the following:

(1) Name of issuer and, if incorporated, place of incorporation.

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registration of securities and the particular matters which need to be reported in the registration statement thereof. The Decision,

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(2) The location of the issuer's principal business office, and if such issuer is a non-resident or its place of office is outside of the Philippines, the name and address of its agent in the Philippines authorized to receive notice.

(3) The names and addresses of the directors or persons performing similar functions, and the chief executive, financial and accounting officers, chosen or to be chosen, if the issuer be a corporation, association, trust, or other entity; of all the partners, if the issuer be a partnership; and of the issuer, if the issuer be an individual; and of the promoters in the case of a business to be formed.

(4) The names and addresses of the underwriters.

(5) The general character of the business actually transacted or to be transacted by, and the organization and financial structure of, the issuer including identities of all companies controlling, controlled by or commonly controlled with the issuer.

(6) The names and addresses of all persons, if any, owning of record or beneficially, if known, more than ten (10%) per centum in the aggregate of the outstanding stock of the issuer as of a date within twenty days prior to the filing of the registration statement.

(7) The amount of securities of the issuer held by any person specified in subparagraphs (3), (4), and (6) of this subsection, as of a date within twenty days prior to the filing of the registration statement, and, if possible, as of one year prior thereto, and the amount of the securities, for which the registration statement is filed, to which such persons have indicated their intention to subscribe.

(8) A statement of the capitalization of the issuer and of all companies controlling, controlled by or commonly controlled with the issuer, including the authorized and outstanding amounts of its capital stock and the proportion thereof paid up; the number and classes of shares in which such capital stock is divided; par value thereof, or if it has no par value, the stated or assigned value thereof; a description of the respective voting rights, preferences, conversion and exchange rights, rights to dividends, profits, or capital of each class, with respect to each other class, including the retirement and liquidation rights or values thereof.

(9) A copy of the security for the registration of which application is made.

(10) A copy of any circular, prospectus, advertisement, letter, or communication to be used for the public offering of the security.

(11) A statement of the securities, if any, covered by options outstanding or to be created in connection with the security to be offered, together with the names and addresses of all persons, if any, to be allotted more than ten (10%) per centum in the aggregate of such options.

(12) The amount of capital stock of each class issued or included in the shares of stock to be offered.

(13) The amount of the funded indebtedness outstanding and to be created by the security to be offered, with a brief statement of the date, maturity, and

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dated 20 August 1998, provides no valid reason to exempt the respondent IRC from such requirements. The lack of implementing

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character of such debt, rate of interest, character or amortization provisions, other terms and conditions thereof and the security, if any, therefor. If substitution of any security is permissible, a summarized statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect.

(14) The specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts and the sources thereof.

(15) The remuneration, paid or estimated to be paid, by the issuer or its predecessor, directly or indirectly, during the past year and the ensuing year to (a) the directors or persons performing similar functions, and (b) its officers and other persons, naming them whenever such remuneration exceeded sixty thousand (₱60,000.00) pesos during any such year.

(16) The amount of issue of the security to be offered.

(17) The estimated net proceeds to be derived from the security to be offered.

(18) The price at which the security is proposed to be offered to the public or the method by which such price is computed and any variation therefrom at which any portion of such security is proposed to be offered to persons or classes of persons, other than the underwriters, naming them or specifying the class. A variation in price may be proposed prior to the date of the public offering of the security by filing an amended registration statement.

(19) All commissions or discounts paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything of value, paid, to be set aside, or disposed of, or understanding with or for the benefit of any other person in which any underwriter is interested, made in connection with the sale of such security. A commission paid or to be paid in connection with the sale of such security by a person in which the issuer has an interest or which is controlled by, or under common control with, the issuer shall be deemed to have been paid by the issuer. Where any such commission is paid, the amount of such commission paid to each underwriter shall be stated.

(20) The amount or estimated amounts, itemized in reasonable detail, of expenses, other than commission specified in the next preceding paragraph, incurred or to be incurred by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, authentication, and other charges.

(21) The net proceeds derived from any security sold by the issuer during the two years preceding the filing of the registration statement, the price at which such security was offered to the public, and the names of the principal underwriters of such security.

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rules cannot suspend the effectivity of these provisions. Thus, this Court cannot find any cogent reason to prevent the SEC

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(22) Any amount paid within two years preceding the filing of the registration statement or intended to be paid to any promoter and the consideration for any such payment.

(23) The names and addresses of the vendors and the purchase price of any property or goodwill, acquired or to be acquired, not in the ordinary course of business, which is to be defrayed in whole or in part from the proceeds of the security to be offered, the amount of any commission payable to any person in connection with such acquisition, and the name or names of such person or persons, together with any expense incurred or to be incurred in connection with such acquisition, including the cost of borrowing money to finance such acquisition.

(24) Full particulars of the nature and extent of the interest, if any, of every director, principal executive officer, and of every stockholder holding more than ten (10%) per centum in the aggregate of the stock of the issuer, in any property acquired, not in the ordinary course of business of the issuer, within two years preceding the filing of the registration statement or proposed to be acquired at such date.

(25) The names and addresses of independent counsel who have passed on the legality of the issue.

(26) Dates of and parties to, and the general effect concisely stated of every material contract made, not in the ordinary course of business, which contract is to be executed in whole or in part at or after the filing of the registration statement or which has been executed not more than two years before such filing. Any management contract or contract providing for special bonuses or profit-sharing arrangements, and every material patent or contract for a material patent right, and every contract by or with a public utility company or an affiliate thereof, providing for the giving or receiving of technical or financial advice or service shall be deemed a material contract.

Any contract, whether or not made in the ordinary course of business with any stockholder, whether a natural or juridical person, owning more than ten (10%) per centum of the shares of the issuer shall be deemed a material contract for the purpose of this Act.

(27) A balance sheet as of a date not more than ninety days prior to the date of the filing of the registration statement showing all of the assets of the issuer, the nature and cost thereof, whenever determinable with intangible items segregated, including any loan to or from any officer, director, stockholder or person directly or indirectly controlling or controlled by the issuer, or person under direct or indirect common control with the issuer. In the event any such assets consist of shares of stock in other companies, the balance sheet and profit and loss statements of such companies for the past three years shall likewise be enclosed. All the liabilities of the issuer, including surplus of the issuer, showing how and from what sources such surplus was created, all as of a date not more than ninety days prior to the filing of the registration statement. If such statement is not certified

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from exercising its authority to investigate respondents for violation of Section 8 of the Revised Securities Act.

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by an independent certified public accountant, in addition to the balance sheet required to be submitted under this schedule, a similar detailed balance sheet of the assets and liabilities of the issuer, certified by an independent certified public accountant, of a date not more than one year prior to the filing of the registration statement, shall be submitted.

(28) A profit and loss statement of the issuer showing earnings and income, the nature and source thereof, and the expenses and fixed charges in such detail and such form as the Commission shall prescribe for the latest fiscal year for which such statement is available and for the two preceding fiscal years, year by year, or, if such issuer has been in actual business for less than three years, then for such time as the issuer has been in actual business, year by year. If the date of the filing of the registration statement is more than six months after the close of the last fiscal year, a statement from such closing date to the latest practicable date. Such statement shall show what the practice of the issuer has been during the three years or lesser period as to the character of the charges, dividends or other distributions made against its various surplus accounts, and as to depreciation, depletion, and maintenance charges, and if stock dividends or avails from the sale of rights have been credited to income, they shall be shown separately with statement of the basis upon which credit is computed. Such statement shall also differentiate between recurring and nonrecurring income and between any investment and operating income. Such statement shall be certified by an independent certified public accountant.

(29) Any liabilities of the issuer to companies controlling or controlled by the issuer shall be disclosed in full detail as to use of the proceeds thereof, the maturity and repayment schedule, nature of security thereof, the rate of interest and other terms and conditions thereof. If the proceeds, or any part of the proceeds, of the security to be issued is to be applied directly or indirectly to the purchase of any business, a profit and loss statement of such business, certified by an independent certified public accountant, meeting the requirements of subparagraph (28) of this subsection, for the three preceding fiscal years, together with a balance sheet, similarly certified, of such business, meeting the requirements of subparagraph (27) hereof of a date not more than ninety days prior to the filing of the registration statement or at the date such business was acquired by the issuer more than ninety days prior to the filing of the registration statement.

(30) A copy of any agreement or agreements or, if identical agreements are used, the forms thereof made with any underwriter, including all contracts and agreements referred to in subparagraph (19) hereof.

(31) A copy of the opinion or opinions of independent counsel in respect to the legality of the issue.

(32) A copy of all material contracts referred to in subparagraph (26) hereof, but no disclosure shall be required by the Commission of any portion

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II. The right to cross-examination is not absolute and cannot be demanded during investigative proceedings before the PED.

In its assailed Decision dated 20 August 1998, the Court of Appeals pronounced that the PED Rules of Practice and Procedure

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of any such contract if the disclosure of such portion would impair the value of the contract and would not be necessary for the protection of the investors.

(33) A detailed statement showing the items of cash, property, services, patents, goodwill, and any other consideration for which securities have been or are to be issued in payment.

(34) The amount of cash to be paid as promotion fees, or of capital stock which is to be set aside and disposed of as promotion stock, and a statement of all stock issued from time to time as promotion stock.

(35) In connection with securities issued by a person engaged in the business of developing, exploiting or operating mineral claims, a sworn statement of a mining engineer stating the ore possibilities of the mine and such other information in connection therewith as will show the quality of the ore in such claims, and the unit cost of extracting it.

(36) Unless previously filed and registered with the Commission and brought up to date:

(a) A copy of its articles of incorporation with all amendments thereof and its existing by-laws or instruments corresponding thereto, whatever the name, if the issuer be a corporation;

(b) A copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged, if the issuer is a trust;

(c) A copy of its articles of partnership or association and all the papers pertaining to its organization, if the issuer is a partnership, unincorporated association, joint-stock company, syndicate, or any other form of organization.

(37) A copy of the underlying agreements or indentures affecting any stock, bonds, or debentures offered or to be offered by the issuer and outstanding on the part of companies controlling or controlled by the issuer.

(38) Where the issuer or registrant is not formed, organized and existing under the laws of the Philippines or is not domiciled in the Philippines, a written power of attorney, certified and authenticated in accordance with law, designating some individual person, who must be a resident of the Philippines, on whom any summons and other legal processes may be served in all actions or other legal proceedings against him, and consenting that service upon such resident agent shall be admitted as valid and proper service upon the issuer or registrant, and if at any time that service cannot be made upon such resident agent, service shall be made upon the Commission.

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Additional information or documents, including written information from an expert, may be required, or anyone of the above requirements may be dispensed with, depending on the necessity thereof for the protection of the public investors, or their applicability to the class of securities sought to be registered, as the case may be.

The registration statement shall be signed by the issuer, its principal executive officer, its principal operating officer, its principal financial officer, its comptroller or principal accounting officer or persons performing similar functions. The written consent of the expert named as having certified any part of the registration statement or any document used in connection therewith shall also be filed.

Upon filing of the registration statement, the registrant shall pay to the Commission a fee of not more than one-tenth of one per centum of the maximum aggregate price at which such securities are proposed to be offered and the fact of such filing shall be immediately published by the Commission, at the expense of the registrant, in two newspapers of general circulation in the Philippines, once a week for two consecutive weeks, reciting that a registration statement for the sale of such security has been filed with it, and that the aforesaid registration statement, as well as the papers attached thereto, are open to inspection during business hours, by interested parties, and copies thereof, photostatic or otherwise, shall be furnished to every applicant at such reasonable charge as the Commission may prescribe.

Any interested party may file an opposition to the registration within ten days from the publication.

If after the completion of the aforesaid publication, the Commission finds that the registration statement together with all the other papers and documents attached thereto, is on its face complete and that the requirements and conditions for the protection of the investors have been complied with, and unless there are grounds to reject a registration statement as herein provided, it shall as soon as feasible enter an order making the registration effective, and issue to the registrant a permit reciting that such person, its brokers or agents, are entitled to offer the securities named in said certificate, with such terms and conditions as it may impose in the public interest and for the protection of investors.

The Commission shall, however, advise the public that the issuance of such permit shall not be deemed a finding by the Commission that the registration statement is true and accurate on its face or that it does not contain an untrue statement of fact or omit to state a material fact, or be held to mean that the Commission has in any way given approval to the security included in the registration statement. Every permit and any other statement, printed or otherwise, for public consumption, that makes reference to such permit shall clearly and distinctively state that the issuance thereof is only permissive and does not constitute a recommendation or endorsement of the securities permitted to be offered for sale. It shall be unlawful to make, or cause to be made, to any prospective purchaser any representation contrary to the foregoing.

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was invalid since Section 8, Rule V[56] thereof failed to provide for the parties' right to cross-examination, in violation of the Administrative Code of 1987 particularly Section 12(3), Chapter 3, Book VII thereof. This ruling is incorrect.

Firstly, Section 4, Rule I of the PED Rules of Practice and Procedure, categorically stated that the proceedings before the PED are summary in nature:

Section 4. Nature of Proceedings — Subject to the requirements of due process, proceedings before the "PED" shall be summary in nature not necessarily adhering to or following the technical rules

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Notwithstanding the foregoing, the Commission, for the guidance of investors, may require issuers to submit their securities to rating by securities rating agencies accredited by the Commission, to provide all information necessary therefor, and to report such rating in the registration statement and prospectus, if any, offering the securities.

If any change occurs in the facts set forth in the registration statement, it shall be the obligation of the issuer, dealer or underwriter who filed the original registration statement to submit to the Commission for approval an amended registration statement.

The Commission, in its order, may fix the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities in the Philippines and the maximum amount of compensation which the issuer shall pay for mining claims and mineral rights for which provision is made by the issuer for payment in cash or securities. The amount of compensation which shall be paid the owner or holder of such mining claims or mineral rights shall be a fair valuation thereof, as may be fixed by the Commission, after consultation with the Bureau of Mines, and after receiving such technical information as the issuer or dealer or the owner or owners of such claims may care to submit in the premises.

A copy of the order of the Commission making the registration effective, together with the registration statement, shall be transmitted to the exchange wherein the security may be listed and shall be available for inspection by any interested party during reasonable hours on any business day.

The order shall likewise be published, at the expense of the registrant, once in a newspaper of general circulation within ten days from its promulgation.

The same rules shall apply to any amendment to the registration statement.

[56] Section 8. Order of Investigation — The parties shall be afforded an opportunity to be present but without the right to examine or cross-examine. If the parties so desire, they may submit questions to the Hearing Officer which the latter may propound to the parties or witnesses concerned.

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of evidence obtaining in the courts of law. The Rules of Court may apply in said proceedings in suppletory character whenever practicable.

Rule V of the PED Rules of Practice and Procedure further specified that:

> Section 5. Submission of Documents — During the preliminary conference/hearing, or immediately thereafter, the Hearing Officer may require the parties to simultaneously submit their respective verified position papers accompanied by all supporting documents and the affidavits of their witnesses, if any which shall take the place of their direct testimony. The parties shall furnish each other with copies of the position papers together with the supporting affidavits and documents submitted by them.
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> Section 6. Determination of necessity of hearing. — Immediately after the submission by the parties of their position papers and supporting documents, the Hearing Officer shall determine whether there is a need for a formal hearing. At this stage, he may, in his discretion, and for the purpose of making such determination, elicit pertinent facts or information, including documentary evidence, if any, from any party or witness to complete, as far as possible, the facts of the case. Facts or information so elicited may serve as basis for his clarification or simplifications of the issues in the case. Admissions and stipulation of facts to abbreviate the proceedings shall be encouraged.
>
> Section 7. Disposition of Case. If the Hearing Officer finds no necessity of further hearing after the parties have submitted their position papers and supporting documents, he shall so inform the parties stating the reasons therefor and shall ask them to acknowledge the fact that they were so informed by signing the minutes of the hearing and the case shall be deemed submitted for resolution.

As such, the PED Rules provided that the Hearing Officer may require the parties to submit their respective verified position papers, together with all supporting documents and affidavits of witnesses. A formal hearing was not mandatory; it was within the discretion of the Hearing Officer to determine whether there was a need for a formal hearing. Since, according to the foregoing rules, the holding of a hearing before the PED is discretionary,

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then the right to cross-examination could not have been demanded by either party.

Secondly, it must be pointed out that Chapter 3, Book VII of the Administrative Code, entitled "Adjudication," does not affect the investigatory functions of the agencies. The law creating the PED, Section 8 of Presidential Decree No. 902-A, as amended, defines the authority granted to the PED, thus:

> SEC. 8. The Prosecution and Enforcement Department shall have, subject to the Commission's control and supervision**, the exclusive authority to investigate**, on complaint or *motu proprio*, any act or omission of the Board of Directors/Trustees of corporations, or of partnerships, or of other associations, or of their stockholders, officers or partners, including any fraudulent devices, schemes or representations, in violation of any law or rules and regulations administered and enforced by the Commission; **to file and prosecute** in accordance with law and rules and regulations issued by the Commission and in appropriate cases, the corresponding criminal or civil case before the Commission or the proper court or body upon *prima facie* finding of violation of any laws or rules and regulations administered and enforced by the Commission; and to perform such other powers and functions as may be provided by law or duly delegated to it by the Commission. (Emphasis provided.)

The law creating PED empowers it to investigate violations of the rules and regulations promulgated by the SEC and to file and prosecute such cases. It fails to mention any adjudicatory functions insofar as the PED is concerned. Thus, the PED Rules of Practice and Procedure need not comply with the provisions of the Administrative Code on adjudication, particularly Section 12(3), Chapter 3, Book VII.

In *Cariño v. Commission on Human Rights*,[57] this Court sets out the distinction between investigative and adjudicative functions, thus:

> "Investigate," commonly understood, means to examine, explore, inquire or delve or probe into, research on, study. The dictionary definition of "investigate" is "to observe or study closely; inquire

[57] G.R. No. 96681, 2 December 1991, 204 SCRA 483, 495-496.

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into systematically: "to search or inquire into" x x x to subject to an official probe x x x: to conduct an official inquiry." The purpose of an investigation, of course is to discover, to find out, to learn, obtain information. Nowhere included or intimated is the notion of settling, deciding or resolving a controversy involved in the facts inquired into by application of the law to the facts established by the inquiry.

The legal meaning of "investigate" is essentially the same: "(t)o follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry;" "to inquire; to make an investigation," "investigation" being in turn described as "(a)n administrative function, the exercise of which ordinarily does not require a hearing. 2 Am J2d Adm L Sec. 257; x x x an inquiry, judicial or otherwise, for the discovery and collection of facts concerning a certain matter or matters."

"Adjudicate," commonly or popularly understood, means to adjudge, arbitrate, judge, decide, determine, resolve, rule on, settle. The dictionary defines the term as "to settle finally (the rights and duties of parties to a court case) on the merits of issues raised: x x x to pass judgment on: settle judicially: x x x act as judge." And "adjudge" means "to decide or rule upon as a judge or with judicial or quasi-judicial powers: x x x to award or grant judicially in a case of controversy x x x."

In a legal sense, "adjudicate" means: "To settle in the exercise of judicial authority. To determine finally. Synonymous with *adjudge* in its strictest sense;" and "adjudge" means: "To pass on judicially, to decide, settle, or decree, or to sentence or condemn. x x x Implies a judicial determination of a fact, and the entry of a judgment."

There is no merit to the respondent's averment that the sections under Chapter 3, Book VII of the Administrative Code, do not distinguish between investigative and adjudicatory functions. Chapter 3, Book VII of the Administrative Code, is unequivocally entitled "Adjudication."

Respondents insist that the PED performs adjudicative functions, as enumerated under Section 1(h) and (j), Rule II; and Section 2(4), Rule VII of the PED Rules of Practice and Procedure:

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Section 1. Authority of the Prosecution and Enforcement Department — Pursuant to Presidential Decree No. 902-A, as amended by Presidential Decree No. 1758, the Prosecution and Enforcement Department is primarily charged with the following:

x x x x x x x x x

(h) Suspends or revokes, after proper notice and hearing in accordance with these Rules, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the following grounds:

1. Fraud in procuring its certificate of registration;

2. Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public;

3. Refusal to comply or defiance of any lawful order of the Commission restraining commission of acts which would amount to a grave violation of its franchise;

x x x x x x x x x

(j) Imposes charges, fines and fees, which by law, it is authorized to collect;

x x x x x x x x x

Section 2. Powers of the Hearing Officer. The Hearing Officer shall have the following powers:

x x x x x x x x x

4. To cite and/or declare any person in direct or indirect contempt in accordance with pertinent provisions of the Rules of Court.

Even assuming that these are adjudicative functions, the PED, in the instant case, exercised its investigative powers; thus, respondents do not have the requisite standing to assail the validity of the rules on adjudication. A valid source of a statute or a rule can only be contested by one who will sustain a direct injury as a result of its enforcement.[58] In the instant case,

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[58] *Gonzales v. Hon. Narvasa*, *supra* note 45 at 528, citing *Sanidad v. Commission on Elections*, *supra* note 45 at 358; and *Valmonte v. Philippine Charity Sweepstakes*, G.R. No. 78716, 22 September 1987, Resolution.

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respondents are only being investigated by the PED for their alleged failure to disclose their negotiations with GHB and the transactions entered into by its directors involving IRC shares. The respondents have not shown themselves to be under any imminent danger of sustaining any personal injury attributable to the exercise of adjudicative functions by the SEC. They are not being or about to be subjected by the PED to charges, fees or fines; to citations for contempt; or to the cancellation of their certificate of registration under Section 1(h), Rule II of the PED Rules of Practice and Procedure.

To repeat, the only powers which the PED was likely to exercise over the respondents were investigative in nature, to wit:

> Section 1. Authority of the Prosecution and Enforcement Department — Pursuant to Presidential Decree No. 902-A, as amended by Presidential Decree No. 1758, the Prosecution and Enforcement Department is primarily charged with the following:
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> x x x x x x x x x
>
> b. Initiates proper investigation of corporations and partnerships or persons, their books, records and other properties and assets, involving their business transactions, in coordination with the operating department involved;
>
> x x x x x x x x x
>
> e. Files and prosecutes civil or criminal cases before the Commission and other courts of justice involving violations of laws and decrees enforced by the Commission and the rules and regulations promulgated thereunder;
>
> f. Prosecutes erring directors, officers and stockholders of corporations and partnerships, commercial paper issuers or persons in accordance with the pertinent rules on procedures;

The authority granted to the PED under Section 1(b), (e), and (f), Rule II of the PED Rules of Practice and Procedure, need not comply with Section 12, Chapter 3, Rule VII of the Administrative Code, which affects only the adjudicatory functions of administrative bodies. Thus, the PED would still be able to investigate the respondents under its rules for their alleged failure

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to disclose their negotiations with GHB and the transactions entered into by its directors involving IRC shares.

This is not to say that administrative bodies performing adjudicative functions are required to strictly comply with the requirements of Chapter 3, Rule VII of the Administrative Code, particularly, the right to cross-examination. It should be noted that under Section 2.2 of Executive Order No. 26, issued on 7 October 1992, abbreviated proceedings are prescribed in the disposition of administrative cases:

> 2. *Abbreviation of Proceedings.* All administrative agencies are hereby directed to adopt and include in their respective Rules of Procedure the following provisions:
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> x x x x x x x x x
>
> 2.2 Rules adopting, unless otherwise provided by special laws and without prejudice to Section 12, Chapter 3, Book VII of the Administrative Code of 1987, the mandatory use of affidavits in lieu of direct testimonies and the preferred use of depositions whenever practicable and convenient.

As a consequence, in proceedings before administrative or quasi-judicial bodies, such as the National Labor Relations Commission and the Philippine Overseas Employment Agency, created under laws which authorize summary proceedings, decisions may be reached on the basis of position papers or other documentary evidence only. They are not bound by technical rules of procedure and evidence.[59] In fact, the hearings before such agencies do not connote full adversarial proceedings.[60] Thus, it is not necessary for the rules to require affiants to appear and testify and to be cross-examined by the counsel of the adverse party. To require otherwise would negate the summary nature of the administrative or quasi-judicial proceedings.[61] In

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[59] *Rabago v. National Labor Relations Commission*, G.R. No. 82868, 5 August 1991, 200 SCRA 158, 164-165; *Rase v. National Labor Relations Commission*, G.R. No. 110637, 7 October 1994, 237 SCRA 523, 532.

[60] *Philippine Airlines, Inc. v. Tongson*, 459 Phil. 742, 753 (2003).

[61] *Rase v. National Labor Relations Commission*, *supra* note 56 at 534.

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Atlas Consolidated Mining and Development Corporation v. Factoran, Jr.,[62] this Court stated that:

> [I]t is sufficient that administrative findings of fact are supported by evidence, or negatively stated, it is sufficient that findings of fact are not shown to be unsupported by evidence. Substantial evidence is all that is needed to support an administrative finding of fact, and substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

In order to comply with the requirements of due process, what is required, among other things, is that every litigant be given reasonable opportunity to appear and defend his right and to introduce relevant evidence in his favor.[63]

III. The Securities Regulations Code did not repeal Sections 8, 30 and 36 of the Revised Securities Act since said provisions were reenacted in the new law.

The Securities Regulations Code absolutely repealed the Revised Securities Act. While the absolute repeal of a law generally deprives a court of its authority to penalize the person charged with the violation of the old law prior to its appeal, an exception to this rule comes about when the repealing law punishes the act previously penalized under the old law. The Court, in *Benedicto v. Court of Appeals*, sets down the rules in such instances:[64]

> As a rule, an absolute repeal of a penal law has the effect of depriving the court of its authority to punish a person charged with violation of the old law prior to its repeal. This is because an unqualified repeal of a penal law constitutes a legislative act of rendering legal what had been previously declared as illegal, such that the offense no longer exists and it is as if the person who committed it never did so. There are, however, **exceptions** to the rule. One is the inclusion

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[62] G.R. No. 75501, 15 September 1987, 154 SCRA 49, 54.

[63] *Philippine Airlines, Inc. v. Tongson, supra* note 57 at 753.

[64] 416 Phil. 722, 746-747 (2001).

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of a saving clause in the repealing statute that provides that the repeal shall have no effect on pending actions. Another exception is where the repealing act **reenacts** the former statute and punishes the act previously penalized under the old law. In such instance, the act committed before the reenactment continues to be an offense in the statute books and pending cases are not affected, regardless of whether the new penalty to be imposed is more favorable to the accused. (Emphasis provided.)

In the present case, a criminal case may still be filed against the respondents despite the repeal, since Sections 8,[65] 12,[66]

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[65] **SEC. 8.** *Requirement of Registration of Securities.*

8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.

8.2. The Commission may conditionally approve the registration statement under such terms as it may deem necessary.

8.3. The Commission may specify the terms and conditions under which any written communication, including any summary prospectus, shall be deemed not to constitute an offer for sale under this Section.

8.4. A record of the registration of securities shall be kept in a Register of Securities in which shall be recorded orders entered by the Commission with respect to such securities. Such register and all documents or information with respect to the securities registered therein shall be open to public inspection at reasonable hours on business days.

8.5. The Commission may audit the financial statements, assets and other information of a firm applying for registration of its securities whenever it deems the same necessary to insure full disclosure or to protect the interest of the investors and the public in general.

[66] **SEC. 12.** *Procedure for Registration of Securities.* —

12.1. All securities required to be registered under Subsection 8.1 shall be registered through the filing by the issuer in the main office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission shall prescribe. The registration statement shall include any prospectus required or permitted to be delivered under Subsections 8.2, 8.3 and 8.4.

12.2. In promulgating rules governing the content of any registration statement (including any prospectus made a part thereof or annexed thereto), the Commission may require the registration statement to contain such

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information or documents as it may, by rule, prescribe. It may dispense with any such requirement, or may require additional information or documents, including written information from an expert, depending on the necessity thereof or their applicability to the class of securities sought to be registered.

12.3. The information required for the registration of any kind, and all securities, shall include, among others, the effect of the securities issue on ownership, on the mix of ownership, especially foreign and local ownership.

12.4. The registration statement shall be signed by the issuer's executive officer, its principal operating officer, its principal financial officer, its comptroller, principal accounting officer, its corporate secretary or persons performing similar functions accompanied by a duly verified resolution of the board of directors of the issuer corporation. The written consent of the expert named as having certified any part of the registration statement or any document used in connection therewith shall also be filed. Where the registration statement includes shares to be sold by selling shareholders, a written certification by such selling shareholders as to the accuracy of any part of the registration statement contributed to by such selling shareholders shall also be filed.

12.5. a) Upon filing of the registration statement, the issuer shall pay to the Commission a fee of not more than one-tenth (1/10) of one *per centum* (1%) of the maximum aggregate price at which such securities are proposed to be offered. The Commission shall prescribe by rule diminishing fees in inverse proportion to the value of the aggregate price of the offering.

b) Notice of the filing of the registration statement shall be immediately published by the issuer, at its own expense, in two (2) newspapers of general circulation in the Philippines, once a week for two (2) consecutive weeks, or in such other manner as the Commission by rule shall prescribe, reciting that a registration statement for the sale of such security has been filed, and that the aforesaid registration statement, as well as the papers attached thereto are open to inspection at the Commission during business hours, and copies thereof, photostatic or otherwise, shall be furnished to interested parties at such reasonable charge as the Commission may prescribe.

12.6. Within forty-five (45) days after the date of filing of the registration statement, or by such later date to which the issuer has consented, the Commission shall declare the registration statement effective or rejected, unless the applicant is allowed to amend the registration statement as provided in Section 14 hereof. The Commission shall enter an order declaring the registration statement to be effective if it finds that the registration statement together with all the other papers and documents attached thereto, is on its face complete and

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26,[67] 27[68] and 23[69] of the Securities Regulations Code impose duties that are substantially similar to Sections 8, 30 and 36 of the repealed Revised Securities Act.

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that the requirements have been complied with. The Commission may impose such terms and conditions as may be necessary or appropriate for the protection of the investors.

12.7. Upon effectivity of the registration statement, the issuer shall state under oath in every prospectus that all registration requirements have been met and that all information are true and correct as represented by the issuer or the one making the statement. Any untrue statement of fact or omission to state a material fact required to be stated therein or necessary to make the statement therein not misleading shall constitute fraud.

[67] **SEC. 26.** *Fraudulent Transactions.* — It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities to:

26.1. Employ any device, scheme, or artifice to defraud;

26.2. Obtain money or property by means of any untrue statement of a material fact of any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

26.3. Engage in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person.

[68] **SEC. 27.** *Insider's Duty to Disclose When Trading.* —

27.1. It shall be unlawful for an insider to sell or buy a security of the issuer, while in possession of material information with respect to the issuer or the security that is not generally available to the public, unless: (a) The insider proves that the information was not gained from such relationship; or (b) If the other party selling to or buying from the insider (or his agent) is identified, the insider proves: (i) that he disclosed the information to the other party, or (ii) that he had reason to believe that the other party otherwise is also in possession of the information. A purchase or sale of a security of the issuer made by an insider defined in Subsection 3.8, or such insider's spouse or relatives by affinity or consanguinity within the second degree, legitimate or common-law, shall be presumed to have been effected while in possession of material non-public information if transacted after such information came into existence but prior to dissemination of such information to the public and the lapse of a reasonable time for the market to absorb such information: *Provided, however,* That this presumption shall be rebutted upon a showing by the purchaser or seller that he was not aware of the material non-public information at the time of the purchase or sale.

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27.2. For purposes of this Section, information is "material non-public" if: (a) It has not been generally disclosed to the public and would likely affect the market price of the security after being disseminated to the public and the lapse of a reasonable time for the market to absorb the information; or (b) would be considered by a reasonable person important under the circumstances in determining his course of action whether to buy, sell or hold a security.

27.3. It shall be unlawful for any insider to communicate material non-public information about the issuer or the security to any person who, by virtue of the communication, becomes an insider as defined in Subsection 3.8, where the insider communicating the information knows or has reason to believe that such person will likely buy or sell a security of the issuer while in possession of such information.

27.4. a) It shall be unlawful where a tender offer has commenced or is about to commence for:

(i) Any person (other than the tender offeror) who is in possession of material non-public information relating to such tender offer, to buy or sell the securities of the issuer that are sought or to be sought by such tender offer if such person knows or has reason to believe that the information is non-public and has been acquired directly or indirectly from the tender offeror, those acting on its behalf, the issuer of the securities sought or to be sought by such tender offer, or any insider of such issuer; and

(ii) Any tender offeror, those acting on its behalf, the issuer of the securities sought or to be sought by such tender offer, and any insider of such issuer to communicate material non-public information relating to the tender offer to any other person where such communication is likely to result in a violation of Subsection 27.4 (a)(i).

(b) For purposes of this subsection the term "securities of the issuer sought or to be sought by such tender offer" shall include any securities convertible or exchangeable into such securities or any options or rights in any of the foregoing securities.

[69] **SEC. 23.** *Transactions of Directors, Officers and Principal Stockholders.*

23.1. Every person who is directly or indirectly the beneficial owner of more than ten *per centum* (10%) of any class of any equity security which satisfies the requirements of Subsection 17.2, or who is a director or an officer of the issuer of such security, shall file, at the time either such requirement is first satisfied or within ten days after he becomes such a beneficial owner, director, or officer, a statement

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Section 8 of the Revised Securities Act, which previously provided for the registration of securities and the information that needs to be included in the registration statements, was expanded under Section 12, in connection with Section 8 of the Securities Regulations Code. Further details of the information required to be disclosed by the registrant are explained in the Amended Implementing Rules and Regulations of the Securities Regulations Code, issued on 30 December 2003, particularly Sections 8 and 12 thereof.

Section 30 of the Revised Securities Act has been reenacted as Section 27 of the Securities Regulations Code, still penalizing an insider's misuse of material and non-public information about the issuer, for the purpose of protecting public investors. Section 26 of the Securities Regulations Code even widens the coverage of punishable acts, which intend to defraud public investors through various devices, misinformation and omissions.

Section 23 of the Securities Regulations Code was practically lifted from Section 36(a) of the Revised Securities Act. Both provisions impose upon (1) a beneficial owner of more than ten percent of any class of any equity security or (2) a director or any officer of the issuer of such security, the obligation to submit a statement indicating his or her ownership of the issuer's securities and such changes in his or her ownership thereof.

Clearly, the legislature had not intended to deprive the courts of their authority to punish a person charged with violation of the old law that was repealed; in this case, the Revised Securities Act.

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with the Commission and, if such security is listed for trading on an Exchange, also with the Exchange, of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten (10) days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission, and if such security is listed for trading on an Exchange, shall also file with the Exchange, a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

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IV. The SEC retained the jurisdiction to investigate violations of the Revised Securities Act, reenacted in the Securities Regulations Code, despite the abolition of the PED.

Section 53 of the Securities Regulations Code clearly provides that criminal complaints for violations of rules and regulations enforced or administered by the SEC shall be referred to the Department of Justice (DOJ) for preliminary investigation, while the SEC nevertheless retains limited investigatory powers.[70] Additionally, the SEC may still impose the appropriate administrative sanctions under Section 54 of the aforementioned law.[71]

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[70] 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, 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 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: *Provided, however,* That any person requested or subpoenaed to produce documents or testify in any investigation shall simultaneously be notified in writing of the purpose of such investigation: *Provided, further,* That all criminal complaints for violations of this Code, and the implementing rules and regulations enforced or administered by the Commission shall be referred to the Department of Justice for preliminary investigation and prosecution before the proper court: *Provided, furthermore,* That in instances where the law allows independent civil or criminal proceedings of violations arising from the same act, the Commission shall take appropriate action to implement the same: *Provided, finally,*That the investigation, prosecution, and trial of such cases shall be given priority.

[71] SEC. 54. *Administrative Sanctions.* — 54.1 If after due notice and hearing, the Commission finds that: (a) There is a violation of this Code, its rules, or its orders; (b) Any registered broker or dealer, associated person thereof has failed reasonably to supervise, with a view to preventing violations, another person subject to supervision who commits any such violation; (c) Any

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In *Morato v. Court of Appeals*,[72] the cases therein were still pending before the PED for investigation and the SEC for resolution when the Securities Regulations Code was enacted. The case before the SEC involved an intra-corporate dispute, while the subject matter of the other case investigated by the PED involved the schemes, devices, and violations of pertinent rules and laws of the company's board of directors. The enactment of the Securities Regulations Code did not result in the dismissal of the cases; rather, this Court ordered the transfer of one case to the proper regional trial court and the SEC to continue with the investigation of the other case.

The case at bar is comparable to the aforecited case. In this case, the SEC already commenced the investigative proceedings against respondents as early as 1994. Respondents were called to appear before the SEC and explain their failure to disclose pertinent information on 14 August 1994. Thereafter, the SEC Chairman, having already made initial findings that respondents failed to make timely disclosures of their negotiations with GHB, ordered a special investigating panel to hear the case. The investigative proceedings were interrupted only by the writ of preliminary injunction issued by the Court of Appeals, which became permanent by virtue of the Decision, dated 20 August 1998, in C.A.-G.R. SP No. 37036. During the pendency of this case, the Securities Regulations Code repealed the Revised Securities Act. As in *Morato v. Court of Appeals,* the repeal cannot deprive SEC of its jurisdiction to continue investigating

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registrant or other person has, in a registration statement or in other reports, applications, accounts, records or documents required by law or rules to be filed with the Commission, made any untrue statement of a material fact, or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading; or, in the case of an underwriter, has failed to conduct an inquiry with reasonable diligence to insure that a registration statement is accurate and complete in all material respects; or (d) Any person has refused to permit any lawful examinations into its affairs, it shall in its discretion, and subject only to the limitations hereinafter prescribed, impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances.

[72] G.R. No. 141510, 13 August 2004, 436 SCRA 438, 458.

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the case; or the regional trial court, to hear any case which may later be filed against the respondents.

V. The instant case has not yet prescribed.

Respondents have taken the position that this case is moot and academic, since any criminal complaint that may be filed against them resulting from the SEC's investigation of this case has already prescribed.[73] They point out that the prescription period applicable to offenses punished under special laws, such as violations of the Revised Securities Act, is twelve years under Section 1 of Act No. 3326, as amended by Act No. 3585 and Act No. 3763, entitled "An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin to Act."[74] Since the offense was committed in 1994, they reasoned that prescription set in as early as 2006 and rendered this case moot. Such position, however, is incongruent with the factual circumstances of this case, as well as the applicable laws and jurisprudence.

It is an established doctrine that a preliminary investigation interrupts the prescription period.[75] A preliminary investigation is essentially a determination whether an offense has been committed, and whether there is probable cause for the accused to have committed an offense:

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[73] *Rollo*, pp. 649-652.

[74] Section 1. Violation penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) after eight years for those punished by imprisonment for two years or more, but less than six years; and **(d) after twelve years for any other offense punished by imprisonment for six years or more,** except the crime of treason, which shall prescribe after twenty years: provided, however, That all offenses against any law or par of law administered by the Bureau of Internal Revenue shall prescribe after five years. Violations penalized by municipal ordinances shall prescribe after two months. (Emphasis provided.)

[75] *Llenes v. Dicdican*, G.R. No. 122274, 31 July 1986, 260 SCRA 207, 217-220; and *Baytan v. Commission on Elections*, G.R. No. 153945, 4 February 2003, 396 SCRA 703, 713.

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A preliminary investigation is merely inquisitorial, and it is often the only means of discovering the persons who may be reasonably charged with a crime, to enable the fiscal to prepare the complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed or whether there is probable cause to believe that the accused is guilty thereof.[76]

Under Section 45 of the Revised Securities Act, which is entitled *Investigations, Injunctions and Prosecution of Offenses*, the Securities Exchange Commission (SEC) has the authority to "make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Act XXX." After a finding that a person has violated the Revised Securities Act, the SEC may refer the case to the DOJ for preliminary investigation and prosecution.

While the SEC investigation serves the same purpose and entails substantially similar duties as the preliminary investigation conducted by the DOJ, this process cannot simply be disregarded. In *Baviera v. Paglinawan*,[77] this Court enunciated that a criminal complaint is first filed with the SEC, which determines the existence of **probable cause**, before a preliminary investigation can be commenced by the DOJ. In the aforecited case, the complaint filed directly with the DOJ was dismissed on the ground that it should have been filed first with the SEC. Similarly, the offense was a violation of the Securities Regulations Code, wherein the procedure for criminal prosecution was reproduced from Section 45 of the Revised Securities Act.[78] This Court affirmed the dismissal, which it explained thus:

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[76] *Bautista v. Court of Appeals,* G.R. No. 143375, 6 July 2001, 360 SCRA 618, 623.

[77] G.R. No. 168380, 8 February 2007.

[78] The Revised Securities Act provides that:

Sec. 45. Investigations, injunctions and prosecution of offenses. — (a) **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 Act or any rule or regulation thereunder**, and may require or permit any person to file with it a statement in writing, under

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The Court of Appeals held that under the above provision, a criminal complaint for violation of any law or rule administered by the SEC must first be filed with the latter. If the Commission finds that there is probable cause, then it should refer the case to the DOJ. Since petitioner failed to comply with the foregoing procedural requirement, the DOJ did not gravely abuse its discretion in dismissing his complaint in I.S. No. 2004-229.

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oath or otherwise, as the Commission shall determine, as to all facts and circumstances concerning the matter to be investigated. The Commission is authorized, in its discretion, to 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 Act, 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 Act relates: Provided, however, That no such investigation shall be conducted unless the person investigated is furnished with a copy of any complaint which may have been the cause of the initiation of the investigation or is notified in writing of the purpose of such investigation: Provided, further, That all criminal complaints for violations of this Act, and the implementing rules and regulations enforced or administered by the Commission shall be referred to the National Prosecution Service of the Ministry of Justice for preliminary investigation and prosecution before the proper court: and, Provided, finally, That the investigation, prosecution, and trial of such cases shall be given priority. (Emphasis provided.)

The Securities Regulations Code provides that:

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, 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: *Provided, however,* That any person requested or subpoenaed to produce documents or testify in any investigation shall simultaneously be notified in writing of the purpose of such investigation: *Provided, further,* That all criminal complaints for violations of this Code, and the implementing rules and regulations enforced or administered by the Commission shall be referred to the Department of Justice for preliminary

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A criminal charge for violation of the Securities Regulation Code is a specialized dispute. Hence, it must first be referred to an administrative agency of special competence, *i.e.*, the SEC. Under the doctrine of primary jurisdiction, courts will not determine a controversy involving a question within the jurisdiction of the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the specialized knowledge and expertise of said administrative tribunal to determine technical and intricate matters of fact. The Securities Regulation Code is a special law. Its enforcement is particularly vested in the SEC. Hence, all complaints for any violation of the Code and its implementing rules and regulations should be filed with the SEC. Where the complaint is criminal in nature, the SEC shall indorse the complaint to the DOJ for preliminary investigation and prosecution as provided in Section 53.1 earlier quoted.

We thus agree with the Court of Appeals that petitioner committed a fatal procedural lapse when he filed his criminal complaint directly with the DOJ. Verily, no grave abuse of discretion can be ascribed to the DOJ in dismissing petitioner's complaint.

The said case puts in perspective the nature of the investigation undertaken by the SEC, which is a requisite before a criminal case may be referred to the DOJ. The Court declared that it is imperative that the criminal prosecution be initiated before the SEC, the administrative agency with the special competence.

It should be noted that the SEC started investigative proceedings against the respondents as early as 1994. This investigation effectively interrupted the prescription period. However, said proceedings were disrupted by a preliminary injunction issued by the Court of Appeals on 5 May 1995, which effectively enjoined the SEC from filing any criminal, civil, or administrative case against the respondents herein.[79] Thereafter, on 20 August 1998, the appellate court issued the assailed Decision in C.A.

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investigation and prosecution before the proper court: *Provided, furthermore,* That in instances where the law allows independent civil or criminal proceedings of violations arising from the same act, the Commission shall take appropriate action to implement the same: *Provided, finally,* That the investigation, prosecution, and trial of such cases shall be given priority.

[79] *Rollo,* p. 32.

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G.R. SP. No. 37036 ordering that the writ of injunction be made permanent and prohibiting the SEC from taking cognizance of and initiating any action against herein respondents. The SEC was bound to comply with the aforementioned writ of preliminary injunction and writ of injunction issued by the Court of Appeals enjoining it from continuing with the investigation of respondents for 12 years. Any deviation by the SEC from the injunctive writs would be sufficient ground for contempt. Moreover, any step the SEC takes in defiance of such orders will be considered void for having been taken against an order issued by a court of competent jurisdiction.

An investigation of the case by any other administrative or judicial body would likewise be impossible pending the injunctive writs issued by the Court of Appeals. Given the ruling of this Court in *Baviera v. Paglinawan*,[80] the DOJ itself could not have taken cognizance of the case and conducted its preliminary investigation without a prior determination of probable cause by the SEC. Thus, even presuming that the DOJ was not enjoined by the Court of Appeals from conducting a preliminary investigation, any preliminary investigation conducted by the DOJ would have been a futile effort since the SEC had only started with its investigation when respondents themselves applied for and were granted an injunction by the Court of Appeals.

Moreover, the DOJ could not have conducted a preliminary investigation or filed a criminal case against the respondents during the time that issues on the effectivity of Sections 8, 30 and 36 of the Revised Securities Act and the PED Rules of Practice and Procedure were still pending before the Court of Appeals. After the Court of Appeals declared the aforementioned statutory and regulatory provisions invalid and, thus, no civil, criminal or administrative case may be filed against the respondents for violations thereof, the DOJ would have been at a loss, as there was no statutory provision which respondents could be accused of violating.

Accordingly, it is only after this Court corrects the erroneous ruling of the Court of Appeals in its Decision dated 20 August

[80] G.R. No. 168380, 8 February 2007, 515 SCRA 170.

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1998 that either the SEC or DOJ may properly conduct any kind of investigation against the respondents for violations of Sections 8, 30 and 36 of the Revised Securities Act. Until then, the prescription period is deemed interrupted.

To reiterate, the SEC must first conduct its investigations and make a finding of probable cause in accordance with the doctrine pronounced in *Baviera v. Paglinawan*.[81] In this case, the DOJ was precluded from initiating a preliminary investigation since the SEC was halted by the Court of Appeals from continuing with its investigation. Such a situation leaves the prosecution of the case at a standstill, and neither the SEC nor the DOJ can conduct any investigation against the respondents, who, in the first place, sought the injunction to prevent their prosecution. All that the SEC could do in order to break the impasse was to have the Decision of the Court of Appeals overturned, as it had done at the earliest opportunity in this case. Therefore, the period during which the SEC was prevented from continuing with its investigation should not be counted against it. The law on the prescription period was never intended to put the prosecuting bodies in an impossible bind in which the prosecution of a case would be placed way beyond their control; for even if they avail themselves of the proper remedy, they would still be barred from investigating and prosecuting the case.

Indubitably, the prescription period is interrupted by commencing the proceedings for the prosecution of the accused. In criminal cases, this is accomplished by initiating the preliminary investigation. The prosecution of offenses punishable under the Revised Securities Act and the Securities Regulations Code is initiated by the filing of a complaint with the SEC or by an investigation conducted by the SEC *motu proprio*. Only after a finding of probable cause is made by the SEC can the DOJ instigate a preliminary investigation. Thus, the investigation that was commenced by the SEC in 1995, soon after it discovered the questionable acts of the respondents, effectively interrupted the prescription period. Given the nature and purpose of the investigation conducted by the SEC, which is equivalent to the

[81] *Id.*

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preliminary investigation conducted by the DOJ in criminal cases, such investigation would surely interrupt the prescription period.

VI. The Court of Appeals was justified in denying SEC's Motion for Leave to Quash SEC Omnibus Orders dated 23 October 1995.

The SEC avers that the Court of Appeals erred when it denied its Motion for Leave to Quash SEC Omnibus Orders, dated 23 October 1995, in the light of its admission that the PED had the sole authority to investigate the present case. On this matter, this Court cannot agree with the SEC.

In the assailed decision, the Court of Appeals denied the SEC's Motion for Leave to Quash SEC Omnibus Orders, since it found other issues that were more important than whether or not the PED was the proper body to investigate the matter. Its refusal was premised on its earlier finding that no criminal, civil, or administrative case may be filed against the respondents under Sections 8, 30 and 36 of the Revised Securities Act, due to the absence of any implementing rules and regulations. Moreover, the validity of the PED Rules on Practice and Procedure was also raised as an issue. The Court of Appeals, thus, reasoned that if the quashal of the orders was granted, then it would be deprived of the opportunity to determine the validity of the aforementioned rules and statutory provisions. In addition, the SEC would merely pursue the same case without the Court of Appeals having determined whether or not it may do so in accordance with due process requirements. Absent a determination of whether the SEC may file a case against the respondents based on the assailed provisions of the Revised Securities Act, it would have been improper for the Court of Appeals to grant the SEC's Motion for Leave to Quash SEC Omnibus Orders.

IN ALL, this Court rules that no implementing rules were needed to render effective Sections 8, 30 and 36 of the Revised Securities Act; nor was the PED Rules of Practice and Procedure invalid, prior to the enactment of the Securities Regulations Code, for failure to provide parties with the right to cross-examine the witnesses presented against them. Thus, the respondents

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may be investigated by the appropriate authority under the proper rules of procedure of the Securities Regulations Code for violations of Sections 8, 30, and 36 of the Revised Securities Act.[82]

IN VIEW OF THE FOREGOING, the instant Petition is *GRANTED*. This Court hereby *REVERSES* the assailed Decision of the Court of Appeals promulgated on 20 August 1998 in CA-G.R. SP No. 37036 and *LIFTS* the permanent injunction issued pursuant thereto. This Court further *DECLARES* that the investigation of the respondents for violations of Sections 8, 30 and 36 of the Revised Securities Act may be undertaken by the proper authorities in accordance with the Securities Regulations Code. No costs.

SO ORDERED.

Quisumbing, Ynares-Santiago, Velasco, Jr., Reyes, and *Leonardo-de Castro, JJ.,* concur.

Puno, C.J., Austria-Martinez, Carpio Morales, and *Azcuna, JJ.,* join in the separate concurring opinion of *J.* Tinga.

Tinga, J., please see concurring opinion.

Carpio, J., see dissenting opinion.

Nachura and *Brion, JJ.,* no part.

Corona, J., on official leave.

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[82] Section 5.2 of Republic Act No. 8799, known as the Securities Regulations Code, enacted on 19 July 2000, reads:

5.2 The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

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CONCURRING OPINION

TINGA, *J.*:

While I fully concur with the *ponencia* ably penned by Justice Chico-Nazario, I write separately to highlight the factual and legal background behind the legal proscription against the blight that is "insider trading." This case is the farthest yet this Court has explored the matter, and it is heartening that our decision today affirms the viability for prosecutions against insider trading, an offense that assaults the integrity of our vital securities market. This case bears special significance, even if it does not dwell on the guilt or innocence of petitioners who are charged with insider trading, simply because the arguments raised by them essentially assail the validity of our laws against insider trading. Since we deny *certiorari* and debunk the challenge, our ruling will embolden our securities regulators to investigate and prosecute insider trading cases, thereby ensuring a more stable, mature and investor-friendly stock market.

The securities market, when active and vibrant, is an effective engine of economic growth. It is more able to channel capital as it tends to favor start-up and venture capital companies. To remain attractive to investors, however, the stock market should be *fair* and *orderly*. All the regulations, all the requirements, all the procedures and all the people in the industry should strive to achieve this avowed objective. Manipulative devices and deceptive practices, including insider trading, throw a monkey wrench right into the heart of the securities industry. When someone trades in the market with unfair advantage in the form of highly valuable secret inside information, all other participants are defrauded. All of the mechanisms become worthless. Given enough of stock market scandals coupled with the related loss of faith in the market, such abuses could presage a severe drain of capital. And investors would eventually feel more secure with their money invested elsewhere.[1]

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[1] See COLIN CHAPMAN, *How the Stock Market Works* (1988 ed.), pp. 151-152.

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The securities market is imbued with public interest and as such it is regulated. Specifically, the reasons given for securities regulation are (1) to protect investors, (2) to supply the informational needs of investors, (3) to ensure that stock prices conform to the fundamental value of the companies traded, (4) to allow shareholders to gain greater control over their corporate managers, and (5) to foster economic growth, innovation and access to capital.[2]

In checking securities fraud, regulation of the stock market assumes quite a few forms, the most common being disclosure regulation and financial activity regulation.

Disclosure regulation requires issuers of securities to make public a large amount of financial information to actual and potential investors. The standard justification for disclosure rules is that the managers of the issuing firm have more information about the financial health and future of the firm than investors who own or are considering the purchase of the firm's securities. Financial activity regulation consists of rules about traders of securities and trading on or off the stock exchange. A prime example of this form of regulation is the set of rules against trading by insiders.[3]

I.

In its barest essence, insider trading involves the trading of securities based on knowledge of material information not disclosed to the public at the time.[4] Such activity is generally prohibited in many jurisdictions, including our own, though the particular scope and definition of "insider trading" depends on the legislation or case law of each jurisdiction. In the United States, the rule

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[2] See R. JENNINGS, H. MARSH, JR., J. COFFEE, JR. AND J. SALGIMAN, *SECURITIES REGULATION: CASES AND MATERIALS* (8th ed., 1998), pp. 1-6.

[3] *F. Babozzi and F. Modigliani, Capital Markets* (3rd ed., 2006).

[4] "Generally speaking, insider trading is trading in securities while in possession of material nonpublic information." *S. BAINBRIDGE, CORPORATION LAW AND ECONOMICS* (2002 ed.), p. 519.

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has been stated as "that anyone who, for trading for his own account in the securities of a corporation has 'access, directly or indirectly, to information intended to be available only for a corporate purpose and not for the personal benefit of anyone' may not take 'advantage of such information knowing it is unavailable to those with whom he is dealing', *i.e.*, the investing public."[5]

It would be useful to examine the historical evolution of the rule.

In the United States, legal abhorrence of insider trading preceded the modern securities market. Prior to 1900, it was treatise law that the doctrine that officers and directors of corporations are trustees of the stockholders does not extend to their private dealings with stockholders or others, though in such dealings they take advantage of knowledge gained through their official position.[6] Under that doctrine, the misrepresentation or fraudulent concealment of a material fact by such corporate officers or directors gave rise to liability based on general fraud as understood in common law, yet such liability would arise only if the defendant actively prevented the plaintiff from looking into or inquiring upon the affairs or condition of the corporation and its prospects for dividends.[7] The rule, as understood then, did not encompass a positive duty for public disclosure of any material information pertinent to a corporation and/or its securities.

The first paradigm shift came with a decision in 1903 of the Georgia Supreme Court in *Oliver v. Oliver*,[8] which pronounced that the shareholder had a right to disclosure, and the corporation a corresponding duty to disclose such material information, based on the principle that "[w]here the director obtains the information

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[5] *Matter of Cady, Roberts & Co.*, 40 SEC 907, 912 (1961); cited in *Texas Gulf Sulphur Co.*, 401 F.2d 833 (2d Cir. 1968).

[6] BAINBRIDGE, *supra* note 4 at 520 citing H.L. Wilgus, *Purchase of Shares of a Corporation by a Director from a Shareholder*, 8 Mich. L. Rev. 267, 267 (1910).

[7] *Id.*, citing *Carpenter v. Danforth*, 52 Barb. 581, 589 (N.Y.Sup. Ct.1868).

[8] 45 S.E. 232 (Ga.1903).

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giving added value to the stock by virtue of his official position, he holds the information in trust for the benefit of [the shareholders]."[9] Subsequent state jurisprudence affirmed this fiduciary obligation to disclose material nonpublic information to shareholders before trading with them, otherwise known as the "minority" or the "duty to disclose" rule. However, the U.S. Supreme Court in 1909 expressed preference for a different rule in *Strong v. Repide*,[10] acknowledging that the corporate directors generally owed no duty to disclose material facts when trading with shareholders, unless there were "special circumstances" that gave rise to such duty. The "special circumstances," as identified in *Strong*, were the concealment of identity by the defendant, and the failure to disclose significant facts having a dramatic impact on the stock price.

Both the "special circumstances" and "duty to disclose" rules gained adherents in the next several years. In the meantime, the 1920s saw the unprecedented popularity of the stock market with the general public, which was widely taken advantage of by corporations and brokers through unscrupulous practices. The American stock market collapse of October 1929, which helped trigger the worldwide Great Depression, left fully half of the $25 million worth of securities floated during the post-First World War period as worthless, to the injury of thousands of individuals who had invested their life savings in those securities.[11] The consequent wellspring of concern over the welfare of the investors animated the passage of the first U.S. federal securities laws, such as the Securities Exchange Act of 1934 which declared that "transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary to provide for regulation and control of such transactions."[12]

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[9] *Id.*

[10] 213 U.S. 419 (1909).

[11] See R. JENNINGS, H. MARSH, JR., J. COFFEE, JR. AND J. SELIGMAN, *supra* note 2 at 2; citing H.R.Rep. No. 85, 73d Cong., 1st Sess. 2 (1933).

[12] *Id.*

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Section 10(b) of the Securities Exchange Act of 1934 provided that:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of the national securities exchange — x x x
>
> (b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.[13]

It is this provision which stands as the core statutory authority prohibiting insider trading under U.S. federal law.[14] Yet the provision itself does not utilize the term "insider trading," and indeed doubts have been expressed whether it was intended at all by the U.S. Congress to impose a ban on insider trading through the 1934 Securities Exchange Act.[15] At the same time, the provision did grant to the U.S. Securities and Exchange Commission (U.S. SEC) the authority to promulgate rules and regulations "as necessary or appropriate in the public interest or for the protection of investors." This power was exercised by the U.S. SEC in 1942, when it enacted Rule 10b-5, which has been described as "the foundation on which the modern insider trading prohibition rests."[16] The Rule reads:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,
>
> (a) To employ any device, scheme, or artifice to defraud,
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> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the

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[13] 15 U.S.C. § 78j(b).

[14] BAINBRIDGE, *supra* note 4 at 525.

[15] *Id.* at 526.

[16] *Id.* at 527.

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statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceipt upon any person,

in connection with the purchase or sale of any security.[17]

Again, the rule by itself did not provide for an explicit prohibition on insider trading practices, and commentators have expressed doubts whether the U.S. SEC in 1942 had indeed contemplated that the rule work to such effect.[18] Yet undoubtedly the Rule created a powerful antifraud weapon,[19] and it would finally be applied by the U.S. SEC as a prohibition against insider trading in the 1961 case of *In re Cady, Roberts & Co.*[20]

The facts of that case hew closely to our traditional understanding of insider trading. A corporate director of Curtiss-Wright Corporation had told one of his business partners, Gimpel, that the board of directors had decided to reduce the company's quarterly dividend. Armed with such information even before the news was announced, Gimpel sold several thousand shares in the corporation's stock held in customer accounts over which he had discretionary trading authority. When the news of the reduced dividend was publicly disclosed, the corporation's share prices predictably dropped, and the owners of the sold shares were able to avoid injury. The U.S. SEC ruled that Gimpel had violated Rule 10b-5, even though he was not an insider privy

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[17] 17 CFR §240.10b-5.

[18] "According to one account, the decision to adopt the rule and model it on Section 17(a) [of the 1933 Securities Exchange Act] was arrived at without any deliberation, with the only official discussion consisting of one SEC Commissioner reportedly observing, "we are against fraud, aren't we?" T.L. HAZEN, *The Law of Securities Regulation* (4th ed., 2002), at 571; citing J. Blackmun, *dissenting*, *Blue Chips Stamps v. Manor Drug Stores*, 421 U.S. 723, 767 (1975).

[19] *Id.* at 570-571.

[20] *Supra* note 5.

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to the confidential material information, but merely a "tippee" of that insider. In doing so, the U.S. SEC formulated the "disclose or abstain" rule, requiring that an insider in possession of material nonpublic information must disclose such information before trading or, if disclosure is impossible or improper, abstain from trading.[21]

Not long after, the American federal courts adopted the principles pronounced by the U.S. SEC in *Cady, Roberts*, and the rule evolved that insider trading was deemed a form of securities fraud within the U.S. SEC's regulatory jurisdiction.[22] Subsequently, jurisprudential limitations were imposed by the U.S. Supreme Court, ruling for example that an insider bears a duty to disclose on the basis of a fiduciary relationship of trust and confidence as between him and the shareholders;[23] or that a tippee is liable for insider trading only if the tipper breached a fiduciary relationship by disclosing information to the tippee, who knew or had reason to know of the breach of duty.[24] In response to these decisions, the U.S. SEC promulgated Rule 14e-3, which specifically prohibited insiders of the bidder and the target company from divulging confidential information about a tender offer to persons that are likely to violate the rule by trading on the basis of that information.[25]

In the United Kingdom, insider trading is considered as a type of "market abuse" assuming the form of behavior "based on information which is not generally available to those using the market but which, if available to a regular user of the market, would or would be likely to be regarded by him as relevant

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[21] BAINBRIDGE, *supra* note 4 at 528.

[22] Particularly, through the case of *SEC v. Texas Gulf Sulphur Co*., 401 F.2d 833 (2d Cir.1968), which has been described as "the first of the truly seminal insider trading cases," even though much of its core insider trading holding had since been rejected by the U.S. Supreme Court. See BAINBRIDGE, *supra* note 4, at 529.

[23] *U.S. v. Chiarella*, 445 U.S. 222 (1980).

[24] *Dirks v. SEC*, 463 U.S. 646 (1984).

[25] See BAINBRIDGE, *supra* note 4, at 537.

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when deciding the terms on which transactions in investments of the kind in question should be effected."[26]

The Philippines has adopted statutory regulations in the trading of securities, tracing in fact as far back as 1936, or just two years after the enactment of the US Securities Exchange Act of 1934. The then National Assembly of the Philippines enacted in 1936 Commonwealth Act No. 83, also known as the Securities Act,[27] designed to regulate the sale of securities and to create a Securities and Exchange Commission (SEC) for that purpose. Notably, Com. Act No. 83 did not contain any explicit provision prohibiting insider trading in precise terms, even as it contained specific provisions prohibiting the manipulation of stock prices[28] or the employment of manipulative and deceptive devices.[29] This silence is unsurprising, considering that American federal law had similarly failed to enact so specific a prohibition and that Rule 10b-5 of the U.S. SEC had not yet come into existence then.

However, in January of 1973, the SEC would issue a set of rules,[30] which required specific insiders to "make a resonably full, fair and accurate disclosure of every material fact relating or affecting it which is of interest to investors." [31] It was explained therein that a fact is material if it "induces or tends to induce or otherwise affect the sale or purchase of the securities of the issuing corporation, such as an acquisition of mining claims, patent or formula, real estate, or similar capital assets; discovery of mineral ores; declaration of dividends; executing a contract

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[26] Financial Securities and Markets Act of 2000, Part VIII (118)(2)(a).

[27] See Sec. 1, Com. Act No. 83 (1936).

[28] See Sec. 20, Com. Act No. 83 (1936).

[29] See Sec. 21, Com. Act No. 83 (1936).

[30] *Rules Requiring Disclosure of Material Facts by Corporations whose Securities are Listed in any Stock Exchange or Registered/Licensed Under the Revised Securities Act*, dated 29 January 1973.

[31] See R. MORALES, *The Philippine Securities Regulation Code* (Annotated) (2002 ed.) at 199.

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of merger or consolidation; rights offering; and any other important event or happening."[32]

The enactment of the Revised Securities Act in 1980 (Batas Pambansa Blg. 178, as amended) provided for the first time a specific statutory prohibition in Philippine law against insider trading. This was embodied in Section 30 of the law, which provides:

> Sec. 30. Insider's duty to disclose when trading — (a) It shall be unlawful for an insider to sell or buy a security of the issuer, if he knows a fact of special signifinace with respect to the issuer or the security that is not generally available, unless (1) the insider proves that the fact is generally available or (2) if the other party to the transaction (or his agent) is identified, (a) the insider proves that the other party knows it, or (b) that other party in fact knows it from the insider or otherwise.
>
> (b) "Insider" means (1) the issuer, (2) a director or officer of, or a person controlling, controlled by, or under common control with, the issuer, (3) a person whose relationship or former relationship to the issuer gives or gave him access to a fact of special significance about the issuer or the security that is not generally available, or (4) a person who learns such a fact from any of the foregoing insiders as defined in this subsection, with knowledge that the person from whom he learns the fact is such an insider.
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> (c) A fact is "of special significance" if (a) in addition to being material it would be likely, on being made generally available, to affect the market price of a security to a significant extent, or (b) a reasonable person would consider it especially important under the circumstances in determining his course of action in the light of such factors as the degree of its specificity, the extent of its difference from information generally available previously, and its nature and reliability.
>
> (d) This section shall apply to an insider as defined in subsection (b) (3) hereof only to the extent that he knows of a fact of special significance by virtue of his being an insider.

Contrary to the claims of respondents, such terms as "material fact," "reasonable person," "nature and reliability" and "generally

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[32] *Id*.

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available" as utilized in Section 30 do not suffer from the vice of vagueness and do not necessitate an administrative rule to supply definitions of the terms either. For example, as the *ponente* points out, the 1973 Rules already provided for a definition of a "material fact," a definition that was actually incorporated in Section 30.

Yet there is an underlying dangerous implication to respondents' arguments which makes the Court's rejection thereof even more laudable. The ability of the SEC to effectively regulate the securities market depends on the breadth of its discretion to undertake regulatory activities. The intractable adherents of *laissez-faire* absolutism may decry the fact that there exists an SEC in the first place, yet it is that body which assures the protection of interests of ordinary stockholders and investors in the capital markets, interests which may be overlooked by the issuers of securities and their corporate overseers whose own interests may not necessarily align with that of the investing public. A "free market" that is not a "fair market" is not truly free, even if left unshackled by the State as it would in fact be shackled by the uninhibited greed of only the largest players.

Respondents essentially contend that the SEC is precluded from enforcing its statutory powers unless it first translates the statute into a more comprehensive set of rules. Without denigrating the SEC's delegated rule-making power, each provision of the law already constitutes an executable command from the legislature. Any refusal on the part of the SEC to enforce the statute on the premise that it had yet to undergo the gauntlet of administrative interpretation is derelict to that body's legal mandate. By no means is the Congress impervious to the concern that certain statutory provisions are best enforced only after an administrative regulation implementing the same is promulgated. In such cases, the legislature is solicitous enough to specifically condition the enforcement of the statute upon the promulgation of the relevant administrative rules. Yet in cases where the legislature does not see fit to impose such a conditionality, the body tasked with enforcing the law has no choice but to do so. Any quibbling as to the precise meaning of the statutory language would be duly resolved through the exercise of judicial review.

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It bears notice that unlike the American experience where the U.S. Congress has not seen fit to specifically legislate prohibitions on insider trading, relying instead on the discretion of the U.S. SEC to penalize such acts, our own legislature has proven to be more pro-active in that regard, legislating such prohibition, not once, but twice. The Revised Securities Act was later superseded by the Securities Regulation Code of 2000 (Rep. Act No. 8799), a law which is admittedly more precise and ambitious in its regulation of such activity. The passage of that law is praiseworthy insofar as it strengthens the State's commitment to combat insider trading. And the promulgation of this decision confirms that the judiciary will not hesitate in performing its part in seeing to it that our securities laws are properly implemented and enforced.

III

Now on the issue of prescription.

The issue boils down to the determination of whether the investigation conducted by the SEC pursuant to Section 45 [33] of the Revised Securities Act in 1994 tolled the running of the period of prescription. I submit it did.

Firstly, this Court, in ruling in *Baviera v. Paglinawan*[34] that the Department of Justice cannot conduct a preliminary investigation for the determination of probable cause for offenses under the Revised Securities Code, without an investigation first had by the SEC, essentially underscored that the exercise is a two-stage process. The procedure is similar to the two-phase preliminary investigation prior to the prosecution of a criminal case in court under the old rules.[35] The venerable J.B.L.

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[33] A similar provision is found in Section 53 of the Securities Regulation Code of 2008.

[34] G.R. No. 168380, 8 February 2007, 515 SCRA 515.

[35] The first phase was the preliminary examination for the determination of the fact of commission of the offense and the existence of probable cause, as well as the issuance of the warrant of arrest. The second phase was the preliminary investigation proper (after arrest, for the determination of whether

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Reyes in *People v. Olarte*[36] finally settled a long standing jurisprudential conflict at the time by holding that **the filing of the complaint in the Municipal Court, even if it be merely for purposes of preliminary examination or investigation, should, and does, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on its merits**. The court gave three reasons in support of its decision, thus:

> . . . Several reasons buttress this conclusion: first the text of Article 91 of the Revised Penal Code, in declaring that the period of prescription "shall be interrupted by the filing of the complaint or information" without distinguishing whether the complaint is filed in the court for preliminary examination or investigation merely, or for action on the merits. Second, even if the court where the complaint or information is filed may only proceed to investigate the case its actuations already represent the initial step of the proceedings against the offender. Third, it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control. All that the victim of the offense may do not on his part to initiate the prosecution is to file the requisite complaint.[37]

The same reasons which moved the Court in 1967 to declare that the mere filing of the complaint, whether for purposes of preliminary examination or preliminary investigation should interrupt the prescription of the criminal action inspire the Court's ruling in this case.

It should be emphasized that Sec. 45 of the Revised Securities Act invests the SEC with the power to "make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Act or any rule or regulation thereunder, 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

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there was a *prima facie* case against the accused and whether the issuance of the arrest warrant was justified).

[36] 125 Phil. 895 (1967).

[37] *Id*.

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and circumstances concerning the matter to be investigated" and to refer criminal complaints for violations of the Act to the Department of Justice for preliminary investigation and prosecution before the proper court.

The SEC's investigatory powers are obviously akin to the preliminary examination stage mentioned in *People v. Olarte*. The SEC's investigation and determination that there was indeed a violation of the provisions of the Revised Securities Act would set the stage for any further proceedings, such as preliminary investigation, that may be conducted by the DOJ after the case is referred to it by the SEC.

Secondly, Sec. 2 of Act No. 3326[38] provides in part:

> Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment. **The prescription shall be interrupted when proceedings are instituted against the guilty person,** and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy. (Emphasis supplied)

Act No. 3326 was approved on 4 December 1926, at a time that the function of conducting the preliminary investigation of criminal offenses was vested in the justices of the peace. The prevailing rule at the time, embodied in the early case of *U.S. v. Lazada*[39] and later affirmed in *People v. Joson*,[40] is that the prescription of the offense is halted once the complaint is filed with the justice of the peace for preliminary investigation inasmuch as the filing of the complaint signifies the institution of criminal proceedings against the accused.[41] *People v. Parao*[42] — a case

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[38] Entitled "AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATION PENALIZED BY SPECIAL ACTS AND MUNICIPALS ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO ACT."

[39] 9 Phil. 509 (1908).

[40] 46 Phil. 380.

[41] 9 Phil. 509, 511.

[42] 52 Phil. 712 (1929).

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which affirmed the power of the then municipal president to conduct preliminary investigation in the absence of the justice of the peace and of the auxiliary justice of the peace when the same could not be deferred without prejudice to the interest of justice — established the correlative rule that the first step taken in the investigation or examination of offenses partakes the nature of a judicial proceedings which suspends the prescription of the offense.[43] But although the second *Olarte*[44] case made an affirmative ruling that the preliminary investigation is not part of the action proper, the Court therein nevertheless declared that such investigation is quasi-judicial in nature and that as such, the mere filing of the complaint with the justice of the peace should stall the exhaustion of the prescriptive period of the offense charged.

While it may be observed that the term "judicial proceedings" in Sec. 2 of Act No. 3326 appears before "investigation and punishment" in the old law, with the subsequent change in set-up whereby the investigation of the charge for purposes of prosecution has become the exclusive function of the executive branch, the modifier "judicial" should be taken to refer to the trial and judgment stage **only** and not to the earlier investigation phase. With this clarification, any kind of investigative proceeding instituted against the guilty person which may ultimately lead to his prosecution as provided by law shall suffice to toll prescription.

Thus, in the case at bar, the initiation of investigative proceedings against respondents, halted only by the injunctive orders issued by the Court of Appeals upon their application no less, should and did interrupt the period of prescription.

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[43] 52 Phil. 712, 715.

[44] G.R. No. L-22465, 28 February 1967.

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DISSENTING OPINION

CARPIO, *J.*:

I dissent because the majority opinion is **patently contrary** to the express provision of Section 2 of Act No. 3326.

The majority opinion holds that the **administrative investigation** by the Securities and Exchange Commission (SEC) interrupted the running of the prescriptive period for violation of the Securities Regulation Code (Code). The majority opinion holds:

> x x x It should be noted that the SEC started investigative proceedings against the respondents as early as 1994. **This investigation effectively interrupted the prescriptive period**.
>
> x x x x x x x x x
>
> x x x **Thus, the investigation that was commenced by the SEC in 1995 (sic), soon after they discovered the questionable acts made by the respondents, effectively interrupted the prescriptive period**. (Emphasis supplied)

This ruling of the majority violates Section 2 of Act No. 3326 entitled *An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and To Provide When Prescription Shall Begin To Run*. Section 2 provides:

> Section 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the **institution of judicial proceedings for its investigation and punishment**. (Emphasis and underscoring supplied)

In *Zaldivia v. Reyes, Jr.*,[1] the Court ruled that the proceedings referred to in Section 2 of Act No. 3326 are **judicial proceedings and not administrative proceedings.** The Court held:

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[1] G.R. No. 102342, 3 July 1991, 211 SCRA 277.

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x x x **This means that the running of the prescriptive period shall be halted on the date the case is actually filed in court and not on any date before that.**

This interpretation is in consonance with the afore-quoted Act No. 3326 which says that the period of prescription shall be suspended "when proceedings are instituted against the guilty party." **The proceedings referred to in Section 2 thereof are "judicial proceedings**," contrary to the submission of the Solicitor General that they include administrative proceedings. His contention is that we must not distinguish as the law does not distinguish. As a matter of fact, it does. (Emphasis and underscoring supplied)

Indeed, Section 2 of Act No. 3326 expressly refers to the "**institution of judicial proceedings**." Contrary to the majority opinion's claim that "a preliminary investigation interrupts the prescriptive period," **only the institution of judicial proceedings can interrupt the running of the prescriptive period**. Thus, in the present case, since no criminal case was filed in any court against respondents since 1994 for violation of the Code, the prescriptive period of twelve years under Section 1[2] of Act No. 3326 has now expired.

The fact that the Court of Appeals enjoined the SEC from filing any criminal, civil or administrative case against respondents for violation of the Code is immaterial. The SEC has no jurisdiction to institute judicial proceedings against respondents for criminal violation of the Code. Even if the Court of Appeals did not issue the injunction, the SEC could still not have instituted any judicial proceedings against respondents for criminal violation

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[2] Section 1 of Act No. 3326 provides: "Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) after a year for offences punished only by a fine or by imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) after eight years for those punished by imprisonment for two years or more, but less than six years; and (d) **after twelve years for any other offence punished by imprisonment for six years or more**, except the crime of treason, which shall prescribe after twenty years. Violations penalized by municipal ordinances shall prescribe after two months." (Emphasis supplied)

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of the Code. The Code empowers the SEC to conduct **only administrative investigations and to impose fines and other administrative sanctions**[3] against violators of the Code. Section 54.2 of the Code states that the "imposition of x x x administrative sanctions shall be without prejudice to the filing of criminal charges against the individuals responsible for the violation."

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[3] Section 54 of the Securities Regulation Code provides: "Administrative Sanctions. — 54.1. If, after due notice and hearing, the Commission finds that: (a) There is a violation of this Code, its rules, or its orders; (b) Any registered broker or dealer, associated person thereof has failed reasonably to supervise, with a view to preventing violations, another person subject to supervision who commits any such violation; (c) Any registrant or other person has, in a registration statement or in other reports, applications, accounts, records or documents required by law or rules to be filed with the Commission, made any untrue statement of a material fact, or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading; or, in the case of an underwriter, has failed to conduct an inquiry with reasonable diligence to insure that a registration statement is accurate and complete in all material respects; or (d) Any person has refused to permit any lawful examinations into its affairs, it shall, in its discretion, and subject only to the limitations hereinafter prescribed, impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances:

(i) Suspension, or revocation of any registration for the offering of securities;

(ii) A fine of no less than Ten thousand pesos (₱10,000.00) nor more than One million pesos (₱1,000,000.00) plus not more than Two thousand pesos (₱2,000.00) for each day of continuing violation;

(iii) In the case of a violation of Sections 19.2, 20, 24, 26 and 27, disqualification from being an officer, member of the Board of Directors, or person performing similar functions, of an issuer required to file reports under Section 17 of this Code or any other act, rule or regulation administered by the Commission;

(iv) In the case of a violation of Section 34, a fine of no more than three (3) times the profit gained or loss avoided as a result of the purchase, sale or communication proscribed by such Section; and

(v) Other penalties within the power of the Commission to impose.

54.2. The imposition of the foregoing administrative sanctions shall be without prejudice to the filing of criminal charges against the individuals responsible for the violation.

54.3. The Commission shall have the power to issue writs of execution to enforce the provisions of this Section and to enforce payment of the fees and other dues collectible under this Code.

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Thus, the criminal charges may proceed separately and independently of the administrative proceedings.

Under Section 53.1 of the Code,[4] jurisdiction to institute judicial proceedings against respondents for criminal violation of the Code **lies exclusively** with the Department of Justice (DOJ). Section 53.1 of the Code expressly states that "**all criminal complaints for violations of this Code** x x x **shall be referred to the Department of Justice for preliminary investigation and prosecution before the proper court**." No court ever enjoined the DOJ to institute judicial proceedings against respondents for criminal violation of the Code. Nothing prevented the DOJ's National Bureau of Investigation from investigating the alleged criminal violations of the Code by respondents. Thereafter, the DOJ could have conducted a preliminary investigation and instituted judicial proceedings against respondents. The DOJ did not and prescription has now set in.

Accordingly, I vote to *DISMISS* the petition.

FIRST DIVISION

[G.R. No. 156962. October 6, 2008]

VICTORIAS MILLING CO., INC., *petitioner, vs.* **LUIS J. PADILLA, EMMANUEL S. DUTERTE, CARLOS TUPAS, JR., and ROLANDO C. RODRIGUEZ,** *respondents.*

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[4] Section 53.1 of the Securities Regulation Code provides that "**all criminal complaints for violations of this Code**, and the implementing rules and regulations enforced or administered by the Commission **shall be referred to the Department of Justice for preliminary investigation and prosecution before the proper court**." Section 45 of the old Revised Securities Act contained substantially the same provision.