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REPUBLIC OF THE PHILIPPINES )  
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APPROVED BY:

SENATE

P.S. Res. No. 347

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Introduced by Senator FRANCIS G. ESCUDERO

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RESOLUTION

DIRECTING THE SENATE COMMITTEE ON BANKS, FINANCIAL INSTITUTIONS AND CURRENCIES TO CONDUCT AN INQUIRY IN AID OF LEGISLATION INTO THE IMPLEMENTATION OF REPUBLIC ACT NO. 8799 WHICH HAS RESULTED IN UNDUE DELEGATION, MONOPOLY AND RESTRAINT OF TRADE AND VIOLATION OF OTHER RELATED LAWS SUCH AS THE GENERAL BANKING LAW AND THE SECRECY OF BANK DEPOSITS ACT WITH THE END IN VIEW OF ENACTING LEGISLATIVE MEASURES TO ADDRESS THE SAME AND PROTECT NATIONAL AND FINANCIAL SECURITY, AND THE INVESTING PUBLIC

WHEREAS, Article XII, Section 19 of the Constitution provides:

*"The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed."*

WHEREAS, since the passage of Republic Act (RA) No. 8799 in July 2000, otherwise known as The Securities Regulation Code ("SRC"), the Securities and Exchange Commission ("SEC") has been tasked to register and possess oversight powers over Self-Regulatory Organizations ("SRO");

WHEREAS, in December 2006, the SEC issued the Rules Governing the Over the Counter ("OTC") market ("RGOTC"); among the eligible securities in an OTC market are government issued and guaranteed<sup>1</sup> securities.

WHEREAS, the RGOTC provides that brokers or dealers who participate in an OTC market should be a member of an SRO,<sup>2</sup> prohibiting them from dealing with another dealer or broker who is not authorized to participate in an OTC market or to non-qualified investors;<sup>3</sup>

WHEREAS, in January 2008, a private stock corporation, the Philippine Dealing and Exchange Corporation ("PDEX") was granted an SRO status for the OTC market; this, despite the notable prohibition on PDEX's

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<sup>1</sup> RGOTC, Sec. 8 A. (ii)

<sup>2</sup> RGOTC, Sec. 6

<sup>3</sup> RGOTC, Sec. 19

Certificate of Incorporation that it cannot act as a "broker or dealer in securities, government securities eligible dealer xxx"; PDEX is 99.99% owned by the Bankers Association of the Philippines Consulting Inc.

**WHEREAS**, with the questionable grant of SRO status to PDEX, it was able to monopolize 100% of government securities market, with the power to, among others: 1) enforce compliance of the SRC and codify its own rules;<sup>4</sup> 2) take over the operations of insolvent member firms;<sup>5</sup> 3) discipline its members;<sup>6</sup> 4) expel or suspend them;<sup>7</sup> and 5) deny membership of a broker or dealer<sup>8</sup>.

**WHEREAS**, even more insidious is that an SRO, like PDEX, has the power to enforce compliance with the SRC and its own rules, "notwithstanding any provision of the Corporation Code to the contrary,<sup>9</sup>" thereby unduly arrogating upon an SRO the executive power of enforcing laws and the legislative power of repealing them;

**WHEREAS**, PDEX charges an "ad valorem" fee of PhP1,250.00 for every PhP50 Million Pesos worth of transaction; PDEX also charges PhP100.00 uplift fee for every security which passes through its Philippine Depository and Trust Corp. (PDTC) broker Registry of Scripless Security ("RoSS") account;

**WHEREAS**, when the Monetary Board had been asked its opinion on the effect of the PDEX' SRO status on bank operations, it referred the matter to the SEC thereby impressing upon an abdication of its supervisory power over banks;

**WHEREAS**, in June 2010, the Department of Finance issued Department Order No. 20-2010, prescribing the qualifications of a Sub-registrar for the Bureau of Treasury's RoSS, ostensibly for "tax unification program for trading and settlement" of government securities<sup>10</sup>.

**WHEREAS**, such Department Order has made PDEX's position even much better since through its subsidiary, PDTC, which handles the transaction for the RoSS, it has been given access to information of those buying/selling securities and at what rate and volume; moreover, PDEX now possesses the inventory of government securities of its members.

**WHEREAS**, it is imperative to disabuse the mind of the public that the SEC, or even the Monetary Board or the Department of Finance, is favoring PDEX in the exercise of their respective regulatory functions;

**WHEREAS**, the foregoing shows clear and present danger to national and financial security given PDEX's control over vital information concerning government securities and buyers and sellers thereof.

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<sup>4</sup> SRC, Sec. 33 (a).

<sup>5</sup> SRC, Sec. 33.1 (d) But see Sec. 29, R.A. No. 7653, the General Banking Act

<sup>6</sup> SRC, Secs. 33.2(d) & 39.3, (b)

<sup>7</sup> SRC, Sec. 33.2. (d)

<sup>8</sup> SRC, Sec. 39.4

<sup>9</sup> SRC, Sec. 40.2

<sup>10</sup> D.O. No. 10-2010, Sec. 12

NOW, THEREFORE, BE IT RESOLVED, as it is hereby resolved, that the Senate Committee on Banks, Financial Institutions and Currencies conduct an inquiry in aid of legislation into the implementation of RA No. 8799 with the end in view of enacting legislative measures to address the same and protect national and financial security, and the investing public.

Adopted.



FRANCIS G. ESCUDERO