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REPUBLIC OF THE PHILIPPINES)
Second Regular Session)

SENATE

COMMITTEE REPORT NO. 75

Submitted by the Committee on Banks, Financial Institutions and Currencies on 01 JUN 2006

RE: PRIVILEGE SPEECH OF SENATOR ENRILE DELIVERED ON FEBRUARY 1, 2005 AND PSR 166 - "RESOLUTION DIRECTING THE COMMITTEE ON BANKS, TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE ALLEGED ILLEGAL SALE OF UNREGISTERED AND HIGH RISK SECURITIES BY STANDARD CHARTERED BANK, WHICH RESULTED IN BILLIONS OF PESOS OF LOSES TO THE INVESTING PUBLIC"

Recommending the adoption of the recommendations made therein and their immediate implementation

Sponsors: Senator Angara and the members of the Committee

MR. PRESIDENT:

The Committee on Banks, Financial Institutions and Currencies, to which were referred the Privilege Speech of Senator Enrile and PSR 166 on the alleged illegal sale of unregistered and high risk securities by Standard Chartered Bank (SCB), has conducted an inquiry, in aid of legislation and has the honor to submit its Report back to the Senate for adoption of the recommendations made therein and their immediate implementation.

Respectfully submitted:

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COMMITTEE ON BANKS, FINANCIAL INSTITUTIONS AND CURRENCIES

COMMITTEE REPORT ON THE INVESTIGATION, IN AID OF LEGISLATION, ON STANDARD CHARTERED BANK'S ALLEGED SALE OF UNREGISTERED FOREIGN SECURITIES, IN CONSIDERATION OF:

A. **Privilege speech delivered by Senator Juan Ponce Enrile on February 1, 2005 re: the alleged illegal sale of unregistered and high risk securities by the Standard Chartered Bank**

B. **PSR 166 - Resolution directing the Committee on Banks, Financial Institutions and Currencies to Conduct an inquiry, in aid of legislation, into the illegal sale of unregistered and high risk securities by Standard *Chartered Bank, which resulted in billions of pesos of losses* to the investing public.**

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I. BACKGROUND

On 1 February 2005, Senator Juan Ponce Enrile delivered a privilege speech denouncing the alleged sale of unregistered and speculative foreign securities by the Standard Chartered Bank (the "Bank"). Senator Enrile likewise filed P.S. Resolution No. 166[1] urging the Senate to conduct an inquiry, in aid of legislation, on the alleged illegal sale. The privilege speech and the resolution were referred to the Committee on Banks, Financial Institutions and Currencies (the "Committee").

Complaints against the Bank were received by the Office of Senator Enrile from clients who suffered losses on their investments in the unregistered securities. They were allegedly defrauded to invest in the unregistered securities purportedly marketed as safe investment havens with guaranteed returns of 40%.

Due to the sheer enormity of the amounts involved as well as the pressing need to maintain public confidence on the banking system, the Committee gave priority to the issue and conducted an investigation, in aid of legislation, thereon.

The Committee conducted eight (8) public hearings on the following dates:

1. Monday, 28 February 2005;
2. Tuesday, 15 March 2005;
3. Thursday, 5 May 2005;
4. Tuesday, 24 May 2005;
5. Monday, 30 May 2005;
6. Thursday, 17 November 2005;
7. Thursday, 24 November 2005; and
8. Tuesday, 28 March 2006.

Prior to the second public hearing on 15 March 2005, the Bank, through its lawyers, the Romulo Mabanta Buenaventura Sayoc De los Angeles Law Offices ("Romulo Mabanta"), filed a Petition for Prohibition (With Prayer for the Issuance of Temporary Restraining Order and/or Injunction)[2] with the Supreme Court praying for a prohibition of the inquiry against the bank. In view of the Supreme Court's denial of the prayer for the issuance of a TRO[3], the Committee continued with the investigation, in aid of legislation.

The Committee endeavored to hear all the parties, including the government agencies that have investigated the Bank's sale of unregistered and speculative securities. The facts of the case, as gathered by the Committee, are summarized as follows:

Standard Chartered Bank

Standard Chartered Bank (the "Bank") is a foreign bank that has operated in the Philippines for 134 years.

Trust and Other Fiduciary Business

The Bank was granted a permit by the Bangko Sentral ng Pilipinas (the "BSP") on May 3, 1995 to engage in Trust and Other Fiduciary Business[4]. It is not a registered "broker" or "dealer" of securities. Thus, although the Bank is allowed to engage in a trust business, it is not authorized to engage in the business of buying and/or selling securities, including mutual fund shares, in the Philippines.[5]

Making use of its permit to engage in trust operations, the Bank conceptualized a trust product called "Investment Services Philippines" which aimed to develop and introduce on-shore and off-shore investment services to identified segments in the Philippine Market. The product was envisioned to complement the Bank's global strategy of providing one-stop shop financial services to customers, to make the Global Mutual Funds available to its clients in Asia, and to take advantage of the Bank's reputation and international presence. [6]

The product was designed for the clients to make the investment decisions themselves, as evidenced by their express written direction, and for the Bank, as investment advisor, to provide customers with the adequate, timely and relevant information on available offshore placements.

Legal Opinion

An opinion was sought by the Bank from its legal counsel, Romulo Mabanta, on the legality of the trust product. In particular, the Bank wanted to know whether or not registration of the offshore securities was necessary.

Romulo Mabanta's Atty. Reynaldo G. Geronimo opined that the "product does not consist in selling the securities but instead merely in providing the necessary data needed to make prudent investment in the subject securities". Atty. Geronimo took the view that the Bank has no obligation to have the said securities registered with the SEC. He concluded that the Bank has the capacity under Sec 72 of the General Banking Act to "act as financial agent and buy and sell, by order and for the account of their customers, shares, evidences of indebtedness and all types of securities".[7]

The opinion on the legality of the trust product, however, was not without a precaution that the documentations, disclaimers and disavowals should clearly show that the Bank's relationship with the trust client is limited only in providing information.

Such precaution was echoed by the Bank's Head of Compliance based in Singapore, Edward Lee-Smith, who has warned the Bank of the "serious repercussions for breach of prospectus law" since it "has been marketing to its clients securities for which no equivalent of a prospectus has been registered contrary to local law on public offerings".[8]

The Bank, therefore, was all along aware of the need for registration should it sell or offer for sale in the Philippines Global Mutual Funds.

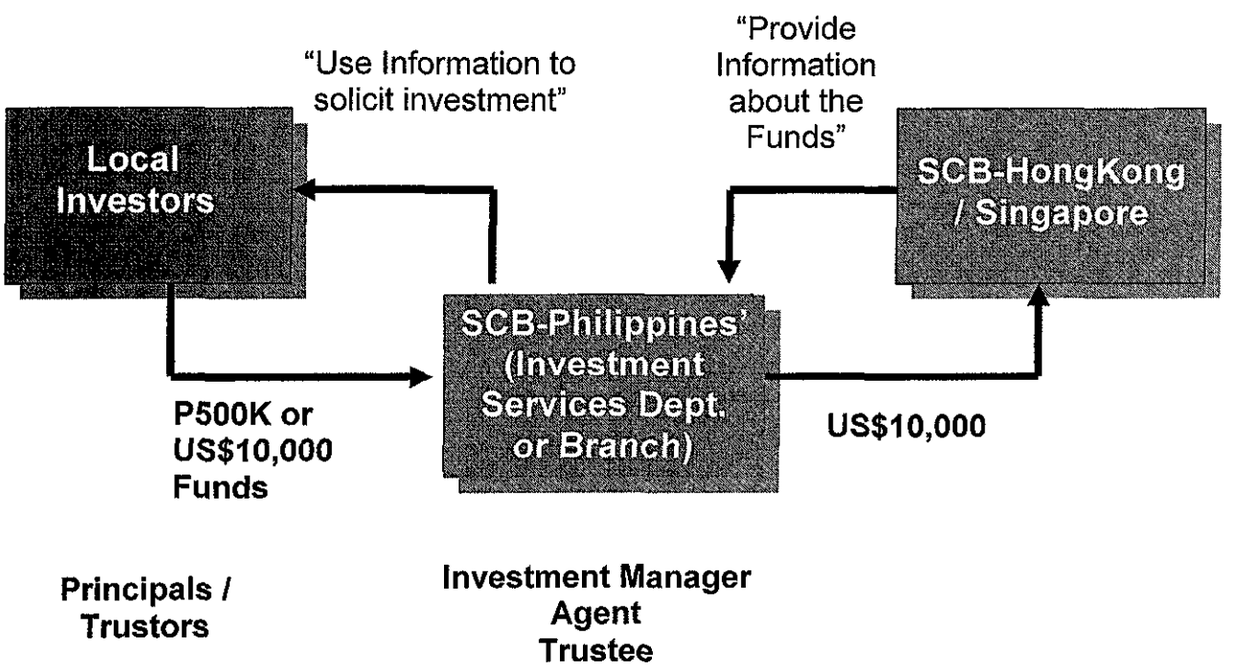
Launching of Global Mutual Funds

Thereafter, the Bank's management approved the trust product and authorized the Trust Department to offer Third Party Funds being distributed by SCB-Hong Kong.[9]

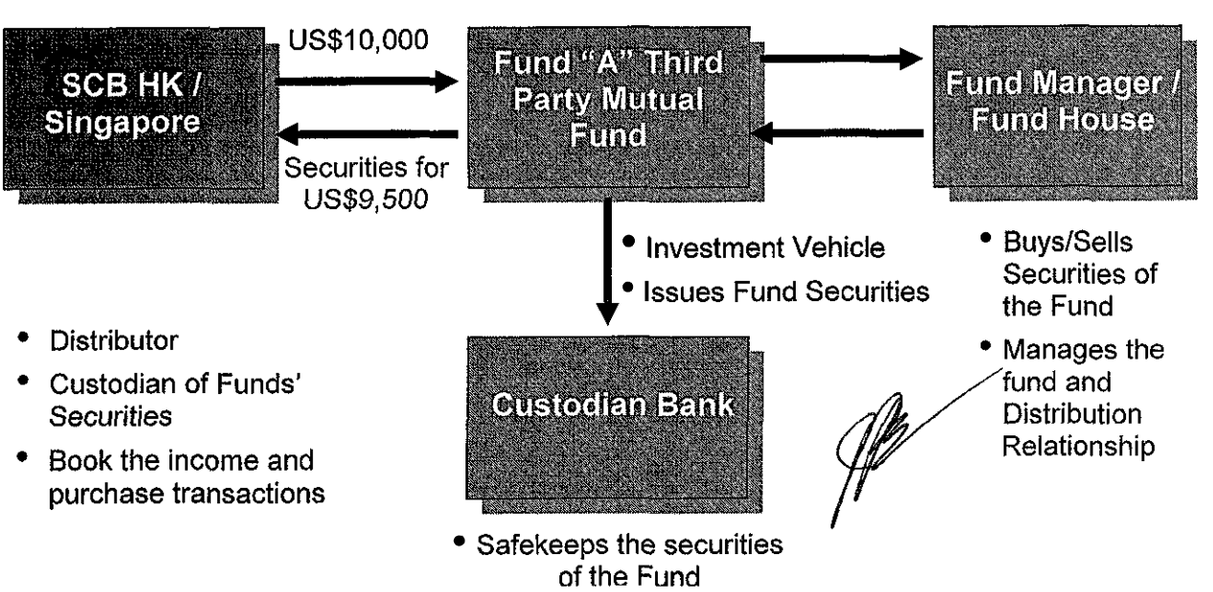
The Bank launched the Global Mutual Funds product in November 1996.[10] Shortly thereafter, the BSP noted in its Report of Examination[11] that of the P30.179 Million Trust Assets, ***P29.213 million or 96.80% were invested in offshore mutual funds***. As early as February 28, 1997, BSP had already observed a glaring decline in value of the trust investments amounting to P18,351,540.

The high volume of transactions on Global Mutual Funds can be attributed to the aggressive sales strategy of the Bank, such as telemarketing, proposal letters, personal calls, mailing of risk-reward chart, and mailing of fund fact sheet/prospectus and e-mail messages, among others.[12]

Once a client decides to buy, the transaction is documented through a Custodianship Agreement and Investment Distribution Instruction where the client is supposed to instruct the Bank to buy or to redeem funds. The investment then passes through the Bank and remitted to SCB-Hong Kong or SCB-Singapore.



Then, SCB-Hong Kong or SCB-Singapore purchases the funds for and on behalf of the customers, books all income of the purchase transactions, sends confirmation notice to the Bank and takes custody of the fund certificate. The Bank never took custody of the securities but only confirmation slips received from the foreign branches. Such confirmation slips and other reportorial requirements were likewise received by the local investors.[13] Redemptions are also done through the Hong Kong and Singapore branches.



Out of the transaction, the Bank-Philippines gets a sales load fee of 2 to 5 percent from the sale transaction, a portion of the management fee of the fund manager and a trust fee. The sales load fee and the management fee, however, are not recorded in the Philippines but merely earmarked or recorded as "MIS income".[14]

ICAP Complaints

The Bank's dealings in Global Mutual Funds caught the attention of the Investment Company Association of the Philippines (ICAP), which reported the matter to the BSP on 18 July 1997 with the following objections against the Bank's sale of global mutual funds –

1) It involves capital flight;
2) It is in violation of the Revised Securities Act since the global mutual funds are registrable securities; and
3) It is being conducted on bank premises (this might confuse ordinary bank clients who may not be able to discriminate between regular bank products and non-traditional investment vehicles[15]

In this regard, the BSP's General Counsel opined that "the Bank has been offering for sale within the Philippines unregistered securities issued by non-residents" as clearly shown by the following observations which deemed to constitute solicitation of an offer to buy unregistered securities:

1) The Bank has represented in its product brochures which were distributed to clients that it can provide wide selection of investment opportunities and information to assist clients in making wiser decisions, and that it is the largest distributor of third party funds into categories based on risks involved;
2) The Bank's investment specialists rank the funds into categories based on risks involved; and
3) The Bank rates its clients' risk profile by requiring them to fill out a Risk Profile Questionnaire.[16]

On 16 October 1997, the Bank informed the BSP that pending resolution of the issues, the subject investment services have been temporarily suspended.[17]

Thereafter, on 13 August 1998, the Bank informed the BSP that they have "decided to **permanently withdraw** the third party fund products and will not offer any other product that involves direct purchase of third party mutual funds by investors."[18]

In view of the Bank's promise, the case before the BSP was considered moot and academic and was thereby closed and the determination of the Bank's possible violation of the Revised Securities Act was referred to the SEC.[19]

Meanwhile, ICAP likewise filed a complaint with the SEC.[20] As early as 2 September 1997, after giving the Bank an opportunity to explain its side, SEC's Money Market Department determined that the Bank violated Sections 4(a) and 19 of the Revised Securities Act.[21] Thus, the said Department recommended the issuance of a Cease and Desist Order (the "CDO").

However, in deference to the BSP's authority as regulator of banks, SEC decided to submit the matter to the BSP for determination.[22]

Although the CDO was not issued at this point, the Bank was apparently aware of the possible issuance of the order. Thus, the letter dated 9 October 1997[23] addressed to then Department of Finance (DOF) Secretary Roberto F. de Ocampo giving the latter assurance that the Bank has "withdrawn the product from the market and will not offer the product again until the matter has been cleared with the relevant regulatory authorities"

Repackaging of the Product

In view of the concerns raised by ICAP, the Bank redesigned the product through the PIP Premier. It is a long-term savings scheme that was designed so as not to guarantee any principal protection nor quote any returns. The funds will again be invested in Global Mutual Funds.[24]

Atty. Geronimo again opined to the effect that the Global Mutual Funds under the PIP Premier need not be registered with the SEC.[25]

On the contrary, Atty. Avelino Sebastian, who was also consulted by the Bank, cautioned the Bank of the possible violation of the Revised Securities Act. According to him, although Section 5(3) of the Revised Securities Act exempts from the registration requirements the securities to be issued or guaranteed by a banking institution, it did not exempt from registration the securities which such banking institution may purchase from other sources, whether for its own account or for the account of some third party.[26] He further stated that that *shares of an unregistered foreign mutual fund do not fall within the concept of exempt securities and the Bank's sale or distribution of the shares of an unregistered mutual fund does not fall within the concept of an exempt transaction."*[27]

Moreover, Atty. Sebastian commented that the Bank's statement that it will "link Filipino investors interested to invest abroad" directly to its foreign offices is problematic as this can serve as basis for the conclusion that the Bank is actually offering for sale in the Philippines an unregistered foreign security, in contravention with the Revised Securities Act."[28]

The BSP Directive

Meanwhile, on 20 January 1999, the Bank inquired from the BSP about the compliance of its PIP Premier with relevant regulations for trust and **investment management** operations. Further the Bank inquired if it could be allowed, upon the direction of the Trustor, to invest in Global Mutual Funds not registered in the Philippines.

In its reply dated 17 August 1999, the BSP ruled on the legal compliance of the PIP Premier. However, BSP categorically **prohibited the Bank from including investment in global mutual funds issued abroad in its trust investment portfolio unless the same are registered with the SEC.**

Continued Violations

Despite the explicit prohibition by the BSP, the thwarted issuance of CDO by the SEC and the undertaking made by the Bank to permanently withdraw the third party fund products, the latter still continued with its dealings in Global Mutual Funds.

Atty. Mark Bocobo, Mr. Manuel Baviera and Ms. Belinda Morales testified that they were enticed by the officers of the Bank to avail of its services. Atty. Bocobo

testified on the aggressiveness of the Bank in getting clients, he having been approached by the Bank's representatives in a crowded mall. Despite his initial refusal, the Bank's representatives persisted in enticing him to invest in Global Mutual Funds, such persistence lasted a span of five or six months until he was finally able to invest in March 2000. Mr. Manuel Baviera, on the other hand, was offered the Bank's services as early as January 7, 2000 up to sometime in 2003.[29]

Ms. Antonette delos Reyes likewise testified that the Bank continued to deal with Global Mutual Fund despite being expressly prohibited by the BSP.

The above testimonial evidence were corroborated by the results of the BSP examinations in years 2000, 2003, 2004 and 2005, where it was established that the Bank has continued engaging in the prohibited transactions.[30] Even with the glaring violations, however, the BSP did not penalize the Bank apart from the very measly amount of P30,000.00.

Such penalty imposed by the BSP is very insignificant as compared to the volume of the Bank's transactions in Global Mutual Funds. Undaunted with the meagre penalty, the Bank continued to entice more clients and solicit more new subscriptions.

	Number of Clients	**Year End Balance (US $, in Millions)**	**New Subscriptions (US $, in Millions)**
1999	125	4.814	4.812
2000	525	43.392	**38.931**
2001	551	40.006	**2.426**
2002	544	37.163	**0.202**
2003	531	23.944	-
January 2005	181	5.465	-

It can be noted in the table above that new subscriptions ballooned after BSP issued the prohibition on 17 August 1999.

Moreover, on February 1, 2001, three new Guaranteed Funds (Investec, Indocam and HSBC Guaranteed Fund) were added to the list of investment outlet of the Bank's Trust.

On September 2001, the aggregate amount of the investments in Global Mutual Funds were as follows:[31]

PHP 757,986,941.25
USD 22,350,191.97
EUR 2,996.87
HKD 2,392.41

Such continued dealings on global mutual funds were with the knowledge and approval of top management as shown in the corresponding Project Approval Request and Approval sheet signed by heads of departments and even by the Chief Executive Officer.[32]

Moreover, despite the representations made by the Bank's Chief Executive Officer to the government authorities that the Bank will be permanently withdrawing the Global Mutual Funds from the market, the Head of Trust Department was not given any instruction to cease from selling the product.[33]

Booking in Singapore Branch

When the Bank's dealings in Global Mutual Funds have been cited in several instances by the regulators, the Bank unbooked the transactions from the Philippine Branch and booked everything to its Singapore Office, but the transaction continued.

This shifting of the booking from the Philippine Branch to the Singapore Office was intended to show that the sale was being consummated in SCB-Singapore, in order to justify the non-compliance with the registration requirements.

The practice was in fact regularized with the execution of the Service Level Agreement (SLA).

Attempt to Register

Sometime after 6 December 2000, the Bank attempted to register the Global Mutual Funds. Presentation was made by Atty. Sebastian, Ms. Delos Reyes and Ms. Durbin (then Chief Executive Officer) to the SEC to demonstrate the registrability of foreign mutual funds. Subsequently, the request for the registration of shares of selected Global Mutual Funds was filed with the SEC.[34]

On April 20, 2001, SEC replied that "before an entity can offer mutual funds for sale and distribution in the Philippines, it must first be licensed as an investment

company pursuant to Sections 6 and 7 of Republic Act 2629, otherwise known as the Investment Company." Thus, the request for registration of foreign mutual funds was not acted upon in view of the said requirement.

Subsequently, the Bank, with the approval of its Board of Directors, attempted to establish an investment and distribution-brokerage company.[35] However, for some unclear reasons, the incorporation did not push through.

The Baviera Complaints

On 30 June 2003, Mr. Manuel Baviera filed a Letter-Complaint with the SEC[36] against the Bank for alleged violation of the Securities Regulation Code.

Five months thereafter, SEC's Compliance and Enforcement Department came up with its *Investigation Report*[37] with the following findings, among others:

1) The Global Mutual Funds were in the nature of securities and should not have been sold or offered for sale without prior SEC registration;

2) The Bank was aware of the need for registration, and there was evidence of an intention to register the same, though this never materialized; and

3) Despite the lack of registration, the securities were still sold or offered to the public. The investigators found that there were circumstances inconsistent with purely informational functions, such as the presence of brochures and prospectuses displayed on racks at the Bank's main office.

With the above findings, CED proposed the issuance of a Cease and Desist Order. Moreover, it proposed that the Bank be ordered to return, by way of restitution, all principal investments to the investors.

The Commission issued a Cease and Desist Order on 4 December 2003. However, the recommendation for restitution of the principal investments was left out. Thereafter, an Offer of Settlement in the amount of P7,000,000.00 was filed by the Bank, which was subsequently accepted by the SEC.

Almost simultaneous with the filing of his complaint with the SEC, Mr. Baviera, through his lawyer Atty. Francisco Chavez, likewise filed a letter-complaint with the BSP. With this case, what the Bank got was a "stern warning" from the BSP that it will impose heavier monetary penalties and administrative sanctions should repetition of the same violations be committed by the Bank. This "stern warning" came after the Bank represented that it had already ceased from marketing/participating in foreign-based mutual funds. The BSP opined that it would be academic to issue any directive for the cessation of such business activity.

Thereafter, BSP no longer acted on the case until such time when Senator Enrile delivered a privilege speech on the Bank's dealings with unregistered securities. At this point, BSP's examiners conducted a targeted examination whereby it was noted that the Bank continued to offer/market global mutual funds to trust clients as the Bank was still issuing the corresponding transaction forms, although these transactions were being booked in SCB-Singapore.

The Anti-Money Laundering Council's (the "Council") attention was likewise called on 14 August 2003 when a complaint for alleged money laundering activities committed by the Bank was filed, in relation to syndicated estafa and violation of the Revised Securities Act allegedly committed by the Bank.

In its Resolution No. 296, the Council resolved to defer any and all action on Mr. Baviera's complaint against SC unless and until a final determination of the existence of probable cause of the unlawful activity of estafa/swindling has been made by the Department of Justice and/or in case of the SEC, a finding by that agency that the Bank has committed a violation of the Securities Regulation Code.

In view of the subsequent settlement of the case before the SEC and the dismissal of the charges filed with the DOJ, the Council terminated the case for lack of probable cause.[38]

II. THE CHARGES

The charges against the Bank are summed up as follows:

1. Violations of the Revised Securities Act, and subsequently, the Securities Regulation Code;
2. Violations of the Banking laws and regulations;
3. Violations of the Anti-Money Laundering Act; and
4. Tax Evasion.

A. ON THE ALLEGED VIOLATIONS OF THE REVISED SECURITIES ACT AND THE SECURITIES REGULATION CODE

The Revised Securities Act and the Securities Regulations Code are two important securities legislations intended to protect the investing public.

The Securities Regulation Code, same as the Revised Securities Act, is a "truth-in-securities law", because its aim is to "ensure full and fair disclosure [of information] about securities,"[39] with a view to enable the public to make an informed investment decision in respect of the securities offered for sale.

The paramount concern of the two laws of ensuring full and fair disclosure of information about securities is embodied in the following provisions.

Section 4(a) of the Revised Securities Act provides as follows:

> *"SECTION 4. Requirement of registration of securities. — (a) No securities, except of a class exempt under any of the provisions of Section five hereof or unless sold in any transaction exempt under any of the provisions of Section six hereof, shall be sold or offered for sale or distribution to the public within the Philippine unless such securities shall have been registered and permitted to be sold as hereinafter provided."*

Such registration requirement was carried over to the Securities Regulation Code, which provides under Section 8(1) as follows:

> *"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."

Faced with the charges of violating the afore-quoted sections, the Bank's defences are as follows:

1. It was performing 'purely informational function' - that it merely provided information about the securities – without any form of solicitation. The Bank merely introduced the Global Mutual Fund available abroad to prospective investors.

   As claimed by the Bank, it was a popular choice of global information because it was, and still is, a bank with global presence and was in fact at that time a distributor of Global Mutual Funds in the Asian region. [40]

2. Its clients took the initiative to invest. The investment in the funds was upon the instance of the individual investors. The Bank merely acted as an agent or a 'passive order taker' that had no hand in recommending or actually choosing the funds to invest in.

   In its Position Paper, the Bank stated that –

   "the Bank, submits that, contrary to the accusations made against it, what it did was no more than lawfully assist its clients, who had availed themselves of its duly licensed trust services, to invest their monies abroad under the Philippine government's liberalized regime of foreign exchange ushered in by CB Circular No. 1389."

3. The Bank merely entered into Investment Management Agreements ("IMA") with the investors showing that the Bank only acted as an agent. Under the IMA, the investors were to place money for the purchase of different foreign securities.

   The Bank, as the Investment Manager, has the power "to invest and reinvest the Portfolio in such stocks, bonds, securities, participation in financial instruments, shares in mutual funds, or other property, real, personal or mixed,

as Investment Manager shall *in its discretion determine to be reasonable, advisable, expedient or proper*, taking into account the current risk profile of the Principal as well as his investment objectives x x x."

To determine whether or not the Bank was in violation of the above laws, the following elements should be attendant in the present case:

1. The Global Mutual Funds are "securities".
2. The Bank was engaged in the selling or offering for sale of Global Mutual Funds.
3. The Global Mutual Funds were not registered with the SEC.
4. The Global Mutual Funds are not "exempt securities" and the transactions by the Bank in selling or offering for sale of Global Mutual Funds are not considered as exempt transactions.

ARE GLOBAL MUTUAL FUNDS "SECURITIES"?

Global Third Party Mutual Funds are mutual funds which "are called 'third party' because of the fact that the Bank, as a bank, was not the sponsor, adviser, or in a significant way associated with any of the mutual funds, which it distributed in accordance with the allowable legal parameters of the various jurisdictions in which the Bank was present. The funds were also called 'global' because they were designed to answer the investment appetite of investors in whichever part of the world they are residing."[41]

"Mutual fund" was defined by the Black's Law Dictionary (Sixth Edition) as follows:

"Mutual fund is a fund managed by an investment company in which money is raised ***through the sale of stock*** *and subsequently invested in publicly traded securities. The investment performance of the mutual fund depends on the performance of the underlying investments. Each mutual fund tends to have an investment objective such as; a growth fund strives for capital appreciation in the portfolio; an income fund looks for a stream of income over the life of the investment. There are two general types of mutual funds; "open-end" in which capitalization is not fixed and more shares may be sold at any time, and "closed-end" in*

which capitalization is fixed and only the number of shares originally authorized may be sold."

The Investment Company Association of the Philippines (ICAP), which is a self-regulating body organized to raise the investment company industry's standard, defined "mutual fund" as –

> *"an investment company that pools the funds of many individual and institutional investors to form a massive asset base. The assets are then entrusted to a full time professional fund manager who develops and maintains a diversified portfolio of security investments.* ***People who buy shares of a mutual fund are its owners or shareholders.*** *Their purchases provide the money for a mutual fund to buy securities such as stocks and bonds. A mutual can make money from its securities investments in two ways: a security can pay dividends and interest to the fund, or a security can rise in value. The fund passes any dividends, interest or profits on the sale of its portfolio securities, less fund expenses, to shareholders in the form of distributions."*[42]

Based on the above definition, shares and/or investments in a mutual fund are considered shares of stock in an investment company or an interest in a commercial venture.

On the other hand, the term "securities" was defined by enumeration as follows:

1. Under the Securities Regulation Code:

"Securities are *shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture* and evidenced by a certificate, contract, instruments, whether written or electronic in character. It includes:

(a) *Shares of stocks*, bonds, debentures, notes evidences of indebtedness, asset-backed securities;

(b) Investment contracts, certificates of *interest or participation in a profit sharing agreement*, certifies of deposit for a future subscription;

X x x"

2. Under the Revised Securities Act:

"Securities" shall include bonds, debentures, notes, evidences of indebtedness, *shares in a company*, pre-organization certificates or subscriptions, ***investment contracts, certificates of interest or participation in a profit sharing agreement,*** x x x"

Based on the foregoing, it is clear that mutual funds fall squarely under the definition of "securities".

DID THE BANK SELL OR OFFER FOR SALE GLOBAL MUTUAL FUNDS?

In its Position Paper, the Bank denied having sold Global Mutual Funds.

However, the totality of evidence that the Bank was engaged in the sale or offer for sale of Global Mutual Funds is overwhelming.

1. The BSP, which is the primary regulator of the bank, has determined in various examinations that the Bank has been distributing Global Mutual Funds. As early as 1997, the BSP was already able to observe the Bank's dealings with Global Mutual Funds. In fact, the Bank's attention was called that year due to the material decline in value of the funds. Subsequent examinations likewise showed that the Bank was continuously engaged in the said activities.

2. The SEC, in its own investigation, ruled that "Standard Chartered Bank is not merely disseminating information but is engaging in the business of selling Global Third Party Mutual Funds to the public"[43]. Such conclusion was based on the following findings:

    a. The bank pre-selected the mutual funds wherein investors shall invest which in effect is an indirect encroachment upon the investors' prerogative and discretion and may thus be considered as an active solicitation on the part of the bank. It was the Bank that chose the mutual funds and the investor was merely asked to write the names of the shares on the ready form.

b. The Bank set revenue quota. This belies the bank's claim that it is only a "passive order taker" considering that the imposition of revenue quota in the Trust Department impels the members or employees of the department to actively offer, solicit, and sell its product to the public. Such revenue quota cannot be attained by simply relying on the client's own initiative to invest in the said funds without any active solicitation on the part of the bank.

3. The voluminous advertising materials submitted for the consideration of the Committee show that the Bank was not a mere passive disseminator of information but has been actively offering the products for sale.

4. The testimonies of various investors in Global Mutual Funds would elucidate that the Bank has, in fact, actively sought their investments.

5. The volume of investments in Global Mutual Funds solicited by the Bank, which reached US$ 38.931 million in Year 2000, would negate the claim that the Bank was not engaged in the sale of Global Mutual Funds.

The accumulation of all these attendant facts points to only one conclusion, that the Bank actively sold and offered Global Mutual Funds not only to their existing clients but also to strangers.

WERE THE GLOBAL MUTUAL FUNDS REQUIRED TO BE REGISTERED?

Section 4(a) of the Revised Securities Act and Section 8(1), as above-quoted, require the registration of securities to be sold or to be offered for sale unless such securities are exempt from registration under the respective provisions in the Revised Securities Act and the Securities Regulation Code. Registration may be dispensed with only if the security to be distributed falls within the class of an exempt security or if *the securities are sold in any transaction exempt from the said requirement.*

ARE THE GLOBAL MUTUAL FUNDS "EXEMPT SECURITIES"?

The Revised Securities Act (Section 5)[44] and the Securities Regulation Code (Section 9.1)[45] enumerate the "exempt securities". These securities may be sold and

resold and not subject to registration. The "exempt securities" are exempt either because the issuer of the security is an entity that could be trusted not to deceive the investor or the issuer is regulated, supervised or monitored by another government entity that could be expected to protect the interest of investors in the same manner as the SEC.[46]

For instance, banks are being regulated by the BSP. Thus, securities issued by banks are among the exempt securities under the Revised Securities Act and the Securities Regulation Code:

> Under the Revised Securities Act: Section 5(3) Any security issued or guaranteed by any banking institution authorized to do business in the Philippines, the business of which is substantially confined to banking or a financial institution licensed to engage in quasi-banking, and is supervised by the Central Bank.
>
> Under the Securities Regulation Code: Section 9(e) Any security issued by a bank except its own shares of stock.

It should be noted, however, that although Revised Securities Act and Securities Regulation Code exempt from registration the securities to be issued and guaranteed by a bank, these does not exempt from registration the securities issued by other entities, bought by the bank and sold to the public. The Global Mutual Funds, having been issued by third parties, are not covered by the above provisions.

An examination of the other categories of exempt securities under Section 5 of the Revised Securities Act and Section 9 of the Securities Regulation Code would show that Global Mutual Fund could not be considered as exempt securities.

MAY THE BANK'S DEALINGS IN GLOBAL MUTUAL FUNDS BE CONSIDERED AS "EXEMPT TRANSACTION"?

The enumerations of exempt transactions may be found in Section 6[47] of the Revised Securities Act and Section 10.1[48] the Securities Regulation Code. Under the listed transactions, the requirement of registration is not necessary in the public interest or for the protection of the investors in view of some existing circumstances (e.g. the

small amount or the limited character of the public offering, the level of knowledge or sophistication of the ultimate investor).

Although the enumerations are not exhaustive, only the SEC has the power to include other situations as exempt transactions. The existing circumstances in the Bank's sale of Global Mutual Funds do not fall under any item in the lists.

DID THE BANK VIOLATE SECTION 4 OF THE REVISED SECURITIES ACT AND SECTION 8.1 OF THE SECURITIES REGULATION CODE?

Considering that all the elements of the violations under Section 4 of the Revised Securities Act and Section 8.1 of the Securities Regulation Code are present, infringement by the Bank of the provisions requiring the registration of securities under the two laws is obvious.

Moreover, the Bank stated in its Position Paper[49] that –

> *"In the Philippines, the Bank, since it is not a registered "broker" or "dealer" as these terms are defined in subsections 3.3 and 3.4, respectively, of R.A. 8799, is not authorized to engage in the business of buying or selling securities, including mutual fund shares, in the Philippines."*

Corollary to the violation of Section 4 of the Revised Securities Act and Section 8.1 of the Securities Regulation Code, the Bank likewise breached Section 19[50] of the Revised Securities Act and Section 28.1[51] of the Securities Regulation Code, which pertain to its non-registration, as well as the non-registration of its personnel, as broker, dealers and/or salesmen.

WAS FRAUD PRESENT IN THE CASE UNDER INVESTIGATION?

The term "fraud", in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omission, and concealment ***involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in damage to another***, or by which an undue and unconscientious advantage is taken of another. (People vs. Sabio, L-45490, November 20, 1978)

Fraud from the legal point of view may be defined as a deception practice to induce another to part with his property or surrender some legal rights and which accomplished the end desired. As commonly used, the word implies deceit, deception, artifice or trickery. The fraud contemplated therein must be serious so as to induce consent of one of the parties.[52]

Section 29 of the Revised Securities Act and Section 26 of the Securities Regulation Code enumerated the fraudulent transactions as follows:

"Fraudulent transactions. — It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities —

(1) To employ any device, scheme, or artifice to defraud, or

(2) To obtain money or property by means of any untrue statement of a material fact or 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

(3) To engage in any act, transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any person."

In the case of SECURITIES AND EXCHANGE COMMISSION vs. COURT OF APPEALS,[53] the Supreme Court had the occasion to discuss the essence of fraud in relation to the Revised Securities Act. It opined that -

> "To constitute x x x a violation of the Revised Securities Act that can warrant an imposition of a fine under Section 29 (3), in relation to Section 46 of the Act, fraud or deceit, not mere negligence, on the part of the offender must be established. Fraud here is akin to bad faith which implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity; it is unlike that of the negative idea of negligence in that fraud or bad faith contemplates a state of mind affirmatively operating with furtive objective."

In the case at bar, there were several instances which showed that the Bank acted in bad faith, which implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity. These badges of fraud were as follows:

1. Precautions made by Atty. Geronimo that the Bank's relationship with the trust client be limited only in providing information and the warning made by Mr. Edward Lee-Smith, Head of Compliance of Singapore Branch that the Bank-Manila "has been marketing to its clients securities for which no equivalent of a prospectus has been registered contrary to local law on public offerings" and that such may result to "serious repercussions for breach of prospectus law". The Bank obviously chose to ignore such warnings with the intention to violate local laws in view of the expected returns from the transactions.

2. Representation made by the Bank's CEO, Mr. Eirvin B. Knox to the BSP that the Bank management have "decided to permanently withdraw the third party fund products and will not offer any other product that involves direct purchase of third party mutual funds by investors." Despite such representation, however, the Bank's transactions in Global Mutual Funds have continued to increase.

3. Efforts on the part of the Bank to hide transactions in Global Mutual Funds from the regulators by booking these transactions at the Singapore Branch.

Considering the foregoing, it could be deduced that the Bank committed fraud in its continued dealing with Global Mutual Funds despite the knowledge of its illegality. Its bad faith was shown in the fact that it tried to conceal its fraudulent activities by recording them in Singapore. Thus, the Bank's liabilities under Sections 58 and 63 of the Securities Regulation Code should be reviewed.

SEC'S ACTIONS

The SEC is the administrator and watchdog of the Securities Regulation Code. In the language of the Securities Regulation Code, the SEC is charged with acting "in the public interest and for the protection of investors."[54]

Protection of the public is the paramount concern of the Securities Regulation Code, as well as the Revised Securities Act. The primary purpose of these securities laws is to protect the public against the imposition of unsubstantial schemes and the securities based thereon. It therefore follows that in administering the securities laws, SEC should concern itself with what is essential for the protection of the public, before anything else.

The complaint given due course by the Committee has first been lodged before the SEC in 1997. However, there was no extensive investigation on the matter. Instead, the resolution of the complaint was passed on to the BSP as the primary regulator of banks.

In 2003, when the SEC again found that there was in fact sale or offer for sale of unregistered securities, it merely entered into a settlement agreement with the Bank, leaving the investors in the cols, absent the restitution of their investments.

The question now is whether SEC acted in accordance with its mandate, whether SEC, in accepting the settlement offer, acted to the best interest of the investing public.

SEC, in its Position Paper, justified its action as follows:

> "The Commission's acceptance of the settlement offer had the same end result as a victory in a court litigation, which would most likely be protracted and expensive. It was doubtful if the court case could achieve the same results or objectives as the acceptance of the settlement offer.
>
> "The evidence on hand would at most be sufficient to hold the Bank liable for negligence only for its failure to adopt enforcement measures to ensure compliance by its employees and officers with its directives. There was no evidence that the Bank ordered the sale of the securities knowing the same to be unregistered, in violation of the Securities Regulation Code.
>
> "The amount proposed to be paid by the Bank was sufficient to deter and serve as an example to other banks similarly inclined from committing the same or similar violations."

It could be inferred in the given justifications that SEC did not act in accordance with its mandate to protect the interest of the investing public. SEC only viewed the case with respect to its own convenience.

First, SEC's view that "the settlement offer had the same end result as a victory in a court litigation" is void of concern to the fact that a court could very well agree with

the CED's recommendation to return, by way of restitution, all principal investments to all its investors. Restitution is an equitable remedy and investors who lost their principal investments can very well recover their money in view of the fact that the Bank has violated the Securities Regulation Code requirement of registration.

Second, SEC's statement that "the evidence on hand would at most be sufficient to hold the Bank liable for negligence only" is contrary to the characteristics of a zealous regulatory agency. As discussed above, there is a sufficient mass of evidence, most of which were presented to the SEC, that would show that the Bank acted fraudulently. For SEC to conclude that the Bank did not act fraudulently makes it, at least in this case, an ineffective regulator.

Third, the statement that "the amount proposed to be paid by the Bank was sufficient to deter and serve as an example to other banks similarly inclined from committing the same or similar violations" is very much untrue. Seven Million pesos is nothing as compared to the millions of dollars generated from the illegal activities committed. Moreover, the amount of money received by SEC was not enough to protect the investing public who deserved restitution of at least the principal amount of their investments.

Subsection 55.3 of the Securities Regulation Code provides that –

> "The Commission may only agree to a settlement offer based on its findings that such settlement is in the public interest. x x x"

Based on the foregoing, it is clear that the SEC was remiss of its duty to protect the public. The settlement of the case was clearly not in accord with public interest.

B. ON THE ALLEGED VIOLATION OF THE BANKING LAWS

Due to the blatant violations of the Revised Securities Act and Securities Regulation Code, the Bank was said to have conducted business in an unsafe and unsound manner considering that its sale of the unregistered securities has resulted in material loss or damage or abnormal risk to its investors. Thus, the Bank was said to have violated Section 56 of the General banking Law of 2000, which provides that –

"**Section 56.** *Conducting Business in an Unsafe or Unsound Manner* - In determining whether a particular act or omission, which is not otherwise prohibited by any law, rule or regulation affecting banks, quasi-banks or trust entities, may be deemed as conducting business in an unsafe or unsound manner for purposes of this Section, the Monetary Board shall consider any of the following circumstances:

X x x

56.2 The act or omission has resulted or may result in material loss or damage or abnormal risk to the institution's depositors, creditors, investors, stockholders or to the Bangko Sentral or to the public in general;

X x x"

Appendix 48 of the Manual of Regulations for Banks (MORB) enumerated some of the acts that will be tantamount to conduct of business in an unsafe and unsound manner. Among those enumerated are the following:

"s . Failure to heed warnings and admonitions of the supervisory authorities of the institution.

t. Continued and flagrant violation of any law, rule, regulation or written agreement between the institution and the BSP."[55]

On the other hand, the Bank was said to have acted with lack diligence in the conduct of its trust business in contravention with Section 80 of the General Banking Law of 2000, which provides that –

"**Section 80.** *Conduct of Trust Business.* - A trust entity shall administer the funds or property under its custody with the diligence that a prudent man would exercise in the conduct of an enterprise of a like character and with similar aims. X x x. (56)."

The Bank reasoned that its services have been discussed openly with regulators and, notwithstanding its belief that it was acting in accordance with local laws and regulations, ceased offering the services after expressions of concerns from regulators.

Contrary to the claims of the Bank, there is an overwhelming amount of evidence that it continued to deal with Global Mutual Funds notwithstanding the explicit prohibition made by the BSP and the determination that such activities are in violation of the Revised Securities Act and the Securities Regulation Code.

This continued dealing in Global Mutual Funds is a clear example of a conduct of business in an unsafe and unsound manner, falling under the violations cited in letters *s* and *t* of Appendix 48 of the MORB.

The Bank, as trustee of its clients and with prior knowledge that the Global Mutual Funds are not registered in the Philippines, violated Section 80 of the General Banking Law for its failure to exercise the skill, care, prudence and diligence there under. Such failure was even sustained through the years as established in various examinations conducted by the BSP.

Furthermore, the Bank's act of hiding these activities from the BSP and the non-inclusion of the proceeds from dealings on Global Mutual Funds in the statements submitted by the Bank's trust department to the BSP constitute false statement, in Section 35 of the New Central Bank Act (R.A.7653).

The Bank likewise violated BSP Circular Letter dated July 29, 2002 (Series of 2002)[56], which provides that –

> "In view of the persistent reports that banks have been marketing/selling foreign-based mutual funds, banks are reminded that they are not allowed to use any or all of their branches as outlets and/or sales of such financial products without prior approval of the Bangko Sentral ng Pilipinas."

The banking laws have armed the BSP with sufficient teeth for disciplining errant banks, ranging from fines to suspension or revocation of licenses. It is scandalous to note, however, that all the BSP has done was penalize the bank with a meager amount of P30,000.

C. ON THE ALLEGED VIOLATION OF THE ANTI MONEY LAUNDERING ACT (AMLA)

The sale, offer or distribution of securities within the Philippines without a registration statement duly filed with and approved by the SEC is considered an "unlawful activity" in the AMLA. This is clear in Section 3 of the AMLA, which provides that –

> (i) "Unlawful activity" refers to any act or omission or series or combination thereof involving or having relation to the following:
>
> x x x
>
> (13) Fraudulent practices and other violations under Republic Act No. 8799, otherwise known as the Securities Regulation Code of 2000;
>
> x x x
>
> (36) Sale, offer or distribution of securities within the Philippines without a registration statement duly filed with and approved by the SEC;
>
> X x x"

Considering that the Bank engaged in the selling of unregistered securities, transacting the proceeds there from, thereby making them appear to have originated from legitimate sources, is considered a money laundering offense under Section 4(a)[57] of the AMLA. Moreover, failure by the Bank to disclose this unlawful activity of its Trust Department to the Anti-Money Laundering Council (Council) is another money laundering offense under Section 4(c).

Unfortunately, however, the Council terminated the case by virtue of the dismissal of the charges of syndicated estafa by the DOJ and the settlement of the case of violation of the Securities Regulation Code by the SEC, which were considered by the Council as basis for lack of probable cause.

The Council cited that since money laundering is a derivative offense, AMLA does not grant the Council the power to investigate the underlying unlawful activities. Such authority is vested upon other government agencies, which has the expertise on such matters. (Doctrine of Primary Jurisdiction)

Did the Council act pursuant to its mandate when it waited for the resolution of DOJ and SEC of the cases filed with them dismissing the complaint?

While money laundering and its predicate offense are related, these offenses are of a separate nature, with different elements and are to be prosecuted against independently of the other.[58]

Rule 6.7 of the Revised Implementing Rules and Regulations to the AMLA provides that –

> "No element of the unlawful activity, however, including the identity of the perpetrators and the details of the actual commission of the unlawful activity need be established by proof beyond reasonable doubt. The elements of the offense of money laundering are separate and distinct from the elements of the felony or offense constituting the unlawful activity."

Since the elements of the money laundering offense and that of the predicate offense are different, the probable cause on the predicate offense need not be determined categorically by the DOJ or any other investigating/prosecuting agency before the Council may be able to determine probable cause on the money-laundering offense.

Nowhere in the AMLA or its Implementing Rules and Regulations has the Council been required to await such determination by the DOJ, and in this case, by the SEC, before it could act in accordance with its duties.

Instead, the Council was granted the power to determine, on its own or subject to review by the Court of Appeals, the existence of probable cause that a money laundering offense has been committed in order for it to inquire into bank deposits[59] and/or apply for the issuance of a freeze order with the Court of Appeals.[60] Thus, the

Council should have investigated whether or not probable cause exists in the case filed before it by Mr. Baviera.

The Council, considering the voluminous amount of evidence that it could have gotten had it pursued an investigation, could have easily established such probable cause.

As defined in the IRR, "probable cause" includes such facts and circumstances which would lead a reasonably discreet, prudent or cautious man to believe that an unlawful activity and/or a money laundering offense is about to be, is being or has been committed and that the account or any monetary instrument or property subject thereof sought to be frozen is in any way related to said unlawful activity and/or money laundering offense. (Rule 10.2)

D. ON THE ALLEGED VIOLATION OF THE NATIONAL INTERNAL REVENUE CODE

Section 23(F) of the Tax Reform Act of 1997 provides that –

> "A foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on income derived from sources within the Philippines."

To determine the "source of income" it should be noted that the term "source" is not a place but the property, activity, or service that produced the income. In the case of income derived from labor, it is the place where the labor is performed; in the case of income from the use of capital, it is the place where the capital is employed; and *in the case of profits from the sale or exchange of capital assets, it is the place where the transaction occurs.*[61]

Thus, Section 42(E) of the Tax Reform Act of 1997 provides in part that –

> "Gains, profits and income derived from the purchase of personal property within and its sale without the Philippines, or from the purchase of personal property without and its sale within the Philippines shall be treated as derived entirely from sources within the country in which sold"

As established earlier, the sale of unregistered global mutual funds occurred here in the Philippines. An indication that the income out of the Global Mutual Funds transactions was in fact derived from within the Philippines is the fact that the Philippine branch gets a sales load fee of 2 to 5 percent from the sale transaction, a portion of the management fee of the fund manager and a trust fee. Theses sales load fee and management fee, however, are not recorded in the Philippines but merely earmarked or recorded as "MIS income".[62]

The BIR, in a Preliminary Assessment Notice (PAN) issued to the Bank, was able to determine that revenues relating to Global Mutual Funds derived from services within the Philippines for the taxable years 1997-2002 were not reported in the Bank's statements.

The non-reporting of these revenues (e.g. sales load fee from the sales transactions, management fee and trust fee) would show that the Bank has been evading taxes.

Prior to the issuance of the PAN, the Bank submitted a formal offer of compromise settlement to pay the basic amount of the deficiency gross receipts tax plus interest in order to put closure to the issue of Global Mutual Fund. Such was not accepted by the BIR.

Upon the issuance of the Preliminary Assessment Notice (PAN), the Bank filed a protest, asserting that the deficiency GRT lacks factual and legal basis on the ground that service fees from Global Mutual Funds are income from sources outside the Philippines.

CONCLUSIONS AND RECOMMENDATIONS

A. LEGISLATIVE AMENDMENTS

In light of the evidence gathered by the Committee during the hearings, it is alarming to note that that the financial regulatory agencies, particularly the BSP and the SEC, have treated the financial anomaly uncovered during the Committee investigation too lightly. Even though these regulatory agencies have the necessary powers to stop

and sanction erring financial institutions, the evidence shows that the Bank's activities were treated lightly.

The Committee therefore recommends strengthening further the regulatory laws with respect to the following matters:

1. Definitions for the terms 'public solicitation', 'sale' or 'sell', 'offer to sell', 'offer for sale' or 'offer'.

   The following definitions should be included in the Securities Regulation Code:

   "Sale" or "sell" shall include every contract of sale or disposition of a security or interest in a security, for value. The terms "offer to sell" "offer for sale", or "offer" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value."

   "Public Offering means a random or indiscriminate offering of securities in general to anyone who will buy, whether solicited or unsolicited. Any solicitation or presentation of securities for sale through any of the following modes shall be presumed to be a public offering:

   i. Publication in any newspaper, magazine or printed reading material which is distributed within the Philippines or any part thereof;
   ii. Presentation in any public or commercial place;
   iii. Advertisement or announcement in any radio or television, or in any online or email system; or
   iv. Distribution and/or making available flyers, brochures or any offering material in a public or commercial place, or mailing the same to prospective purchasers.[63]

   Adopting these definitions in the Securities Regulation Code will provide more clarity to the intent of the law and avoid or lessen the possibility of legal maneuvers in attempting to circumvent the intent of the Securities Regulation Code, as what happened in the present case.

2. SEC's powers to impose restitution and to award damages

Although the SEC already has an implied power to order restitution as part of its mandate to protect the investing public, it was apparent that it was very hesitant in exercising this power. It is, therefore, to the interest of the public for Congress to spell out SEC's power to order restitution in case of sale of unregistered security and in other violations of the Securities Regulation Code. This is also true with respect to the power to award damages.

3. Protection of Whistleblowers.

Study and adopt the provisions of the Sarbanes-Oxley Act of the United States on whistle blowers, particularly:

a) the exemption of whistleblowers from prosecution;
b) the prohibition against employment discrimination; and
c) the prohibition of retaliation against employee whistleblowers.

The incorporation of these provisions to our laws will embolden witnesses to bring to the attention of the regulatory bodies the anomalies being perpetrated by institutions.

4. Inter-agency Coordination

The BSP should be required to provide assistance to the BIR, SEC, AMLC and/or other investigative body in these agencies' investigation of any institution under the BSP's supervision. Thus, the New Central Bank Act should be amended accordingly.

5. Penalties

The penalties for the violations of the banking laws and regulations should be raised to a level that will deter the banks from violating the same.

B. ADMINISTRATIVE RECOMMENDATIONS

1. Securities and Exchange Commission

The Bank violated Sections 4(a) and 19 of the Revised Securities Act and Sections 8(1) and 28(1) of the Securities Regulation Code.

The SEC failed to protect the interest of the investing public and in so doing, fell short in fulfilling its mandate. The settlement of the case, without the order of restitution, was clearly an injustice to those who were duped into investing in Global Mutual Funds. In order to give justice to these investors and to maintain public confidence in the SEC as a regulatory body, the SEC is urged to:

1. Reopen the case and ensure that SEC's mandate to protect the public interest be followed.

2. Work for the restitution of the principal investments of each and every investor.

   SEC as the watchdog of the securities laws has the inherent power to ensure that the interest of investing public be protected.[64]

3. Investigate further the culpability of the directors and/or officers involved in the fraudulent violations of the Revised Securities Act and Securities Regulation Code and, thereafter, endorse its finding to the Department of Justice for prosecution.

4. Verify and/or investigate, in coordination with the BSP, reports/complaints that other foreign banks are likewise engaging in similar practices and prosecute those found guilty of selling or offering for sale unregistered securities;

   SEC should work, in coordination with the Department of Justice, to ensure that directors and officers of the Bank who approved and/or tolerated the above illegal activities be prosecuted against in the courts.

5. Promulgate rules on regulating the activities of institutions under the supervision of other regulatory agencies pursuant to its authority as the administrator of the Securities Regulation Code.

2. Bangko Sentral ng Pilipinas

The Bank violated Sections 56 and 80 of the General Banking Law, as well as BSP Circular Letter dated July 29, 2002.

So far, the BSP has only fined the Bank with the measly amount of P30,000. This leniency is very uncharacteristic of a good regulator of banks. The BSP is hereby urged to –

1. Study the propriety of imposing the administrative sanctions under Section 37[65] of the New Central Bank Act;
2. Institute complaints with the Department of Justice officers and directors who have willfully violated the banking laws and /or regulations pursuant to Section 36[66] of the New Central Bank Act.
3. Probe existing related cases vigorously and diligently.
4. Conduct examination of the books and/or trust operations of other banks engaged in similar activities.
5. Coordinate with the SEC in promulgating rules of procedure in investigating cases within their joint and/or overlapping regulatory jurisdiction.

3. Anti-Money Laundering Council

The Bank violated Subsections 4(a) and 4(c) of the Anti-Money Laundering Act.

The Committee, however, finds no sufficient reason for the Council to reopen the case.

4. Bureau of Internal Revenue

The Bank evaded taxes when it failed to report to the Bureau of Internal Revenue the proceeds of the sale of Global Mutual Funds, as well as the revenues relating to such sale (e.g. sales load fee from the sales transactions, management fee and trust fee).

In the letter[67] submitted by the Bureau to the Committee, it was reported that they are inclined to deny the offer for compromise settlement and to issue a

partial Final Assessment Notice containing the deficiency gross receipts tax covering the taxable years 2000, 2001 and 2002. Such Final Assessment Notice, however, will be without prejudice to the assessment of additional deficiency taxes that may arise from additional data that will be obtained.

The BIR is urged to continue its investigation on the alleged tax evasion.

5. Department of Justice and Office of the Ombudsman

It is recommended for the Department of Justice to study further the culpability of the directors and officers of the Bank on the basis of the Committee's findings and institute the appropriate actions.

The Office of the Ombudsman is likewise urged to study the actions of the officials of the government agencies who took lightly the activities of the Bank and institute the proper actions if deemed necessary.

The SEC, the BSP, the AMLC, the BIR, the Department of Justice and the Office of the Ombudsman are hereby mandated to report to the Committee the progress of their respective investigations and/or actions at the end of every quarter, starting June 30, 2006 until such time that the cases before them has been satisfactorily concluded.

ENDNOTES

[1] PSR 166 "Inquiring into the Illegal Sale of Unregistered and High Risk Securities by Standard Chartered bank which Resulted in Billions of Losses to the Investing Public"

[2] GR No.167173c(Standard Chartered Bank [Philippine Branch], et. Al. vs. Senate Committee on Banks, Financial Institutions and Currencies, etc., et. al.

[3] Dated March 14, 2005

[4] Pursuant to Monetary Board Resolution No. 1142 dated 3 December 1992 and the Deputy Governor's letter dated 9 November 1993.

[5] Page 5, Position Paper dated 3 April 2006.

[6] Approval; Committee Hearing dated 28 February 2005.

[7] Letter dated 16 September 1996

[8] Letter dated 11 August 1997.

[9] First Approval: Antonette delos Reyes (Project Manager); Allan Harden (Project Sponsor); Jose S. Ho (Head, Country Finance); Philippe Paillart (Personal Banking Group Executive Director) and Chris Werner (Group Head, Business Development). Second Approval: Antonette delos Reyes; Chris Low (Head, Personal Banking); Nicholas Davenport (Head, Operations); Nhilda Causing (Systems Manager); Steven Ghakkar (Head, Treasury); Robin Brown (Head, Credit risk); Eloisa Manlansing (Compliance Officer) and Jose S. Ho (Head, Financial Control).

[10] BSP-48: Issues and Observations on Standard Chartered Bank's Sale of Global Mutual Funds; Report of Examination dated 28 February 1997.

[11] Report of Examination dated 28 February 1997

[12] Testimony of Ms. Antonette delos Reyes on 17 November 2005 at 9:24 AM.

[13] Testimony of Antonette delos Reyes in the 17 November Public Hearing at 9:34 am.

[14] Ibid.

[15] Letter dated 18 July 1997 by ICAP President Roberto Lorayes.

[16] Memorandum dated 31 July 1998

[17] Letter signed by the Bank's Acting Chief Executive ACM Low

[18] Letter signed by the Bank's CEO, Mr. Eirvin B. Knox.

[19] Memorandum dated 9 September 1998

[20] 18 July 1997

[21] Memorandum dated 2 September 1997

[22] Letter dated 9 September 1997

[23] Letter signed by the Bank's CEO Eirvin Knox.

[24] Ms. Antonette delos Reyes's letter dated 4 June 1997 to Atty. Reynaldo Geronimo.

[25] Legal opinion dated 24 July 1997.

[26] Legal opinion dated 5 January 1999.

[27] Legal opinion dated 6 August 1999.

[28] Legal opinion dated 11 August 1999.

[29] Mr. Manuel Baviera, November 24, 2005.

[30] In the Report of Examination as of 31 January 2000, it was reported that the Bank has been offering investments in Global Mutual Fund to its clients in violation of the 17 August 1999 prohibition and the Bank's commitment to permanently withdraw the said investments. A monetary penalty of P30,000 was imposed for non-compliance with the BSP directive. Ms. Antonette delos Reyes was reprimanded for ignoring the directive.

In the 30 April 2003 examination, it was noted that some Global Mutual Funds were held by a trust client (Ateneo de Manila Retirement Fund) but booked in the Bank-Singapore Branch.

The examination of the Bank-Quezon City Branch as of 31 May 2003 likewise led to the discovery that a certain loan account was secured by Global Mutual Fund placements. The placements were made as part of trust portfolio on various dates from April 2000 to April 2001. Further examination showed that the Bank-Manila, as Investment Manager, actually manages the Global Mutual Funds placements but such were booked in the Bank-Singapore.

In the 30 June 2004 examination, it was disclosed that an agreement (Service Level Agreement) between the Bank-Manila and the Bank-Singapore allows an existing trustor to initiate shifting/switching from one Global Mutual Fund booked with the Bank-Singapore to another Global Mutual Fund. The shifting/switching was to be considered as a new TPF investment by Philippine trust clients. Although said transactions were booked in Singapore, the BSP found it in violation of the BSP directive dated 17 August 1999 and of the Circular-letter dated 29 July 2002.

In the Targeted Examination conducted on 28 February to 1 March 2005, conducted by the BSP following the Privilege Speech delivered by Senator Enrile, it was noted that the Bank continued to offer/market global mutual funds to trust clients as transaction forms were issued by the Bank-Manila although the Bank claims that transactions are now booked in the Bank-Singapore.

[31] Masterlist of Investors.

[32] Approval Sheet dated 10 November 1999 approved/ratified by: Allan Harden, Tak Xin Chan, Nguyen Xuan Tong, Antonette delos Reyes and Eirvin Knox; Project Approval Request/Approval Sheet signed by Mr. David Wallace (Head, Consumer Banking), Antonette R. delos Reyes (Head, Investment Services), Sanjay Uppal (Head, Finance), Danny Ang Tan Chai (Finance Manager), Jose S. Ho (Head, Compliance) and Eirvin B. Knox (CEO)

[33] Ms Antonette delos Reyes, November 24, 2005.

[34] On 6 March 2001.

[35] On 14 August 2001, Atty. Sebastian had the name "STANDARD CHARTERED SECURITIES PHILS., INC." reserved being the proposed corporate name for the investment company.

[36] Through the Compliance and Enforcement Department (CED)

[37] Dated 21 November 2003.

[38] AMLC Resolution No. 355.

[39] Policy declared in SRC Section 2

[40] Page 5, Position Paper dated 3 April 2006.

[41] Page 5 Position Paper dated 3 April 2006.

[42] www.icap.com.ph

[43] Cease and Desist Order dated 4 December 2003.

[44] SECTION 5. Exempt securities. — (a) Except as expressly provided, the requirement of registration under subsection (a) of Section four of this Act shall not apply to any of the following classes of securities:

(1) Any security issued or guaranteed by the Government of the Philippines, or by any political subdivision or agency thereof or by any of its public instrumentalities, or by any person controlled or supervised by, and acting as an instrumentality of said Government, or any certificate of deposit for any of the foregoing.

(2) Any security issued or guaranteed by the government of any country with which the Philippines is, at the time of the sale or offer of sale thereof, maintaining diplomatic relations, or by any state, province or political subdivision thereof having the power of taxation or assessment, which security is recognized at the time of the sale or the offer to sell in the Philippines as a valid obligation by such foreign government or by such state, province or political subdivision thereof using the same.

(3) Any security issued or guaranteed by any banking institution authorized to do business in the Philippines, the business of which is substantially confined to banking or a financial institution licensed to engage in quasi-banking, and is supervised by the Central Bank.

(4) Any security issued by a building and loan association, non-stock savings and loan association, or similar institution, substantially all the business of which is confined to the making of loans to members but does not include any such security where the issuer takes from the total amount paid or deposited by the purchaser, by way of any fee, cash value or other device whatsoever, either upon termination of the investment at maturity or before maturity an aggregate amount in excess of three per centum of the face value of such security; or any security issued by rural credit associations or by cooperative marketing associations which are subject to regulation and supervision by the proper government agency.

(5) Certificates issued by a receiver or by a trustee in bankruptcy duly approved by the court.

(6) Any insurance or endowment policy or annuity contract, or optional annuity contract, issued by a corporation subject to the supervision of the Insurance Commission.

(7) Any security covering any right or interest in real property, including a subdivision lot or a condominium unit, where the sale or transfer of such security is subject to the supervision and regulation of the Ministry of Human Settlements or any of its authorized constituent or attached agencies.

(8) Pension plans subject to regulation and supervision by the Bureau of Internal Revenue and/or the Insurance Commission.

(b) The Commission may, from time to time and subject to such terms and conditions as may be prescribed after public hearing, add to the foregoing any class of securities similar to these above-enumerated if it finds that the enforcement of this Act with respect to such securities is not necessary in the public interest and for the protection of investors. (5a)

[45] **Section 9.** *Exempt Securities.* - 9.1. The requirement of registration under Subsection 8.1 shall not as a general rule apply to any of the following classes of securities:

(a) Any security issued or guaranteed by the Government of the Philippines, or by any political subdivision or agency thereof, or by any person controlled or supervised by, and acting as an instrumentality of said Government.

(b) Any security issued or guaranteed by the government of any country with which the Philippines maintains diplomatic relations, or by any state, province or political subdivision thereof on the basis of reciprocity: Provided, That the Commission may require compliance with the form and content for disclosures the Commission may prescribe.

(c) Certificates issued by a receiver or by a trustee in bankruptcy duly approved by the proper adjudicatory body.

(d) Any security or its derivatives the sale or transfer of which, by law, is under the supervision and regulation of the Office of the Insurance Commission, Housing and Land Use Rule Regulatory Board, or the Bureau of Internal Revenue.

(e) Any security issued by a bank except its own shares of stock.

[46] TRISTAN A. CATINDIG, Notes on Selected Commercial Laws, may 2003

[47] SECTION 6. Exempt transactions. — (a) The requirement of registration under subsection (a) of Section four of this Act shall not apply to the sale of any security in any of the following transactions:

(1) At any judicial sale, or sale by an executor, administrator, guardian or receiver or trustee in insolvency or bankruptcy.

(2) By or for the account of a pledge holder, or mortgagee, or any other similar lienholder selling or offering for sale or delivery in the ordinary course of business and not for the purpose of avoiding the provisions of this Act, to liquidate a bona fide debt, a security pledged in good faith as security for such debt.

(3) An isolated transaction in which any security is sold, offered for sale, subscription or delivery by the owner thereof, or by his representative for the owner's account, such sale or offer for sale, subscription or delivery not being made in the course of repeated and successive transactions of a like character by such owner, or on his account by such representative and such owner or representative not being the underwriter of such security.

(4) The distribution by a corporation, actively engaged in the business, authorized by its articles of incorporation, of securities to its stockholders or other security holders as a stock dividend or other distribution out of surplus; or the issuance of securities to the security holder or other creditors of a corporation in the process of a bona fide reorganization of such corporation made in good faith and not for the purpose of avoiding the provisions of this Act, either in exchange for the securities of such security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such security holders or creditors; or the issuance of additional capital stock of a corporation sold or distributed by it among its own stockholders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with the sale or distribution of such increased capital stock.

(5) The transfer or exchange by one corporation to another corporation of their own securities in connection with a consolidation or merger of such corporations.

(6) The issuance of bonds or notes secured by mortgage upon real estate or tangible personal property, where the entire mortgage together with all the bonds or notes secured thereby are sold to a single purchaser at a single sale.

(7) The issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security surrendered in exchange to make such conversion, provided that the security so surrendered has been registered and permitted to be sold under this Act or was, when sold, exempt from the provisions of this Act, and that the security issued and delivered in exchange, if sold at the conversion price, would at the time of such conversion fall within the class of securities entitled to registration under this Act. Upon such conversion the par value of the

security surrendered in such exchange shall be deemed the price at which the securities issued and delivered in such exchange are sold.

(8) Broker's transactions, executed upon customer's orders on any exchange or in the over-the-counter market but not those made upon the solicitation by brokers of such orders.

(9) Subscriptions for shares of the capital stock of a corporation prior to the incorporation thereof under the Corporation Code, when no expense is incurred, or no commission, compensation or remuneration is paid or given in connection with the sale or disposition of such securities, and only when the purpose for soliciting, giving or taking, of such subscriptions is to comply with the requirements of such law as to the percentage of the capital stock of a proposed corporation which should be subscribed before it can be registered and duly incorporated.

(10) The exchange of securities by the issuer with its existing security holders exclusively, where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange.

(11) Any issuance of any security by a public utility or service corporation which, in compliance with or pursuant to law, regulation or decree, is intended to broaden its equity base as well as to finance a part of the capital investment thereof through the issuance and sale of stocks.

(b) The Commission may, from time to time and subject to such terms and conditions as it may prescribe, exempt transactions other than those provided in the preceding paragraph, if it finds that the enforcement of the requirements of registration under this Act with respect to such transactions is not necessary in the public interest and for the protection of the investors by reason of the small amount involved or the limited character of the public offering.

(c) A fee equivalent to one-tenth of one per centum of the maximum aggregate price or issued value of the securities shall be collected by the Commission for granting a general or particular exemption from the registration requirements of this Act. (6a)

[48] **Section 10.** *Exempt Transactions.* - 10.1. The requirement of registration under Subsection 8.1 shall not apply to the sale of any security in any of the following transactions:

(a) At any judicial sale, or sale by an executor, administrator, guardian or receiver or trustee in insolvency or bankruptcy.

(b) By or for the account of a pledge holder, or mortgagee or any of a pledge lien holder selling of offering for sale or delivery in the ordinary course of business and not for the purpose of avoiding the provision of this Code, to liquidate a *bonafide* debt, a security pledged in good faith as security for such debt.

(c) An isolated transaction in which any security is sold, offered for sale, subscription or delivery by the owner therefore, or by his representative for the owner's account, such sale or offer for sale or offer for sale, subscription or delivery not being made in the course of repeated and successive transaction of a like character by such owner, or on his account by such representative and such owner or representative not being the underwriter of such security.

(d) The distribution by a corporation actively engaged in the business authorized by its articles of incorporation, of securities to its stockholders or other security holders as a stock dividend or other distribution out of surplus.

(e) The sale of capital stock of a corporation to its own stockholders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with the sale of such capital stock.

(f) The issuance of bonds or notes secured by mortgage upon real estate or tangible personal property, when the entire mortgage together with all the bonds or notes secured thereby are sold to a single purchaser at a single sale.

(g) The issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security surrendered in exchange to

make such conversion: *Provided,* That the security so surrendered has been registered under this Code or was, when sold, exempt from the provision of this Code, and that the security issued and delivered in exchange, if sold at the conversion price, would at the time of such conversion fall within the class of securities entitled to registration under this Code. Upon such conversion the par value of the security surrendered in such exchange shall be deemed the price at which the securities issued and delivered in such exchange are sold.

(h) Broker's transaction, executed upon customer's orders, on any registered Exchange or other trading market.

(i) Subscriptions for shares of the capitals stocks of a corporation prior to the incorporation thereof or in pursuance of an increase in its authorized capital stocks under the Corporation Code, when no expense is incurred, or no commission, compensation or remuneration is paid or given in connection with the sale or disposition of such securities, and only when the purpose for soliciting, giving or taking of such subscription is to comply with the requirements of such law as to the percentage of the capital stock of a corporation which should be subscribed before it can be registered and duly incorporated, or its authorized, capital increase.

(j) The exchange of securities by the issuer with the existing security holders exclusively, where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange.

(k) The sale of securities by an issuer to fewer than twenty (20) persons in the Philippines during any twelve-month period.

(l) The sale of securities to any number of the following qualified buyers:

(i) Bank;

(ii) Registered investment house;

(iii) Insurance company;

(iv) Pension fund or retirement plan maintained by the Government of the Philippines or any political subdivision thereof or manage by a bank or other persons authorized by the Bangko Sentral to engage in trust functions;

(v) Investment company or;

(vi) Such other person as the Commission may rule by determine as qualified buyers, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial and business matters, or amount of assets under management.

[49] Dated 3 April 2006.

[50] SECTION 19. Registration of brokers, dealers and salesmen. — No broker, dealer or salesman shall engage in business in the Philippines as such broker, dealer or salesman or sell any securities, including securities exempted under this Act, except in exempt transactions, unless he has been registered as a broker, dealer, or salesman pursuant to the provisions of this Section.

[51] **Section 28.** *Registration of Brokers, Dealers, Salesmen and Associated Persons.* - 28.1. No person shall engage in the business of buying or selling securities in the Philippine as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.

[52] GREGORIO FULE vs. ONAPAL PHIL., COMMODITIES INC., ET AL., SEC CASE NO. 3628. February 7, 1991.

[53] SECURITIES AND EXCHANGE COMMISSION vs. COURT OF APPEALS; G.R. Nos. 106425 & 106431-32. July 21, 1995.

[54] RAFAEL MORALES. The Philippine Securities Regulation Code (Annotated). 2005. Page 36

[55] Appendix 48 of the 2004 Manual of regulations for Banks.

[56] Later adopted in the 2002 Manual of Regulations for Banks, as follows:

> SECTION X632. Prohibition on the Sale of Foreign-Based Mutual Funds by Banks. — *Criminal and administrative sanctions prescribed under Sections 36 and 37,* respectively, of R.A. No. 7653 shall be imposed on banks marketing/selling foreign-based mutual funds using any or all of their branches as outlets and/or selling such financial products without prior BSP approval.

[57] **SEC. 4.** ***Money Laundering Offense.*** – Money laundering is a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources. It is committed by the following:

> (a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property.
>
> (b) Any person knowing that any monetary instrument or property involves the proceeds of any unlawful activity, performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above.
>
> (c) Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Money Laundering Council (AMLC), fails to do so.

[58] JOSE MARI BENJAMIN F. U. TIROL. The Anti-Money Laundering Law of the Philippines. 2004 Edition. Page 71.

[59] "SEC. 11. Authority to Inquire into Bank Deposits. – Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the Council may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution upon order of any competent court in cases of violation of this Act, when it has been established that there is probable cause that the deposits or investments are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof; except that no court order shall be required in cases involving unlawful activities defined in Sections 3(i)(1), (2) and (12). (AMLA)

[60] "SEC. 10. *Freezing of Monetary Instrument or Property.* – The Court of Appeals, upon application *ex parte* by the Council and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Section 3(i) hereof, may issue a freeze order which shall be effective immediately. The freeze order shall be for a period of twenty (20) days unless extended by the court." (AMLA)

[61] BENJAMIN D. TEODORO AND HECTOR S. DE LEON. THE LAW ON INCOME TAXATION. Page 8, citing Alexander Howden & Co., Ltd., Et Al. vs. The Collector (now Commissioner) of Internal Revenue, G.R. No. L-19392; April 14, 1965.

[62] Testimony of Antonette delos Reyes in the 17 November Public Hearing at 9:34 am.

[63] Rule 3 (N) of the Amended IRR of the SRC.

[64] Section 5(n) provides that the SEC has the duty to –

"Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws."

[65] **Section 37.** *Administrative Sanctions on Banks and Quasi-banks.* - Without prejudice to the criminal sanctions against the culpable persons provided in Sections 34, 35, and 36 of this Act, the Monetary Board may, at its discretion, impose upon any bank or quasi-bank, their directors and/or officers, for any willful violation of its charter or by-laws, willful delay in the submission of reports or publications thereof as required by law, rules and regulations; any refusal to permit examination into the affairs of the institution; any willful making of a false or misleading statement to the Board or the appropriate supervising and examining department or its examiners; any willful failure or refusal to comply with, or violation of, any banking law or any order, instruction or regulation issued by the Monetary Board, or any order, instruction or ruling by the Governor; or any commission of irregularities, and/or conducting business in an unsafe or unsound manner as may be determined by the Monetary Board, the following administrative sanctions, whenever applicable:

(a) fines in amounts as may be determined by the Monetary Board to be appropriate, but in no case to exceed Thirty thousand pesos (P30,000) a day for each violation, taking into consideration the attendant circumstances, such as the nature and gravity of the violation or irregularity and the size of the bank or quasi-bank;

(b) suspension of rediscounting privileges or access to Bangko Sentral credit facilities;

(c) suspension of lending or foreign exchange operations or authority to accept new deposits or make new investments;

(d) suspension of interbank clearing privileges; and/or

(e) revocation of quasi-banking license.

Resignation or termination from office shall not exempt such director or officer from administrative or criminal sanctions.

The Monetary Board may, whenever warranted by circumstances, preventively suspend any director or officer of a bank or quasi-bank pending an investigation: Provided, That should the case be not finally decided by the Bangko Sentral within a period of one hundred twenty (120) days after the date of suspension, said director or officer shall be reinstated in his position: Provided, further, That when the delay in the disposition of the case is due to the fault, negligence or petition of the director or officer, the period of delay shall not be counted in computing the period of suspension herein provided.

The above administrative sanctions need not be applied in the order of their severity.

Whether or not there is an administrative proceeding, if the institution and/or the directors and/or officers concerned continue with or otherwise persist in the commission of the indicated practice or violation, the Monetary Board may issue an order requiring the institution and/or the directors and/or officers concerned to cease and desist from the indicated practice or violation, and may further order that immediate action be taken to correct the conditions resulting from such practice or violation. The cease and desist order shall be immediately effective upon service on the respondents.

The respondents shall be afforded an opportunity to defend their action in a hearing before the Monetary Board or any committee chaired by any Monetary Board member created for the purpose, upon request made by the respondents within five (5) days from their receipt of the order. If no such hearing is requested within said period, the order shall be final. If a hearing is conducted, all issues shall be determined on the basis of records, after which the Monetary Board may either reconsider or make final its order.

The Governor is hereby authorized, at his discretion, to impose upon banking institutions, for any failure to comply with the requirements of law, Monetary Board regulations and policies, and/or instructions issued by the Monetary Board or by the Governor, fines not in excess of Ten

thousand pesos (P10,000) a day for each violation, the imposition of which shall be final and executory until reversed, modified or lifted by the Monetary Board on appeal.

[66] **Section 36.** *Proceedings Upon Violation of This Act and Other Banking Laws, Rules, Regulations, Orders or Instructions.* - Whenever a bank or quasi-bank, or whenever any person or entity willfully violates this Act or other pertinent banking laws being enforced or implemented by the Bangko Sentral or any order, instruction, rule or regulation issued by the Monetary Board, the person or persons responsible for such violation shall unless otherwise provided in this Act be punished by a fine of not less than Fifty thousand pesos (P50,000) nor more than Two hundred thousand pesos (P200,000) or by imprisonment of not less than two (2) years nor more than ten (10) years, or both, at the discretion of the court.

Whenever a bank or quasi-bank persists in carrying on its business in an unlawful or unsafe manner, the Board may, without prejudice to the penalties provided in the preceding paragraph of this section and the administrative sanctions provided in Section 37 of this Act, take action under Section 30 of this Act.

[67] Dated 4 April 2006