

RECORDS OF THE SENATE

SBN 1220

The Securities Act of 1998

PA 8799

I believe that the issue is not how to diminish the role of union leaders but how to effect a change in the relationship between union leaders and members, such that leaders shall be accountable and accessible while members shall have ultimate authority.

I would highly recommend to this Chamber that we should consider labor union reforms including, but not limited to, the following: direct election of all officers; secret ballot referenda of all affected workers to authorize a strike, suspend a strike or ratify a contract; ratification by members of all side agreements or memoranda of understanding with management; membership right to vote no confidence in nonelective staff responsible for negotiating and administering the agreements.

I repeat that today, I have filed Proposed Senate Resolution No. 230, entitled

RESOLUTION DIRECTING AN INQUIRY, IN AID OF LEGISLATION, ON ALLEGATIONS THAT CERTAIN LABOR UNION LEADERS NO LONGER REPRESENT UNION MEMBERS, BUT DOMINATE LABOR NEGOTIATIONS BY THEIR IMPROPER LIFESTYLE, INCOME, AND VALUES,

in the hope that the appropriate Senate committee will conduct the hearings as soon as possible.

Thank you.

The President. The Majority Leader is recognized.

Senator Drilon. Mr. President, by tomorrow we should be able to refer Proposed Senate Resolution No. 230 to the appropriate committee so that on Thursday, the same can properly be heard, together with the other resolutions filed on the same matter.

Senator Santiago. Thank you.

SPECIAL ORDERS

Senator Drilon. Mr. President, I move that we transfer from the Calendar for Ordinary Business to the Calendar for Special Orders, Senate Bill No. 1220 under Committee Report No. 6, entitled

THE SECURITIES ACT OF 1998.

The President. Is there any objection? [Silence] There being none, the motion is approved.

BILL ON SECOND READING
S. No. 1220--Securities Act of 1998

Senator Drilon. Mr. President, I move that we consider on Second Reading Senate Bill No. 1220, as reported out under Committee Report No. 6.

The President. Is there any objection? [Silence] There being none, the motion is approved.

Consideration of Senate Bill No. 1220 is now in order. With the permission of the Body, the Secretary will read only the title of the bill, without prejudice to inserting in the *Record* the whole text thereof.

The Secretary. Senate Bill No. 1220, entitled

THE SECURITIES ACT OF 1998

The following is the whole text of the bill:

Senate Bill No. 1220

THE SECURITIES ACT OF 1998

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I
Title and Definitions

SECTION 1. *Title.* - This Act shall be known as "The Securities Act of 1998."

SEC. 2. *Declaration of State Policy.* - It is hereby declared to be the policy of the State to encourage private corporations to broaden the base of their ownership, to enhance a socially-conscious free market that regulates itself and promote the development of a capital market and encourage the widest participation of ownership and democratization of wealth, favor publicly-listed corporations, and to minimize if not totally eliminate insider trading and other manipulative devices which create distortion of the free market.

To achieve these ends, the Securities Act of 1998 is hereby enacted, to be administered by a more efficient and strengthened Securities and Exchange Commission, hereafter the Commission.

SEC. 3. *Definitions.* - For purposes of this Act, unless the context otherwise requires:

3.1. "Securities" are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract or instrument. It includes:

- (A) Shares of stock, bonds, debentures, notes, evidences of indebtedness, asset-backed securities;
- (B) Investment contracts, certificates of interest or participation in a profit sharing agreement, asset-backed securities, certificates of deposit for a future subscription;
- (C) Fractional undivided interests in oil, gas or other mineral rights;
- (D) Derivatives like option and warrants;
- (E) Certificates of assignments, certificates of participation, trust certificates, voting trust certificates or similar instruments;
- (F) Proprietary or non proprietary membership certificates in corporations; and
- (G) Other instruments as may in the future be determined by the Commission.

3.2. "Issuer" is the originator, maker, obligor, or creator of the security.

3.3. "Dealer" means any person who buys and sells securities for his own account in the ordinary course of business and holds himself out as such.

3.4. "Salesman" is a natural person, employed by a dealer, issuer or broker to buy and sell securities.

3.5. "Broker" is a person engaged in the business of buying and selling securities for the account of others.

3.6. "Clearing Agency" is any person who acts as an intermediary in making payments of deliveries or both in connection with transactions in securities, to provide facilities for comparison of data respecting the terms of settlement of securities transactions. Such term may also include a securities depository.

3.7. "Transfer agent" means any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in: (A) countersigning

such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry.

3.8. "Underwriter" means any person who is licensed to guarantee the distribution and sale of securities of any kind by another company.

3.9. "Promoter" includes: (A) any person who, acting alone or in conjunction with one or more persons, directly or indirectly, takes initiative in founding and organizing the business or enterprise of the issuer; or (B) any person who, in connection with the founding and organizing of the business of an issuer, directly or indirectly receives in consideration of services or property or both services or property ten *per centum* (10%) or more of any class of securities of the issuer or ten *per centum* (10%) or more of the proceeds from the sale of any class of such securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely as consideration of property shall be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise.

3.10. "Prospectus" refers to the document made by or on behalf of an issuer, underwriter or dealer to sell or offer for sale any securities offered to the public by a registration statement filed with the Commission pursuant to Sections 5 and 8 of this Act.

3.11. "Registration statement" refers to the application for the registration of securities required to be filed with the Commission pursuant to Sections 5 and 8 of this Act, and includes any amendments thereto, and any supporting documents (including any prospectus) attached thereto and made a part thereof or incorporated therein by reference.

3.12. "Associated person of a broker or dealer" means any employee thereof who directly exercises control or supervisory authority, but does not include a salesman or person whose functions are solely clerical or ministerial.

3.13. "Self-regulatory organization" means any securities exchange, clearing or depository agency or other securities-related organization or association so

organized and has the capacity to comply with and to enforce compliance by its members, with the provisions of this Act or rules and regulations promulgated thereunder and the rules of the organization, including the imposition of sanction for violation thereof.

3.14. "Commodity interest contracts" means contracts, providing for the making or taking of delivery at a prescribed time in the future of a specified quantity and quality of a commodity (or the cash value thereof), which are customarily offset prior to the delivery date. For purposes of this definition, the term "commodity" means any goods, articles, services, rights and interests including any group or index of any of the foregoing.

3.15. "Pre-Need Plans" means contracts which provide for the performance of future services or the payment of future monetary considerations at the time of actual need, for which planholders pay in cash or installment at stated prices, with or without interest or insurance coverage and includes life, pension, education, interment, and other plans which the Commission may from time to time approve.

3.16. "Securities account" refers to that account brought about by an agreement under which a securities intermediary maintains the account for and in behalf of the person for whom the account is opened and maintained, is entitled to exercise the rights that comprise the security.

3.17. "Securities intermediary" means:

- (A) A registered clearing agency; or
- (B) A person who is registered or licensed by the Commission, or
- (C) A bank that maintains securities accounts for others.

3.18. "Uncertificated security" means a security that is not represented by a physical title.

SEC. 4. *Administrative Agency.* -

4.1. This Act shall be administered by the Commission which is a collegial body composed of five Commissioners, inclusive of the Chairman, who shall be appointed by the President, and the term of office of each Commissioner shall be seven (7) years: *Provided, however,* That upon expiration of his term, a Commissioner shall serve as such until his successor shall

have been appointed and qualified: *Provided, further,* That no Commissioner shall be appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed except for the unexpired portion of such term: *Provided, finally,* That upon the effective date of this Act the Chairman and Associate Commissioners then in office shall forthwith serve as Commissioners through the remainder of the terms prescribed for such offices under Presidential Decree 902-A, as amended. The Commission shall have the organization, powers, and functions provided by this Act and other existing laws as the same may from time to time be amended or supplemented.

4.2. The salary of the Chairman and the Associate Commissioners shall be fixed by the President of the Philippines at a sum commensurate to the importance and responsibility attached to the position.

4.3. (A) The Chairman shall be the Chief Executive Officer or the Commission and his functions shall be to:

(i) Execute and administer the policies, decisions, orders and resolutions approved by the Commission;

(ii) Direct and supervise the operations and internal administration of the Commission;

(iii) Sign appointments of subordinate officials and employees made by the Commission and enforce decisions on administrative discipline involving them;

(iv) With the consent of the Commission, make temporary assignments, rotate and transfer personnel in accordance with the provisions of the civil service law;

(v) Submit an annual budget and other budget supplements to the Commission for its approval;

(vi) Delegate his authority, in whole or in part, to other officials of the Commission, in accordance with the rules and regulations of the Commission; and

(vii) Perform such other duties as may be authorized by the Commission.

(B) In carrying out any of his functions under the provisions of this Subsection 4.3, the Chairman shall be governed by the general policies of the

Commission and by such regulatory decisions, findings and determinations as the Commission may by law be authorized to make.

4.4. (A) There shall be a Secretary appointed by the Commission, who shall be of equal rank or level with that of a Director of a Department and shall be the recorder and official reporter of the proceedings of the Commission and shall have the authority to administer oaths in all matters coming under the jurisdiction of the Commission.

(B) There shall be an Executive Director appointed by the Commission who shall be responsible for the effective implementation of the policies, rules and standards promulgated by the Commission, to coordinate and supervise the activities of the different operating units; to report to the Chairman on the operations of such units; and to perform such functions as may be assigned to him by the Chairman and/or by the Commission.

4.5. The Commission shall hold meetings *en banc* for the conduct of business as often as may be necessary at such times as the Chairman may fix or such number of Commissioners constituting a quorum shall request. The notice of the meeting shall be given to all Commissioners and the presence of at least three (3) Commissioners shall constitute a quorum. In the absence of the Chairman, the most senior Commissioner shall act as presiding officer of the meeting.

4.6. (A) To constitute action of the Commission in respect of any matter, the Commissioners of the Commission shall be required to act *en banc* and assent to such action by a majority thereof comprising a quorum at any meeting at which such action is considered or, if action is taken without a meeting by a majority of all Commissioners: *Provided, however,* That the Commission, *en banc*, is authorized, by rule, regulation or order, to delegate any of its functions to any department or office of the Commission, an individual Commissioner, or staff member of the Commission, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter: *Provided, further,* That the Commission, *en banc*, may not delegate, and shall be required to act *en banc*, in respect of the adoption of any rule or regulation, the denial, alteration or supplementation or any rule of a self-regulatory organization, or in the exercise of its quasi-judicial function under Presidential Decree 902-A, as amended.

(B) With respect to the delegation of any functions, as provided in paragraph (A) of Subsection 4.6, the Commission, *en banc*, shall retain a discretionary right to review the action of any department or office, individual Commissioner, or staff member of the Commission, upon its own initiative, or upon petition of a party to or intervenor in such action. The vote of one Commissioner shall be sufficient to bring any such action before the Commission, *en banc*, for review.

If no review is sought within the prescribed time or the Commission, *en banc* declines to exercise review, the action taken pursuant to delegated authority shall for all purposes be deemed the action of the Commission.

4.7. The Commission is authorized to reorganize its internal structure as, from time to time, it determines to be necessary and appropriate in the public interest to carry out its responsibilities under this Act and other laws which it administers. This shall include the power to fix the remuneration and other emoluments of its personnel based on job evaluation and qualifications, to increase or decrease the number of departments, divisions, extension offices, and any other organizational structures within the Commission, to reassign functions and personnel among departments, divisions, extension offices, and any other organizational structures, and to name or rename departments, divisions, offices, and any other organization structures.

4.8. The Commission shall, except as otherwise expressly provided, have the power to promulgate such rules and regulations as it may consider appropriate in the public interest or for the protection of investors to effectuate the purposes and policies of the provisions hereof.

CHAPTER II Registration of Securities

SEC. 5. Requirement of Registration of Securities. -

5.1. No securities, except of a class exempt under Section 6 hereof or unless sold in any transaction exempt under Section 7 hereof, shall be sold or offered for sale or distribution within the Philippines, unless a registration statement registering the securities to be offered has been filed with the Commission and is in effect.

5.2. No securities required to be registered pursuant to Subsection 5.1. shall be sold unless prior to such sale information on the securities in such form and with such

substance as the Commission by rule may prescribe is made available to each prospective purchaser. Notwithstanding the provisions of Subsections 5.1. hereof and of the succeeding sections regarding exemptions, no commercial paper as defined in Section 3 hereof shall be issued, endorsed, sold, transferred or in any other manner conveyed to the public, unless registered in accordance with the rules and regulations that shall be promulgated in the public interest and for the protection of investors by the Commission. The Commission, however, with due regard to public interest and the protection of investors, may, by rules and regulations, exempt from registration any commercial paper that may otherwise be covered by this paragraph. In either case, the rules and regulations shall be promulgated by the Commission with the concurrence of the approval of the Monetary Board of the Bangko Sentral ng Pilipinas. The Monetary Board shall, however, have the power to promulgate its own rules on the monetary and credit aspects of commercial paper issues, which may include the imposition of ceilings on issues by any single borrower, and the authority to supervise the enforcement of such rules and to require issuer of commercial papers to submit their financial statements and such periodic reports, when required by both the Commission and the Monetary Board, shall be uniform.

5.3. The Commission by rule may permit securities required to be registered under Subsection 5.1 to be offered for sale after the filing of a registration statement for such securities, but prior to its effectivity, upon such terms and conditions as the Commission by rule may prescribe in the public interest or for the protection of investors: *Provided, however,* That no offer for sale under this subsection shall be made by means of any written communication except a preliminary prospectus conforming in form and content to requirements for preliminary prospectuses which the Commission by rule may prescribe.

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

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

SEC. 6. *Exempt Securities.* -

6.1. Except as expressly provided, the requirement of registration under Subsection 5.1 shall not 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: *Provided,* That the Commission may require compliance with the form and content of disclosures the Commission may by rule prescribe.
- (C) Certificates issued by a receiver or by a trustee in bankruptcy duly approved by the court.
- (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 Regulatory Board, the Bangko Sentral ng Pilipinas, or the Bureau of Internal Revenue.

6.2. 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 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 or investors.

SEC. 7. *Exempt Transactions.* -

7.1. The requirement of registration under Subsection 5.1 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 mortgage or any other similar lien holder 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.

- (C) 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 or 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, where 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 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.
- (H) Broker's transactions, executed upon customer's orders, on any registered exchange or other trading market.
- (I) Subscriptions for shares of the capital stock of a corporation prior to the incorporation thereof or in pursuance of an increase in its authorized capital stock 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 corporation which should be subscribed before it can be registered and duly incorporated, or its authorized capital increased.
- (J) 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.
- (K) The sale of securities by an issuer to fewer than 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 managed 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 by rule 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.
- 7.2. The Commission by rule 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 subsection, if it finds that the enforcement of the requirements of registration

under this Act with respect to such transaction is not necessary in the public interest and for the protection of the investors such as by reason of the small amount involved or the limited character of the public offering.

7.3. Any person claiming any exemption under this Section, shall file with the Commission a notice identifying the exemption relied upon on such form and at such time as the Commission by rule may prescribe and with such notice shall pay to the Commission a fee equivalent to one-tenth of one *per centum* of the maximum aggregate price or issued value of the securities.

SEC. 8. *Procedure for Registration of Securities.* -

8.1. All securities required to be registered for offer and sale under Subsection 5.1 shall be registered through the filing by the issuer in the office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission by rule shall prescribe. The registration statement shall include or have annexed thereto any prospectus required or permitted to be delivered under Subsections 5.2, 5.3 and 5.4.

8.2. In promulgating rules governing the content of any registration statement (including any prospectus made a part thereof or annexed thereto), the Commission may require the registration statement to contain the information or documents described in Schedule A appended to this Act, may dispense with any such requirement, or may require additional information or documents, including written information from an expert, depending on the necessity thereof for the protection of public investors, or their applicability to the class of securities sought to be registered, as the case may be.

8.3. The registration statement shall be signed by the issuer, its principal executive officer, its principal operating officer, its principal financial officer, its comptroller or principal accounting officer, a majority of members of its board of directors, or persons performing functions similar to any of the foregoing. The written consent of the expert named as having certified any part of the registration statement or any document used in connection therewith shall also be filed. Where the registration statement includes shares to be sold by selling shareholders, a written certification by such selling shareholders as to the accuracy of any part of the registration statement contributed to by such selling shareholders shall also be filed.

8.4. (A) Upon filing of the registration statement, the issuer shall pay to the Commission a fee of not more than one-tenth of one *per centum* of the maximum aggregate price at which such securities are proposed to be offered.

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

8.5. Within forty-five (45) days after the date of filing of the registration statement, or by such later date to which the issuer has consented, the Commission shall declare the registration statement effective or rejected, unless the applicant is allowed to amend the registration statement as provided in Section 10 hereof. The Commission shall enter an order declaring the registration statement to be effective if it finds that the registration statement together with all the other papers and documents attached thereto, is on its face complete and that the requirements have been complied with. The Commission may impose such terms and conditions as may be necessary or appropriate for the protection of the investors.

8.6. Upon effectivity of the registration statement, the issuer shall state in every prospectus that such effectivity shall not be deemed a finding by the Commission that the registration statement is true and accurate on its face or that it does not contain an untrue statement of fact or omit to state a material fact, or be held to mean that the Commission has in any way recommend, endorsed or given approval to the security included in the registration statement. It shall be unlawful to make, or cause to be made, to any prospective purchaser any representation contrary to the foregoing.

8.7. The Commission, for the guidance of investors, may require the issuer to submit the security for rating by rating agencies accredited by the Commission and to include such rating in the registration statement and prospectus.

SEC. 9. *Rejection and Revocation of Registration of Securities.* -

9.1. The Commission may, after due notice and hearing, reject a registration statement and refuse registration of the security thereunder, or revoke the effectivity of a registration statement and the registration of the security thereunder by issuing an order to such effect, setting forth its findings in respect thereto, if it finds that:

(A) The issuer;

(i) Has been judicially declared insolvent;

(ii) Has violated any of the provisions of this Act, the rules promulgated pursuant thereto, or any order of the Commission of which the issuer has notice in connection with the offering for which registration statement has been filed;

(iii) Has been or is engaged or is about to engage in fraudulent transactions;

(iv) Has made any false or misleading representation of material facts in any prospectus concerning the issuer or its securities;

(v) Has failed to comply with any requirement that the Commission may impose as a condition for registration of the security for which the registration statement has been filed; or

(B) The registration statement is on its face incomplete or inaccurate in any material respect or includes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statement therein not misleading; or

(C) The issuer, any officer, director or controlling person of the issuer, or person performing similar functions, or any underwriter:

(i) Has been convicted, by a competent judicial or administrative body, upon plea of guilty, or otherwise, of an offense involving moral turpitude, fraud, embezzlement, counterfeiting, theft, estafa, misappropriation, forgery, bribery, false oath, or perjury, or of a violation of securities, commodities, banking, real estate, insurance, mining, investment and other related laws; or

(ii) Is enjoined or restrained by the Commission or other competent judicial or administrative body from engaging in securities, commodities, banking, real estate, insurance, mining, investment and other related laws or from willfully violating laws governing such activities; or

(iii) Is subject to an Order of the Commission or other competent judicial or administrative body refusing, revoking or suspending any registration, license or other permit required under this Act, the rules and regulations promulgated thereunder, or any other law to engage in any activity involving securities, commodities, banking, real estate, insurance, mining, investment or other related activities;

(iv) Is subject to an order of a self-regulatory organization suspending or expelling him from membership or participation therein or from association with a member or participant thereof;

(v) Has been found by final Order of the Commission or other competent judicial or administrative body to have willfully violated any provisions of securities, commodities, banking, real estate, insurance, mining, investment or other related laws, or have willfully aided, abetted, counseled, commanded, induced or procured such violation.

For purposes of this subsection, the term "competent judicial or administrative body" shall include a foreign court of competent jurisdiction and a foreign financial regulator.

9.2. The Commission may compel the production of all the books and papers of such issuer, and may administer oaths to, and examine the officers of such issuer or any other person connected therewith as to its business and affairs, and may also require a balance sheet exhibiting the assets and liabilities of any such issuer or his income statement of both, to be certified to by an independent certified public accountant.

9.3. If any issuer shall refuse to permit an examination to be made by the Commission, its refusal shall be proper ground for the refusal or revocation of the registration of its securities.

9.4. If the Commission deems it necessary, it may issue an Order suspending the offer and sale of the securities pending any investigation. The Order shall

state the grounds for taking such action, but such Order of suspension although binding upon the persons notified thereof, shall be deemed confidential, and shall not be published. Upon the issuance of the Suspension Order, no further offer or sale of such security shall be made until the same is lifted or set aside by the Commission. Otherwise, such sale shall be void.

9.5. Notice of issuance of such Order shall be given to the issuer and every dealer and broker who shall have notified the Commission of an intention to sell such security.

9.6. A registration statement may be withdrawn by the issuer only with the consent of the Commission.

SEC. 10. *Amendments to the Registration Statement.* -

10.1. If a registration statement is on its face incomplete or inaccurate in any material respect, the Commission shall issue an Order directing the amendment of the registration statement. Upon compliance with such Order, the amended registration statement shall become effective in accordance with the procedure mentioned in Subsection 8.5 hereof.

10.2. An amendment filed prior to the effective date of the registration statement shall recommence the forty-five (45) day period within which the Commission shall act on a registration statement. An amendment filed after the effective date of the registration statement shall become effective only upon such date as determined by the Commission.

10.3. If any change occurs in the facts set forth in a registration statement, the issuer shall file an amendment thereto setting forth the change.

10.4. If, at any time, the Commission finds that a registration statement contains any false statement or omits to state any fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may conduct an examination, and, after due notice and hearing, issue an Order suspending the effectivity of the registration statement. If the statement is duly amended, the Suspension Order may be lifted.

10.5. In making such examination the Commission or any officer or officers designated by it may administer oaths and affirmations and shall have access to, and may demand the production of, any books, records or documents relevant to the examination. Failure of the

issuer, underwriter, or any other person to cooperate, or his obstruction or refusal to undergo an examination, shall be a ground for the issuance of a Suspension Order.

SEC. 11. *Suspension of Registration.* -

11.1. If, at any time, the information contained in the registration statement filed is or has become misleading, incorrect, inadequate or incomplete in any material respect, or the sale or offering for sale of the security registered thereunder may work or tend to work a fraud, the Commission thereunder may require from the issuer such further information as may in its judgment be necessary to enable the Commission to ascertain whether the registration of such security should be revoked on any ground specified in this Act. The Commission may also suspend the right to sell and offer for sale such security pending further investigation, by entering an order specifying the grounds for such action, and by notifying the issuer, underwriter, dealer or broker known as participating in such offering.

11.2. The refusal to furnish information required by the Commission may be a ground for the issuance of an Order of Suspension pursuant to Subsection 11.1. Upon the issuance of any such Order and notification to the issuer, underwriter, dealer or broker known as participating in such offering, no further offer or sale of any such security shall be made until the Commission orders otherwise. Otherwise, such sale shall be void.

11.3. Upon issuance of an Order of Suspension, the Commission shall conduct a hearing. If the Commission determines that the sale of any security should be revoked, it shall issue an Order prohibiting sale of such security. Until the issuance of a final Order, the suspension of the right to sell, though binding upon the persons notified thereof, shall be deemed confidential, and shall not be published, unless it shall appear that the Order of Suspension has been violated after notice. If, however, the Commission finds that the sale of the security will neither be fraudulent nor result in fraud, it shall forthwith issue an Order revoking the Order of Suspension, and such security shall be restored to its status as a registered security as of the date of such Order of Suspension.

CHAPTER III

Regulation of Commodity Interests and
Pre-Need Plans

SEC. 12. *Commodity Interest Contracts.* -

12.1. No person shall offer, sell, or enter into commodity interest contracts except in accordance with the rules and regulations the Commission may prescribe. Such regulations may include, without limitation:

- (A) Prohibiting fraud, manipulation, fictitious transactions, undue speculation and other unfair and abusive trading practices;
- (B) Registering commodity Exchanges and commodity associations, providing for approval by the Commission of the rules thereof (including terms of commodity interest contracts traded on such Exchanges or in markets supervised by such associations) and requiring enforcement of such rules, in a manner similar to that provided in this Act for the regulation of Exchanges;
- (C) Licensing market professionals, such as futures brokers, commodity trading advisors and salemen;
- (D) Imposing requirements on the persons referred to in paragraphs (B) and (C), with respect to disclosure, reporting, record keeping, examination, capital, bonding and other financial responsibility, and segregation of margin deposits and other customer funds.

12.2. The Commission shall prohibit transactions with respect to all or specified commodity interest contracts if it finds, after due notice and hearing, that such transactions will be inimical to the public interest of the country or may cause grave or irreparable injury.

SEC. 13. *Pre-Need Plans.* - No person shall sell or offer for sale to the public any pre-need plan except in accordance with rules and regulations which the Commission shall prescribe. Such rules shall regulate the sale of pre-need plans by, among other things, requiring the registration of pre-need plans, licensing persons involved in the sale of pre-need plans, requiring disclosures to prospective plan holders, prescribing advertising guidelines, providing for uniform accounting system, reports and record keeping with respect to such plans, imposing capital, bonding and other financial responsibility, and establishing trust funds for the payment of benefits under such plans.

CHAPTER IV Reportorial Requirements

SEC. 14. *Periodic and Other Reports of Issuers.* -

14.1. Every issuer with a class of securities satisfying the requirements in Subsection 14.2 hereof shall file with the Commission:

- (A) An annual report within 135 days, or such other time as the Commission by rule shall prescribe, after the end of the issuer's fiscal year, which shall include a balance sheet, profit and loss statement and statement of cash flows, for such last fiscal year, certified by an independent certified public accountant, and a management discussion and analysis of results of operations; and
- (B) Such other periodical reports for interim-fiscal periods and current reports on significant developments of the issuer as the Commission may prescribe as necessary to update and keep current information on the operation of the business and financial condition of the issuer.

14.2. The reportorial requirements of Subsection 14.1 shall apply to the following:

- (A) An issuer which has sold a class of its securities pursuant to registration under Section 8 hereof: *Provided, however,* That the obligation of such issuer to file reports shall be suspended for any fiscal year after the year such registration became effective if such issuer, as of the first day of any such fiscal year, has less than 100 holders of such class of securities or such other number as the Commission shall prescribe and it notifies the Commission of such;
- (B) An issuer with a class of securities listed for trading on an Exchange; and
- (C) An issuer with assets of at least P50,000,000 or such other amount as the Commission shall prescribe, and having 200 or more holders each holding at least 100 shares of a class of its equity securities: *Provided, however,* That the obligation of such issuer to file reports shall be terminated ninety (90) days after notification to the Commission by the issuer that the number of its holders holding at least 100 shares is reduced to less than 100.

14.3. Every issuer of a security listed for trading on an Exchange shall file with the Exchange a copy of any report filed with the Commission under Subsection 14.1 hereof.

14.4. All reports (including financial statements)

required to be filed with the Commission pursuant to Subsection 14.1 hereof shall be in such form, contain such information and be filed at such times as the Commission by rule shall prescribe, and shall be in lieu of any periodical or current reports or financial statements otherwise required to be filed under the Corporation Code.

14.5. Every issuer which has a class of equity securities satisfying any of the requirements in Subsection 14.2 shall furnish to each holder of such equity security an annual report in such form and containing such information as the Commission by rule shall prescribe.

14.6. Within such period as the Commission by rule may prescribe preceding the annual meeting of the holders of any equity security of a class entitled to vote at such meeting, the issuer shall transmit to such holders an annual report in conformity with Subsection 14.5.

14.7. The Commission, by rule or order, may exempt any issuer from the provisions of this Section.

SEC. 15. Reports by 10% Holders of Equity Securities. -

15.1. In every case in which an issuer has a class of equity security that satisfies the requirements of Subsection 14.2 (B) or 14.2 (C) hereof, any person who, after acquiring directly or indirectly the beneficial ownership of any such equity security, is directly or indirectly the beneficial owner of more than ten *per centum* (10%) of such class or in excess of such lesser *per centum* as the Commission by rule may prescribe, shall, within ten days after such acquisition or such reasonable time as fixed by the Commission, submit to the issuer of the security, to the Exchange where the security is traded, and to the Commission a sworn statement containing the following information and such other information as the Commission may require in the public interest or for the protection of investors:

- (A) The personal background, identity, residence, and citizenship of, and the nature of such beneficial ownership by, such person and all other persons by whom or on whose behalf the purchases are effected; in the event the beneficial owner is a juridical person, the lines of business of the beneficial owner shall also be reported;
- (B) If the purpose of the purchasers or prospective purchasers is to acquire control of the business of

the issuer of the securities, any plans or proposals which such persons may have that will effect a major change in its business or corporate structure;

- (C) The number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by: (i) such person, and (ii) each associate of such person, giving the background, identity, residence, and citizenship of each such associate; and
- (D) Information as to any contracts, arrangements, or understanding with any person with respect to any securities of the issuer including but not limited to transfer, joint ventures, loan or option arrangements, puts or calls, guarantees or division of losses or profits, or proxies naming the persons with whom such contracts, arrangements, or understanding have been entered into, and giving the details thereof.

15.2. If any change occurs in the facts set forth in the statements, an amendment shall be transmitted to the issuer, the Exchange and the Commission.

15.3. The Commission, may permit any person to file in lieu of the statement required by Subsection 15.1 hereof, a notice stating the name of such person, the shares of any equity securities subject to Subsection 15.1 which are owned by him, the date of their acquisition and such other information as the Commission may specify, if it appears to the Commission that such securities were acquired by such person in the ordinary course of his business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer nor in connection with any transaction having such purpose or effect.

**CHAPTER V
Civil Liabilities**

SEC. 16. Civil Liabilities on Account of False Registration Statement. -

16.1. Any person acquiring a security, the registration statement of which or any part thereof contains on its effectivity an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make such statements not misleading, and who suffers damage, may sue and recover damages from the following enumerated

persons, unless it is proved that at the time of such acquisition he knew of such untrue statement or omission:

- (A) The issuer and every person who signed the registration statement;
- (B) Every person who was a director of, or any other person performing similar functions, or a partner in, the issuer at the time of the filing of registration statement or any part, supplement or amendment thereof with respect to which his liability is asserted;
- (C) Every person who is named in the registration statement as being or about to become a director of, or a person performing similar functions, or a partner in, the issuer and whose written consent thereto is filed with the registration statement;
- (D) Every person whose profession gives authority to a statement made by him, who, with his written consent, which shall be filed with the registration statement, has been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement in such registration statement, report, or valuation, which purports to have been prepared or certified by him.
- (E) Every selling shareholder who contributed to and certified as to the accuracy of a portion of the registration statement, with respect to that portion of the registration statement which purports to have been contributed by him.
- (F) Every underwriter with respect to such security.

If the person who acquired the security did so after the issuer has made generally available to its security holders an income statement covering a period of at least twelve months beginning from the effective date of the registration statement, then the right of recovery under this subsection shall be conditioned or proof that such person acquired the security relying upon such untrue statement in the registration statement or relying upon the registration statement and not knowing of such income statement, but such reliance may be established without proof of the reading of the registration statement by such person.

16.2. Notwithstanding the provisions of Subsection

16.1, no person, other than the issuer, shall be liable as provided therein if he proves that:

- (A) Before the effective date of the part of the registration statement with respect to which his liability is asserted: (i) He had resigned from or had taken such steps as are permitted by law to resign from, or ceased or refused to act in, every office, capacity or relationship in which he was described in the registration statement as acting or agreeing to act; and (ii) He had advised the Commission and the issuer in writing that he had taken such action and that he would not be responsible for such part of the registration statement; or
- (B) (i) As regards any part of the registration statement not purporting to be a copy of or extract from a report or valuation of an expert, and not purporting to be made on the authority of a public official document or statement, he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements not misleading; and (ii) As regards any part of the registration statement purporting to be made upon his authority as an expert or purporting to be a copy of or extract from a report or valuation of himself as an expert: (a) He had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or (b) Such part of the registration statement did not fairly represent his statement as an expert or was not a fair copy of or extract from his report or valuation as an expert; and (iii) As regards any part of the registration statement purporting to be made on the authority of an expert (other than himself) or purporting to be a copy of or extract from a report or valuation of an expert (other than himself), he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue or that there was an omission to state a material fact required to be stated

therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement of the expert or was not a fair copy of or extract from the report or valuation of the expert; and (iv) As regards any part of the registration statement purporting to be a statement made by a public official or purporting to be a copy of or extract from a public official document, he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue, or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement made by the public official or was not a fair copy of or extract from the public official document.

16.3. In determining for the purpose of paragraph (B) of Subsection 16.2, what constitutes reasonable investigation and reasonable ground for belief, the standard of reasonableness shall be that required of a prudent man in the management of his own property.

16.4. The suit authorized under Subsection 16.1 may be filed to recover such damages as shall represent double the difference between the amount paid and committed to be paid for the security, not exceeding the price at which the security was offered to the public, and: (A) The value thereof as of the time such suit was brought, or in case the security has been disposed of; (B) The price at which such security shall have been disposed of in the market before the suit; or (C) The price at which such security shall have been disposed of after the filing of the suit but before judgment. No underwriter shall be liable in any suit or as a consequence of suits authorized under Subsection 16.1 hereof for damages in excess of the total price at which the securities underwritten by him and distributed to the public were offered to the public.

16.5. The persons specified in Subsection 16.1 hereof shall be jointly and severally liable for the payment of damages. However, any person who becomes liable for the payment of such damages may recover contribution from any other person who, if sued separately, would have been liable to make the same payment, unless the former was guilty of fraudulent representation and the latter was not.

16.6. In no case shall the amount recoverable under

this Section exceed double the price at which the security was offered to the public and such exemplary damages as may be awarded.

16.7. Notwithstanding any provision of law to the contrary, all persons, including the issuer, held liable under this Section, shall contribute equally to the total liability adjudged herein. In no case shall the principal stockholders, directors and other officers of the issuer or persons occupying similar positions therein, recover their contribution to the liability from the issuer. However, the right of the issuer to recover from the guilty parties the amount it has contributed under this Section shall not be prejudiced.

16.8. In any suit this or any other subsection of this Act, the Commission may, in its discretion, require the payment of the costs of such suit, including reasonable attorney's fees. Costs may be allowed by the Commission to the prevailing party litigant.

SEC. 17. *Civil Liabilities Arising in Connection with Prospectus, Communications and Reports.* -

17.1. Any person who:

- (A) offers to sell or sells a security in violation of Chapter II, or
- (B) offers to sell or sells a security, whether or not exempted by the provisions of this Act, by the use of any means or instruments of transportation or communication, by means of a prospectus or other written or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall fail in the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable to the person purchasing such security from him, who may sue to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

17.2. Any person who shall make or cause to be made any statement in any report, or document filed pursuant to this Act or any rule or regulation thereunder,

which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable to any person who, not knowing that such statement was false or misleading, and relying upon such statements shall have purchased or sold a security at a price which was affected by such statement, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading.

17.3. Every person who becomes liable to make payment under this Section and Sections 18 through 21 may recover contribution as in cases of contract from any person who, if joined in the original suit, would have been liable to make the same payment.

SEC. 18. *Civil Liability for Fraud in Connection with Securities Transactions.* - Any person who engages in any act or transaction in violation of Subsections 23.5 or 24.5, or Section 31, or any rule or regulation of the Commission thereunder, shall be liable to any other person who purchases or sells any security, grants or refuses to grant any proxy, consent or authorization, or accepts or declines an invitation for tender of a security, as the case may be, for the damages sustained by such other person as a result of such act or transaction.

SEC. 19. *Civil Liability for Manipulation of Security Prices.* - Any person who willfully participates in any act or transaction in violation of Section 29 shall be liable to any person who shall purchase or sell any security at a price which was affected by such act or transaction, and the person so injured may sue to recover the damages sustained as a result of such act or transaction.

SEC. 20. *Civil Liability on Account of Insider Trading.* -

20.1. Any insider who violates Subsection 32.1 and any person in the case of a tender offer who violates Subsection 32.5 (A) (i), or any rule or regulation thereunder, by purchasing or selling a security while in possession of material information not generally available to the public, shall be liable in a suit brought by any investor who, contemporaneously with the purchase or sale of securities that is the subject to the violation, purchased or sold securities of the same class unless such insider, or such person in the case of a tender offer, proves that such investor knew the information or would have purchased or sold at the same price regardless of disclosure of the information to him.

20.2. The actual damages that may be imposed shall be equal to the difference between the price at which such investor purchased or sold the security and the market value which such security would have had at the time of the purchase or sale if the information known to such insider, or such person in the case of a tender offer, had been publicly disseminated and absorbed by the market prior to such time: *Provided, however,* That in no event shall the total amount of all damages imposed exceed the profit gained or loss avoided in the transactions that comprised the violation.

20.3. An insider who violates Subsection 32.4, or any person in the case of a tender offer who violates Subsection 32.5 (B), or any rule or regulation thereunder, by communicating material non-public information, shall be jointly and severally liable under Subsection 20.1 with, and in the same extent as, the insider, or person in the case of a tender offer, to whom the communication was directed and who is liable under Subsection 20.1 by reason of his purchase or sale of a security.

SEC. 21. *Civil Liability with Respect to Commodity Interest Contracts and Pre-need Plans.* -

21.1. Any person who engages in any act or transaction in willful violation of any rule or regulation promulgated by the Commission under Section 22 or 13, which the Commission denominates at the time of issuance as intended to prohibit fraud in the offer and sale of pre-need plans or to prohibit fraud, manipulation, fictitious transactions, undue speculation, or other unfair or abusive practices with respect to commodity interest contracts, shall be liable to any other person sustaining damage as a result of such act or transaction.

21.2. As to each such rule or regulation so denominated, the Commission by rule shall prescribe the elements of proof required for recovery and any limitations on the amount of damages that may be imposed.

SEC. 22. *Limitation of Actions.* -

22.1. No action shall be maintained to enforce any liability created under Sections 16 and 17 of this Act unless brought within two years after the discovery of the untrue statement or the omission, or, if the action is to enforce a liability created under Subsection 15.1 (A), unless brought within two years after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under Section 16 or Subsection 17.1 (A) more than five years after the

security was bona fide offered to the public, or under Subsection 17.1 (B) more than five years after the sale.

22.2. No action shall be maintained to enforce any liability created under any other provision of this Act unless brought within two years after the discovery of the facts constituting the cause of action and within five years after such cause of action accrued.

22.3. All suits to recover damages or otherwise impose civil liability pursuant to this Chapter V shall be brought before the Commission, which shall have exclusive jurisdiction to hear and decide such suits.

CHAPTER VI

Protection of Shareholder Interests

SEC. 23. *Tender Offers.* -

23.1. (A) It shall be unlawful for any person, directly or indirectly, to make a tender offer for, or a request or invitation for tenders of, any class of any equity security which satisfies the requirements of Subsection 14.2 (B) or 14.2 (C) if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than ten *per centum* (10%) of such class, or in excess of such lesser *per centum* as the Commission may prescribe, unless at the time copies of the offer or request of invitation are first published or sent or given to security holders, such person has filed with the Commission and furnished the issuer a statement containing such of the information required in Section 15 of this Act as the Commission may prescribe. All requests or invitations for tender, or advertisements making a tender offer or requesting or inviting tenders of such a security, shall be filed as a part of such statement as the Commission may prescribe. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, and shall be filed with the Commission and sent to the issuer not later than the time copies of such materials are first published or sent or given to security holders.

(B) Any solicitation or recommendation to the holders of such a security to accept or reject a tender offer or request or invitation for tenders shall be made in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(C) Securities deposited pursuant to a tender offer or request or invitation for tenders may be withdrawn by or on behalf of the depositor at any time until the expiration of seven days after the time definitive copies of the offer or request or invitation are first published or sent or given security holders, and any time after sixty days from the date of the original tender offer or request or invitation, except as the Commission may otherwise prescribe by rules, regulations, or order as necessary or appropriate in the public interest or for the protection of investors.

(D) Where any person makes a tender offer, or request or invitation for tenders, for less than all the outstanding equity securities of a class, and where a greater number of securities is deposited pursuant thereto within ten days after copies of the offer or request or invitation are first published or sent or given to security holders than such person is bound or willing to take up and pay for, the securities taken up shall be taken up as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositor. The provisions of this subsection shall also apply to securities deposited within ten days after notice of an increase in the consideration offered to security holders, as described in paragraph (E) of this subsection, is first published or sent or given to security holders.

(E) Where any person varies the terms of a tender offer or request or invitation for tenders before the expiration thereof by increasing the consideration offered to holders of such securities, such person shall pay the increased consideration to each security holder whose securities are taken up and paid for whether or not such securities have been taken up by such person before the variation of the tender offer or request or invitation.

23.2 The provisions of Subsection 14.1 and 23.1 shall not apply to the ownership, or to any offer for, or request or invitation for tenders of, any equity security:

(A) If the acquisition of such security, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months would not exceed two *per centum* (2%) of that class; or

(B) By the issuer of such security; or

(C) Which the Commission, by rules or regulations or

by order, shall exempt as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purpose of said Sections.

23.3. When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for the purposes of Section 15 and Subsection 23.1.

23.4. In determining, for purposes of Section 15 and Subsection 23.1, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

23.5. It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation. The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

SEC. 24. *Purchases by Issuers.* -

24.1. The Commission shall promulgate rules and regulations providing for reporting, disclosure and the prevention of fraudulent, deceptive or manipulative practices in connection with the purchase by an issuer, by tender offer or otherwise, of any equity security of a class issued by it that satisfies the requirements of Subsection 14.2(B) or 14.2(C). Such rules and regulations may require such issuer to provide holders of equity securities of such class with such information relating to the reasons for such purchase, the source of funds, the number of shares to be purchased, the price to be paid for such securities, the method of purchase and such additional information as the Commission deems necessary or appropriate in the public interest or for the protection of investors, or which the Commission deems to be material to a determination by holders whether

such security should be sold.

24.2. For the purpose of this Section, a purchase by or for the issuer or any person controlling, controlled by, or under common control with the issuer, or a purchase subject to the control of the issuer or any such person, shall be deemed to be a purchase by the issuer. The Commission shall have the power to make rules and regulations implementing this subsection in the public interest and for the protection of investors, including exemptive rules and regulations covering situations in which the Commission deems it unnecessary or inappropriate that a purchase of the type described in this subsection shall be deemed to be a purchase by the issuer for the purpose of some or all of the provisions of Subsection 24.1.

SEC. 25. *Proxy Solicitations.* - With respect to any class of equity security that satisfies the requirements of Subsection 14.2(B) or 14.2(C):

25.1. The Commission is authorized to promulgate rules and regulations governing the solicitation of proxies, consents and authorizations with respect to any such class or equity security. Notwithstanding any provision of the Corporation Code to the contrary, such rules and regulations may, among other things, require the filing with the Commission of a proxy statement, and other materials proposed for use in any solicitation, prescribe the form and content of such materials and of any proxy, consent or authorization, fix the periods within which a solicitation may occur, impose restrictions on the time in which and the purpose for which a proxy, consent or authorization may be effective, and prevent fraudulent and deceptive practices in connection therewith.

25.2. The Commission is authorized to promulgate rules and regulations governing the obligations of any member of an Exchange, any broker or dealer, or any bank, association, or other entity that exercises fiduciary powers, to give, or to refrain from giving a proxy, consent or authorization with respect to any such class of equity security, and which is carried for the account of a customer thereof.

25.3. Unless proxies, consents, or authorizations with respect to any such class of equity security are solicited by or on behalf of the management of the issuer from the holders of record of such security in accordance with the rules and regulations prescribed under Subsection 25.1, such issuer shall, prior to any annual or

other meeting of the holders of such security (or the taking of any action without a meeting) and in accordance with rules and regulations prescribed by the Commission, file with the Commission and transmit to all holders of record of such security an information statement containing information substantially equivalent to that which would be required in a proxy statement if a solicitation were made.

25.4. Notwithstanding any provision of the Corporation Code to the contrary, notice of any annual or special meeting of the holders of any equity security of a class entitled to vote at such meeting shall be mailed or otherwise transmitted at least fifteen (15) days prior thereto.

25.5. No solicitation of a proxy, consent or authorization shall be made by means of a proxy statement, form of proxy or consent, notice of meeting or other communication, written or oral, which is materially false or misleading, or which fails to disclose material facts necessary to correct any statement in an earlier communication made with respect to the solicitation of a proxy, consent or authorization for the same meeting or subject matter, which has become false or misleading.

SEC. 26. Fees for Tender Offers and Certain Proxy Solicitations. - At the time of filing with the Commission of any statement required under Section 23 for any tender offer or Section 24 for issuer repurchases, or of proposed proxy or consent solicitation materials under Section 25 that concerns an acquisition, merger, consolidation or proposed sale or disposition of substantially all of the assets of any issuer, the Commission may require by rule that the person making such filing pay a fee of one-tenth of one *per centum* of:

26.1. The proposed aggregate purchase price in the case of a transaction under Section 23 or 24; or

26.2. The proposed payment in cash, and the value of any securities or property to be transferred in the acquisition, merger or consolidation, or the cash value of any securities proposed to be received upon the sale or disposition of such assets in the case of a solicitation under Section 25.

SEC. 27. Internal Record Keeping and Accounting Controls. - Every issuer which has a class of securities that satisfies the requirements of Subsection 14.2 shall:

27.1. Make and keep books, records, and accounts which, in reasonable detail accurately and fairly reflect the transactions and dispositions of assets of the issuer;

27.2. Devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (A) Transactions and access to assets are pursuant to management authorization; (B) Financial statements are prepared in conformity with generally accepted accounting principles that are adopted by the Accounting Standards Council and the rules promulgated by the Commission with regard to the preparation of financial statements; and (C) Recorded assets are compared with existing assets at reasonable intervals and differences are reconciled.

SEC. 28. Transactions of Directors, Officers and Principal Stockholders. -

28.1. Every person who is directly or indirectly the beneficial owner of more than ten *per centum* of any class of any equity security which satisfies the requirements of Subsection 14.2 (B) or 14.2 (C), or who is a director or an officer of the issuer of such security, shall file, at the time either such requirement is first satisfied or within ten days after he becomes such a beneficial owner, director, or officer, a statement with the Commission and, if such security is listed for trading on an Exchange, also with the Exchange, of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten (10) days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission, and if such security is listed for trading on an Exchange, shall also file with the Exchange, a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

28.2. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted before the Commission by

the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter, but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehend within the purpose of this subsection.

28.3. It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such issuer if the person selling the security or his principal: (A) Does not own the security sold; or (B) If owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels or transportation; but no person shall be deemed to have violated this subsection if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

28.4. The provisions of Subsection 28.2 shall not apply to any purchase and sale, or sale and purchase, and the provisions of Subsection 28.3 shall not apply to any sale, of an equity security not then or thereafter held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market, otherwise than on an Exchange, for such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

CHAPTER VII

Prohibition on Fraud, Manipulation and Insider Trading

SEC. 29. *Manipulation of Security Prices; Devices and Practices.* -

29.1. It shall be unlawful for any person, directly or indirectly:

- (A) To create a false or misleading appearance of active trading in any listed security for trading on an Exchange or any other trading market:
 - (i) By effecting any transaction in such security which involves no change in the beneficial ownership thereof, or
 - (ii) By entering an order or orders for the purchase or sale of such security with the knowledge that an order or orders of substantially the same size, time and price, for the sale or purchase of any such security, has or have been or will be entered by or for the same or different parties.
- (B) To effect, alone or with one or more other persons, a series of transactions in securities that: (i) Raises their price to induce the purchase of a security, whether of the same or a different class of the same issuer or of a controlling, controlled, or commonly controlled company by others; (ii) Depresses their price to induce the sale of a security, whether of the same or a different class, of the same issuer or of a controlling, controlled, or commonly controlled company by others; or (iii) Creates active trading to induce such a purchase or sale.
- (C) To induce the purchase or sale of any security listed for trading on an Exchange or transacted on any other trading market by the circulating or disseminating of information that the price of any such security will or is likely to rise or fall because of market operations of any one or more persons conducted with the purpose of raising or depressing the price of such security.
- (D) To make false or misleading statement with respect to any material fact, which he knew or had reasonable ground to believe was so false or misleading, regarding any security listed or traded on an Exchange or transacted on any other trading market for the purpose of inducing the purchase or sale of such security.
- (E) For a consideration received directly or indirectly from a dealer or broker or other person selling or offering for sale or purchasing or offering to purchase the security, to induce the purchase or sale of any security on an Exchange or transacted on any other trading market by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or

fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.

- (F) To effect, either alone or with one or more other persons, any series of transactions for the purchase and/or sale of any security listed for trading on an Exchange or transacted on any other trading market for the purpose of pegging, fixing or stabilizing the price of such security.

29.2. No person, by use of any facility of any Exchange or of any other trading market, shall:

- (A) Effect a short sale, or use or employ any stop-loss order in connection with the purchase or sale of any security on an Exchange or effected on any other trading market except in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

- (B) Use of, employ, in connection with the purchase or sale of any security, any manipulative or deceptive device or contrivance.

29.3. It shall be unlawful for any Exchange or any other self-regulatory organization administering a trading market to adopt and enforce artificial measures of price control of any nature whatsoever without the prior approval of the Commission which may be given only if it serves the public interest and benefits investors.

29.4. The foregoing provisions notwithstanding, the Commission, having due regard to the public interest and the protection of investors, may, by rules and regulations, allow certain acts or transactions that may otherwise be prohibited under this Section.

SEC. 30. *Regulation of Option Trading.* -

30.1. No person shall offer, sell, enter into, acquire an interest in, or, in the case of a member of an Exchange or other self-regulatory organization, guarantee an option or privilege (including any put, call, or straddle) on a security, a certificate of deposit, or a group or index of securities (including any interest therein or based on the value thereof) except in accordance with rules and regulations promulgated by the Commission.

30.2. The Commission is authorized to regulate trading of any option or privilege by permitting such

transactions on such terms and conditions as the Commission may prescribe, and may prohibit any option transaction if it determines that such prohibition is necessary and appropriate in the public interest or for the protection of investors.

30.3. The terms "put", "call", "straddle", "option", or "privilege" as used in this Section shall not include any registered warrant, right or convertible security.

SEC. 31. *Fraudulent Transactions.* - It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities to:

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

31.2. 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

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

SEC. 32. *Insider's Duty to Disclose When Trading.* -

32.1. It shall be unlawful for an insider to sell or buy a security of the issuer, while in possession of material information with respect to the issuer or the security that is not generally available to the public, unless: (A) the insider proves that the information was not gained from such relationship; or (B) if the other party selling to or buying from the insider (or his agent) is identified, the insider proves: (i) that he disclosed the information to the other party, or (ii) that he had reason to believe that the other party otherwise is also in possession of the information. A purchase or sale of a security of the issuer made by an insider defined in Subsection 32.2 (B) of this Section, or such insider's spouse, parents, siblings or children, shall be presumed to have been effected while in possession of material non-public information if transacted after such information came into existence but prior to dissemination of such information to the public and the lapse of a reasonable time for the market to absorb such information: *Provided, however,* That his presumption shall be rebutted upon a showing by the purchaser or seller that he was not aware of the material non-public information at the time of the purchase or sale.

32.2. "Insider" means: (A) The issuer; (B) A director or officer (or person performing similar functions) of, or a person controlling the issuer; (C) A person whose relationship or former relationship to the issuer gives or gave him access to material information about the issuer or the security that is not generally available to the public; or (D) A person who learns such information by a communication from any of the foregoing insiders as defined in paragraphs (A), (B) and (C) of this subsection, with knowledge or reason to believe that the person from whom he learns the information is such an insider and the information is not generally available to the public.

32.3. For purposes of this Section, information is "material" if: (A) The information would likely affect the market price of the security after being disseminated to the public and the lapse of a reasonable time for the market to absorb the information; or (B) A reasonable person would consider the information important under the circumstances in determining his course of action whether to buy, sell or hold a security in the light of such factors as the degree of its specificity, the extent of its difference from information generally available previously, and its nature and reliability.

32.4. It shall be unlawful for any insider to communicate material non-public information about the issuer or the security to any person who, by virtue of the communication, becomes an insider as defined in Subsection 32.2, where the insider communicating the information knows or has reason to believe that such person will likely buy or sell a security of the insider while in possession of such information.

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

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

(ii) Any tender offeror, those acting on its behalf, the issuer of the securities sought or to be sought by such tender offer, and any insider of such

issuer to communicate material non-public information relating to the tender offer to any other person where such communication is likely to result in a violation of Subsection 32.5 (A)(i) of this subsection.

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

32.6. It shall be unlawful for a person controlling any person who violates Subsection 32.1, 32.4 or 32.5 to knowingly or recklessly disregard that such controlled person was likely to engage in such violation and fail to take appropriate steps or adopt procedures to prevent such violations.

CHAPTER VIII

Regulation of Securities Market Professionals

SEC. 33. *Registration of Brokers, Dealers, Salesmen and Associated Persons.* -

33.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesmen, or an associated person of any broker or dealer unless registered as such with the Commission.

33.2. No registered broker or dealer shall employ any salesman or any associated person, and no issuer shall employ any salesman, who is not registered as such with the Commission.

33.3. The Commission, by rule or order, may conditionally or unconditionally exempt from Subsections 33.1. and 33.2 any broker, dealer, salesman, associated person of any broker or dealer, or any class of the foregoing, as it deems consistent with the public interest and the protection of investors.

33.4. The Commission shall promulgate rules and regulations prescribing the qualifications for registration of each category of applicant, which shall, among other things, require as a condition for registration that:

(A) If a natural person, the applicant satisfactorily pass a written examination as to his proficiency and knowledge in the area of activity for which registration is sought;

- (B) In the case of a broker or dealer, the applicant satisfy a minimum net capital as prescribed by the Commission, and provide a bond or other security as the Commission may prescribe to secure compliance with the provisions of this Act; and
- (C) If located outside of the Philippines, the applicant files a written consent to service of process upon the Commission pursuant to Section 60 hereof.

33.5. A broker or dealer may apply for registration by filing with the Commission a written application in such form and containing such information and documents concerning such broker or dealer as the Commission by rule shall prescribe.

33.6. Registration of a salesman or of an associated person of a registered broker or dealer may be made upon written application filed with the Commission by such salesman or associated person. The application shall be separately signed and certified by the registered broker or dealer in which such salesman or associated person is to become affiliated, or by the issuer in the case of a salesman employed, appointed or authorized solely by such issuer. The application shall be in such form and contain such information and documents concerning the salesman or associated person as the Commission by rule shall prescribe. For purposes of this Section, a salesman shall not include any employee of an issuer whose compensation is not determined directly or indirectly on sales of securities of the issuer.

33.7. Applications filed pursuant to Subsection 33.5 and 33.6 shall be accomplished by a registration fee in such reasonable amount prescribed by the Commission.

33.8. Within thirty (30) days after the filing of any application under this Section, the Commission shall by order: (A) Grant registration if it determines that the requirements of this Section and the qualifications for registration set forth in its rules and regulations have been satisfied; or (B) Deny said registration .

33.9. The names and addresses of all persons approved for registration as brokers, dealers, associated persons or salesmen and all orders of the Commission with respect thereto shall be recorded in a Register of Securities Market Professionals kept in the office of the Commission which shall be open to public inspection.

33.10. Every person registered pursuant to this Section shall file with the Commission, in such form as the

Commission shall prescribe, information necessary to keep the application for registration current and accurate, including in the case of a broker or dealer changes in salesmen, associated persons and owners thereof.

33.11. Every person registered pursuant to this Section shall pay to the Commission an annual fee at such time and in such reasonable amount as the Commission shall prescribe. Upon notice by the Commission that such annual fee has not been paid as required, the registration of such person shall be suspended until payment has been made.

33.12. The registration of a salesman or associated person shall be automatically terminated upon the cessation of his affiliation with said registered broker or dealer, or with an issuer in the case of a salesman employed, appointed or authorized by such issuer. Promptly following any such cessation of affiliation, the registered broker or dealer, or issuer, as the case may be, shall file with the Commission a notice of separation of such salesman or associated person.

SEC. 34. Revocation, Refusal or Suspension of Registration of Brokers, Dealers, Salesmen and Associated Persons.-

34.1. Registration under Section 33 of this Act may be refused, or any registration granted thereunder may be revoked, suspended, or limitations placed thereon, by the Commission if, after due notice and hearing, the Commission determines the applicant or registrant:

- (A) Has willfully violated any provision of this Act, any rule, regulation or order made hereunder, or another law administered by the Commission, or in the case of a registered broker, dealer or associated person has failed to supervise, with a view to preventing such violation, another person who commits such violation.
- (B) Has willfully made or caused to be made a materially false or misleading statement in any application for registration or report filed with the Commission or a self-regulatory organization, or has willfully omitted to state any material fact that is required to be stated therein;
- (C) Has failed to satisfy the qualifications or requirements for registration prescribed under Section 33 and the rules and regulations of the Commission promulgated thereunder;

- (D) Has been convicted, by a competent judicial or administrative body of an offense involving moral turpitude, fraud, embezzlement, counterfeiting, theft, estafa, misappropriation, forgery, bribery, false data, or perjury, or of a violation of securities, commodities, banking, real estate or insurance laws;
- (E) Is enjoined or restrained by a competent judicial or administrative body from engaging in securities commodities, banking, real estate or insurance activities or from willfully violating laws governing such activities;
- (F) Is subject to an order of a competent judicial or administrative body refusing, revoking or suspending any registration, license or other permit under this Act, the rules and regulations promulgated thereunder, any other law administered by the Commission;
- (G) Is subject to an order of a self-regulatory organization suspending or expelling him from membership or participation therein or from association with a member or participant thereof;
- (H) Has been found by a competent judicial or administrative body to have willfully violated any provisions of securities, commodities, banking, real estate or insurance laws, or has willfully aided, abetted, counseled, commanded, induced or procured such violation; or
- (I) Has been judicially declared insolvent.

For purposes of this subsection, the term "competent judicial or administrative body" shall include a foreign court of competent jurisdiction and a foreign financial regulator.

34.2. (A) In cases of charges against a salesman or associated person, notice thereof shall also be given the broker, dealer or issuer employing such salesman or associated person.

- (B) Pending the hearing, the Commission shall have the power to order the suspension of such broker's, dealer's, associated person's or salesman's registration: *Provided*, That such order shall state the cause for such suspension. Until the entry of a final order, the suspension of such registration, though binding upon the persons notified thereof, shall be deemed confidential, and shall not be

published, unless it shall appear that the order of suspension has been violated after notice.

34.3. The order of the Commission refusing, revoking, suspending or placing limitations on a registration as herein above provided, together with its findings, shall be entered in the Register of Securities Market Professionals. The suspension or revocation of the registration of a dealer or broker shall also automatically suspend the registration of all salesmen and associated persons affiliated with such broker or dealer.

34.4. It shall be sufficient cause for refusal, revocation or suspension of a broker or dealer's registration, of any associated person thereof or any juridical entity controlled by such associated person has committed any act or omission or is subject to any disability enumerated in paragraphs (A) through (I) of Subsection 34.1 hereof.

SEC. 35. *Transactions and Responsibility of Brokers and Dealers.* -

35.1. No broker or dealer shall deal in or otherwise buy or sell, for its own account or for the account of customers, securities listed on an Exchange issued by any corporation where any stockholder, director, associated person or salesman, or authorized clerk of said broker or dealer and all the relatives of the foregoing within the fourth civil degree of consanguinity or affinity, is at the time holding office in said issuer corporation as a director, president, vice-president, manager, treasurer, comptroller, secretary or any office of trust and responsibility, or is a controlling person of the issuer.

35.2. No broker or dealer shall effect any transaction in securities or induce or attempt to induce the purchase or sale of any security except in compliance with such rules and regulations as the Commission shall prescribe to ensure fair and honest dealings in securities and provide financial safeguards and other standards for the operation of brokers and dealers, including the establishment of minimum net capital requirements, the acceptance of custody and use of securities of customers, and the carrying and use of deposits and credit balances of customers.

CHAPTER IX

Exchanges and Other Securities Trading Markets

SEC. 36. *Prohibition on Use of Unregistered Exchange Regulation of Over-the-Counter Markets.* -

36.1. No broker, dealer, salesman, associated person of a broker or dealer, or Exchange, directly or indirectly, shall make use of any facility of an Exchange in the Philippines to effect any transaction in a security, or to report such transaction, unless such Exchange is registered as such under Section 37 of this Act.

36.2. (A) No broker, dealer, salesman or associated person of a broker or dealer, singly or in concert with any other person, shall make, create or operate, or enable another to make, create or operate, any trading market, otherwise than on a registered Exchange, for the buying and selling of any security, except in accordance with rules and regulations the Commission may prescribe.

(B) The Commission may promulgate rules and regulations governing transactions by brokers, dealers, salesmen or associated persons of a broker or dealer, over any facilities of such trading market and may require such market to be administered by a self-regulatory organization determined by the Commission as capable of insuring the protection of investors comparable to that provided in the case of a registered Exchange. Such self-regulatory organization must provide a centralized marketplace for trading and must satisfy requirements comparable to those prescribed for registration of Exchanges in Section 37 of this Act.

SEC. 37. *Registration of Exchanges.* -

37.1. Any Exchange may be registered as such with the Commission under the terms and conditions hereinafter provided in this Section and Section 41 hereof, by filing an application for registration in such form and containing such information and supporting documents as the Commission by rule shall prescribe, including the following:

- (A) An undertaking to comply and enforce compliance by its members with the provisions of this Act, its implementing rules or regulations and the rules of the Exchange;
- (B) The organizational charts of the Exchange, rules of procedure, and a list of its officers and members;
- (C) Copies of the rules of the Exchange; and
- (D) An undertaking that in the event a member firm becomes insolvent or when the Exchange shall

have found that the financial condition of its member firm has so deteriorated that it cannot readily meet the demands of its customers for the delivery of securities and/or payment of sales proceeds, the Exchange shall, upon order of the Commission, take over the operation of the insolvent member firm and immediately proceed to settle the member firm's liabilities to its customers.

37.2. Any provision of the Corporation Code to the contrary notwithstanding, no registration of an Exchange shall be granted unless the rules of the Exchange provide for:

- (A) The expulsion, suspension, or disciplining of a member and persons associated with a member for conduct or proceeding inconsistent with just and equitable principles of fair trade, and for violations of provisions of this Act, or any other Act administered by the Commission, the rules, regulations and order thereunder, or the rules of the Exchange;
- (B) A fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking to be a member, the barring of any person from association with a member, and the prohibition or limitation of any person from access to services offered by the Exchange;
- (C) A fair representation of its members to serve on the board of directors of the Exchange and in the administration of its affairs, and that any natural person associated with a juridical entity that is a member shall himself be deemed to be a member for this purpose;
- (D) The board of directors of the Exchange to include in its composition: (i) the president of the Exchange, and (ii) persons who represent the interests of issuers and public investors and who are not associated with any broker or dealer or member of the Exchange;
- (E) The president and other management of the Exchange to consist only of persons who are not members and are not associated with any broker or dealer or member of the Exchange;
- (F) The transparency of transactions on the Exchange;
- (G) The equitable allocation of reasonable dues, fees,

and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls;

- (H) Prevention of fraudulent and manipulative acts and practices, promotion of just and equitable principles of trade, and, in general, protection of investors and the public interest; and
- (I) The transparent, prompt and accurate clearance and settlement of transactions effected on the Exchange.

37.3. If the Commission finds that the applicant Exchange is capable of complying and enforcing compliance by its members, and persons associated with such members, with the provisions of this Act, its rules and regulations, and the rules of the Exchange, and that the rules of the Exchange are fair, just and adequate, the Commission shall cause such Exchange to be registered. If, after notice due and hearing, the Commission finds otherwise, the application shall be denied.

37.4. Within ninety (90) days after the filing of the application the Commission may issue an order either granting or denying registration as an Exchange, unless the Exchange applying for registration shall withdraw its application or shall consent to the Commission's deferring action on its application for a stated longer period after the date of filing. The filing with the Commission of an application for registration by an Exchange shall be deemed to have taken place upon the receipt thereof. Amendments to an application may be made upon such terms as the Commission may prescribe.

37.5. Upon the registration of an Exchange, it shall pay a fee in such amount and within such period as the Commission may fix.

37.6. Upon appropriate application in accordance with the rules and regulations of the Commission and upon such terms as the Commission may deem necessary for the protection of investors, and Exchange may withdraw its registration or suspend its operations or resume the same.

SEC. 38. Segregation and Limitation of Functions of Members, Brokers and Dealers. -

38.1. The Commission shall prescribe such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors: (A)

To regulate floor trading by members of Exchanges, and trading by brokers and dealers, their salesmen, associated persons, employees and floor traders, directly or indirectly, for their own account or for discretionary accounts; (B) To prevent such excessive trading on the Exchange but off the floor by members, directly or indirectly, in their own account, as the Commission may deem detrimental to the maintenance of a fair and orderly market: and (C) To restrict a broker from directly or indirectly dealing in securities or otherwise segregate and limit the function of a broker and dealer.

38.2. If, because of the limited volume of transactions effected on an Exchange, it is impracticable and not necessary or appropriate in the public interest or for the protection of investors to apply any of the foregoing provisions of this Section or the rules and regulations thereunder, the Commission shall have the power, upon application of the Exchange and on a showing that the rules of such Exchange are otherwise adequate for the protection of investors, to exempt such Exchange and its members from any such provision or rules and regulations.

SEC. 39. Additional Fees of Exchanges. - In addition to the registration fee prescribed in Section 37 of this Act, every Exchange shall pay to the Commission, on or before March fifteen of each calendar year, a fee in such an amount as the Commission shall prescribe, but not more than one-hundredth of one *per centum* of the aggregate amount of the sales of securities transacted on such Exchange during the preceding calendar year, for the privilege of doing business, during the preceding calendar year or any part thereof.

SEC. 40. Powers with Respect to Exchanges and Other Trading Markets. -

40.1. The Commission is authorized, if in its opinion such action is necessary or, appropriate for the protection of investors and the public interest so requires, summarily to suspend trading in any listed security on any Exchange or other trading market for a period not exceeding thirty days or, with the approval of the President of the Philippines, summarily to suspend all trading on any securities Exchange or other trading market for a period of more than thirty but not exceeding ninety days: *Provided, however,* That the Commission, promptly following the issuance of the order of suspension, shall notify the affected issuer of the reasons for such suspension and provide such issuer with an opportunity for hearing to determine whether the suspension should be lifted.

40.2. Wherever two or more Exchanges or other trading markets exist, the Commission may require and enforce uniformity of trading regulations in and/or between or among said Exchanges or other trading markets.

40.3. The Commission shall have the authority to determine the number, size and location of stock Exchanges, other trading markets and commodity Exchanges and other similar organizations in the light of national or regional requirements for such activities with the view to promote, enhance, protect, conserve or rationalize investment.

40.4. The Commission, having due regard to the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers, dealers, clearing agencies, and transfer agencies, shall promulgate rules and regulations for the prompt and accurate clearance and settlement of securities transactions.

40.5. (A) The Commission may establish or facilitate the establishment of trust funds which shall be contributed by Exchanges, brokers, dealers, underwriters, transfer agents, salesmen and other persons transacting in securities, as the Commission may require, for the purpose of compensating investors for the extraordinary losses or damage they may suffer due to business failure or fraud or mismanagement of the persons with whom they transact, under such rules and regulations as the Commission may from time to time prescribe or approve in the public interest.

(B) The Commission may, having due regard to the public interest or the protection of investors, regulate, supervise, examine, suspend or otherwise discontinue such and other similar funds under such rules and regulations which the Commission may promulgate, and which may include taking custody and management of the fund itself as well as investments in and disbursements from the funds under such forms of control and supervision by the Commission as it may from time to time require. The authority granted to the Commission under this subsection shall also apply to all funds established for the protection of investors, whether established by the Commission or otherwise.

CHAPTER X

Registration, Responsibilities and Oversight of Self-Regulatory Organizations

SEC. 41. *Associations of Securities Brokers, and*

Dealers, and Other Securities Related Organizations. -

41.1. The Commission shall have the power to register as a self-regulatory organization, or otherwise grant licenses, and to regulate, supervise, examine, suspend or otherwise discontinue, as a condition for the operation of organizations whose operations are related to or connected with the securities market such as but not limited to associations of brokers and dealers, transfer agents, custodians, fiscal and paying agents, computer services, news disseminating services, proxy solicitors, statistical agencies, securities rating agencies, and securities information processors which are engaged in the business of: (A) Collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security; or (B) Distributing or publishing, whether by means of a ticker tape, a communications network, a terminal display device, or otherwise, on a current and continuing basis, information with respect to such transactions or quotations. The Commission may prescribe rules and regulations which are necessary or appropriate in the public interest or for the protection of investors to govern self-regulatory organizations and other organizations licensed or regulated pursuant to the authority granted in Subsection 41.1.

41.2. An association of brokers and dealers may be registered as a securities association pursuant to Subsection 41.3 by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the association and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors,

41.3. An association of brokers and dealers shall not be registered as a securities association unless the Commission determines that:

(A) The association is so organized and has the capacity to be able to carry out the purposes of this Act and to comply with, and to enforce compliance by its members and persons associated with its members, with the provisions of this Act, the rules and regulations thereunder, and the rules of the association.

(B) The rules of the association, notwithstanding anything in the Corporation Code to the contrary,

provide that:

(i) Any registered broker or dealer may become a member of the association;

(ii) There exist a fair representation of its members to serve on the board of directors of the association and in the administration of its affairs, and that any natural person associated with a juridical entity that is a member shall himself be deemed to be a member for this purpose;

(iii) The board of directors of the association includes in its composition; (a) The president of the association and (b) Persons who represent the interests of issuers and public investors and are not associated with any broker or dealer or member of the association; that the president and other management of the association not be a member or associated with any broker, dealer or member of the association;

(iv) For the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls;

(v) For the prevention of fraudulent and manipulative acts and practices, the promotion of just and equitable principles of trade, and, in general, the protection of investors and the public interest;

(vi) That its members and persons associated with its members shall be appropriately disciplined for violation of any provision of this Act, the rules or regulations thereunder, or the rules of the association;

(vii) That a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the association of any person with respect to access to services offered by the association or a member thereof.

41.4. (A) A registered securities association shall deny membership to any person who is not a registered broker or dealer.

(B) A registered securities association may deny

membership to, or condition the membership of, a registered broker or dealer of such broker or dealer:

(i) Does not meet the standards of financial responsibility, operational capability, training, experience, or competence that are prescribed by the rules of the association; or

(ii) Has engaged, and there is a reasonable likelihood it will again engage, in acts or practices inconsistent with just and equitable principles of fair trade.

(C) A registered securities association may deny membership to a registered broker or dealer not engaged in a type of business in which the rules of the association require members to be engaged: *Provided, however,* That no registered securities association may deny membership to a registered broker or dealer by reason of the amount of business done by the broker or dealer.

A registered securities association may examine and verify the qualifications of an applicant to become a member in accordance with procedures established by the rules of the association.

(D) A registered securities association may bar a salesman or person associated with a broker or dealer from being employed by a member or set conditions for the employment of a salesman or associated if such person:

(i) Does not meet the standards of training, experience, or competence that are prescribed by the rules of the association; or

(ii) Has engaged, and there is a reasonable likelihood he will again engage, in acts or practices inconsistent with just and equitable principles of fair trade.

A registered securities association may examine and verify the qualifications of an applicant to become a salesman or associated person employed by a member in accordance with procedures established by the rules of the association. A registered association also may require a salesman or associated person employed by a member to be registered with the association in accordance with procedures prescribed in the rules of the association.

41.5. In any proceeding by a registered securities association to determine whether a person shall be denied membership, or barred from association with a member, the association will provide notice to the person under review of the specific grounds being considered for denial, afford him an opportunity to defend against the allegations, and keep a record of the proceedings. A determination by the association to deny membership shall be supported by a statement setting forth the specific grounds on which the denial is based.

SEC. 42. *Powers with Respect to Self-Regulatory Organizations.* -

42.1. Upon the filing of an application for registration as an Exchange under Section 37, a registered securities association under Section 41, a registered clearing agency under Section 44, or other self-regulatory organization under this Section, the Commission shall have ninety days within which to either grant registration or institute a proceeding to determine whether registration should be denied. In the event proceedings are instituted, the Commission shall have 270 days within which to conclude such proceedings at which time it shall, by order, grant or deny such registration.

42.2. Every self-regulatory organization shall comply with the provisions of this Act, the rules and regulations thereunder, and its own rules, and enforce compliance therewith, notwithstanding any provision of the Corporation Code to the contrary, by its members, persons associated with its members or its participants.

42.3. (A) Each self-regulatory organization shall submit to the Commission for prior approval any proposed rule or amendment thereto, together with a concise statement of the reason and effect of the proposed amendment.

- (B) Within sixty (60) days after submission of a proposed amendment, the Commission shall, by order, approve the proposed amendment. Otherwise, the same may be made effective by the self-regulatory organization.
- (C) In the event of an emergency requiring action for the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities and funds, a self-regulatory organization may put a proposed amendment into effect summarily: *Provided, however,* That a copy of the same shall be immediately submitted to the Commission.

42.4. If after making appropriate request in writing to a self-regulatory organization to effect on its own behalf specified changes in its rules and practices and, after due notice and hearing to all interested parties, it determines that such changes have not been effected as requested, the Commission may alter, abrogate or supplement the rules of such self-regulatory organization: *Provided, however,* That such changes are necessary to protect investors, to insure fair dealing, to insure fair administration of the self-regulatory organization, to conform its rules to the requirements of this Act or to otherwise further its purposes. The Commission may without limitation take such action in respect of such matters as:

- (A) Safeguards in respect of the financial responsibility of members and adequate provision against the evasion of financial responsibility through the use of corporate forms or special partnerships;
- (B) The supervision of trading practices;
- (C) The listing or striking from listing of any security;
- (D) Hours of trading;
- (E) The manner, method, and place of soliciting business;
- (F) Fictitious accounts;
- (G) The time and method of making settlements, payments, and deliveries, and of closing accounts;
- (H) The transparency of securities transactions and prices;
- (I) The fixing of reasonable rates of fees, interest listing and other charges, but not rates of commission;
- (J) Minimum units of trading;
- (K) Odd-lot purchases and sales;
- (L) Minimum deposits on margin accounts; and
- (M) The supervision, auditing and disciplining of members or participants.

42.5. The Commission is authorized, by order, if it is necessary in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act, after due notice and hearing:

- (A) To suspend for a period not exceeding twelve months or to revoke the registration of a self-regulatory organization, or to censure or impose limitations on the activities, functions, and operations of such self-regulatory organization, if the Commission finds that such a self-regulatory organization has willfully violated or is unable to comply with any provision of this Act or of the rules and regulations thereunder, or its own rules, or has failed to enforce compliance therewith by a member of, person associated with a member, or a participant in such self-regulatory organization;
- (B) To suspend for a period not exceeding twelve months or to expel from a self-regulatory organization any member thereof or any participant therein who is subject to an order of the Commission under Section 33 of this Act or is found to have willfully violated any provision of this Act, any other laws administered by the Commission, or the rules and regulations thereunder, or effected, directly or indirectly, any transaction for any person who, such member or participant had reasons to believe, was violating in respect of such transaction any of such provisions; and
- (C) To remove from office or censure any officer or director of a self-regulatory organization if it finds that such officer or director has willfully violated any provision of this Act, any other law administered by the Commission, the rules or regulations thereunder, or the rules of such self-regulatory organization, willfully abused his authority, or without reasonable justification or excuse has failed to enforce compliance with any of such provisions.

42.6. (A) A self-regulatory organization is authorized to discipline a member of or participant in such self-regulatory organization, or any person associated with a member, including the suspension or expulsion of such member or participant, and the suspension or bar from being associated with a member, if such person has engaged in acts or practices inconsistent with just and equitable principles of fair trade or in willful violation of any provision of the Act, any other law administered by the Commission, the rules or regulations thereunder, or the rules of the self-regulatory organization. In any disciplinary proceeding by a self-regulatory organization (other than a summary proceeding pursuant to paragraph (B) of this subsection) the self-regulatory organization shall bring specific charges, provide notice to the person charged, afford

the person charged with an opportunity defend against the charges, and keep a record of the proceedings. A determination to impose a disciplinary sanction shall be supported by a written statement of the offense, a summary of the evidence presented and a statement of the sanction imposed.

- (B) A self-regulatory organization may summarily:
- (i) Suspend a member, participant or person associated with a member who has been or is expelled or suspended from any other self-regulatory organization; or
 - (ii) Suspend a member who the self-regulatory organization finds to be in such financial or operating difficulty that the member or participant cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, participants or the self-regulatory organization: *Provided*, That the self-regulatory organization immediately notifies the Commission of the action taken. Any person aggrieved by a summary action pursuant to this paragraph shall be promptly afforded an opportunity for a hearing by the association in accordance with the provisions of paragraph (A) of this subsection. The Commission, by order, may stay a summary action on its own motion or upon application by any person aggrieved thereby, if the Commission determines summarily or after due notice and hearing (which hearing may consist solely of the submission of affidavits or representation of oral arguments) that a stay is consistent with the public interest and the protection of investors.

42.7. A self-regulatory organization shall promptly notify the Commission of any disciplinary sanction on any member thereof or participant therein, any denial of membership or participation in such organization, or the imposition of any disciplinary sanction on a person associated with a member or a bar of such person from becoming so associated. Within thirty (30) days after such notice, any aggrieved person may appeal to the Commission from, or the Commission on its own motion within such period, may institute review of, the decision of the self-regulatory organization, at the conclusion of which, after due notice and hearing (which may consist solely of review of the record before the self-regulatory organization), the Commission shall affirm, modify or set aside the sanction. In such proceeding the Commission shall determine whether the aggrieved person has engaged or omitted to engage in the acts and practices as found by the self-regulatory organization, whether

such acts and practices constitute willful violations of this Act, any other law administered by the Commission, the rules or regulations thereunder, or the rules of the self-regulatory organization as specified by such organization, whether such provisions were applied in a manner consistent with the purposes of this Act, and whether, with due regard for the public interest and the protection of investors the sanction is excessive or oppressive.

CHAPTER XI

Acquisition and Transfer of Securities and Settlement of Transactions in Securities

SEC. 43. *Prohibition on Use of Unregistered Clearing Agency.* - It shall be unlawful for any broker, dealer, salesman, associated person of a broker or dealer, or clearing agency, directly or indirectly, to make use of any facility of a clearing agency in the Philippines to make deliveries in connection with transactions in securities or to reduce the number of settlements of securities transactions or to allocate securities settlement responsibilities or to provide for the central handling of securities so that transfers, loans and pledges and similar transactions can be made by bookkeeping entry or otherwise to facilitate the settlement of securities transactions without physical delivery of securities certificates, unless such clearing agency is registered as such under Section 44 of this Act or is exempted from such registration upon application by the clearing agency because, in the opinion of the Commission, by reason of the limited volume of transactions which are settled using the clearing agency, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require such registration.

SEC. 44. *Registration of Clearing Agencies.* -

44.1. Any clearing agency may be registered as such with the Commission under the terms and conditions hereinafter provided in this Section, by filing an application for registration in such form and containing such information and supporting documents as the Commission by rule shall prescribe, including the following:

- (A) An undertaking to comply and enforce compliance by its participants with the provisions of this Act, and any amendment thereto, and the implementing rules or regulations made or to be made thereunder, and the clearing agency's rules;

- (B) The organizational charts of the Exchange, its rules of procedure, and a list of its officers and participants;
- (C) Copies of the clearing agency's rules.

44.2. No registration of a clearing agency shall be granted unless the rules of the clearing agency include provision for:

- (A) The expulsion, suspension, or disciplining of a participant for violations of this Act, or any other Act administered by the Commission, the rules, regulations and orders thereunder, or the clearing agency's rules;
- (B) A fair procedure for the disciplining of participants, the denial of participation rights to any person seeking to be a participant, and the prohibition or limitation of any person from access to services offered by the clearing agency;
- (C) The equitable allocation of reasonable dues, fees, and other charges among participants;
- (D) Prevention of fraudulent and manipulative acts and practices, promotion of just and equitable principles of trade, and, in general, protection of investors and the public interest; and
- (E) The transparent, prompt and accurate clearance and settlement of transactions in securities handled by the clearing agency.

44.3. In the case of an application filed pursuant to this Section, the Commission shall grant registration if it finds that the requirements of this Act and the rules and regulations thereunder with respect to the applicant have been satisfied, and shall deny registration if it does not make such finding.

44.4. Upon appropriate application in accordance with the rules and regulations of the Commission and upon such terms as the Commission may deem necessary for the protection of investors, a clearing agency may withdraw its registration or suspend its operations or resume the same.

44.5. Section 42 of this Act shall apply to every registered clearing agency.

SEC. 45. *Uncertificated Securities.* - Notwithstanding Section 63 of the Corporation Code of the Philippines:

45.1. A corporation whose securities are registered pursuant to this Act or listed on a securities Exchange may:

- (A) If so resolved by its Board of Directors and agreed by a securities intermediary, issue shares to, or record the transfer of some or all of its shares into the name of, that securities intermediary in the form of uncertificated securities. The use of uncertificated securities in these circumstances shall be without prejudice to the rights of the securities intermediary subsequently to require the corporation to issue a certificate in respect of any shares recorded in its name; and
- (B) If so provided in its articles of incorporation and by-laws, issue all of the shares of a particular class in the form of uncertificated securities and subject to a condition that investors may not require the corporation to issue a certificate in respect of any shares recorded in their name.

45.2. The Commission by rule may allow other corporations to provide in their articles of incorporation and by-laws for the use of uncertificated securities.

45.3. Transfers of securities, including an uncertificated securities, may be validly made and consummated by appropriate book-entries in the securities accounts maintained by securities intermediaries and such bookkeeping entries shall be binding on the parties to the transfer. A transfer under this subsection has the effect of the delivery of a security in bearer form or duly indorsed in blank representing the quantity or amount of security or right transferred, including the unrestricted negotiability of that security by reason of such delivery.

However, nothing in the provisions of this Act shall preclude compliance by banking and other institutions under the supervision of the Bangko Sentral ng Pilipinas and their stockholders with the applicable ceilings on shareholdings prescribed under pertinent banking laws and regulations.

SEC. 46. *Best Evidence.* - Notwithstanding Section 63 of the Corporation Code, the official records and book entries of a securities intermediary in which the securities of an issuer have been lodged shall constitute the best evidence title of such securities.

SEC. 47. *Pledging a Security or Interest Therein.* - In addition to other methods recognized by law, a

pledge of, or release of a pledge of, a security, including an uncertificated security, is properly constituted and the instrument proving the right pledged shall be considered delivered to the creditor under Articles 2039 and 2095 of the Civil Code if a securities intermediary indicates by book-entry that such security has been credited to a specially designated pledge account in favor of the pledgee. A pledge under this subsection has the effect of the delivery of a security in bearer form or duly indorsed in blank representing the quantity or amount of such security or right pledged. In the case of a registered clearing agency, the procedures by which, and the exact time at which, such book-entries are created shall be governed by the registered clearing agency's rules.

SEC. 48. *Issuer's Responsibility for Wrongful Transfer to Registered Clearing Agency.* - The registration of a transfer of a security into the name of and by a registered clearing agency or its nominee shall be final and conclusive unless the clearing agency had notice of an adverse claim before the registration was made. The above provision shall be without prejudice to any rights which the claimant may have against the issuer for wrongful registration in such circumstances.

SEC. 49. *Power of the Commission with Respect to Securities Ownership.* - The Commission is authorized, having due regard to the public interest and the protection of investors, to promulgate rules and regulations which:

49.1. Validate the transfer of securities by book-entries rather the delivery of physical certificates;

49.2. Establish when a person acquires a security or an interest therein and when delivery of a security to a purchaser occurs;

49.3. Establish which records constitute the best evidence of a person's interests in a security and the effect of any errors in electronic records of ownership;

49.4. Codify the rights of investors who choose to hold their securities indirectly through a registered clearing agency and/or other securities intermediaries;

49.5. Codify the duties of securities intermediaries (including clearing agencies) who hold securities on behalf of investors; and

49.6. Give first priority to any claims of a registered

clearing agency against a participant arising from a failure by the participant to meet its obligations under the clearing agency's rules in respect of the clearing and settlement of transactions in securities, in a dissolution of the participant, and any such rules and regulations shall bind the issuers or the securities, investors in the securities, any third parties with interests in the securities, and the creditors of a participant of a registered clearing agency.

SEC. 50. *Immunity for Registered Clearing Agency.* -

50.1. No civil liability shall be incurred by a registered clearing agency or any of its directors, officers or employees in respect of anything done, or omitted to be done, by it or him in good faith in the performance or purported performance of any function under this Chapter of this Act, or the rules or regulations adopted by the Commission hereunder, or the rules of such clearing agency.

50.2. A person who complies, in good faith, with a requirement made under this Chapter of this Act, or the rules and regulations adopted by the Commission hereunder, or the rules of a registered clearing agency, shall not incur any liability to any person by reason only of that compliance.

CHAPTER XII
Margin and Credit

SEC. 51. *Margin Requirements.* -

51.1. For the purpose of preventing the excessive use of credit for the purchase or carrying of securities, the Commission, in accordance with the credit and monetary policies that may be promulgated from time to time by the agency of the Government of the Philippines authorized to set such policies, shall prescribe rules and regulations with respect to the amount of credit that may be extended on any security. For the extension of credit, such rules and regulations shall be based upon the following standard:

An amount not greater than whichever is the higher of -

- (A) Sixty-five (65%) *per centum* of the current market price of the security, or
- (B) One hundred (100%) *per centum* of the lowest

market price of the security during the preceding thirty-six calendar months, but not more than seventy-five (75%) *per centum* of the current market price.

However, the agency of the Government which sets credit and monetary policies may increase or decrease the above percentages, in order to achieve the objectives of the Government with due regard for promotion of the economy and prevention of the use of excessive credit.

Such rules and regulations may make appropriate provision with respect to the carrying of undermargined accounts for limited periods and under specified conditions; the withdrawal of funds or securities; the transfer of accounts from one lender to another; special or different margin requirements for delayed deliveries, short sales, arbitrage transactions, and securities to which the letter (B) of the second paragraph of this subsection does not apply; the bases and the methods to be used in calculating loans, and margins and market prices; and similar administrative adjustments and details.

51.2. No member of an Exchange or broker or dealer shall, directly or indirectly, extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer:

- (A) On any security unless such credit is extended and maintained in accordance with the rules and regulations which the Commission shall prescribe under this Section including rules setting credit in relation to net capital of such member, broker or dealer;
- (B) Without collateral or on any collateral other than securities, except (i) to maintain a credit initially extended in conformity with the rules and regulations of the Commission and (ii) in cases where the extension or maintenance of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of paragraph (A) of this subsection.

51.3. Any person not subject to Subsection 51.2 hereof shall extend or maintain credit or arrange for the extension or maintenance of credit for the purpose of purchasing or carrying any security, only in accordance with such rules and regulations as the Commission shall prescribe to prevent the excessive use of credit for the purchasing or carrying of or trading in securities in

circumvention of the other provisions of this Section. Such rules and regulations may impose upon all loans made for the purpose of purchasing or carrying securities limitations similar to those imposed upon members, brokers, or dealers by Subsection 51.2 and the rules and regulations thereunder. This subsection and the rules and regulations thereunder shall not apply: (A) To a credit extension made by a person not in the ordinary course of business; (B) To a loan to a dealer to aid in the financing of the distribution of securities to customers not through the medium of an Exchange; or (C) To such other credit extension as the Commission shall exempt from the operation of this subsection and the rules and regulations thereunder upon specified terms and conditions or for stated period.

SEC. 52. Restriction on Borrowings by Members, Brokers, and Dealers. - It shall be unlawful for any registered broker or dealer, or member of an Exchange, directly or indirectly:

52.1. To permit in the ordinary course of business as a broker or dealer his aggregate indebtedness including customers' credit balances, to exceed such percentage of the net capital (exclusive of fixed assets and value of Exchange membership) employed in the business, but not exceeding in any case two thousand *per centum* (2,000%), as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors.

52.2. To pledge, mortgage, or otherwise encumber or arrange for the pledge, mortgage or encumbrance of any security carried for the account of any customer under circumstances: (A) That will permit the commingling of his securities, without his written consent, with the securities of any customer; (B) That will permit such securities to be commingled with the securities of any person other than a bona fide customer; or (C) That will permit such securities to be pledged, mortgaged, or encumbered, or subjected to any lien or claim of the pledge, for a sum in excess of the aggregate indebtedness of such customers in respect of such securities. However, the Commission, having due regard to the protection of investors, may, by rules and regulations, allow certain transactions that may otherwise be prohibited under this subsection.

52.3. To lend or arrange for the lending of any security carried for the account of any customer without the written consent of such customer or in contravention of such rules and regulations as the Commission shall prescribe.

SEC. 53. Enforcement of Margin Requirements and Restrictions on Borrowing. - To prevent indirect violations of the margin requirements under Section 51, the broker or dealer shall require the customer in non-margin transactions to pay the price of the security purchased for his account within such period as the Commission may prescribe, which shall in no case exceed the prescribed settlement date. Otherwise, the broker shall sell the security purchased starting on the next trading day but not beyond ten trading days following the last day for the customer to pay such purchase price, unless such sale cannot be effected within said period for justifiable reasons. The sale shall be without prejudice to the right of the broker or dealer to recover any deficiency from the customer. To prevent indirect violation of the restrictions on borrowings under Section 52, the broker shall, unless otherwise directed by the customer, pay the net sales price of the securities sold for a customer within the same period as above prescribed by the Commission: *Provided*, That the customer shall be required to deliver the instruments evidencing the securities as a condition for such payment upon demand by the broker.

CHAPTER XIII

Exclusions from Corporate Code

SEC. 54. Special Provisions for Publicly-Held Companies. -

54.1. Notwithstanding any provision in the Corporation Code to the contrary, the following shall apply to corporations of the types specified in Subsection 54.2:

- (A) Founders' shares classified as such in the articles of incorporation of such a corporation shall not, by reason of such classification, possess voting or other rights and privileges not enjoined by the owners of other stock.
- (B) The authorized capital stock of such a corporation may through amendment to the articles of incorporation be increased or decreased, and bonded indebtedness may be incurred, created or increased, upon approval by a majority vote of the board of directors and by a majority of the votes of outstanding capital stock entitled to vote at a stockholders' meeting called for such purpose, or upon the vote of such greater percentage as may be provided in the articles of incorporation.

(C) The articles of incorporation of such a corporation may deny pre-emptive rights to its stockholders upon approval of an amendment providing for such denial by a majority of the votes of outstanding capital stock entitled to vote at a stockholders' meeting called for such purpose or upon the vote of such greater percentage as may be provided in the articles of incorporation.

(D) (i) Unless otherwise provided in its articles of incorporation or by-laws, the board of directors of such a corporation may declare and pay stock and property dividends out of unrestricted retained earnings without the approval of stockholders.

(ii) The board of directors of such a corporation is permitted to retain surplus profits for any lawful purpose.

(E) (i) Unless a greater percentage is provided in its articles of incorporation, a director of such a corporation may be removed from office by a majority of the votes of outstanding capital stock entitled to vote at a stockholders' meeting called for such purpose.

(ii) The board of directors may fix reasonable compensation for service as a director, which may be a per diem, annual stipend or other remuneration: *Provided, however,* That such compensation may be changed or rescinded by a majority of the votes of outstanding capital stock entitled to vote at a regular, or special stockholders' meeting at which such action is considered. The fixing of compensation of directors shall not be limited to any percentage of net income before income tax of such corporation during the preceding year.

(iii) In the case only of a corporation of the type specified in subsection 54.2 (A), the board of directors thereof shall consist of at least two independent directors or such independent directors shall constitute at least twenty percent (20%) of the members of such board, whichever is the lesser. For this purpose, an "independent director" shall mean a person other than an officer or employee of the corporation, its parent or subsidiaries, or any other individual having a relationship with the corporation, which would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

(F) The president and other officers of such a corporation shall not be required to be directors and, except for the treasurer and secretary, need not be residents in the Philippines.

(G) Every officer and director shall exercise such care in the management of the affairs of such a corporation as is required of a prudent man in the management of his own property, and shall be liable to the corporation and its shareholders for damages resulting from the intentional or negligent failure to exercise such care: *Provided, however,* That no liability shall be incurred for any business judgment exercised in good faith and upon consideration of all facts material to the act or transaction.

54.2. Subsection 54.1. shall apply to:

(A) Any corporation with a class of equity securities listed for trading on an Exchange;

(B) Any corporation with assets in excess of P50,000,000 and having 200 or more holders, at least of 200 of which are holding at least 100 shares of a class of its equity securities; and

(C) Any corporation which has sold a class of equity securities to the public pursuant to an effective registration statement in compliance with Section 8 hereof.

54.3. In conjunction with the filing of a registration statement for a public offering of a class of equity securities pursuant with Section 8 hereof, a corporation shall be subject to paragraphs (B), (C), and (F) of Subsection 54.1: *Provided, however,* That if, prior to its effectivity, such registration statement is refused or withdrawn, or if the sale of such class of equity security does not occur after the registration statement is declared effective, such paragraphs shall have no further application or effect with respect to such corporation.

CHAPTER XIV General Provisions

SEC. 55. *Liabilities of Controlling Persons, Aider and Abettor and Other Secondary Liability.* -

55.1. Every person who, by or through stock ownership agency, or otherwise, or in connection with an agreement or understanding with one or more other

persons, controls any person liable under this Act or the rules or regulations of the Commission thereunder, shall also be liable jointly and severally with and to the same extent as such controlled persons to any person to whom such controlled person is liable, unless the controlling person proves that, despite the exercise of due diligence on his part, he has no knowledge of the existence of the facts by reason of which the liability of the controlled person is alleged to exist.

55.2. It shall be unlawful for any person, directly or indirectly, to do any act or thing which it would be unlawful for such person to do under the provisions of this Act or any rule or regulation thereunder.

55.3. It shall be unlawful for any director or officer of, or any owner of any securities issued by, any issuer required to file any document, report or other information under this Act or any rule or regulation of the Commission thereunder, without just cause, to hinder, delay or obstruct the making or filing of any such document, report, or information.

55.4. It shall be unlawful for any person to aid, abet, counsel, command, induce or procure any violation of this Act, or any rule, regulation or order of the Commission thereunder.

55.5. Every person who substantially assists the act or omission of any person primarily liable under Sections 17, 18, 19, and 21 of this Act, with knowledge or in reckless disregard that such act or omission is wrongful, shall be jointly and severally liable as an aider and abettor for damages resulting from the conduct of the person primarily liable: *Provided, however,* That an aider and abettor shall be liable only to the extent of his relative contribution in causing such damages in comparison to that of the person primarily liable, or the extent to which the aider and abettor was unjustly enriched thereby, whichever is greater.

SEC. 56. *Accounts and Records, Reports, Examination of Exchanges, Members, and Others.* -

56.1. Every Exchange, broker or dealer, transfer agent, clearing agency, registered securities association, and other self-regulatory organization, shall make, keep and preserve for such periods, such accounts, correspondence, memoranda, papers, books, reports and other records, furnish such copies thereof, as the Commission by its rules and regulations may prescribe. Such accounts, correspondence, memoranda, papers,

books, and other records shall be subject at any time to such reasonable examinations by representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors.

56.2. Any broker, dealer or other person extending credit, who is subject to the rules and regulations prescribed by the Commission pursuant to this Act, shall make such reports to the Commission as may be necessary or appropriate to enable it to perform the functions conferred upon it by this Act.

SEC. 57. *Investigation, Injunctions and Prosecution of Offenses.* -

57.1. The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Act, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency, other self-regulatory organization, and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the Commission shall determine, as to all facts and circumstances concerning the matter to be investigated. The Commission may publish information concerning any such violations, and to investigate any fact, condition, practice or matter which it may deem necessary or proper to aid in the enforcement of the provisions of this Act, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this Act relates: *Provided, however,* That any person requested or subpoenaed to produce documents or testify in any investigation shall simultaneously be notified in writing of the purpose of such investigation: *Provided, further,* That all criminal complaints for violations of this Act, and the implementing rules and regulations enforced or administered by the Commission shall be referred to the Department of Justice for preliminary investigation and prosecution before the proper court: *Provided, finally,* That the investigation, prosecution, and trial of such cases shall be given priority.

57.2. For the purpose of any such investigation, or any other proceeding under this Act, the Commission or any officer designated by it is empowered to administer oaths and affirmations, subpoena witnesses, compel attendance, take evidence, require the production of any book, paper, correspondence, memorandum, or

other record which the Commission deems relevant or material to the inquiry, and to perform such other acts necessary in the conduct of such investigation or proceedings.

57.3. Whenever it shall appear to the Commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Act, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency or other self-regulatory organization, it may issue an order to such person to desist from committing such act or practice: *Provided, however,* That the Commission shall not charge any person with violation of the rules of an Exchange or other self-regulatory organization unless it appears to the Commission that such Exchange or other self-regulatory organization is unable or unwilling to take action against such person. After finding that such person has engaged in any such act or practice and that there is a reasonable likelihood of continuing, further or future violations by such person, the Commission may issue: (A) an order of permanent or temporary injunction after due notice and hearing; or (B) an *ex parte* temporary restraining order for a maximum period of 20 days, enjoining the violation and compelling compliance with such provision. The Commission may transmit such evidence as may be available concerning any violation of any provision of this Act, or any rule, regulation or order thereunder, to the Department of Justice, which may institute the appropriate criminal proceedings under this Act.

57.4. Any person who, within his power but without cause, fails or refuses to comply with any lawful order, decision or subpoena issued by the Commission under Subsection 57.2 or Subsection 57.3 or Section 59 of this Act, shall after due notice and hearing, be guilty or contempt of the Commission. Such person shall be fined in such reasonable amount as the Commission may determine, or when such failure or refusal as a clear and open defiance of the Commission's order, decision or subpoena, shall be detained under an arrest order issued by the Commission, until such order, decision or subpoena is complied with.

SEC. 58. Administrative Sanctions. -

58.1. If, after due notice and hearing, the Commission finds that: (A) There is a willful violation of this Act, its rules, or its orders; (B) Any registered broker or dealer, associated person thereof had failed reasonably to

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

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

(ii) A fine of no less than ten thousand (P10,000.00) pesos nor more than one million (P1,000,000.00) pesos plus not more than two thousand (P2,000.00) pesos for each day of continuing violation;

(iii) In the case of a violation of Subsections 23.5, 25.5, 29, 31 and 32, disqualification from being an officer, member of the board of directors, or person performing similar functions, of an issuer required to file reports under Section 14 of this Act or any other act, rule or regulation administered by the Commission;

(iv) In the case of a violation of Section 32, a fine of no more than three times the profit gained or loss avoided as a result of the purchase, sale or communication proscribed by such Section; and

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

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

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

SEC. 59. *Cease and Desist Order.* -

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

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

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

SEC. 60. *Substituted Service Upon the Commission.*

- Service of summons or other process shall be made upon the Commission in actions or legal proceedings against an issuer or any person liable under this Act who is not domiciled in the Philippines. Upon receipt by the Commission of such summons, the Commission shall within ten (10) days thereafter, transmit by registered mail a copy of such summons and the complaint or other legal process to such issuer or person at his last known address or principal office. The sending thereof by the Commission, the expenses for which shall be advanced by the party at whose instance it is made, shall complete such service.

SEC. 61. *Revelation of Information Filed with the Commission.* -

61.1. All information filed with the Commission in compliance with the requirements of this Act shall be made available to any member of the general public, upon request, in the premises and during regular office hours of the Commission, except as set forth in this Section.

61.2. Nothing in this Act shall be construed to require, or to authorize the Commission to require, the revealing of trade secrets or processes in any application, report, or document filed with the Commission.

61.3. Any person filing any such application, report or document may make written objection to the public disclosure of information contained therein, stating the grounds for such objection, and the Commission may hear objections as it deems necessary. The Commission may, in such cases, make available to the public the information contained in any such application, report, or document only when a disclosure of such information is required in the public interest or for the protection of investors; and copies of information so made available may be furnished to any person having a legitimate interest therein at such reasonable charge and under such reasonable limitations as the Commission may prescribe.

61.4. It shall be unlawful for any member, officer, or employee of the Commission to disclose to any person other than a member, officer or employee of the Commission or to use for personal benefit, any information contained in any application, report, or document filed with the Commission which is not made available to the public pursuant to Subsection 61.3.

61.5. Notwithstanding anything in Subsection 61.4 to the contrary, on request from a foreign enforcement authority of any country whose laws grant reciprocal assistance as herein provided, the Commission may provide assistance in accordance with this subsection, including the disclosure of any information filed with or transmitted to the Commission, if the requesting authority states that it is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws relating to securities or commodities matters that the requesting authority administers or enforces. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of law of the Philippines.

SEC. 62. *Effect of Action of Commission and Unlawful Representation with Respect Thereto.* -

62.1. No action or failure to act by the Commission in the administration of this Act shall be construed to mean that the Commission has in any way passed upon the merits of or given approval to any security or any transaction or transactions therein, nor shall such action

or failure to act with regard to any statement or report filed with or examined by the Commission pursuant to this Act or the rules and regulations thereunder to be deemed a finding by the Commission that such statements or report is true and accurate on its face or that it is not false or misleading. It shall be unlawful to make, or cause to be made, to any prospective purchaser or seller of a security any representation that any such action or failure to act by the Commission is to be so construed or has such effect.

62.2. Nothing contained in Subsection 62.1 shall, however, be construed as an exemption from liability of an employee or officer of the Commission for any nonfeasance, misfeasance or malfeasance in the discharge of his official duties.

SEC. 63. *Special Accounting Rules.* - The Commission shall have the authority to make, amend, and rescind such accounting rules and regulations as may be necessary to carry out the provisions of this Act, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting, technical and trade terms used in this Act. Among other things, the Commission may prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and income statement, and the methods to be followed in the preparation of accounts, appraisal or valuation of assets and liabilities, determination of depreciation and depletion, differentiation of recurring and non-recurring income, differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

SEC. 64. *Effect on Existing Law.* - The rights and remedies provided by this Act shall be in addition to any and all other rights and remedies that may now exist. However, except as provided in Section 16 hereof, no person permitted to maintain a suit for damages under the provisions of this Act shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of: *Provided*, That exemplary damages may be awarded in cases of bad faith, fraud, malevolence or wantonness in the violation of this Act or the rules and regulations promulgated thereunder.

SEC. 65. *Class Actions; Consolidation of Actions.* - The Commission may promulgate rules and regulations as may be necessary or appropriate in the public interest or for the protection of investors which will govern:

65.1. Class actions involving any violation of this Act or the rules promulgated by the Commission;

65.2. The consolidation of actions brought pursuant to this Act or rules promulgated by the Commission; and

65.3. The compensation of counsel in class actions.

SEC. 66. *Judicial Review of Commission Orders.* - Any person aggrieved by an order of the Commission may appeal the order to the Court of Appeals by petition for review in accordance with the pertinent provisions of the Rules of Court.

SEC. 67. *Validity of Contracts.* -

67.1. Any condition, stipulation, provision binding any person to waive compliance with any provision of this Act or of any rule or regulation thereunder, or of any rule of an Exchange required thereby, as well as the waiver itself, shall be void.

67.2. Every contract made in violation of any provision of this Act or of any rule or regulation thereunder, and every contract, including any contract for listing a security on an Exchange heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this Act, or any rule or regulation thereunder, shall be void.

(A) As regards the rights of any person who, in violation of any such provision, rule or regulation, shall have made or engaged in the performance of any such contract, and

(B) As regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule or regulation.

67.3. Nothing in this Act shall be construed:

(A) To effect the validity of any loan or extension of credit made or of any lien created prior or subsequent to the effectivity of this Act, unless at the

time of the making of such loan or extension of credit or the creating of such lien, the person making such loan or extension of credit or acquiring such lien shall have actual knowledge of the facts by reason of which the making of such loan or extension of credit or the acquisition of such lien is a violation of the provisions of this Act or any rules or regulations thereunder; or

- (B) To afford a defense to the collection of any debt, obligation or the enforcement of any lien by any person who shall have acquired such debt, obligation or lien in good faith, for value and without actual knowledge of the violation of any provision of this Act or any rule or regulation thereunder affecting the legality of such debt, obligation or lien.

SEC. 68. *Rules and Regulations; Effectivity.* -

68.1. The Commission may issue, amend, and rescind such rules and regulations and orders necessary or appropriate to effect the provisions and purposes of this Act, including rules and regulations defining accounting, technical, and trade terms used in this Act, and prescribing the form or forms in which information required in registration statements, applications, and reports to the Commission shall be set forth. For purposes of its rules or regulations, the Commission may classify persons, securities, and other matters within its jurisdiction, prescribe different requirements for different classes of persons, securities, or matters, and by rule or order, conditionally or unconditionally exempt any person, security, or transaction, or class or classes of persons, securities or transactions, from any or all provisions of this Act.

68.2. The rules and regulations promulgated by the Commission shall be published in two newspapers of general circulation in the Philippines, and unless otherwise prescribed by the Commission, the same shall be effective fifteen (15) days after the date of the last publication.

SEC. 69. *Penalties.* - Any person who violates any of the provisions of this Act, or the rules and regulations promulgated by the Commission under authority thereof, or any person who, in a registration statement filed under this Act, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall, upon conviction, suffer a fine of not less than fifty thousand (P50,000.00) pesos nor more than

five million (P5,000,000.00) pesos or imprisonment of not less than seven (7) years nor more than twenty one (21) years, or both in the discretion of the court. If the offender is a corporation, partnership or association or other juridical entity, the penalty may in the discretion of the court be imposed upon such juridical entity and upon the officer or officers of the corporation, partnership, association or entity responsible for the violation, and if such officer is an alien, he shall in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

SEC. 70. *Transitory Provisions.* - The Commission, as organized under existing laws, shall continue to exist and exercise its powers, functions and duties under such laws and this Act.

All further requirements herein shall be complied with upon approval of this Act: *Provided, however,* That compliance may be deferred for such reasonable time as the Commission may determine but not to exceed one year from approval of this Act: *Provided, further,* That securities which are being offered at the time of effectivity of this Act pursuant to an effective registration and permit, may continue to be offered and sold in accordance with the provisions of the Revised Securities Act in effect immediately prior to approval of this Act: *Provided, furthermore,* That the Chairman and Associate Commissioners appointed pursuant to Section 2 of P.D. 902-A, as amended, and serving in such positions on the effective date of approval of this Act, shall thereupon assume and for the remaining unexpired term of such positions serve in the capacities of Commissioners under Section 4 hereof, and the Chairman appointed under Section 2 of P.D. 902-A, as amended, and so serving on such effective date shall also thereupon assume and serve as Chairman pursuant to Section 4 hereof.

SEC. 71. *Repealing Clause.* - The Revised Securities Act (Batas Pambansa Blg. 178), as amended, in its entirety, and Sections 2 and 4 of Presidential Decree 902-A as amended, are hereby repealed. All other laws, orders, rules and regulations, or parts thereof, inconsistent with any provision of this Act are hereby repealed or modified accordingly.

SEC. 72. *Separability Clause.* - If any portion or provision of this Act is declared unconstitutional or invalid, the other portions or provisions hereof, which are not affected thereby shall continue in full force and effect.

SEC. 73. *Effectivity.* - This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in two (2) newspapers of general circulation.

Approved,

Senator Drilon. Mr. President, may I ask that the gentleman from Camarines Sur, Sen. Raul S. Roco, be recognized to sponsor the measure.

The President. Senator Roco is recognized.

SPONSORSHIP SPEECH OF SENATOR ROCO

Senator Roco. Thank you, Mr. President.

The committee is pleased to submit for the consideration of this Chamber Senate Bill No. 1220, the proposed Securities Act of 1998.

Mr. President, we will be entering soon a new millennium in which the capital market is expected to play an increasingly critical role in the development of our country. In fact, we already had a preview of it when firms found a new way of raising funds other than bank loans and investors found new investment instruments other than bank deposit instruments, leading to the capital market boom we experienced during the first half of the 1990s.

Unfortunately, the capital market boom was muted by the Asian currency crisis that continues to batter our economy today and threatens to spread to other regions of the world. But this should not deter us from looking forward into the future when economic stability returns to the region. In fact, this is the best time for us to make the necessary preparations for a more rapid and sustained development of capital market.

Development, in its broadest sense, Mr. President, connotes broader choices for our people. This is consistent with our democratic ideals of providing the greatest number of our people with social, political and economic opportunities. If our financial markets are to develop in tandem with the development of the real sector of our economy, then our people, be they borrowers or savers, must have access to a much broader set of financial instruments with great confidence and satisfaction. This is one important instrument for democratizing wealth that we must fully use. We already started this process with great zeal and patience a few years back when we established an independent central bank to reflect the mandate of the Constitution, followed by the liberalization of the banking sector. Now, we want to deepen it by developing our capital market, specifically the

securities market, or what is generally called the stock market.

Let our capital market create wealth; but that wealth should be widely dispersed to our people. Let us develop a reward system in our capital market that is fair, transparent and can be implemented at the least cost. These are the guiding principles in reforming our capital market.

Experiences of the developed economies suggest that as a country develops, firms switch from relying on intermediated finance, that is, bank loans as a source of finance to non-intermediated finance through the securities market. But this did not happen automatically. In truth, their legal frameworks had been overhauled several times just to provide an environment conducive for building public confidence in their securities market. Indeed, public confidence is the key to the development of the securities market. Our legal framework, therefore, must aim at strengthening public confidence in that securities market.

The securities market still operates within the purview of the Revised Securities Act of 1982 which modified the Securities Act of 1934, I think. Admittedly, the existing law is full of weaknesses and it does not address fundamental problems that undermine the public's confidence in our securities market.

After thorough deliberation, after four hearings, Mr. President, and innumerable technical working group meetings with the officers and technical staff and staff support from the SEC and private agencies, together with various sectors of our society and various experts in the securities market development, our committee is pleased to submit for the consideration of this Chamber the proposed law that we hope will be called the Securities Act of 1998, which we hope addresses the fundamental problems in securities market development that cannot be dealt with by the existing law.

We believe that this is the appropriate, forward-looking legal framework that can transform our securities market into a world-class market and propel our economy into the next millennium.

In terms of timing, it seems a good time to reform the stock market now that it is down. Because when the market is good, Mr. President, all of them will say, "Please, do not tamper with the bus when it is going well."

All of them will say if legislation is introduced that reforms the market, they will suffer.

Today, Mr. President, that argument does not hold water. There is nothing to protect. The market is fairly down. We must therefore make it ready to absorb the transfer of capital from the less fortunate Asian markets into the Philippines. We must make

that market transparent and fully available under free market terms.

Some Fundamental Problems

Let me read, Mr. President, through some of the fundamental problems sought to be addressed. These problems—and I hate to use certain economic terms that the staff puts in but I find it difficult to find other words to describe the problem—are: (1) the asymmetric information problem, the incompatibility or the lack of equality and access to information; (2) the uneven playing field between the insiders of the market and those who have more money and the small market investors, or those who want to participate in the development of wealth in the country; (3) the static view of the securities market, and (4) the structural weaknesses of the regulatory body, the Securities and Exchange Commission, as far as the stock market is concerned.

Asymmetric Information Problem

The first, what we refer to as the asymmetric information problem, arises when one side of a transaction has relevant and material information that the other side lacks, and this is pervasive in current financial markets. This often leads to market failure, which at the end penalizes everybody. This is more acute in securities market where securities issuers have more and better information about the issues than investors.

The stock market has seen very often stocks listings going up and zooming for no apparent reason or falling down in price for no known cogent or rationale reason. This is because of trading information. Clearly, this does not invite investors' confidence, and without that confidence, the securities market can never develop.

The market, Mr. President, is transferring from Malaysia, from Indonesia, from Thailand. Even Hong Kong is having growth problem. The Philippines is in the situation and has the best opportunity for getting all this money looking for markets.

The legal framework for the current securities market, therefore, must significantly reduce, if not completely eliminate, this asymmetric information problem, this lack of equality of access to information on the technical situation of those stocks or securities that are being sold. Those measures to address this problem are the following:

A. *Full disclosure.* This is recommended by the bill. The nature of the offering or issues must be transparent to the investors. This can be done only if the issuers are required to fully disclose all material information about the issues or the nature of the offering, prior to sale and in accordance with certain information disclosure standards.

There must be full disclosure, and even suppression of a material fact, Mr. President, should be made punishable, as recommended by the bill. Unfortunately, the present law does not require issuers and underwriters to make available the company prospectus to investors as a matter of law. This loophole had been the cause of great disappointment of investors who later lost money because they based their investment decisions on inadequate or misleading information. The proposed law addresses this problem by requiring full disclosure of all material information concerning the issuers through the mandatory distribution of prospectus and the regular filing of financial and operational reports.

The bill authorizes the SEC to provide for the contents of the registration statement and the prospectus which may include, among others, the issuer's balance sheet, profit and loss statement, any judicial and administrative proceedings involving the director or officer of the issuer, and a statement of risk factors associated with the business of the issuer and with investing in such securities.

B. *Elimination of Trading Abuses by Insiders.* The insider trading prohibition, Mr. President, is a mine of legalese and it is very difficult to comprehend by American standards. There was effort by the Committee and the technical working group to make it a little bit more understandable. We hope the Committee has succeeded.

Insider trading confers undue advantage to insiders at the expense of investors. It does not only undermine investors' confidence in the securities market but also leads to greater concentration of wealth. Wealth is earned not through hardwork but through privilege information.

When directors, officers, lawyers, or people who have been given inside information about the possible mine or the striking of oil, or the striking of minerals, or about a branch to be opened by a manufacturing company abroad, these are material inside informations that all the people must be told if they are listed. When they are listed in the stock market, every information about that industry, about that manufacturing concern, about that mine, about that oil company must be shared so that wealth is not generated only by those inside, but wealth is generated for all available who are willing to risk their accumulated capital or whatever savings they may have.

The present law is insufficient to prevent trading abuses by insiders because it adopts terms that allow a wide latitude of interpretation and therefore make the determination of insider trading difficult.

For example, under the present law, there is insider trading if the insider trades on nonpublic information "of special

significance," which in turn is defined as a fact that affects the market price to a significant extent, or especially important to a "reasonable person." Under the bill, insiders are deemed to violate insider trading rules if they trade on any material information that has not been publicly disclosed. "Materiality" is defined to cover any type of information that would likely affect the market price and that would be important to a reasonable investor in determining his investment decision.

Likewise, the bill creates a disputable presumption that trading by an issuer's officers or directors was undertaken while in possession of material, nonpublic information where it is shown that the transaction occurred within the period between the time the inside information came into existence and its public disclosure.

This is very important, Mr. President, because the officers of a listed corporation owes fiduciary obligations not only to the stockholders of the company. They owe fiduciary obligations to the public because it is we, in the public, who support them. They owe us truthfulness and they owe the stockholders their fidelity. They must earn money when the company earns money. They must not earn money by trading on inside information.

The proposed measure, Mr. President, closes another loophole by considering a person who receives a tip on a material information as an insider. He got a tip; he is an insider if he got it from an insider. The tipper is also liable if he divulges information he knows or has reason to believe will be used in trading.

In American law, it even penalizes the janitor in a company who picked up a carbon paper during the time there were carbon papers, and who got information from the carbon paper when he was cleaning the office of the executive vice-president of the company. And it is that kind of fidelity to the market that we must require so that the small investors, the teachers, the small people who have small savings can participate in the generation of wealth. And we can, maybe, approximate the democratization of wealth-sharing, once and for all, in this country.

Reporting Requirement

The third requirement is the reporting requirement. Shareholders must be able to monitor constantly the performance of the security issuers through certain means so that they can make a fair assessment of the market value of their securities. The best monitoring instrument is no other than the issuer's annual report describing its past performance and outlook for the future. Unfortunately, the present law does not specifically require issuers to provide shareholders with annual reports. The proposed measure makes it mandatory for issuers to furnish all stockholders with annual reports.

Uneven Playing Field

The second problem, Mr. President, refers to what everybody likes to call the "uneven playing field."

Any market works best if players play, and they know they are playing, in a level playing field. The rules are the same and they apply to all in the same manner. The present law, however, does not promote this wholesome market condition by exempting certain issues from registration. Specifically exempted from registration under the present law are: (1) securities issued by banks; (2) issuance arising from reorganization or merger. So people in the know participate in the merger or reorganization, or in issuance by the banks. But the ordinary investor is lost in the hinterlands of ignorance and lack of information.

No. 3 is issuance to stockholders in an increase in capital. That can be arguably fair to the original stockholders but the proposed measure seeks to reexamine that. These exemptions can create opportunities for unfairness to public investors and existing stockholders who are equally entitled to full disclosure. The proposed law will remedy this problem by subjecting to registration shares issued by banks and issuance arising from reorganization or merger. The bill now exempts, among others, issuance to less than 20 persons in any 12-month period.

This proposal, Mr. President, has been cleared with the Bangko Sentral ng Pilipinas and, to our knowledge, has not been opposed by any particular sector involved in the securities market.

Static View of the Securities Market

The third problem is the static view of the securities market. The securities market is a living and breathing market that constantly innovates to respond to the growing needs of the general public for financial instruments that have not been conceived or anticipated before, which nonetheless will pass as securities. With the advent of the Internet and access to information almost about anything anywhere in the globe, there will be new instruments that will come up. There will be instruments that may not even be written on paper and the old Securities Act is not ready to cope with instruments that may only be carried by electric impulses. That must be cured.

The proposed law also develops new technologies to improve the efficiency of the transactions in the securities market.

The legal framework, therefore, must nurture the innovative spirit of securities market by approaching financial innovations from a development perspective. However, this is not a feature of the existing law. In fact, it views the securities market as a static

market. As though what happened 30 years ago, 20 years ago or 10 years ago will not change. But five years ago, Mr. President, the whole world was wired and instant information and instant transfer of wealth can be done by almost anybody, even by a 12-year old who understands how to operate the Internet.

This static view hinders the development of the securities market. To illustrate, allow us to cite other cases.

First, the present law has a narrow and rigid definition of securities, which does not explicitly cover newly developed securities such as asset-backed securities, derivatives, et cetera. In addition to explicitly covering the existing traditional and newly developed securities, the proposed law is forward-looking in that it will include those securities which the market may develop in the future. The flexibility in defining securities recognizes and supports financial market innovations worldwide.

Second, the present law does not expressly provide for the securities market to adapt to newly developed cost-reducing practices, such as the use of uncertificated or dematerialized stocks, and to emerging efficient technologies, such as electronic trading system. The proposed law provides sufficient flexibility for the securities market to adapt to modern practices and trading technologies.

Third, the existing law does not explicitly allow for the adoption of modern approaches to securities market regulation. Presently, there is a worldwide trend towards self-regulation, which is found to be a more effective and efficient means of regulating the market. The proposed law, however, adopts the self-regulation approach towards securities market regulation and directs various market players, including the exchange, the clearing agencies, the stock brokers and the dealers, to develop the capability to operate as self-regulatory organizations or SROs. Under this approach, the SROs will have the primary responsibility of maintaining professionalism in its internal affairs, and to regulate and discipline its members. The SEC, in the exercise of its oversight functions, will review and approve the regulatory programs of SROs and will hold them accountable for failure to police their ranks.

Structural Weaknesses of the Regulatory Body

The fourth problem, Mr. President, is the structural weakness of the regulatory body. The Securities and Exchange Commission must be an effective regulatory body of the securities market. The effectiveness of this regulatory body promotes public confidence in the securities market.

The Commission's strength draws upon its internal

organization, which is a collegial body, and upon the clarity of its mandates and authority. Unfortunately, the existing law has certain gaps in these areas, which undermines the effectiveness of the SEC. Allow me, Mr. President, to cite some weaknesses.

- a. The present law provides that the Commission meets only when so desired by the Chairman. Under the proposed law, the Commission shall meet en banc as the chairman may fix or as a quorum shall request.
- b. Under the existing law, the chairman has sole control and supervision on the operations of the Commission. In the proposed measure, Mr. President, the chairman is the chief executive officer of the Commission and his/her functions are specific and clearly defined.
- c. The present law does not allow the Commission to reorganize its internal structure. In contrast, the proposed measure gives the Commission flexibility to reorganize its internal structure as demanded by circumstances to maintain, if not enhance, its effectiveness in regulating and overseeing a very dynamic securities market.
- d. The present law does not expressly state that the Commission is empowered to regulate trading in options and derivatives. The proposed measure makes these powers explicit.

Mr. President, what we have enumerated are only some of the major obstacles to the development of our securities market that the proposed Securities Act of 1998 seeks to dismantle. I am certain all of our colleagues will take a closer look at the proposed measure and seek to discover ways of improving it further. The committee will yield to the superior judgment of the collegial body.

But allow us to say this: The proposed law builds on our past experience and those of other countries with securities market development; it incorporates flexibility to address unanticipated developments; it captures the aspirations of our people to have a fully developed securities market that can facilitate economic development; and finally, it addresses the universal concern that wealth must be created fairly and distributed equitably.

This is not the result purely of the Senate committee's work in the past two months, Mr. President. When the Committee on Banks, Financial Institutions and Currencies was under the Majority Leader now, Senator Drilon, there were extensive hearings and studies in the last session. Even before that, in the 8th and 9th congresses, there were also extensive studies. What the Senate committee has done, with the permission of its members, was to collect all those materials and take legislative cognizance and notice over the past proceedings of the 8th, 9th, and 10th Congresses.

We wish to thank the Majority Leader now, those who were involved in the Committee on Banks, Financial Institutions and Currencies before, the Securities and Exchange Commission and the technical staff who had helped us, the private agencies that had offered assistance, and the repetitive witnesses who were called by the committee to prepare the final Committee Report.

We also beg leave, Mr. President, because of the length of the bill, and with the permission of the Majority Leader, we have asked permission that the questions be started at the earliest tomorrow because the members themselves may also wish to go through the thick report at some leisure and with the least possible pressure.

There is a lot of things in the report. We hate to do this to the Senate, but there is no other way. We started at 130 pages, we are down to 77 pages, and we were hoping that that is as short and as brief as we could get.

Thank you, Mr. President.

Senator Guingona. Mr. President.

The President. The Minority Leader is recognized.

PARLIAMENTARY INQUIRY OF SENATOR GUINGONA
(On the Exclusion of S. No. 22 and S. No. 24
in the Committee Report)

Senator Guingona. Parliamentary inquiry, Mr. President. We understand that the committee report sponsorship, which has just been terminated, includes Senate Bill No. 529 and Senate Bill No. 204.

We would like to know why Senate Bill No. 24, the Securities Market Development Act, and Senate Bill No. 22, An Act Disqualifying Brokers, Dealers and Sellers of Securities from Becoming Directors and Trustees or Officers of any Publicly Listed Corporation, were not consolidated in this Committee Report.

The President. Is there any comment from Senator Roco?

Senator Roco. These were the related bills we were able to spot. I will check the numbers on the record on what happened to them, and I will inform the Minority Leader accordingly. But this had specific reference to the proposal to modify the Securities Act. But I will look at the bills. I am also not sure whether they were referred to us.

Senator Guingona. Since they treat on the same subject matter, we presume that they were referred to the same committee, Mr. President.

Senator Roco. We will validate that, Mr. President, without any problem.

Senator Guingona. I think it would be fair to the authors if these two bills were included or consolidated.

Senator Roco. Mr. President, Senate Bill No. 24 was on matters of tax incentives, and this was authored by Senator Flavie. Tax incentives could not originate from the Senate. When the hearings started, Senate Bill No. 24 was being considered. But in view of its tax nature of creating incentives, the Constitution requires that that must be approved by the majority of all the members of the House of Representatives. So we could not act on it until it becomes a tax measure. Probably the primary committee which has jurisdiction now would be the Committee on Ways and Means.

This was the Flavie bill. We will look into that. In fact, Senator Flavie was there because he was attending the meetings.

Senate Bill No. 204 was the bill of Senator Osmenia which referred, in fact, to commodities market and which we introduced and incorporated into the section. We are validating Senate Bill No. 22. I am not quite familiar with Senate Bill No. 22.

Senator Guingona. The other one was not referred to the committee of the gentleman.

Senator Roco. Senate Bill No. 22.

Senator Guingona. Senate Bill No. 22.

Senator Roco. No wonder we could not act on it, Mr. President.

Senator Guingona. No, I am asking, Mr. President.

Senator Roco. Senate Bill No. 24, the tax incentives, was referred to us, but we have to hold it in abeyance. I informed Senator Flavie specifically about that because it is a tax measure and it is a tax incentive. So, I did not feel that they were neglected. But I am not sure whether Senate Bill No. 22 was with me.

Senator Guingona. Perhaps it was referred as a secondary bill.

Senator Roco. Yes, this is the one that was corrected on. In fact, the Committee on Trade and Commerce is still holding hearings on that and it is another code altogether. They have a broader scope. Whereas this report, Mr. President, just tries to modernize the Securities Act, conceptually, if it is the same as the one being heard now by the Committee on Trade and Commerce.

When they refer now, they are referring to the Investment Company Act improvement. If they are referring to the mutual funds, that is a separate law altogether. The mutual funds and the Investment Company Act is one of the most torturous, one of the most difficult laws one could ever imagine that one could be made to read. It is almost cruel and unusual. It is almost as bad as the Antidumping Law.

So, if the Minority Leader is referring to the one-although it is already being referred as a primary jurisdiction of the banks-that Senator Magsaysay is still hearing, I welcome if they try to do it.

Mr. President, in my 30 or 31 years of law practice, the most difficult law I ever read is the one affecting mutual funds. We would not want this Chamber to discuss Securities Act and the mutual funds together because we will go nuts. I do not propose to impose cruel and unusual punishment on this Chamber.

Thank you, Mr. President.

Senator Guingona. Thank you.

The President. The Majority Leader is recognized.

Senator Drilon. Mr. President, we congratulate the gentleman from Camarines Sur, Senator Roco, for his sponsorship speech, but more importantly, I think we should thank him for exerting his best effort to explain to the Chamber and our people this very complicated measure.

To enable our colleagues to study this measure which would have impact on our economic life, I ask the Secretariat first to distribute copies of the sponsorship speech of Senator Roco to all the members of the Chamber.

SUSPENSION OF CONSIDERATION OF S. NO. 1220

I therefore move to suspend consideration of Senate Bill

No. 1220 as reported out under Committee Report No. 6.

The President. There is a motion to suspend consideration of Senate Bill No. 1220 under Committee Report No. 6. Is there any objection? [Silence] There being none, the motion is approved.

Senator Drilon. The period of interpellations will start tomorrow, Mr. President.

The President. Yes. Please take note.

SUSPENSION OF SESSION

Senator Drilon. May I ask for a one-minute suspension of the session, Mr. President.

The President. The session is suspended, if there is no objection. [There was none.]

It was 4:23 p.m.

RESUMPTION OF SESSION

At 4:27 p.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

ADJOURNMENT OF SESSION

Senator Drilon. Mr. President, I move that we adjourn our session for today, until three o'clock tomorrow afternoon, September 30, 1998.

The President. Is there any objection? [Silence] There being none, the session is hereby adjourned until three o'clock tomorrow afternoon, September 30, 1998.

It was 4:27 p.m.

THE SENATE TO OPPOSE MOVES TO AMEND OR REVISE THE CONSTITUTION AT THIS TIME

Introduced by Senator Santiago

The President. Referred to the Committee on Constitutional Amendments, Revision of Codes and Laws

The Secretary. Proposed Senate Resolution No. 230, entitled

RESOLUTION DIRECTING AN INQUIRY, IN AID OF LEGISLATION, ON ALLEGATIONS THAT CERTAIN LABOR UNION LEADERS NO LONGER REPRESENT UNION MEMBERS BUT DOMINATE LABOR NEGOTIATIONS BY THEIR IMPROPER LIFESTYLE, INCOME, AND VALUES

Introduced by Senator Santiago

The President. Referred to the Committees on Public Services; and Labor, Employment and Human Resources Development

COMMUNICATION

The Secretary. Indorsement from Director Carlito C. Gaddi of the Office of the President of the Philippines, respectfully referring to the Senate the letter, dated 12 August 1998, of Ms. Diosdada C. Carado, City Government Department Head of the Sangguniang Panlungsod of Iloilo, forwarding Resolution No. 98-437, current series, opposing the proposal to legalize in the country the operation of jueteng.

The President. Referred to the Committee on Games, Amusement and Sports

Senator Drilon. Mr. President.

The President. The Majority Leader is recognized.

BILL ON SECOND READING

S. No. 1220--The Securities Act of 1998 (Continuation)

Senator Drilon. Mr. President, I move that we resume consideration of Senate Bill No. 1220, as reported out under Committee Report No. 6.

The President. Is there any objection? [Silence] There

being none, resumption of consideration of Senate Bill No. 1220 is now in order.

Senator Drilon. Mr. President, may I ask the Chair to recognize the sponsor, Sen. Raul S. Roco.

The President. Sen. Raul Roco is recognized.

Senator Drilon. And for the interpellation, may we ask the Chair to recognize Sen. Juan Ponce Enrile.

The President. For the interpellation, Sen. Juan Ponce Enrile is recognized.

SUSPENSION OF SESSION

Senator Drilon. May we ask for a one-minute suspension of the session, Mr. President.

The President. The session is suspended for one minute, if there is no objection. [There was none.]

It was 3:42 p.m.

RESUMPTION OF SESSION

At 3:49 p.m., the session was resumed.

The President. The session is resumed.

Senator Drilon. Mr. President, may we ask again that the Chair recognize Senator Roco, the principal sponsor of the measure and for the interpellation, Sen. Juan Ponce Enrile.

The President. Senator Roco, the principal sponsor, and Sen. Juan Ponce Enrile are recognized.

Senator Roco. Thank you, Mr. President.

We wish to acknowledge--before the beginning of the interpellation--the presence of the Acting Chairman of the SEC, Fe Gloria, her staff and her group to assist us in the effort to explain this to the Chamber, Mr. President.

Senator Enrile. Thank you. I would like to find out if I could propose some clarificatory questions to the distinguished sponsor of the measure, Mr. President.

Senator Roco. Gladly, Mr. President, although not without hesitation.

Senator Enrile. Mr. President, I must congratulate the

distinguished sponsor for a gigantic effort to craft a piece of legislation covering a very complicated area of the law, but nonetheless a very important field of human endeavor, a field that has a very great bearing on the dispersal of wealth in any society like ours.

I must say that this measure has been well done. Although very complicated, nevertheless, there is a very great effort to simplify the concepts and the rules governing this very complicated area of economic activity.

Mr. President, just to start on the issue of definitions, may I know why the terms that are used in the latter portion of this bill were not defined like "option," "privilege," "put," and "straddle." I encountered these words in the latter portion of the measure and I would like to find out if there was any special reason there was no definition of these words. If not, perhaps, a definition should be introduced in order that the provisions bearing on "options," "privileges," "puts" and "straddles" be understood by laymen.

Senator Roco. Yes, Mr. President. First, we want to thank the gentleman from Cagayan for the kind words. We also want to acknowledge the tremendous work done over the years, not only by the past committees but by the SEC and the members of the private sector that have been helping here.

Mr. President, in fact, the original draft had the words "straddle" and "put-options" and they are mentioned in passing under "derivatives." The reason we finally decided not to carry it was that it was so difficult to craft a short definition, but the committee is not averse to putting such a definition later on.

Senator Enrile. Just for the record, Mr. President, so that future students or interested parties who may wish to look at the records of the proceedings of the Senate could benefit out of this. May the gentleman give examples, for instance, of "straddle." What is a "straddle" in security transactions? May we get the benefit of the assistance of the Securities and Exchange Commission people?

Senator Roco. Yes, Mr. President. They are getting their notes on the "straddle," Mr. President. There were many definitions in terms of securities and trading in the United States that we tried to look at.

Senator Enrile. Maybe an example would do, Mr. President.

Senator Roco. May I just read one of the accepted definitions and it does not even define the term per se.

It says: Straddle - strategy consisting of an equal number of put-options and call-options on the same underlying stock index

or commodity future at the same strike price and maturity date.

Each option may be exercised separately, although the combination of options is usually brought and sold as a unit which brings us to the problem of options and futures. When we get to the options, Mr. President, and I am referring to option-based derivatives, we have an exchange for payment-and I am sorry if this is confusing because, believe me, this is very technical and very difficult-of a premium, an option contract gives the option holder the right, but not the obligation, to buy or sell the underlying at a price called a strike price during a period for a specified date.

What I understand, Mr. President, of the whole transaction is that it is a series of dates when one may exercise the payment right to put the price or to call. When there is a series of these things, we call it a "straddle." But please do not consider my understanding as authoritative on the matter. It is a very esoteric field and it applies not only to securities in the stock market, but to commodities or any instrument that is resting on underlying values.

Just as an example, if I have a Golden Buddha and I say, "I separate this in a number of units and I sell it for participation," and any one may or may not buy at certain dates on a prearranged or non-prearranged price. If I have all the series, anyone can consider his risk as he goes along. That is how I understand a straddle operating. But that example itself is subject to so many qualifications.

Senator Enrile. Is it possible, Mr. President, for the Securities and Exchange Commission or the people who are involved in the art of buying and selling in the stock market and who are familiar with security transactions to provide us with a simple but adequate definition of these terms so that we can at least include them as a basis for a working knowledge of this Securities Act that we are crafting? Because really, these are very complicated activities in the stock and commodity markets. I think it is best that our law practitioners or even stock or commodity players would understand the law as they apply to this type of transactions.

Senator Roco. Mr. President, I saw the chairman of the Commission nodding her head, but if the gentleman would also help, maybe we can add "forwards"--the definition of "forwards"--"swaps, futures, the caps, floors," even "swaptions"--this is the first time I have also heard of swap options--and options on futures.

Senator Enrile. Including "insiders" because there is no definition of "insiders." There is a portion in the latter part of this bill which attempted to define an "insider." But I think this should be properly placed in the definition beforehand.

Senator Roco. Yes, Mr. President, I think it is buried in the sections but we will extract the "insider." Normally, by banking parlance, it refers to directors or officers.

Senator Enrile. Is that found on page 48?

Senator Roco. Yes, Mr. President.

Senator Enrile. Paragraph 32.2.

Senator Roco. But we will extract the definition already from the text, Mr. President.

Senator Enrile. Mr. President, on page 4, paragraph 3.14, "Commodity Interest Contracts" means contracts providing for the making or taking of delivery at a prescribed time in the future of a specified quantity and quality of a commodity which are customarily offset prior to the delivery dates.

The activity of banks, Mr. President, selling dollars, foreign exchange, future..

Senator Roco. Excuse me, Mr. President. Maybe we are not looking at the same page. Is it on page 4, line..?

Senator Enrile. Yes, line 20.

Senator Roco. Line 20, *Commodity Interest Contracts*.

Senator Enrile. Yes, Mr. President. Would foreign exchange in the country be treated as commodities? If so, would this be covered by the rules of this proposed measure considering that these are sold for delivery at a future date?

Senator Roco. Foreign currency, Mr. President, technically, should not be considered commodity as defined here. But the rules on foreign currency transactions, whether forward or futures, are practically the same as the rules that apply to commodity markets. They analogically apply.

In other words, when we buy, we can buy corn one year from now at a predetermined price that we agree on.

Senator Enrile. We can also buy deutschemark at a specified price now to be delivered in March next year.

Senator Roco. But that rules are basically the same, because who bears the risk of the delivery or of the foreign currency fluctuation? So whether it is a currency contract or a commodity contract, the rules generally, as I understand it, are analogical and the same.

Senator Enrile. At any rate, would it be correct to say,

Mr. President, that while the foreign currencies are not money in the country, they are actually commodities. They are not to be covered by this particular measure because they have to be covered by a measure governing the handling of our monetary policies. And these are essentially within the jurisdiction and competence of the Bangko Sentral ng Pilipinas.

Senator Roco. That is correct, Mr. President. That is why the technical staff, on line 24, added, "for the purpose of this definition, the term commodity means any goods, articles, services, rights and interests including any group or index of any of the following." They refer to lines 24 and 25 of the same page.

While the rules may be basically the same when commodity is used as a term, Mr. President, it does not include currency. As rightly pointed out, that really is subject to the jurisdiction now of the BSP.

Senator Enrile. Corollary to this point that I have just raised, Mr. President, and in connection with Chapter II, page 9, Section 5 of this measure, can the gentleman give us a brief explanation of the relationship of the SEC and the Bangko Sentral ng Pilipinas with respect to securities that are disseminated by investment houses which otherwise would be covered by this measure, but nonetheless also governed by the Bangko Sentral ng Pilipinas?

I raised this point, Mr. President, because beginning on line 21, page 9 all the way to line 28 or maybe even beyond, it states here: "The Commission"--meaning the Securities and Exchange Commission--"however, with due regard to public interest and the protection of investors may, by rules and regulations, exempt from registration any commercial paper that may otherwise be covered by this paragraph. In either case, the rules and regulations shall be promulgated by the Commission with the concurrence of the Monetary Board of the Bangko Sentral ng Pilipinas. The Monetary Board shall, however, have the power to promulgate its own rules on the monetary and credit aspects of commercial paper issues."

This suggests to me that these commercial papers are both covered by the provisions of this Act, as well as the issuances of the central bank. If there is a conflict, then whose decision would prevail?

Senator Roco. The rule we sought to be followed is as a general proposition, the Securities Act will prevail. And I wish to call the attention of our good friend as regards not only 5.2 on page 9 but also on page 11. On page 11, lines 7 to 11, these are where the exceptions lie.

Senator Enrile. These are the exempt transactions.

Senator Roco. No, these are not only exempt transactions.

Senator Enrile. But these are the exempt securities.

Senator Roco. As a rule, the Securities Act will prevail because it is generic. But some securities, like treasury bills or securities issued by the banks, are more appropriately covered by the Bangko Sentral.

Senator Enrile. Commercial papers are issuable by banks, by investment houses, by commercial houses and by big corporations, Mr. President. And as far as the definition of securities is concerned, these commercial papers are treated as securities.

Senator Roco. That is correct, Mr. President.

Senator Enrile. So what aspects of these commercial papers would be governed by this Act, and what aspects of these commercial papers would be governed by the issuances of the Bangko Sentral?

Senator Roco. As regards banks, Mr. President, the proposed bill will cover only the stocks or the equity certificates representing ownership in the banks. All other commercial documents issued, for instance, by the Bangko Sentral or by the banks will now fall under the primary jurisdiction of the Bangko Sentral.

Senator Enrile. Let us take the case of X banking corporation. The shares of stock issued by this bank and especially listed and traded in the stock exchanges including fractions of these or options over these shares of stock will be governed by this proposed piece of legislation. But the certificate of indebtedness, bank notes, promissory notes, bonds, debentures, and other commercial papers issued by the banks will not be covered by this Securities Act?

Senator Roco. Yes, Mr. President. Let us say the shares of stock representing ownership in BPI, that will be subject to these rules. But all others, like the certificate of indebtedness that the bank as a bank may issue will then be covered by line 28 of the same page 9, which states:

The Monetary Board shall have the power to promulgate its own rules on the monetary and credit aspects of commercial paper issues which may include the imposition of ceilings and issues by any single borrower and the authority to supervise the enforcement of such rules and to require issuer of commercial papers to submit their financial statements and such periodic reports when required by both the Commission and the Monetary Board.

Senator Enrile. Even if these papers will be traded in a duly registered exchange, Mr. President?

Senator Roco. I guess the very specific problems like that, Mr. President, will now be subject to discussions between the Monetary Board and the Commission.

Senator Enrile. This will be covered by the rules and regulations to be issued by the SEC.

Senator Roco. In this particular case, Mr. President, it will be in conjunction with the BSP. In fact, in a meeting held on March 17, 1997 at the Office of the BSP Governor, between the BSP and the SEC on the common issues as regard the Securities Act, there were nine basic principles agreed upon by the BSP and the SEC. I can read it into the *Record* but maybe..

Senator Enrile. Maybe for the sake of future researchers.

Senator Roco. May we just read. We will furnish the Secretariat later on a copy of these basic principles.

The principles agreed upon by the BSP and the SEC are as follows:

1. The provision of the Securities Act of 1998 should preserve the constitutional mandate given to BSP to have supervision over the operations of banks and exercise such regulatory powers as provided by law over both finance companies and other institutions performing similar functions. Dual supervision of banks by BSP and SEC should be avoided and should not happen;
2. Banks and quasi-banks when acting as fiduciary for trust funds shall be exempt from registration because they are trust funds;
3. The phrase "customary banking activities" shall not be used. Banking is a dynamic industry that keeps on innovating or introducing new financial instruments in the market.

Examples of new instruments introduced recently in the Philippines are derivatives, for example, options which we were initially discussing and asset-back securities, which could include one of the favorites of Senator Biazon, of securitizing land so that they will have money to build their low-cost housing;

4. Banks will have to go to the BSP first to obtain approval for their underwriting and securities dealership or brokerage activities after which they shall be endorsed to SEC for registration;

5. The SEC shall make the rules on the underwriting and securities dealership or brokerage activities of banks, NIH, investment houses, quasi-banks while BSP shall enforce these rules and ensure that these are complied with by banks and quasi-banks;
6. Securities shall be classified into equity and non-equity securities. SEC shall have the discretion to exempt or not to exempt the issuance of equity securities of banks and quasi-banks;
7. Non-equity and quasi-equity securities of banks and quasi-banks shall be exempt from SEC registration;
8. Section 4B of the proposed Securities Act--I think the section has changed because of what we made, *revoke*--which gives the Monetary Board certain powers shall be retained to enable the BSP to effectively carry out its monetary policy objectives relative to commercial paper issues.

That probably refers now to Section 5.2, the lines I mentioned earlier. Such rules shall be jointly signed by the BSP and the SEC. The interagency cooperation shall be maintained. This was already working even in a technical working group. The BSP formally confirmed this.

9. The BSP Governor and the SEC chairman shall jointly sign the letter transmitting the proposed amendments and comments on the proposed Securities Act to the House and the Senate.

Those are the nine points.

They were given to the committee and we worked into these to the extent that we could catch all of them. These have been worked into the working draft now, Mr. President.

Senator Enrile. Would the distinguished sponsor consider the insertion of this document into the *Record* of this Chamber in connection with our discussion of this proposed measure as an interpretation of the relationship between the SEC and the Bangko Sentral ng Pilipinas with respect to security transactions falling under the jurisdiction of each?

Senator Roco. Yes. Mr. President, we have no objections to that. It was a signed agreement between the BSP and the SEC and we can put it into the records. If legislative drafting will allow it, it can be an appendix, without necessarily having the characteristics of a law so that they do not have to come to the Chamber or to the House of Representatives to modify.

I would imagine, Mr. President, as we go along in regulating

the securities or the commercial papers, new incidents will arise and we should allow flexibility both to the BSP and the SEC. So we can put the signed documents on record, so that everybody can refer to it and everybody knows the parameters of the agreement. But we may hesitate to give it the status of a statute, so that they can modify as they go along.

Senator Enrile. But, at least, there is a basis for our understanding of the relationship between these two agencies of government with respect to securities that are being treated and governed or proposed to be governed by the measure before us, and at the same time, falling also within the jurisdiction of the other.

Senator Roco. Yes, Mr. President. We will furnish the Chamber with the signed copy as agreed upon between these two agencies.

Senator Enrile. Mr. President, on page 5, just to start our discussion, paragraph 3.16 speaks of securities intermediary. What is a securities intermediary? Are these brokers or dealers? What are these?

Senator Roco. Yes, paragraph 3.17 defines the term "securities intermediary."

Senator Enrile. Yes, Mr. President. I am sorry.

Senator Roco. It does refer to a registered clearing agency or a person registered or licensed by the Commission to maintain security accounts for others.

When we trade in the stock market, some people just pick.

Senator Enrile. Or a bank?

Senator Roco. Yes, a bank can do it. The term "person" is not restricted and not qualified.

Senator Enrile. A registered clearing house would be what is this? Is it separate from the Exchange or..?

Senator Roco. Yes, Mr. President. For instance, I think there is a clearing house fidelity.

Senator Enrile. Are these the ones issuing the supposedly stock certificates?

Senator Roco. I understand, Mr. President, one of the things they do is, when one buys it from a broker, there are more than a hundred brokers but not all of them have the capacity to process all these documents. So there are clearing houses or securities intermediary. When one orders and they implement his order, then they notify.

Senator Enrile. The clearing house?

Senator Roco. Yes, Mr. President, the clearing house. They take care therefore of getting the certificate from the broker. And the broker can keep the certificate if they want it to be in script certificates, or they want it just for margin trading, or the broker can send it to the buyer and send or cancel or get the original certificate to be cancelled from the seller.

Senator Enrile. So, in effect, with this system, there would be no need to issue stock certificates every time a person buys shares of stock in the stock market?

Senator Roco. In instances between the buyer and the stock broker, they allow for script or what they refer to as the scriptless transactions.

So, in fact, if there are among our colleagues who buy and sell in the stock market, very often, unless we specifically ask for it, we will never really know the exact status. But it is prudent to have records.

I am also informed that there is a Securities Clearing Corporation of the Philippines, as well as the Philippine Central Depository where they just follow the book entry system.

Senator Enrile. There are no more stock certificates, so to speak, being issued to the buyers because of the rapidity and frequency of transactions. It is just a matter of book entries.

Senator Roco. We can restrict it to that, Mr. President. But if the buyer asks for the certificate, it can be furnished. And I know that some corporations up to now in their secretariat or in their corporate secretary offices still maintain the clearing function.

Senator Enrile. In this paragraph 3.17, banks are included as securities intermediary. Lest misunderstanding may occur because of our previous discussion, is it possible to explain what kind of securities could be handled by the bank as a securities intermediary?

Senator Roco. This one is not supported by empirical data. But from what I could visualize, trust account, for instance, can transact. We have seen transactions by people who want to keep their certificate of ownership in the name of their trust account. The trust account can be, for all I care, foreign or local. But one remains therefore hidden. The bank, therefore, as the trustee or agent of the trustor, now performs this function because nobody else can do it.

Senator Enrile. The term "securities" mentioned in line 10, paragraph (c) would not be limited to bonds, debentures, prom-

issory notes, certificates of indebtedness, et cetera, but it could include, for instance, shares of stock in San Miguel Corporation, in PLDT, in Meralco, and in other corporations whose shares of stock are being traded in the stock exchanges of the country.

Senator Roco. That to my experience, Mr. President, is correct. We have seen and we know of banks that operate not only as clearing houses, not only as stock transfer agents but hold certificates of listed companies in their trust departments, in their trust accounts as custodian and sometimes as escrow agents.

Senator Enrile. Mr. President, paragraph 3.18 in line 12 speaks of "Uncertificated security." Will the sponsor favor this humble representation a brief explanation of this term "Uncertificated security"?

Senator Roco. There is another section, Mr. President. I will have just to look through it.

Senator Enrile. It says here, "security that is not represented by a physical title." Would this uncertificated security refer to securities in the hands of securities intermediary?

Senator Roco. It can be, Mr. President. But here, probably, the word "represented" on line 13 should later on be modified, if that is acceptable, to evidence by a physical title. In the proposed law, we are only covering regulation of the certificated securities because there are consensual contracts.

We can agree. Again in my example of the Golden Buddha, we agreed to share 50 percent, as long as we keep it between the two of us. We can also pass it on. So, the uncertificated security is really just to distinguish the generic security evidenced by appropriate title. There may be other forms of securities which we do not put into writing.

Senator Enrile. Would this uncertificated security be covered by the provisions of this bill, Mr. President?

Senator Roco. I have to revisit this, Mr. President. But to my total understanding of this proposed measure, this bill will not cover uncertificated securities because in the definition of securities, it is specifically mentioned that there must be a piece of paper. In fact, there must be an evidence for negotiability. The Securities Act, Mr. President, seeks precisely to protect the investors and the public because of the constant transfer of ownership over these negotiable pieces of paper. If it is uncertificated, it becomes very difficult to regulate, so long as it is not given to the public in general.

Senator Enrile. But, Mr. President, this particular measure

covers transactions involving securities in stock exchanges. And we already established the fact that these transactions could be done through these stock exchanges with the aid of a clearing agency where there is no need for any actual physical delivery of the muniments of title covering the stocks but that accounts could be maintained in certain books in the hands of clearing agencies, banks or a person who is registered or licensed by the Commission for that purpose to hold the account of the owner or the buyer.

Senator Roco. Mr. President, just to complete the answer we initially offered, may we invite our distinguished colleague to look at page 74, Section 45. There is an amplification of uncertificated securities.

On page 74, Section 45, we refer to the uncertificated securities lodged in the Philippine Central Depository which is not evidenced by stock certificates but just a book entry system.

It may be appropriate to coordinate it now--it reads: "Notwithstanding Section 63 of the Corporation Code"--Section 63 being the section on certificate of stock and transfer of Stock, and normally we have a piece of paper showing this--"A corporation whose securities are registered pursuant to this Act or listed on a securities Exchange may.." And it gives conditions when the certificate may not be evidenced.

Senator Enrile. How will the owner then establish his title over an uncertificated security, Mr. President, in the event of a contest or litigation with respect to ownership? What will be the proof of ownership in those shares by the claimant?

Senator Roco. On page 75, Section 46, there is a proviso on the best evidence. It reads: "Notwithstanding Section 63 of the Corporation Code, the official records and book entries of a securities intermediary in which the securities of an issuer have been lodged shall constitute the best evidence of the title of such securities."

Senator Enrile. So the entry.

Senator Roco. The entries, Mr. President.

Senator Enrile. If there is an error in the entry, then what is the protection of the claimant?

Senator Roco. If there is some fraud in the mind of the issuer, he can be sued criminally; otherwise, there will be damages or civil liabilities. And there will be more and more of this in the electronic transactions. If the mind is criminal and there was fraud aforethought, I can visualize how, as a lawyer, we can sue criminally.

Senator Enrile. But these uncertificated securities would be available only if the organizers of a corporation would agree among themselves to state this in the Articles of Incorporation and that the purchaser would agree to buy these uncertificated shares. So that it will be caveat emptor. He buys at his own risk. Is this correct, Mr. President?

Senator Roco. As provided on page 74, I think that is correct, Mr. President.

A note has just been passed to me which reads that the beneficial owner gets a statement of his stockholdings on a regular basis which he can refute, correct or confirm.

Senator Enrile. So, there is a periodic notice to the owner.

Senator Roco. Yes, Mr. President. As I recall, when one enters into these transactions, normally they will send him a letter which says, "We have entered into a sale or transfer," et cetera. And then they say: "If you keep quiet or we do not hear from you within the next one week, we assume we are correct."

Senator Enrile. How would sales of these uncertificated securities be done, Mr. President? If I am a holder of an uncertificated security and I want to sell it, would I just notify the corporation that I have sold my interest or would the seller be the one to notify the corporation that he has bought my interest? The other question is: May these uncertificated securities be registered for sale in the stock exchanges?

Senator Roco. I am informed that they are using the term "uplifted." For instance, when one calls the clearing house or the intermediary, then they will physically take it out. Then they will notify him again that they confirm for his purposes in order to sell or to buy.

Senator Enrile. In effect, the shares of stock recorded in the books of a clearing agency are uncertificated securities.

Senator Roco. Uncertificated. But there is no need to issue the stock certificate which they specifically represent. They are recorded in the books or in the entries of the clearing house or the intermediary.

Senator Enrile. This is the one that bothers me. I was studying this. On page 74, it says:

If so provided in the articles of incorporation and by-laws, issue all of the shares of a particular class in the form of uncertificated securities and subject to a condition that investors may not require the corporation to issue a certificate in respect of any shares recorded in their names.

My question, Mr. President, which I have already raised, is: How will I prove that I own the shares? As the gentleman said, the issuer will record my holding and they will notify me periodically.

If I want to sell these shares, I will probably cover these with some documents, either a letter or a simple contract, in which case notice is given to the corporation.

Senator Roco. Yes, Mr. President.

Senator Enrile. This provision on page 74, paragraph (B), line 14 would seem to suggest that, unless this is not so, for a security to be treated as uncertificated, it must be so provided in the Articles of Incorporation of the corporation; otherwise, all securities must be deemed certificated.

Senator Roco. In this particular case, Mr. President, if it appears in the articles of incorporation, it only expresses that the investor may not therefore require the corporation to issue a certificate.

Senator Enrile. But this provision, therefore, does not limit.

Senator Roco. May I be allowed to finish, Mr. President. What happens is the stockholder who participates in that kind of uncertificated transactions has a credit and debit form. As one notifies them, they debit and credit him. So he does not have a piece of paper. But at a certain point in time, the stockholder may change his mind. If it appears in the Articles of Incorporation, it is too bad. He cannot change his mind and now makes everybody change their resistance. That is what it provides only in subsection (b) of Section 45.

Senator Enrile. In Section 45.1, it says:

A corporation whose securities are registered pursuant to this Act or listed on a securities exchange may:

- (A) If so resolved by its Board of Directors and agreed by a securities intermediary, issue shares to that securities intermediary or recall the transfer of some or all of its shares into the name of that securities intermediary in the form of uncertificated securities.

What is the meaning of this?

Senator Roco. It means, Mr. President, that they have a book entry and it shows that one is credited or debited for the

transaction. But that appears in the central office. One probably has a confirmation of the sale or purchase, and I guess he will have to rely on that to prove ownership in an aliquot portion of the corporation.

Senator Enrile. Yes, Mr. President.

Senator Roco. But this is only done with the agreement of all the stockholders. If one gets into uncertificated securities arrangement, then that really is his problem. But if he changes his mind, we cannot burden everybody else.

So this is not compulsory. It is entered into voluntarily, and he has to live by the rules of uncertificated securities.

Senator Enrile. Would this uncertificated securities be treated as bearer shares or not?

Senator Roco. No, Mr. President. It will be in the name of the depository. I think they call it the Philippine Central Depository. It is in their name and one has to go into their records to show his balance of credit and debit.

Senator Enrile. If they are not in the hands of the security intermediary, be it a bank, a person authorized to be so, or a clearing agency, if these are not held in the accounts of these security intermediary but in the hands of a corporation, may this be treated as bearer shares, Mr. President?

Senator Roco. Technically, to my understanding, the bearer certificate in fact is represented by a certificate of stock. So it does not fall within the definition of the "uncertificated." There is an existing certificate but the owner is not recorded, and so we call it bearer. Or it may be signed in blank and so it becomes bearer and whoever picks it up becomes the owner.

In this particular case, one's confirmations will not necessarily represent a certificate of stock. It only shows that he did transact, he sold and bought, and it is now in the name of the PCDI.

I am given a diagram that in the PCDI, the participants are the stockholders, the stock brokers, then there are custodian banks.

Actually, it looks very complicated when we put it into words, in law. But in the software or in the program of the transactions, they become almost instant and they wash out. So the actual implementation, as long as they are honest, is fairly simple, especially at this time of the computer.

Senator Enrile. I just want to clarify these points, Mr. President, because there is a problem for me as a tax practitioner here. If the shares are uncertificated, I could sell my holdings, probably

the government will have a hard time tracing whether I made a profit or not.

Senator Roco. Yes, but I think in that particular case, I am no tax expert, Mr. President, when we transact through the stock exchange, there is an automatic stock transfer.

Senator Enrile. But the provision found on page 74, Mr. President, does not contemplate simply shares of stock that are traded in the stock exchange. Because it says here, "The Commission, by rule, may allow other corporations to provide in their articles of incorporation and by-laws for the use of uncertificated securities."

It does not necessarily mean that the shares of stock are actually listed in the stock exchanges.

Senator Roco. That is correct, Mr. President. It becomes a matter of consent or agreement between the parties if somebody is willing to transact without certificates where in such amounts as just to hide his ownership, then he also runs the risk of somebody in the custodian's office or among the dealers running away with the ownership as well.

So as a practical matter, Mr. President, in terms of probability, it seems unlikely that if the amounts are very substantial, that there will be those who will risk it just to hide themselves from the tax man. But I do accept the difficulty of tracing uncertificated shares because, precisely, there is no physical evidence of the ownership.

Senator Enrile. At any rate, Mr. President, I think the provisions of Section 45 are explicit enough to cover some of the problems that are being raised.

Now, Mr. President, this is so complicated that we will have to wade through this.

Senator Roco. Yes, Mr. President.

Senator Enrile. Mr. President, on "SEC. 4. *Administrative Agency*," it says:

4.1. This Act shall be administered by the Commission which is a collegial body composed of five Commissioners, inclusive of the Chairman, who shall be appointed by the President, and the term of office of each Commissioner shall be seven (7) years: Provided, however, That upon the expiration of his term, a Commissioner shall serve as such until his successor shall have been appointed and qualified: x x x

Why the need for this proviso, Mr. President? Why not terminate him and let the appointing power appoint?

Senator Roco. That will be a policy choice of this Chamber, Mr. President. Let me just put on record that, in fact, earlier today with the technical group, I was discussing this and the committee at the appropriate time will probably propose some rewriting to make this simpler. It is a fairly wordy paragraph.

But to me, Mr. President, this is just a choice. The problem is when the President or the appointing power does not immediately appoint, we cripple the Commission. Right now, I think the SEC is effectively affected. The Chairman is suspended, he is in court and they have not filled up the position. There are major things going on like the rehabilitation or the receivership of PAL and quorum and the ability to act as a collegial body—they cannot respond.

And so maybe by clarifying this rule that until their successor..which is a general rule in any event, and by expressly making that rule, maybe we can avoid a situation of unnecessary paralysis.

Senator Enrile. But that would, in effect, contradict the next proviso, "That no Commissioner shall be appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed except for the unexpired portion of such term."

I would envision a situation where if we have a hold-over provision like this, a President could keep his people in place without appointing anybody.

Senator Roco. The committee, Mr. President, is open to either options, and we will certainly try to clarify it at the committee amendments date.

Senator Enrile. Thank you, Mr. President. Does this Section 4, Mr. President, contemplate a situation where the President may reappoint a commissioner?

Senator Roco. There is no prohibition in the proposed bill, Mr. President. So it will allow the possibility of reappointment.

Senator Enrile. Which is the better policy, Mr. President: To limit the service of a commissioner to seven years or for the unexpired term without reappointment or to allow reappointments?

Senator Roco. If I were to be asked, Mr. President, I would personally recommend the reappointment possibility.

The law, as we can see, Mr. President, even just drafting this bill, the Securities Act, is so complicated. We lose the expertise if we cannot reappoint them. If we also start modifying the Investment Company Act, again, that will be so complicated and the experience will be useful for the commission.

So for me, Mr. President, I would favor a policy of allowing reappointments.

Senator Enrile. Thank you for that, Mr. President.

Senator Roco. Yes, thank you, Mr. President.

Senator Enrile. On page 6, Mr. President, paragraph 4.2, the salary of the chairman and the associate commissioners shall be fixed by the President of the Philippines at a sum commensurate to the importance and responsibility attached to the position.

Does the gentleman think, Mr. President, that this is a very broad unlimited delegation of discretion to the President?

Senator Roco. Yes, maybe again, Mr. President, we can use the model of the Bangko Sentral as well as the Export Processing Zone that we just approved, giving the guidelines and the procedures, so that the commissioners in the SEC shall be exempt from the Standardization Law, but they cannot just run away with their own devices.

So, we will propose, and with the help of the gentleman, we can repeat the proviso that we put in on the Export Processing Zone Law.

Senator Enrile. Mr. President, this only refers to the salary of the chairman and associate commissioners.

Senator Roco. But, Mr. President, maybe a general proposition covering the compensation package as well as the promotions and career growth of the people working at the SEC can be covered.

Senator Enrile. I thank the gentleman for that, Mr. President.

Incidentally, just to clarify. Going back to page 5, the proviso found on line 21 and ending on line 25.

Mr. President, is it the contemplation of this proviso that if, for instance, a commissioner who is supposed to have a term of seven years resigns or is removed for cause or dies, let us say, midway in his or her term, that the new appointee will only serve the unexpired term?

Senator Roco. Yes, that is correct, Mr. President, that is how we understand the recommendation and the sense of the provision. And if that is not clear, then maybe, we can even improve the wordings.

Senator Enrile. I just want to put that clarification into the records.

Senator Roco. Yes, Mr. President. We should avoid the lack of clarity of the Subic situation, Mr. President, so that we will have no arguments as to when they are appointed, and as to whether they are appointed and only for the unexpired portion or for a new term.

Senator Enrile. Now, Mr. President, the Commission being a collegial body, will act en banc. A quorum is three. A decision of a majority of the quorum will be binding on the Commission. So, every decision must at least be done by two commissioners.

Senator Roco. That is correct, Mr. President.

Senator Enrile. If they act en banc.

Senator Roco. That is correct, Mr. President.

Senator Enrile. If the action is taken without a meeting, then it will be a majority of all the commissioners. It must be an absolute majority of the quorum.

Senator Roco. Mr. President, as chairman, I am not totally sold on that proposition myself. In fact, I am mulling it in my mind. We just did not have time to modify or to achieve some consensus on this.

I have a bias for collegial action when a body is collegial. There must be discussions because after listening to discussions-like in this Chamber when we discuss, sometimes we are against-we become in favor. After listening to discussions, it is not even the reason that we hear, but it triggers us off into another thought that convinces us one way or the other.

So, Mr. President, to me, we should look at the policy and also the reason behind collegiality and not all actions of two may necessarily be binding. The only reason I feel confident about this is that, even if we give powers here to the Securities and Exchange Commission-and we are not reinventing 902-A-there are already existing rules and regulations that the SEC is following as regards the need for five or when there is need for a quorum of three. I will just restrict my observations to the effort that the committee will try to do, to delve deeper into the collegial action.

I am not sold right now, although it is part of the effort that decisions can be done just by signing because it allows too much flexibility in lobbying. Sometimes we even do this. When we are asked to cosponsor or to coauthor a bill, everybody coauthors. But as we listen to the debates, we end up being opposed to what we signed and we must not be unmindful of that state of affairs. It is not dishonest. We might be convinced in the beginning, but it is better for policies that will affect business to be discussed by the commission en banc. At some time before we finalize this, the committee will come up with a recommended solution to this problem.

Senator Enrile. Mr. President, apropos to this, I have a problem; and that is, when two commissioners make a decision in an en banc proceeding or three commissioners make a decision in a non-en banc action, there is no appeal to the commission as a whole. Is there any special reason why this is so?

Senator Roco. We must revisit that, Mr. President. Even in the Supreme Court, when the division decides one way or the other, there are certain conditions when the Supreme Court itself must act. To me, there is wisdom to that rule but we cannot apply it to all.

Senator Enrile. As we know, this involves economic matters and there are certain biases, prejudices and interests that might come into the picture. I would imagine that, perhaps, as an additional safeguard, it would be good to provide in this measure a way of appeal by any aggrieved party to the commission as a whole so that five would then sit to consider the issue rather than just three.

Senator Roco. Yes, Mr. President. We will revisit that policy recommendation. In fact, I did mention even to the Commissioners of the SEC that as our committee has reported it, there is a tendency that it favors collegial action by the group and it seems that it is almost impossible to operate without collegial consent.

I did raise the observation that, at the very worst, the chairman should have some necessary and incidental powers. Unfortunately, Mr. President, in the technical group and even during some of the discussions in the past, there were some reactions apparently to some officers or some chairmen of the SEC who exercised powers with extreme vigor. And so, it cannot be helped that the bias of the technical staff is now entering here. But I guess, that is up to the Chamber now to balance that observation. After all, there have been very good chairmen and we must allow them for initiative and flexibility. On the other hand, if there is an abusive chairman, then the collegial nature should be able to curb his abuses in the future.

Senator Enrile. Maybe we can discuss this at the proper time.

Senator Roco. Yes, Mr. President.

Senator Enrile. Now, Mr. President, on page 8, line 2, there is a clause after the word "function," "under PD 902-A as amended." Is there a need for this clause to be added here? Why can we not just say, "Provided that the Commission en banc may not delegate and shall be required to act en banc in respect of the adoption of any rule or regulation the denial, alteration or supplementation of any rule of a self-regulatory organization or in the exercise of its quasi-judicial function."

Senator Roco. There is probably no statutory or draftmanship needed...

Senator Enrile. Because we are in effect repealing PD 902. And if we are going to make a reference here, we are killing it and making it alive at the same time.

Senator Roco. No, Mr. President, I can see that in terms of draftmanship, we can really delete this at a point in time when we amend the bill.

Senator Enrile. In line 5, of the same page 8, paragraph B, with respect to the delegation of any function provided in paragraph A of subsection 4.6, the Commission en banc shall retain a discretionary right. Why a discretionary right? Why not just the right or power to review?

Senator Roco. That is a good observation, Mr. President. In fact, this is part of the observation I have made myself also that we might trigger off too much bureaucracy. At the appropriate time, we will certainly welcome improvements on the language so that we avoid as much of the bureaucracy as possible.

Senator Enrile. Mr. President, I am going over this page by page now. Paragraph 4.7 of page 8.

Senator Roco. Yes, Mr. President.

Senator Enrile. "The Commission is authorized to reorganize its internal structure as, from time to time, it determines to be necessary and appropriate in the public interest to carry out its responsibilities under this Act and other laws which it administers. This shall include the power to fix the remuneration and other emoluments of its personnel based on job evaluation and qualification; to increase or decrease the number of departments, divisions, extension offices and any other reorganizational structures within the Commission; to reassign functions and personnel among departments, divisions, extension offices and any other organizational structures; and to name or rename

departments, divisions, extension offices or any other organizational structures."

I imagine, Mr. President, and I would like to know that if my surmise is correct, this would entail reduction of personnel.

Senator Roco. Mr. President, I think we should take this in the context of our recommendation earlier on the staffing pattern, the process of hiring and firing, which can be modeled after the Bangko Sentral ng Pilipinas and the EPZA provisions that we incorporated to avoid that difficulty.

I am made to understand, however, that the intention behind this was, right now, apparently, to streamline—not necessarily to lay off—and reorganize the commission, which always meets the difficulties of going to Civil Service, DBM and so many other agencies. I am not sure why. But this difficulty of reorganizing, of modernizing is what is sought to be addressed.

The wordings here though may, in fact, exceed the goal sought to be achieved.

Senator Enrile. Would this provision covered by paragraph 4.7 justify the reduction of personnel, Mr. President?

Senator Roco. It is subject to Civil Service laws, Mr. President, in the sense that we cannot remove people who are protected in their tenure.

Senator Enrile. If there will be a reduction of personnel, what would be the criteria or standard in separating those that must be separated?

Senator Roco. In the model we are recommending, which is patterned after the Bangko Sentral ng Pilipinas and what we approved for the Export Processing Zone, the standards will be defined in the system staffing pattern and qualifications that the Commission will issue, so that we have a yardstick for hiring, firing and promotions.

We also have the guideline that to the extent possible—although the salaries may not conform to the Salaries Standardization Law—the equity and procedures of the Standardization Law must be followed so that the people within the SEC, doing the same things, will necessarily get the same basic pay. The equities of the standardization law may be followed, but the limits on the compensation or hiring or firing will alter.

Even in the Senate,—I do not know if this became a law—but before we adjourned last time, we also defined "system" for the institution. Those can be looked at analogically to decide on the staffing pattern of the Commission, Mr. President.

Senator Enrile. There are others who would want to interpellate, Mr. President. I would like to stop here and let others also ask questions.

Senator Roco. I welcome the recess of that point, Mr. President. In fact, I would recommend to the Majority Leader for those who want to ask questions, maybe, we can categorize into the definitions and the organization. Then at some point in time, we go inside the trading or the protection of stockholders. The third area of interpellation can be the regulatory aspect of the stock exchange itself, so that everybody sort of focuses. And even for the sponsor, we also concentrate on the following sections, 1 to 50, et cetera. Then we can all get along without being too mixed up.

Senator Drilon. The suggestion is that we limit first the interpellation, say, to the organization and powers of the Securities and Exchange Commission.

Senator Roco. It is just very arbitrary, Mr. President. The basic concepts are very critical. The definitions are very critical.

Senator Drilon. The definitions, Mr. President, may, in fact, affect the other substantial provisions of the law. So we start with the organization and powers of the Commission as a subject matter of the interpellation.

Senator Roco. Please include Chapter I, Mr. President. We can define it with the Majority Leader sometime later, but for clarity of the discussions, because of the technical nature, that will be very helpful to the sponsor and also for our colleagues.

Senator Drilon. In that case, Mr. President, maybe we can move to suspend consideration of Senate Bill No. 1220 under Committee Report No. 6 and come up with an agreement on how the interpellations will proceed for an orderly and understandable discussion of this complicated piece of legislation.

Senator Roco. It does not deter, of course, reference to the others. Because like in the uncertificated security, Mr. President, we have to jump to page 74. So it does not prevent our colleagues from jumping from one page to the other. But in terms of preparation or discussion, we cover in a day, say, pages 1 to 20, then pages 21 to 50, and then pages 51 till the end. It is helpful not only to us, and it will also be helpful to the Chamber.

Senator Drilon. The Minority Leader has informed me that he is in concurrence with that proposal and therefore, it is appropriate that we suspend consideration of the bill and discuss

it with the sponsor and with the Minority Leader, so that we can come up with an understanding on how the interpellations will proceed.

Senator Roco. Before the Majority Leader moves to finally suspend consideration, Mr. President, may we also ask the help of the Secretariat—there is a matrix done by the Securities and Exchange Commission showing the sources of the bill, and I am sure the Minority Leader will have a tremendous difficulty identifying which section conforms to the Securities Act of 1978—if they can only reproduce the matrix because it is very thick, then those who are interested in pursuing the statutory roots will get a copy or we just give it to all the members of the Chamber.

This is the matrix, Mr. President. While probably 40 percent is basically old law, most of them have been edited because as the lawyers in the Chamber will attest, we do not even take it in law school. We only bumped into it almost like a laxative. We take it only because it is needed by a client. But given the freedom, we will never read these laws. So if we can have the help of the Secretary, they have the better capacity for reproducing them. I will hand it over now to the Majority Leader.

Senator Drilon. Yes, certainly, that will be very helpful and the Secretariat is directed to reproduce this matrix and distribute the same to all the members of the Chamber.

SUSPENSION OF SESSION

May I ask for a one-minute suspension of the session to clarify something with the sponsor, Mr. President?

The President. Is there any objection? *[Silence]* There being none, the session is suspended.

It was 5:08 p.m.

RESUMPTION OF SESSION

At 5:09 p.m., the session was resumed.

The President. The session is resumed.

Senator Roco. Mr. President, during the break, the Majority Leader raised what we initially manifested that we must put on record—right now, we are handing it over to the Secretary the MOA between the BSP and the SEC so that we make it very clear—the legislative intent to resolve conflicts of jurisdiction between the BSP and the SEC in the future, in case such a conflict arises later on.

The President. All right. Is there a motion?

SUSPENSION OF CONSIDERATION OF S. NO. 1220

Senator Drilon. Yes, Mr. President. I now move to suspend consideration of this measure.

The President. There is a motion to suspend consideration of Senate Bill No. 1220, as reported out under Committee Report No. 6. Is there any objection? *[Silence]* There being none, the motion is approved.

SUSPENSION OF SESSION

Senator Drilon. I move for a one-minute suspension of the session, Mr. President.

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 5:10 p.m.

RESUMPTION OF SESSION

At 5:12 p.m., the session was resumed.

The President. The session is resumed.

Senator Drilon. Mr. President, in yesterday's session, we manifested the creation of the Congressional Oversight Committee on Agriculture and Fisheries Modernization. We enumerated the members of the Chamber who will constitute the representation of this Chamber in the oversight committee.

We wish to amend the nomination of a member of the Majority upon the request of the chairman of the Committee on Agriculture and Food. This matter was discussed by the chairman of the committee with the senators concerned.

MOTIONS OF SENATOR DRILON (Change of Membership to Congressional Oversight Committee on Agriculture & Fisheries Modernization; and Senate Electoral Tribunal)

May we therefore enter into the *Record* that Senator Honasan will be substituted in lieu of Senator Jaworski as a member of the Senate contingent in the Congressional Oversight Committee on Agriculture and Fisheries Modernization.

The President. Senator Honasan will take over from Senator Jaworski. Is there any objection? *[Silence]* There being none, the motion is approved.

Senator Drilon. Mr. President, likewise, the Majority

session on October 20, tomorrow. So, may we request our colleagues, who may still have questions to the sponsor, to please prepare their questions for the session tomorrow.

SUSPENSION OF SESSION

Mr. President, may I ask for a one-minute suspension of the session.

The President. The Chair declares a one-minute suspension of the session, if there is no objection. *[There was none.]*

It was 4:55 p.m.

RESUMPTION OF SESSION

At 4:55 p.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

BILL ON SECOND READING

S. No. 1220 - Proposed Securities Act of 1998 (Continuation)

Senator Drilon. Mr. President, I move that we resume consideration of Senate Bill No. 1220 as reported out under Committee Report No. 6.

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of Senate Bill No. 1220 is now in order.

Senator Drilon. May we ask the Chair to recognize Sen. Raul S. Roco, the principal sponsor of the measure. And for purposes of interpellation, may we ask that the Chair recognize Sen. Juan Flavie.

The President. Senator Roco will resume, and Senator Flavie is recognized for interpellation.

Senator Roco. Thank you, Mr. President.

Senator Flavie. Thank you, Mr. President. Will the salutarian of the Senate, batch of 1995, allow me to ask a few questions for my enlightenment and education?

Senator Roco. Yes, we will be happy to try to answer the questions.

Senator Flavie. At the outset, let me first ask the forgiveness of the good sponsor for my violating the understanding that the

questions should be by section. The reason for this, Mr. President, is that my questions are general and basic and meant only for my education and understanding.

My first question, Mr. President, relates to the present economic crisis and the depressed situation in the stock market. The question is: What would be the effect of this bill to the market? Would this, in effect, perk up the market? May the good sponsor please comment.

Senator Roco. Yes. We think, Mr. President, that it will have no direct effect for now. But in the medium-term—because the market is down and investors are looking around for good players to invest—by IMF standards or, at least, by Mr. De Jesus' standards, the Philippines is the way to go. That was put on record in Washington, D.C. at the IMF Conference. So we have something to gloat about, and I think former President Ramos will have something to crow about also.

But the bill is now being presented so that when there is a turnaround, the investors will be happier to come to the Philippines because the insider trading rules will be better; because the objectivity rule will be better; because the disclosure of information will be very clear. We think, therefore, that in the medium and long-term, the bill, if approved into law, will be very helpful both to the stock market and the capital market formation that we are trying to push.

Senator Flavie. I would like to thank the gentleman for that excellent reply, Mr. President.

In the sponsorship speech of Senator Roco, there was a statement that struck me because of its significance for our people. It said, and I quote:

Let our capital create wealth but that wealth should be widely dispersed to our people.

Does this refer to the participation of, say, rural people and the *mahihirap* of our country? I just want to reconcile it.

Senator Roco. Yes, it refers to all—those who may have potential savings and who may want to participate in trading or availing of opportunities in the market.

The intention, Mr. President, is to have information made available to everybody, the retiring teachers, the small farmers, so that they will be induced to participate not only in forming capital, in generating savings, but also in the trading in the stock market. One does not have to be a bigtime to trade in the stock market. But right now, because of information kept by the big boys, the little people do not want to go when the elephants are moving around.

Senator Flavier. I assume, Mr. President, that the mechanics will be set up to enable us to handle that particular dimension which is, to me, new and very exciting.

Senator Roco. Yes, Mr. President. Under the bill, the specific provisions will be the full disclosure. There must be full information to the investing public. By the investing public, we do not refer only to the ones with plenty of money but to all.

We also have a requirement for a prospectus when there are new offers. The prospectus is a piece of paper which basically says: "This is the company, these are its opportunities, this is the capital, these are the officers, and this is what they propose to do."

So that when one buys a piece of share in a corporation, one has full knowledge about what he proposes to do.

Senator Flavier. Thank you, Mr. President.

My next question is on tenure. I have in mind the case of Chairman Yasay who is under investigation by the Ombudsman and claims that this is being done to remove him from office.

My question, Mr. President, is: Assuming that he has done nothing wrong, is the present law strong enough to guarantee the SEC official's security of tenure? I think that is an important dimension to the administration of the SEC.

Senator Roco. Mr. President, I would imagine the general rules on tenure would apply. The present law, with slight modifications in the proposed bill, will not alter very much the present doctrines on tenure. If one has seven years and he cannot be reappointed, at the end of seven years, he goes. If he goes on the fifth year and there is a two-year interregnum or gap and somebody is appointed, the general rule is that person appointed will fill up the two years. That became, I think, the Gordon example.

The present law is sufficient to me. But if there is a point that I may have missed, then we will certainly consider strengthening the tenure provision of the commissioners.

Senator Flavier. Yes, Mr. President. What I had in mind was something more that we may incorporate into the bill so that the present case of Chairman Yasay can be avoided.

Senator Roco. I do not know enough about the case. But cases of that nature can never be avoided by something we will do now because, as I read it from the newspapers, if there is some problems with the rentals of some small space where they sell cookies on a concession, no matter how we perfect the law, if in fact he benefited from a concession, then there is something wrong there. If he did not, then the courts will soon enough acquit him and vindicate him.

Senator Flavier. Thank you, Mr. President.

My next question relates to monitoring. Earlier, the good senator alluded to disclosure regime.

My question is: Does the SEC have the manpower and the system to do the monitoring? For example, during a hearing of the SEC, I inquired about the number of nonprofit organizations and the officials told me there are about 12,000. When I asked how many are foundations, they correctly said there were 1,200. But when I asked what was the status of each of those foundations, they told me that they have no manpower nor ability to monitor those registered entities.

Can the sponsor reconcile that with the need for disclosure and the problem of monitoring, Mr. President?

Senator Roco. Yes, Mr. President. The Securities and Exchange Commission, even in the United States, is not supposed to be a big brother that is supposed to know everything going on.

What we are doing in the proposed law and even in the present law is requiring people to submit disclosures. In the present bill, as proposed, we are asking for fuller disclosures so that everybody who looks at the file... One can go to the SEC, give a piece of paper, and say, "I want to know what foundation so and so has been doing." Because of the requirements of regular reporting, any member of the public can find out everything he wants to know.

So the monitoring is not active. It is the requirement of constant reports. So that anybody who wants to find out the status can look at it.

But if we ask the SEC, I am sure it will always say, if the distinguished gentleman wants it to monitor everybody, we can give it 2,000 people more but still it will not be enough.

So it is the workings of the law in requiring constant updated information available to the public under the principle of transparency that really makes the system works. It is like the banks. The banks just keep submitting. But if the gentleman asks any particular individual if he knows everything going on in all the banks, in general, maybe even Mr. Gabriel Singson will say, yes. But in specifics, he will have to rely on staff and they will have to dig up the records.

So it is the requirement to report that supposedly keeps people honest. If they misreport then the law now, as the proposed bill, will then impose the corresponding penalty for them.

Senator Flavier. There are two more questions, Mr. President, and I will be through. The next question—the distinguished

gentleman will have to forgive me but I must ask—exactly, what is insider trading? Is there also outsider trading, Mr. President? Can the gentleman describe this for my understanding?

Senator Roco. Yes, Mr. President. The first question is, who is an insider? In a corporation, who is an insider? The first answer is, of course, the officers, the members of the Board of Directors, the operating officers who may have access to confidential information. People who have information within the corporation's operations will be considered insiders. A controlling stockholder, who may not be an officer or a director, can be an insider because there are stockholders who do not like to be bothered by director's duties.

An insider will know, for instance, just to give the better-known example, if they discover oil in Palawan. I mean, the minute they struck the oil, I will know. If I were a director, I will be informed. Having known that, the law—and here we are strengthening it in the proposed bill—the corporation that is being listed is being required to inform the SEC immediately and to announce, "We struck oil."

Some people have made it a habit not to tell. "Let us not tell anybody else. Let us buy first all the available. Tomorrow morning I will start buying."

This is a very oversimplified example. So I am a director. I start buying. Then we announce at 10 o'clock. I have bought already at P0.01—I do not know—10 million shares or whatever one billion shares. At 10 o'clock we announce. So it goes from P0.01 to P0.08—and it has happened before. So if I bought P1 million worth of shares, I sell it at 11 o'clock and I just made P7 million clean profit.

These are very rough and very oversimplified examples. I am an inside trader. I am an insider trader; I am an insider who traded. Although I am a listed company, therefore I have a fiduciary duty to tell all. Since it is the whole Philippine public that supports the market, I have a duty to tell all, "No, I keep it and I keep it to myself. By the time you come in, it is no longer one centavo. You are buying at two, at three, and at four." *Ako naman, naghihintay* till it becomes whatever.

So, the insider trading is the use of inside information. Nonpublic material information—I think that is what the bill says—that will likely affect the price. And now, they are giving me the technical definitions. Although we agreed with Senator Flavier that I will not use technical words.

Senator Flavier. That is why the example is excellent. In its simplicity, I even understood. But the subsidiary question is: Between the time of the discovery of the oil and 10 o'clock, will trading be allowed? Or no trading will be allowed to avoid the points which the gentleman has just made?

Senator Roco. Trading will be allowed because the market does not know what is going on. Now, if I benefited from the inside information and I started buying, I think I should be made to cough out the profit.

After everybody knows, the officers may still trade. He is the doctor of the corporation, so he has to know already what went down the grape vine. Now, he must notify the SEC, "I am an insider. I have information known to all, and I also want now to buy."

So, he is still an insider trading, but that is already legal. He is doing it according to Boyle.

Senator Flavier. Thank you, Mr. President.

Finally, Mr. President, there is an interesting sentence which said, "We will shift from merit system to full disclosure system." Is that an "either/ or" proposition? My own feeling is that, both are desirable.

Senator Roco. I lost the last phrase of the question, Mr. President.

Senator Flavier. I was asking whether or not we are going to have an "either/ or" proposition, either merit or full disclosure. Or is the intention to have both, because that would be my inclination?

Senator Roco. On policy level, we will have no problem. But the proposed bill is shifting. If merit, there is a judgment call by SEC.

Let us say, they want to list "Our Oil Company." They have not yet registered, so they will register with the SEC. They will now make an assessment, and that is what they call demerit. They are determining whether one is worth registering, whether they will allow the company to now have a listed share.

Under the bill, actually they combine because there is some degree of judgment. But what we are saying is, reveal all. If I say, and I reveal all, "There is a well that was discovered but it may not be economically sufficient." As long as I reveal all and they still want to buy, that is their problem.

What is sought to be avoided is, if I say, "The well will continue forever and it will be bigger than the wells of Netherlands and Saudi Arabia." Then we are really not giving full disclosure.

So whatever one's weakness or the strength of one's potential may be, if he tells the public fully, then the public must decide because the law cannot take care of the foolish. If I tell him there is a short potential but he still wants to go in, it is not our concern when people are foolish. They are foolish for themselves, then that is really their problem.

Senator Flavier. Thank you, Mr. President. In the absence of Sen. Gloria Macapagal Arroyo, I would like to promote Senator Roco as now the valedictorian of the Senate Batch of 1995.

Thank you very much, Mr. President.

Senator Roco. Mr. President, that has just made me decide to campaign for the reelection of Senator Flavier.

Senator Drilon. Mr. President.

The President. The Majority Leader is recognized.

Senator Drilon. May we ask the Chair to recognize Sen. Francisco S. Tatad.

The President. Sen. Francisco S. Tatad is recognized.

Senator Tatad. Thank you very much, Mr. President.

I wonder if the distinguished sponsor would yield for a few clarificatory questions.

Senator Roco. With some trepidations, Mr. President.

Senator Tatad. Not after the World Bank meeting.

Mr. President, Senate Bill No. 1220 is a bill of 107 pages, very technical in nature, and for that reason, not very easy to read. But the sponsor assures us that the bill will strengthen the disclosure, discipline in securities, eliminate fraudulent and manipulation practices, level the playing field, strengthen the role of regulators and generally invigorate the market.

We are happy to support these objectives, but in the meantime, we would like to be enlightened on a number of points.

The point was made earlier by one of our colleagues about the paucity of definitions. The problem remains, Mr. President. For under the definition of "securities," Section 3, par. (D), we find the word "derivatives," but instead of the word being defined, it is simply described as "derivatives like options and warrants." Neither "options" nor "warrants" is defined. Then the word "derivatives" disappears altogether.

What reappears in Section 30 under "Regulation of Option Trading" is "Option or privilege, including any put, call, or straddle," none of which is defined either.

Mr. President, I find it a little strange, given the fact that so much of the present insecurity in modern hi-tech finance has been linked to the recent explosion of derivatives trade that there is no attempt to adequately define this term.

Billions have been made and lost in derivatives trading. In the last few years alone, we could count among its victims Frankfurter Metal Gessel Chaff which had to be bailed out from bankruptcy with so many billion deutsche marks, the world-renowned Procter and Gamble, the big Japanese bank, Daiwa, the German insurance company's Goutier, Collinear and Hanavoche Krukver Sikh Sherum and the City of London's oldest merchant bank, Barings.

Of course, the most celebrated case, as I have mentioned previously, is Barings, the oldest of British financial institutions, which went belly-up in February 1995 after Nick Leeson, a 27-year old Englishman, lost several hundred million dollars on the Japanese Nikai Index at the Singapore Stock Exchange.

Given this recent history, it seems to me that there is good reason to consider this fully in the bill. But perhaps, I am allowing myself to be distracted from my original point concerning the definition of terms.

Mr. President, with all due respect, I will not pretend to be better or worse than the average layman when it comes to technical jargon. But it seems to me that many of the terms used in the bill are terms we encounter in the financial pages which we read everyday.

With the sponsor's consent therefore, may we propose a working definition of these terms so that we could get on with the debate without having to have several meanings for any of these terms. If the sponsor is agreeable, I will proceed to propose some of these definitions.

Senator Roco. Could I just say something, Mr. President?

First, Mr. President, although it is very thick, not all the pages really contain amendments, that is why we distributed the matrix. And for those who may not have yet received the matrix, we will make it available again.

The matrix shows where there are departures and when we go through the departures, I think, probably less than 30 percent will be modifications. Most of what is there is under the old law although the English was straightened out in many of them. We tried to simplify the sentences because they were written a long time ago and for some reason, lawyers writing laws before wanted it to be as obtuse as possible. We tried to make it less obtuse.

So we just beg the understanding of the Chamber that although it is thick, that whole bundle of papers does not represent departures from standard practice or norms.

The second one, Mr. President, in the case of derivatives, there are definitions—and we can also suggest definitions. But derivatives are new relative to money because while money was

invented, the first time apparently money was invented, there was also resistance to having anonymity of value as to who was holding the value of money.

In the past, I think, 30 years, there has been an increase in the use of what they call "derivatives." "Derivatives" really mean that it is based on some other value. It is a derived value. We can put definitions but the critical suggestion of the bill is to authorize the SEC to precisely have regulatory powers over these growing commercial activities. We have no problem accepting definitions so long as they do not lose the flexibility of the SEC.

Senator Tatad. My intention, Mr. President, is simply to make it easier for laymen like myself to understand the law once it has been enacted. I have no desire to try to divert the focus or thrust of the bill. I fully support the original thrust of the bill as enunciated by the distinguished sponsor and my effort on the floor, if any, will be directed at helping strengthen that thrust.

Senator Roco. Thank you, Mr. President.

Senator Tatad. For instance, our distinguished colleague has just told us that derivatives are derived values from other values.

Would he then agree that we understand the term to mean as a general term for financial assets that are derived from other financial assets?

For instance, an option to buy a treasury bond. We have a derivative. The bond is the other financial asset from which the option is derived. The options are future markets that are generally known as markets in derivative products or derivatives although in reality, banks do undertake a large volume of over-the-counter derivatives business direct to the consumers in products as swaps and interest rate caps which we shall also define with the sponsor's consent.

Now, if that definition of "derivatives" is acceptable, we will now proceed to the other terms like "option."

Can we understand the term "option" to mean the right to buy or sell a specific number of securities at a specific price within a specified period of time—usually, this is three to six months as practiced in the oldest stock exchange in the world—the London Stock Exchange.

Senator Roco. Mr. President, we have no disagreement with the concepts and even with the way it is expressed. But derivatives, for instance, the definition we are holding right now refers to a derivative instrument that derives its economic value from an underlying asset. The underlying assets can be financial instruments, like bonds; or the underlying assets can be commodities—rice, corn, pork, chicken feet, for all I care.

Senator Tatad. That is a richer definition, and if the sponsor would like to put that in, we will be very happy to see that in the bill.

Senator Roco. Yes, Mr. President. Then at the appropriate time, we will put it in.

Actually, that is my fault. The original draft of the technical committee have all the definitions of the words "put", "call", "straddle", and I was the one who removed it, because I said, we will burden the Chamber, and believe me, it is very highly complicated; even the bankers.

From what I have read, the "derivatives" is an effort of the banking and the financial community to lessen risks, and it is an effort to use another commodity other than money in lessening risks.

So when we define an "option," my problem is, we, lawyers, define something. The moment there is a missing element, I will quarrel with him. It is no longer an option; and rather than grapple with all these definitions, we just thought we will understand it as generally understood in commercial and financial terms today. A statement to that effect may have to be introduced.

But if the Chamber wishes to put the definitions of "put," "call," "straddle," "options," whether commodity-based or financial-instrument based, "spot transactions," "forward transactions," "future transactions," if these will improve the bill, Mr. President, certainly, the committee will put in everything.

Senator Tatad. With that statement, Mr. President, I have no difficulty if the bill will contain a provision which says, "these terms will be understood the way they are used in the trade."

Perhaps, at the appropriate time, during the period of amendments, we could consult with the distinguished sponsor if he would, in fact, wish to see the specific definitions introduced in the bill. If that is a satisfactory arrangement, then perhaps, we could proceed with the other parts.

Senator Roco. We will certainly be happy, Mr. President, with this so that it further clarifies the proposed bill.

What we only want to impart to our colleagues is, when we start going into very fine points, even now with the staff, some of the staff, the technical people around us, are saying that forward and future transactions are the same.

I was saying that from what I have read, forwards and futures are not the same and there are distinctions. The moment we get into that kind of discussion, it is difficult and I can show.

But the critical element for the bill is, having established the parameters of derivatives, option, forwards, whatever, the SEC is authorized and is given enough powers to issue rules and regulations to keep pace of developments in the financial and monetary markets. These will be the critical element.

A statement, as already agreed upon between the distinguished gentleman and the sponsor, Mr. President, also that, as generally understood in the trade, will also be a very great improvement.

Senator Tatad. That would include a distinction between "spot," "forward," "forward and futures."

Senator Roco. Yes. Just for the record, Mr. President, a "spot" is, we pay immediately. "Forward"—If I will agree, one delivers to me corn six months from now but at a price that we agree on now. If it goes up, that is too bad for him. If it goes down, maybe it is good for somebody. So the risk is minimized.

Maybe the best way to understand it is when we "put," it means we want to sell. If we "call," we want to buy. "Put" option is we are selling. "Call," we can buy at a predetermined price. When we combine them, that is a "straddle." We can "put" and "call."

Senator Tatad. On the same underlying security?

Senator Roco. Or even differently because then we get into a "barter arrangement." In the words, I can hedge by using...

Senator Tatad. That could be a "swap" if we use different underline instruments.

Senator Roco. But that is still "straddle." That is why I am trying to avoid precisely these very fine definitions and leaving regulatory flexibility with the SEC. That is the one I am trying to avoid, Mr. President.

Senator Tatad. I think the records will clarify this.

Senator Enrile. Mr. President, with the permission of the two distinguished gentlemen, may I ask a clarificatory question.

The President. Senator Enrile is recognized.

Senator Enrile. Is it not a fact that in the case of a "call," a "put" or a "straddle," there is a consideration for the privilege of a "call," a "put" or a "straddle" over and above the consideration for the actual commodity or stock to be delivered or to be bought or sold?

Senator Roco. That is correct, Mr. President. That is the premium. That is exactly why it is a derivative, because the value

of that right to buy or that right to sell is still derived from what is being sold, whether it is a commodity or a financial paper.

Senator Enrile. In other words, in a "call," we buy the privilege to buy a given number of shares or a commodity within a certain time for a certain price to be delivered in the future.

Senator Roco. That is correct, Mr. President.

Senator Enrile. The reverse is, in a "put," we buy a privilege to sell to a particular person a certain number of shares or a certain quantity of commodity at a certain price during a certain time in the future.

Senator Roco. That is correct, Mr. President.

Senator Enrile. "Straddle" is the combination in one single privilege bought, either to buy or call the commodity. One can either sell or buy for a certain price a certain quantity within a certain time.

Senator Tatad. But in all these three situations, we are talking of a right rather than an obligation.

Senator Roco. Yes, Mr. President. In fact, that is exactly what I am saying.

For instance, I now have two answers from the technical staff and they do not necessarily agree.

While one says that "straddle" must be based on the same commodity as our distinguished friend here also says, another note taken from another authority says it can be different commodities.

Even in Loss, because I went into Loss on Securities—Loss is the author—because I was instigated by Senator Enrile. Even in the current books on Loss on Securities, that is even different. Louie Loss is considered the authority on securities for the lawyers.

Senator Osmeña III. Mr. President.

The President. Senator Osmeña III is recognized.

Senator Osmeña III. With the permission of the distinguished sponsor and the senator interpellating, I believe that it might clarify matters if we put into the *Record* that there are two parties to a "put" and two parties to a "call." One can buy a "put" and sell a "put" and one can also buy a "call" and sell a "call."

I know that complicates matters but there are two parties to this transaction. The right to purchase something means there is a party on the other side who is giving somebody the right to buy.

Senator Tatad. And they are called counterparties.

Senator Osmeña III. That is correct, Mr. President. Just to widen perhaps the definition of insider trading, essentially, would the gentleman agree that anybody who has information that is not known or available to the investing public-at-large is an insider? It can be our driver, it can be our assistant, it can be somebody out in the field who happens to have information that has been made available to the public.

Senator Roco. The fisherman in Palawan in my example is not an insider. He must be related to the...

Senator Osmeña III. Mr. President, essentially, there have been very broad interpretations of this. There have been cases, say, in the New York Stock Exchange wherein a taxi driver overheard somebody tell his cousin about a good stock to buy and purchased shares based on that information.

Senator Roco. That is correct. Even decided cases say that; but what I am saying is, the fisherman who saw the oil gushing is not an insider because he is not related at all to the company.

Senator Osmeña III. That is correct. What I am trying to do, I hope the sponsor would be able to do, is to fine-tune the definition of an insider because it should really be much broader than what was explained earlier.

Thank you, Mr. President.

Senator Roco. Yes, Mr. President. In fact, that is one of the stronger points of the bill. I think on page 48, there is an effort to precisely fine-tune the concept of the insider trader. But it must begin with an established relationship with the company because the fisherman who saw the oil can buy, I mean, for all we care. And somebody who picks up from the fisherman is not an insider. But we agree, and if there are ways of improving still the definitions under Section 32.2 and the others, our committee will certainly be very happy to further improve it.

And now, for my distinguished friend.

Senator Tatad. Mr. President, I shall not wish to repeat what has been asked by those who have preceded me on the scope of securities regulation and the organizational structure of the regulator, but perhaps, we can look at the registration and disclosure process a little closer under Section 5. *Requirement of Registration of Securities*. - No securities, except of a class exempt under Section 6 hereof or unless sold in any transaction exempt under Section 7 hereof, shall be sold or offered for sale or distribution within the Philippines, unless a registration statement registering the securities to be offered has been filed with the commission and is in effect. Likewise, the bill provides for the registration of every stock exchange and every clearing agency.

These provisions, Mr. President, are obviously necessary to maintain utmost transparency in all stock transactions. I wonder, however, whether under these provisions there may still be room for small or new companies that would like to be listed eventually on the stock exchange but which are not yet quite ready to be listed and need to be nursed in a smaller second tier or third market not governed by the same rigor as the stock exchange.

I am referring, Mr. President, to a certain layer of the market which exists in some places and which probably needs to be promoted as a help in developing new and small companies and even the stock exchange itself.

For instance, in London, in 1980 the stock exchange introduced a second tier market known as the unlisted stock market precisely as a sort of nursery for newly established companies. Here, only a two-year profit record was required as a condition for entry as against the three-year profit record needed to be listed on the main market. Here, the shares were not listed but merely quoted, although traded, in exactly the same way as the listed shares. Now the unlisted stock market was run by member firms of the stock exchange, and for most purposes, was treated as being part of the stock exchange. This went on until, I believe, 1985 when it was replaced by the alternative investment market.

The idea is very simple: To provide small and new companies a kind of nursery before these can enter the stock exchange. I wonder if that possibility has been considered by the distinguished author and sponsor of the measure, and whether this is now effectively foreclosed because of the strict registration requirements in the present bill.

Senator Roco. Under the bill, Mr. President, that can be done. The stock exchange itself can open a small or medium board or there can, theoretically, be another SRO or self-regulating organization for the small or medium companies. So the bill allows that possibility, but we leave it to the enterprising people to see whether they should organize.

May I just footnote a little. Because unless otherwise provided in Sections 6 and 7—again here, even we, as law students, have great difficulty.

We will notice, Mr. President, we define securities. So there are interests—tangible—that are represented by certificates or that can be negotiated. So all securities are covered by the law, but some securities are exempt. "Issued by the government," I mean, that stands to reason and "other securities are covered but transactions on that security are exempt"—that is Section 7.

But the rule stands: "Register before you sell; Disclose before you transact."

I am just giving that, Mr. President, as a footnote in the hope that cross references of sections will not confuse the reader of the law.

Senator Tatad. That clarification is deeply appreciated, Mr. President.

Let us now look at the registration process. Schedule A contains a long list of information and documentation required of a person registering a security. Within 45 days after the filing of the registration statement, the commission shall declare the registration statement effective or rejected unless the applicant is allowed to amend the registration statement. The registration statement, however, will be judged effective or not depending on whether or not all the required information and documents have been submitted. It will now depend on the truth or falsity on any part of the statement.

The commission is a simple, passive recipient of information in this regard. It appears to me that it has no duty to check or verify the claims contained in the registration statement. No diligence seems to be required on the part of the SEC, it is all *caveat emptor*.

Does the sponsor feel that this is the most that can be done or should be done by the commission to protect investors' interests? Or is my reading of the provision wrong?

Senator Roco. Are we referring to Section 8? I just have to make sure that we are tangent. Is our good friend reading from Section 8 of the bill?

Senator Tatad. Yes, Mr. President.

Senator Roco. That is page 14?

Senator Tatad. Yes, Mr. President.

Senator Roco. And the specific section that was read was Section 8.5?

Senator Tatad. The particular provision refers to Section 8 but I have to refer to the last part of the bill which lists many things required before registration.

Senator Roco. The question of our good friend, Mr. President, is really a very valid policy issue. The policy question is: Do we want the SEC to make business judgments beyond what is fully disclosed?

The Exchange, in fact, wants to have sole discretion to determine what can be listed and that is probably one of the issues we will have to settle in the Chamber.

The balancing of interest between a regulatory arm and the desire for a free market is solved by full disclosure. If one discloses the following facts and he is caught lying, then he will just be prosecuted. But to make the SEC do more to go beyond that, in my experience, Mr. President, we do not want to repeat what BOI was doing before.

The BOI, when there was an application for an investor in Iligan, in Cagayan de Oro also, someday wanted to come in with US \$30 million, but the BOI said that he might lose money. Now, why in heaven's name should anybody in the government worry about somebody losing money? If he wants to lose money, let him lose money. Cagayan de Oro would have been happy with the US \$30 million.

When government starts making business judgments, we have problems of corruption, we have problems of people being jealous of one's investment when they do not even own it and, therefore, there are no limits as to what they can do. So, the passive nature of accepting reports just gives government the clout.

Someone have told me the following facts. I was assured that these are true and on that basis investors will come in. If I catch someone lying, then I will make him accountable. But when the government starts saying, "No this is not correct. Your multiplication maybe, if they are ascertainable by independent means, by an objective method, then that is all right." But when discretion and business judgment is being made by government, I do not know, Mr. President, as a policy matter whether or not that is better for investors and the businessmen.

Senator Tatad. Mr. President, I am not trying to propose that the government exercise its judgment on the information provided by someone who wants to register a security. I simply am trying to see whether apart from receiving the information there is a process whereby the government would be able, after receiving the information over a period of—I do not know what time—to ascertain the accuracy of the data.

Because I do not see it here, therefore, I am tempted to read the provision to mean that unless there is a complaint filed contesting the veracity of certain information, the SEC will not be in any position to correct erroneous data.

Senator Roco. Mr. President, all the documents submitted, even as shown in Annex A, are under oath and signed by the CEO, the COO and the majority members of the board. All the losses when one files the registration and all the disclosures, the SEC accepts. The SEC cannot guarantee the accuracy of the statements. There is a guarantee of the company or the issuer or the corporation that is seeking to sell whatever value that they want to sell. We can,

of course, authorize and empower the SEC to guarantee the accuracy. But as a policy matter, I would hesitate. First, because of the physical impossibility of ascertaining it.

Senator Tatad. No, I would not propose that either. I see the difficulty in requiring the SEC to guarantee the accuracy. I am simply contemplating a process where the SEC receives the information and the information is accepted at face value. But subsequently, there must be a way of finding out the accuracy of the most important information in every registration statement.

Senator Cayetano. Mr. President, with the permission of the gentleman on the floor.

Senator Roco. May I just answer and then I will yield to our distinguished friend. The SEC accepts the information. If somebody is prejudiced or is misled by wrong information in the filing, then he will have litigable claim against the issuer or whoever made the prospectus. Whoever gave the wrong information, then the SEC can stand in...

Senator Tatad. I am pleased with that information.

The President. Sen. Renato *Compañero* Cayetano is recognized.

Senator Cayetano. With the permission of the gentlemen, Mr. President.

I am also interested in the matter being pursued by the gentleman asking the question. Specifically, Mr. President, suppose a registration has been filed and part of the information in the registration is that the corporation owns, say, 100 hectares of land. The only information there is ownership of the land by the corporation as far as the 100 hectares is concerned. But what was omitted was the fact that there is a pending case precisely contesting the ownership of that piece of land.

The question, Mr. President, is: Is the issuing corporation or the registrant duty bound to disclose this as far as the SEC is concerned?

Senator Tatad. Mr. President.

The President. Senator Tatad is recognized.

Senator Tatad. Before our distinguished sponsor answers the question, for the sake of parliamentary decorum, I believe we should allow our colleagues to intervene a debate on the floor only when that particular colleague is going to provide information. But if he is to interpellate while there is another senator interpellating, I believe that is out of order.

Senator Cayetano. Mr. President, I asked the gentleman precisely because I just wanted to clarify myself with the same issue that the gentleman is asking the principal sponsor.

Senator Roco. No. Since we have yielded, Mr. President, with the permission of my good friend, let me offer the answer.

Even under the present rule on material disclosure, I think suppressing a fact that that is litigation will violate that material disclosure rule because it is material in the sense that it will influence one's judgment one way or the other in assessing the business condition of the issuer.

Senator Cayetano. I would like to thank the good sponsor for the answer and thank you, Senator Tatad.

The President. Senator Tatad may proceed.

Senator Tatad. Mr. President, honestly said, I am pleased with the clarification of the distinguished sponsor.

Can we look at Section 8 again, paragraph 6. This provides that upon effectivity of the registration statement, the issuer shall state in every prospectus that such effectivity shall not be deemed a finding by the commission; that the registration statement is true and accurate on its face; that the commission has not in any way recommended, endorsed or given approval to the security included in the registration statement.

My question, Mr. President, is: If the statement should be made at all, should it not be made by the commission itself rather than by the one filing the statement? It is not sufficient for the issuer to be silent on that point and simply say that the registration statement contains no untrue statement and omits no material fact about the security being offered?

Senator Roco. Yes, on the first stage, Mr. President. But the reason for this, as it is also reflected in the annex is, when one picks it up from the SEC, that public document is not warranted by the SEC to contain facts that are true and accurate. So, the responsibility is purely with the private company, person or entity that has issued the information.

In that way, Mr. President, if there are litigations, then the SEC is free to hear the cases. Should the SEC on its own, by virtue of its visitorial powers, if it discovers that the issuer or the company involved was patently lying, then there are enough powers in the SEC not because of the Securities Act. There are enough powers of the SEC both under the Corporation Law and under PD No. 902-A to discipline that corporation.

What we would welcome from our distinguished friend on the point of amendments—earlier this was also mentioned by our

friend from Cagayan, I have seen the penalties. I think they are lacking—is, we may want to introduce the concept of penalty that is in the nature of the antitrust penalty that when one violates certain provisions, he is punished with double or treble damages. If he made money on insider trading of P1 million, they make him pay P2 million or P3 million. So that, he learns not to take advantage.

If one misrepresents and by this misrepresentation or violation of the material disclosure rule, he made P1 million, he is punished with P3 million. Then people will start feeling value in telling the truth.

This concept of penalty, Mr. President—and it is very free enterprise-oriented, but it is borrowed from the antitrust law—can be introduced later on. It is not yet in the bill. But the committee will probably introduce it and we will welcome our colleagues' help on that matter.

Senator Tatad. In that regard, I would like to join the distinguished gentleman from Cagayan when he introduces the amendment.

Mr. President, under Section 8, paragraph 7, the commission may require the issuer to submit the security for rating by a rating agency accredited by the commission. I do not know if this means *modis* investors services or standard and poor or something lesser.

My question is: Under what circumstances will this happen? This is obviously subject to the discretion of the commission. Would it not be more practical if a rating cannot be made a compulsory requirement for all to specify the conditions and circumstances when such rating shall be required by the commission?

Senator Roco. Yes, I am informed, Mr. President. First, the section applies to debt instruments. I am informed that the CIBI, Credit Information Bureau, Incorporated, in fact, makes those assessments already in the ordinary course today.

Senator Tatad. We are happy to hear that, Mr. President.

Unless I have missed the provision, there seems to be no requirement of a hearing prior to the effectivity of a registration statement. Notice of the filing of the registration statement is published in two newspapers of general circulation once a week for two consecutive weeks or as the commission may direct and the registration statement and all accompanying papers thereto shall be open to inspection at the commission to interested parties. But there is no mention of a hearing as a prerequisite.

It is in Section 9 where due hearing is required prior to the rejection of a registration statement and of the security being

sought to be registered therein or prior to the revocation of the effectivity of a previously approved registration statement and the registration of the security therein.

My question is: What would trigger this hearing? Is it a complaint for someone who has inspected the registration statement and found certain information questionable or something else, Mr. President?

Senator Roco. That is correct, Mr. President. As a rule, there is no hearing because we rely on the presumption of regularity and good faith. So that when people, enterprises, corporations give us information under oath, the presumption is that they are true. But it does happen sometimes intentionally and sometimes *ala* President Clinton technically. It happens that there are misstatements. When that happens and somebody complains, then hearing will be triggered.

Senator Tatad. Mr. President, in requiring the registration of our securities being traded, are companies also required to keep a register of shareholders which the public may inspect freely or upon payment of a fee?

Senator Roco. In the ordinary course, under the corporation law, Mr. President, the corporate secretary will have to keep records of all these transactions. When they become listed, then they either have a transfer office in the corporation itself or they start doing other forms of monitoring. That is where we had a discussion on central depository. Even the Central Depository Corporation is here with us precisely to help us along in the dematerialized transfers, uncertificated scripts.

We are now using words that technically are oxymorons. They are uncertificated but they are scripts. *[Laughter]* But because of the nature of the growing transactions, we have to use adjectives that contradict the noun.

Senator Tatad. That is business English, Mr. President.

Senator Roco. So that the mode of transfer can be by transfer office, by electronic transfers—and that is the one that this proposed bill now is strengthening. Because under the old Securities Act, before really the advent of all the sophistication of the computer and record-keeping through electronic impulses, it was very difficult to determine who was the owner.

That is what the bill, we hope, Mr. President, will solve by empowering the SEC to issue rules and regulations covering those instances.

Senator Tatad. That is satisfactory, Mr. President.

Now, let us go to one critical issue. Among the many malpractices in the business today, there is one involving takeovers.

I recall that sometime in the '80s, I believe in '86, there was the case of this 2.6 billion pound Guinness bid for the whiskey giant distillers. Guinness is a drinks company. It is competing with Argyle, the supermarket group to take over distillers. Since the Guinness' offer was mainly in shares, its chances depended heavily on the Guinness' share price. To surpass Argyle's offer and win the bid, Guinness staged a massive support operation to boost its share price including using its own money to encourage or indemnify those who had bought large blocks of shares in order to boost the price. Of course, this became known only after the takeover, following investigations conducted by the government. Criminal charges were filed against those responsible resulting in some people being sentenced to jail.

My first question is: Does the sponsor feel that the provisions of the present bill adequately deal with problems of this sort?

My second question is: Supposing a similar incident takes place, and it is shown later that the issuer of a security used its own money to encourage others or to reward others to acquire the shares it was selling for the purpose of boosting share price and allowing thereby to surpass a competitor's bids as in the case of Guinness, will the subsequent discovery of the malpractice and the prosecution of those responsible not render void the takeover resulting from the illegal manipulation?

Senator Roco. Just to give a direct answer, Mr. President. On page 44, Chapter VII, there are prohibitions on fraud, manipulation and insider trading, and SEC has sufficient powers to answer those.

But by way of adding to the observations of our good friend, all these thrust and party of mergers, acquisitions or takeovers, are really the bread and butter of lawyers who are engaged in corporate practice.

We have talks, for instance, of PLDT having shark repellents. That's lawyers delight. There are tender offers when one is trying to buy. There are creeping tender offers, and we seek to prohibit that. One cannot have a tender offer and try to achieve control without telling people. That is how the bill is now trying to equalize opportunity.

All these can be merged, and by changing or swapping shares one can make himself impossible to be taken over unless at a great expense. One can have his golden parachute, so that if he is taken over and he is fired, he will be very happy to be fired because he will jump out of the corporation in a golden parachute and may be paid ten times his annual salary.

All these are within the ambit of the proposed bill. Certainly, the SEC has the power to answer for each and every occasion. And that is what we are seeking support of this Chamber.

Senator Tatad. I would like to thank the gentleman for that, Mr. President. Still on potential takeovers.

Under Section 15, it states:

Any person who has acquired directly or indirectly the beneficial ownership of more than 10% of any class of equity security, or in excess of a lesser *per centum* as the Commission may prescribe shall, within ten days, report the acquisition to the Exchange where the security is traded.

The well-understood purpose of this provision is to protect the issuer from hostile takeover.

We understand that for a long time in the leading exchanges, 10 percent was the usual figure for this reportorial requirement. But we read in the business pages that recently, this figure has moved down to 5 percent or 3 percent. May we have the sponsor's thoughts on this?

Senator Roco. In the American Stock Exchange, probably 5 percent or 3 percent even can be really controlling. In our Philippine context, it used to be San Miguel which was controlled by 8 percent, but not anymore. It used to be PAL which was controlled by 20 percent, but certainly, not anymore, not in the past 20, 30 years. I am not familiar with the corporate structure of PLDT.

But lowering the percentage requirement, our committee is certainly not averse to lowering it.

Senator Tatad. At the appropriate time, perhaps it could introduce the appropriate recommendation, Mr. President.

The sponsor earlier mentioned PLDT, and indeed, PLDT has been in the news lately because of the attempt to use the poison pill. The pill is a kind of strip wire which the target company employs to make itself less attractive to the bidder, involving, as reported in the press, the creation of a new class of stocks which become automatically redeemable at a high price and eventually a successful takeover.

Along with the green mail, this is one of the more questionable American techniques against takeovers. But this is apparently not outlawed nor regulated under existing law.

Just to make a very important clarification for the record, does the sponsor feel that there is need for the new Securities Act to include a provision that would regulate or provide the standards for the use of such corporate technique?

Senator Roco. Yes. Again, Mr. President, except for the difficulty of defining the ramifications, our committee is not averse to them.

The present law on fraudulent manipulations, however, can probably cover both green mail and the poison pill or even the shark repellent. But these are just terms really that lawyers enjoy. We can put definitions and we can put also appropriate penalties.

I am not sure though as I have to think about the policy impact of preventing green mail because I would like to clarify: When is it green mail? It is very difficult to distinguish.

If somebody is telling us that we do something legal and we are afraid of that legal act, it can be green mail. Imagine being threatened by a legal act. So it becomes a question of character. Some officers fight; others surrender.

So green mail is different from blackmail. If one is embarrassed being caught with a naked lady and the picture shows and that can so easily be arranged now, that is blackmail. But green mail is just threatening us with more money or more opportunities or threatening to do something legal against us. So it becomes more difficult. We probably counterthreaten that we have better legal cases available to us.

Senator Tatad. May we now look at the matter of "Immunity for Registered Clearing Agency." I think we are on Section 50. Section 50 provides that "no civil liability shall be incurred by a registered clearing agency or any of its directors, officers or employees in respect of anything done, or omitted by it or him in good faith in the performance or purported performance of any function under the proposed law."

My question is: There are the many players in the securities trade as defined in the bill. There are issuer, the dealer, the salesman, the broker, the transfer agent, the underwriter, the promoter, among others. But why is the clearing agency singled out as the beneficiary of this good faith provision? Why are the others left out?

But probably more important than this, Mr. President, is not good faith not usually a defense rather than something upon which to build immunity clause? Is this immunity an absolute necessity?

Senator Roco. Let me be candid, Mr. President. I will ask for time to think about the policy impact of this. The answer really is to lend credibility to the system.

We can see the point of the gentleman. I mean, if we must have immunity, why are we granting immunity particularly to the clearing agency?

I will come back with a better analysis of the answer, maybe tomorrow, Mr. President.

Senator Tatad. We thank the gentleman. We will await that more elaborate answer, Mr. President.

Can we now look at Section 51, *Margin Requirements*—

"For the purpose of preventing the excessive use of credit for the purchase or carrying of securities, the Commission, in accordance with the credit and monetary policies that may be promulgated from time to time by the agency of the Government of the Philippines authorized to set such policies, shall prescribe rules and regulations with respect to the amount of credit that may be extended on any security. xxx"

Some standards are proposed. If my memory serves me right, excessive credit on securities trading with low margins have played an important role in the great slump of 1929 and the ensuing depression. Since then, it became very clear to all that margin credit regulation is all important in maintaining the health and stability of the stock market. An increase in margin credit requirement can curtail a surge in stock trading through margin credit or even a speculative stock market boom through the same credit.

Conversely, a relaxation of the margin requirements during a slump can stimulate recovery in stock market trading on prices. It seems to me that this activity bears a very close relationship to monetary policy especially the issue of money supply, credit conditions and interest rates and should be undertaken not by the SEC but by the BSP.

We are informed that in the US, under the Margin Requirements Act, margin credit requirements for securities trading are regulated by the FED or the Federal Reserve Board. This was put in place in 1934 after the great crash. In the early 80s, there were proposals to terminate FED's supervision over margin credit in securities trading, but again, after the October 1987 stock market crash, this initiative fizzled out.

My question then is: Is the sponsor prepared to consider placing this particular supervisory duty in the hands of BSP rather than to the commission?

Senator Roco. In fact, the gentleman is correct. Section 51, if we look at the matrix, refers to the agency of the government of the Philippines authorized to set such policies. It used to be the Monetary Board. I do not know why they changed it. And then in the subsequent paragraphs, we refer to the agency of the government which sets credit and monetary policies.

And so, it might be clearer if we refer to the *Bangko Sentral ng Pilipinas* and at the appropriate time, we can do so.

The old law, however, put an affirmative vote of five of the Monetary Board and the committee did not think that imposing the

vote requirements on this matter through this law is correct. But we can leave it to the rules of the BSP on how it will issue the regulatory provisions for margin and credit transactions.

Senator Tatad. Provided the instructions are clear and there is no room for misunderstanding the mandate of the BSP.

Now, just one general question on internal controls. We have seen the Barings fiasco. I do not know if we can cite the latest long-term capital management fiasco as a similar example.

In the Barings fiasco, we had this 27-year old Englishman Leeson who managed to lose several hundred million US dollars on the Nikkel Index of the Singapore Stock Exchange. In the long-term capital hedge fund, we have a group founded by very reputable people, John Merriweather, the legendary former head of Solomon Brothers Bond Arbitrage Unit, and two Nobel prize economists, Robert C. Merton and Myron S. Scholes who shared the 1997 Nobel prize for economics for their contributions, of all things, to the understanding of financial risk. Still we had this fiasco and the FED had to come in with a workout of US\$3.65 billion just to keep it afloat.

It looks like the two cases are really different from each other in the sense that, according to the latest reports on long-term capital, the situation was caused really by a sudden aversion to risk of so many investors which went beyond the calculations of long-term capital.

But in the case of Barings, that is a case of just so much money of balance sheet and just because we have this guy, Leeson, unsupervised.

So, I am now looking at internal controls, how to strengthen those controls, and do we have this? Is there anything in the bill sufficient to bring about strengthening of internal controls in order to guard against a possible repetition of something like Barings?

Senator Roco. The bill has several provisions, Mr. President, but it should not be taken in isolation. It should be taken also together with the BSP powers to have prudential supervision over banks and similar institutions.

Under the self-regulation of the stock exchange or the SRO, there are also disciplinary rules that must be followed. The SEC itself can issue rules and regulations under the present bill.

The case of Leeson, however, Mr. President, and the other cases are really the result of greed.

When the big bosses of financial institutions are very happy with hidden profit, then the subordinates give them profit even if it is a lie, and even if the profit is being siphoned off.

The problem with illegality, Mr. President, is that it becomes difficult to catch through legal means. Illegality by its definition is outside the purview of the law. So, there is a flaw, there is a human character flaw that comes in the case of those things. Even under the Federal Reserve Act, the difficulties met by so many banks in the US—all of them could have been caught. The present difficulties of our current banks, all of them could have been caught under the prudential supervision of the BSP. But man is man, and those who are greedy and clever to hide their greediness sometimes bring grave repercussions to the financial institutions.

Senator Tatad. This is not to dispute the statement.

In principle, banks should be more tightly supervised than other financial institutions. But we have entered the period of deregulation and because of certain developments in the recent past, so many authors have issued a call for prudential reregulation.

But as I said, in principle, the banks should be more tightly supervised than the securities firms. That is why I am trying to find out how much further can we improve the present regime.

Senator Roco. May we offer additional information from the staff, Mr. President.

There is a note passed to me that the financial institutions mentioned were in fact engaged in derivatives, and so it is more difficult to monitor.

But in late 1995, the BSP issued Circular No. 102 which spelled out the conditions necessary for banks to obtain licenses for derivatives and these conditions included minimum capital, hardware, software, risk management and similar concerns, and local and foreign banks applied for these licenses.

As of the middle of this year, 11 banks had authorization to conduct the expanded derivative activities and one had a regular derivatives license. Please do not ask me the distinction.

Many other banks have also submitted applications for such licenses. From what I understand from bankers and from readings, this is the new way by which the bankers try to minimize or manage their risk by using derivatives and the values attached to the derivatives.

The BSP today collects monthly data on derivative activities of banks and their FCDU affiliates. This includes information on the type of derivative, whether the purpose is trading, hedging or what have you, to ascertain the market value and the gain or loss of the transactions.

Total derivatives outstanding in June 1998 totalled about US\$10 billion with virtually all attributable to currency forwards and swaps. These volumes are in the national pricing in U.S. dollars.

The main types of derivatives reported by regular units of our Philippine banks or foreign exchange forwards and currency swaps are about US\$8 billion, with forward contract accounting for about five-eighths of the total. There are no currency options reported as of today.

Senator Tatad. Mr. President, perhaps we can get a copy of that fact sheet.

Senator Roco. I will give this to the gentleman because it is longer and it is really useful to have. The data given by the PIDS came from Dr. Lamberte. This will be a useful reference.

Senator Tatad. On final question before I suspend, Mr. President.

Senator Roco. Yes, Mr. President.

Senator Tatad. Just looking at the penalties, Mr. President, there seems to be an obvious bias in favor of civil liabilities involving fines. We have seen and are likely to see offenses that are downright criminal.

My question is: When do we stop talking of simply collecting fines and begin sending people to jail?

Senator Roco. Mr. President, when we mentioned earlier—in fact we proposed it as a possible penalty—of the double or treble damages in commercial transactions, what happens is when we also have jail terms, the civil liability cannot be determined until the criminal is first ruled on. So for a defense lawyer, it is great. Since the burden of proof for criminal cases is proof beyond reasonable doubt, a good lawyer or even a bad lawyer can delay proceedings

for long. That is why I see some merit in leaving it only to civil liabilities.

What I myself cannot accept in our own draft is that the civil liability tends to be small that is why we go into double or treble damages. Maybe, since this is done out of greed, the prospect of returning three times of what one gained will be sufficient disincentive for some businessmen.

Senator Tatad. Mr. President, I would like to thank the distinguished sponsor for his patience and his time.

Thank you very much, Mr. President.

Senator Roco. Thank you. The pleasure was ours, Mr. President.

The President. The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF S. NO. 1220

Senator Drilon. Mr. President, there are still a number of our colleagues who made reservations to interpellate on this measure. May we therefore move to suspend its consideration.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

ADJOURNMENT OF SESSION

Senator Drilon. Mr. President, since there are no further business in the agenda, I move to adjourn today's session until three o'clock tomorrow afternoon.

The President. Is there any objection? [*Silence*] There being none, the session is adjourned until three o'clock tomorrow afternoon, October 20, 1998.

It was 6:30 p.m.

it, but sometimes lawyers are useful. But since we are dictated when we are counsels to come up with all legal remedies, all these questions I am saying now...

In fact, anybody who reads the transcript will cite Senator Enrile, Senator Osmeña, Senator Roco, and will use it for the defense. They will not use it for the prosecution. Who cares? We are the ones prosecuting. And this is my concern, Mr. President. We all share the view.

My questions therefore, Mr. President, can be repeated as regards Executive Order Nos. 14, 14-A, and the problem is the same. I am sorry. Up to now, I really have no concrete legal solution to offer the sponsor. I am not trying to make it difficult but I am really grappling with the legal issue.

We do not want to approve this bill and end up making it easy for the defense. That is the sole intention of my questions.

I am raising this to the attention of the committee because it has occurred to me. And if it occurs to me—and I am not even in active practice right now—we can imagine what active practitioners will make out of the bill. That is all.

Senator Pimentel. That's why, Mr. President, our proposal is to adopt the executive orders that were mentioned but already revised for purposes of the law. Meaning to say, we adopt those that can be legitimately incorporated in the new law constitutionally and probably spell out which parts of Executive Order Nos. 1, 2, 14 and 14-A should be incorporated in the new bill.

Senator Roco. May I just have a small suggestion, Mr. President. Maybe the staff can look into it.

There is transitory provision in some laws where transfer of jurisdiction occurred. In the family courts, for instance, the Supreme Court, I think, was mandated to define the rules so that nobody loses the case simply because of the transfer of jurisdiction. There should be others.

We have a very cursory research. But if the staff of our distinguished committee can look into it further, and also ask even the Office of the Special Prosecutor since it will defend this in court, then maybe we can help establish a legal theory that will not just be easily assailed by the defendants when we finally approve the bill.

Senator Pimentel. In fact, let me share this information with the gentleman that indeed, the staff of the committee has been instructed to provide a transitory provision along the line that the gentleman is now articulating.

Senator Roco. Thank you very much, Mr. President. I know I taxed the patience of my good friend. I hope, however, that when we approve this bill, we do not necessarily allow all the defendants to go scot-free.

Senator Pimentel. It is the intention of the bill to do that, Mr. President.

The President. The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF S. NO. 1254

Senator Sotto. Mr. President, in the meantime, I move that we suspend consideration of Senate Bill No. 1254.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

BILL ON SECOND READING
S. No. 1220—Securities Act of 1998
(Continuation)

Senator Sotto. Mr. President, I move that we resume consideration of Senate Bill No. 1220 as reported out under Committee Report No. 6.

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of Senate Bill No. 1220 is now in order.

Senator Sotto. Mr. President, we are in the period of interpellations.

The Minority Leader, Senator Guingona, has expressed his intention or desire to interpellate one of the sponsors, Senator Osmeña III.

SUSPENSION OF SESSION

In the meantime, may I ask for a suspension of the session.

The President. Is there any objection? *[Silence]* There being none, the session is suspended for one minute.

It was 4:22 p.m.

RESUMPTION OF SESSION

At 4:55 p.m., the session was resumed.

The President. The session is resumed.

Senator Drilon. Mr. President.

The President. The Majority Leader is recognized.

Senator Drilon. Mr. President, Senate Bill No. 1220 is still in the period of interpellations but all the senators have informed this representation that they no longer have any questions. If there are other questions that may arise, they can be taken up during the period of amendments.

That being the case, I move that we close the period of interpellations on Senate Bill No. 1220. This is the Securities Act.

The President. There is a motion to close the period of interpellations on Senate Bill No. 1220 under Committee Report No. 6. Is there any objection? [*Silence*] There being none, the motion is approved.

SUSPENSION OF CONSIDERATION OF S. NO. 1220

Senator Drilon. Mr. President, we move to suspend consideration of Senate Bill No. 1220.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

Senator Drilon. Mr. President, there will be committee amendments proposed for the next session.

SUSPENSION OF SESSION

In the meantime, may I move for the suspension of the session for one minute.

The President. The session is suspended for one minute, if there is no objection. [*There was none.*]

It was 4:57 p.m.

RESUMPTION OF SESSION

At 5:06 p.m., the session was resumed.

The President. The session is resumed.

CONSIDERATION OF P. S. RES. NO. 236 (Creating the Select Oversight Committee on Intelligence Funds, Programs and Activities)

Senator Drilon. Mr. President, I move that we consider Proposed Senate Resolution No. 236 as reported out by the Committee on Rules.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

Consideration of Proposed Senate Resolution No. 236 is now in order. With the permission of the Body, the Secretary will read only the title of the resolution without prejudice to inserting in the *Record* the whole text thereof.

The Secretary. Proposed Senate Resolution No. 236, entitled

RESOLUTION CREATING A SELECT OVERSIGHT COMMITTEE ON INTELLIGENCE FUNDS, PROGRAMS AND ACTIVITIES

WHEREAS, only about one percent (1%) of the total national budget is identified as intelligence funds or programmed for intelligence programs or activities every year;

WHEREAS, this percentage, however, does not reflect the true amount of funds actually utilized for intelligence programs and activities of various agencies or offices of the government;

WHEREAS, funds used for intelligence activities are not subject to the stringent regular auditing requirements of the Commission on Audit, thus, opening the floodgates to abuse in the utilization of intelligence funds;

WHEREAS, during the Tenth Congress, a Select Oversight Committee on Intelligence Funds, Programs, and Activities was organized on 12 August 1997;

WHEREAS, there is a need to reconstitute said committee in the Eleventh Congress;

WHEREAS, the recreation of this Select Committee is made imperative by the need to establish controls over the use, disbursement and expenditure of intelligence funds granted to several government agencies;

WHEREAS, this Committee shall have jurisdiction over all matters relating to the intelligence funds granted to all government agencies, including the monitoring and overseeing of how such funds are used, disbursed or expended;

WHEREAS, Section 14, Rule X of the *Rules of the Senate* provides that "whenever necessary, special committees shall be organized, the membership and jurisdiction of which shall be determined by the Senate President." Now, therefore, be it

the message of the Gospel or civilization, while seeing nothing wrong in legalizing fetal mutilation, or the murder and destruction of unborn children. While condemning some repressive governments for keeping political prisoners, they are not incapable of citing the same governments as models of development for requiring their women to secure an official permit before they could bear children.

In a word, Mr. President, there are many legitimate human rights violations that cry to the heavens for intervention. We cannot look the other way, simply because the powerful and the strong want us to look the other way, and then proceed to label as human rights issues, political conflicts or criminal cases in certain sovereign jurisdictions where we have absolutely no cause or reason to intervene.

Now that the President has decided to be completely officially correct on the Anwar affair, we should exert every effort to repair the breach, work on confidence-building measures, and move forward in our relations with Kuala Lumpur. As the global economy lurches on in its perilous course, let us learn from each other, and benefit from each other's experience.

In the economy, Malaysia has chosen a course different from our own. Let us wish her well, and pray that she succeed in what she is doing, so that her success could eventually become also our own. Because her new policies have triggered some alarm across the global economic system, let us help protect Malaysia from being savaged by those who are shocked, if not offended, by those policies, and let us resist the effort by some to use our policy differences in order to press us into the service of those who wish to rubbish our neighbor. This is the best way we can show our solidarity with Malaysia at this time. This is the best way for our relationship to move on.

Thank you very much, Mr. President.

**MOTION OF SENATOR DRILON
(Referral of Senator Tatad's Privilege Speech to
Foreign Affairs Committee)**

Senator Drilon. Mr. President, I move to refer the privilege speech of Senator Tatad to the Committee on Foreign Affairs.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

**MOTION OF SENATOR DRILON
(Reconsideration of S. No. 1220)**

Senator Drilon. Mr. President, in yesterday's session, this Body approved the termination of the period of interpellations on Senate Bill No. 1220 under Committee Report No. 8. However, we

have received a request from one of our colleagues to reconsider the termination of the period of interpellations.

I therefore move that we reconsider the ruling of this Chamber to close the period of interpellations on Senate Bill No. 1220 under Committee Report No. 8.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

**BILL ON SECOND READING
S. No. 1220—The Securities Act of 1998
(Continuation)**

Senator Drilon. Mr. President, I move that we resume consideration of Senate Bill No. 1220 as reported out under Committee Report No. 8.

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of Senate Bill No. 1220 is now in order.

Senator Drilon. Mr. President, we are still in the period of interpellations. May I ask the Chair to recognize the principal sponsor, Sen. Raul S. Roco.

The President. Senator Roco is recognized for the period of interpellations.

Senator Drilon. May I ask the Chair to also recognize Senator Miriam Defensor Santiago.

The President. Senator Santiago is recognized for interpellation.

Senator Santiago. Thank you, Mr. President.

Mr. President, will the gentleman yield?

Senator Roco. Yes, of course, with some fear, Mr. President.

Senator Santiago. I will refer to the sections of the bill.

The first question will deal with Section 3.8 which is on page 3, lines 10 to 12. This section defines an underwriter as any person who is licensed to guarantee the distribution and sale of securities of any kind by another company.

I would be happy to be corrected. But is it not the case that an underwriter is someone who is firmly committed to sell all the issue which he bought? Meaning, he is bound by a firm commitment, not one who merely guarantees to distribute it.

Senator Roco. Mr. President, the relationship of underwriter, issuer and other parties is basically guided by contracts. There are underwriters, as described by the lady senator, which may, in fact, be committed to buy or purchase the underlying values discussed. So that is one specie of an underwriter.

There are underwriters with a firm-commitment basis and there are underwriters with a best-effort basis.

Senator Santiago. I will bear those remarks in mind when we reach the amendment stage. At this stage I will simply raise the points.

I will now go to Section 6 (D) which is found on page 11, lines 7 to 11. This section enumerates the government agencies which may issue securities which are exempt from registration requirements.

I would like to know why are agencies like the SSS, GSIS, DBP, and the Landbank not included in the enumeration? Would it not be better to cite only the Bangko Sentral ng Pilipinas and the Insurance Commission and then state that other government financial institutions may, subject to the prior approval of the Securities and Exchange Commission, also issue exempt securities?

Senator Roco. Mr. President, the reason is that in the case of the the GSIS and the SSS, they are covered by exempt securities. So they are not covered by the other requirements in the bill as proposed.

I am being coaxed into calling attention to 6.1 (A) in the previous page, page 10, which says that among the exempt securities, any security issued or guaranteed by the Development Bank 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 shall be considered an exempt security. That is the reason GSIS and SSS are not mentioned there.

Senator Santiago. In the case, may I please request an answer to the second part of the question: Would it not be better to cite only the Bangko Sentral and the Insurance Commission and then state that other GFIs may, subject to the prior approval of the SEC, also issue exempt securities?

Senator Roco. Our committee will certainly consider the policy defects of this. There have been agreements in the financial sector when the bill was being prepared over the years and it has resulted in this kind of distribution. But certainly, we are open to considering or restricting further just to the BSP and to the Insurance Commission.

But in the Housing and Land Use Regulatory Board, for instance, it will create securitization opportunities. And when we securitize the land, Mr. President, as I know some of the agencies are trying to undertake and some of the land companies are trying to implement, there may be need for an agency with primary competence and jurisdiction on land registration and similar land-based issues.

So there are good arguments for the Housing and Land Use Regulatory Board but they are not cast in stone. The same thing can be said of the BIR. I am not sure what kind of transactions may be covered by the BIR. So we can look closer at this one during the period of amendments.

Senator Santiago. I would like to thank the gentleman, Mr. President.

I will go to my next question which will deal with Section 7 (G), page 12, lines 26 to 29.

Senator Roco. May I just add, Mr. President. When I was saying that I am not sure what the Bureau of Internal Revenue may want to cover, the staff is whispering to me that the pension funds are specifically covered by the BIR. Therefore, that might remain with the BIR.

Now we are on...

Senator Santiago. Section 7 (G), page 12, lines 26 to 29. This provision sets the par value of the securities surrendered in such exchange as the price at which the securities issued and delivered are sold.

My question is: Is resort to using the par value necessary when pricing the convertible security at the time of conversion? Would that not only present arbitrage opportunities for market players, especially if in their determination the conversion price is above or below the par value of the security?

I am using the word "arbitrage" in the understanding that it refers to the open, simultaneous purchase and sale of the same or equivalent security in order to profit from price discrepancies.

Senator Roco. Yes, this is one of the series of exempt transactions. The arbitrage possibility, Mr. President, in fact, is one of the areas that will have to be regulated by the SEC in the exercise of its powers under this bill.

In this particular case, yes, I can see how an arbitrage may occur or an opportunity for arbitrage may occur. Again, the committee is open to suggestion in this regard.

Senator Santiago. Thank you, Mr. President. I will move on to Section 16.1 (F), page 27, line 30 and then to page 28, line 9.

Senator Roco. All the way to line 9 of page 28?

Senator Santiago. Yes, please. This section on Civil Liabilities provides that a person acquiring a security may recover damages from the underwriter. It also provides that if the person acquired the security after the issuer has made its income statement generally available, then he may recover only upon proof that he acquired the security relying on an untrue entry in the registration statement.

It is common practice for research analysts and their brokerages to furnish information upon which an investment decision may be made. However, they cover their potential liabilities with disclaimers. These disclaimers state that the information contained and used in the analysis is derived from sources deemed to be reliable. They do not vouch for accuracy but will only state that the brokerage house will not be responsible for actual losses incurred since the report is only informational and is not a solicitation to invest.

I would like to know: How does the bill address this problem?

Senator Roco. I am not sure if we are referring to the same thing, Mr. President, but I think some of the books would call a prospectus with weasel words or with escape clauses as a red herring prospectus.

In the instance being cited by our distinguished colleague, such weasel-worded prospectus or offers can, in fact, be regulated and monitored by the SEC. When a registration, however, is done, the SEC, as shown in the Annex "A," I think, of this bill, will not guarantee the truth of the statements. They will really have to be the responsibility of the issuer or the company printing or offering to the public the prospectus or the opportunities for investment.

Senator Santiago. I am enlightened. Moving on now to Section 20.2, page 33, lines 25 to 33.

Senator Roco. Yes, Mr. President.

Senator Santiago. This section provides that actual damage is determined by the difference between the price at which such investor purchased or sold the security and the market value with such security would have had at the time of the purchase and sale if the information known to such insider had been publicly disseminated and absorbed by the market prior to such time.

My question is: How would the price differential be determined, considering that the starting and end points will not be easy to determine? Or, in other words, how can we prevent arbitrariness,

assuming that a stock price is manipulated by a group of brokers? Would it not entail a drawn-out process which takes months to implement and which involves not just a few fluctuations in prices, but a series of almost unpredictable ups and downs to maximize trading opportunities.

Senator Roco. Yes, Mr. President.

I appreciate the difficulty pointed out by the lady senator. May we just call attention to the fact that the committee will be proposing amendments to this particular section, and we will welcome also suggestions in that regard.

The basic idea though in the proposed amendments has already been mentioned in the various interpellations. The committee will propose and if approved by this Body, will therefore modify this bill so that instead of this kind of computation, we go on treble or double damages in the model of antitrust damage provisions.

I do not have the specific formula, but it becomes then a question of accounting entries, and the accountants can just ascertain the amounts involved and the courts or the SEC will be granted the power and the authority to impose double or treble damages.

So, we will ask for the forbearance of our distinguished senator. Maybe we can discuss this again and revisit this again at the point of amendments when we modify the formula.

Senator Santiago. I am interested in the mention of double or treble damages in connection with my next question. I am referring to Section 20.2, page 33, line 32, and then page 34 up to line 2.

This section carries a proviso that the penalty for insider trading shall be no greater than the gain from such activities. But my concern is, if that were the case, then there would be no loss to the violator other than the profit he has acquired against the law.

So I have to raise the question: Should the actual damage not be equal to the profit gain plus a punitive amount as may be set by the SEC or other relevant authority?

Senator Roco. That is correct, Mr. President. In fact, the proposed amendment will make it even more punitive so that not only the actual damages as defined by the Civil Code in terms of opportunity loss, not only the actual values that were accumulated by the insider trader, but those actual damages plus interest, et cetera shall not be less than three times the difference between the price at which such investor purchased or sold the security and the market value with which security would have had at the time of the purchase.

To put it simply, Mr. President—and this is a notion we worked on last night with the technical staff after the close of interpellations—it is an effort to balance, to frighten the greedy with the possibility of losing more money for their foolishness.

If, for instance, an insider trades and makes P1 million, then we can see the possibility under the proposed alteration of fines and penalties, that he may suffer a potential loss if he loses the case of P3 million. Whether it is given to the party-litigant or forfeited in favor of government, we leave it to the determination of the courts. But that is the nature of the penalty provisions the committee has been working on.

Senator Santiago. I consider that good news.

So moving on, I will refer to Section 25.5, page 40, line 27 until page 41 up to line 2.

Senator Roco. Yes, Mr. President.

Senator Santiago. This section provides that "No solicitation of a proxy, consent or authorization shall be made which is materially false or misleading, or which fails to disclose material facts necessary to correct any statement in an earlier communication made with respect to the solicitation of a proxy, consent or authorization which has become false or misleading."

My question is: What becomes of the proxy or authorization issued? Should we not specify that the proxy which is obtained in a false and misleading manner should be considered null and void?

Senator Roco. In the ordinary course of a proxy contest, Mr. President, the corporate secretary will have the initial jurisdiction and power to rule on such faulty or defective proxy statements. Failure in that regard will, therefore, give the party questioning the proxy the ability to appeal to the Securities and Exchange Commission.

From what I have seen, Mr. President, what does happen in a proxy contest is that the SEC team monitoring the proxies themselves will then be able to give specific rulings before the actual vote is taken.

So the question of whether it should be null and void still has to be ruled on by the corporate secretary and if an appropriate appeal is raised by the team designated by the SEC. If we wish to make it automatic, it may be difficult because there would be a deprivation of property rights. And so there must be some kind of a hearing either with the corporate secretary or with the SEC.

Senator Santiago. I would not have any more to raise except that the exercise of the powers by the SEC should hopefully be made before the voting.

Senator Roco. Yes. That is correct, Mr. President.

In the actual instances I am familiar with, the SEC team designated, if there is a proxy contest, makes rulings, otherwise the election of the board of directors cannot push through when it cannot ascertain who can vote. That is what happens from what I have seen, Mr. President.

Senator Santiago. I will now proceed to Section 42.3 (a). This is found on page 67, lines 5 to 8.

Senator Roco. Yes, Mr. President. We do appreciate the effort given by our colleague in specifying the sections and the pages. It certainly makes the sponsor and the staff happy that somebody went through all the sections.

Senator Santiago. This section provides that each self-regulatory organization or SRO shall submit to the SEC for prior approval—I would like to emphasize *prior approval*—any proposed rule or amendment of the proposed amendment.

Under this section, the SRO has to wait for 60 days or the commission's approval before it can implement rules. The SRO is allowed to immediately implement rules only in the event of an emergency requiring action for the protection of investors. It is in the nature of a self-regulatory organization that interference by the SEC should be minimal. If so, should it not be the general rule that the SRO should be allowed to immediately implement rules? The SEC could act if such rules violate any provisions of the Act or any guidelines which it has promulgated.

Senator Roco. Yes, Mr. President. The committee is not averse to the idea and the suggestion. But these series of procedures have been the product of extensive discussions between the PSE, the brokers, all the participants in the capital market, and the SEC. In fact, one of the ticklish points until last night was precisely the overlap of powers between the SRO—since we want self-regulation—and the governmental powers and duties of the SEC to ensure that fairness is guaranteed.

So that is our only reservation. This was crafted with the consent of so many people. While we can modify them, it behooves us to consider carefully departures so that no party who was otherwise consulted will complain later on. That is our suggestion.

We have no violent objection to the suggestion. But to the extent that we may stick to the agreements of the regulated and the regulator, it sorts of help the legislative process.

Senator Santiago. There seems to be benefit in relying on the collective wisdom of their resource panel. I will proceed to Section 42.4 which is on page 67, lines 31 to 32. But I would like to take it up in conjunction with Section 3.13.

Senator Roco. Yes, Mr. President.

Senator Santiago. Section 3.13 defines a self-regulatory organization as any securities exchange, clearing or depository agency or other securities-related organization or association that has the capacity to comply with and to enforce compliance by its members, with the provisions of this Act or rules and regulations promulgated thereunder and the rules of the organization, including the imposition of sanction for violation thereof.

However, Section 42.4 page 67, lines 31 to 32, still on self-regulatory organizations, provides that the commission may, without limitation, take such action in respect of certain specified matters. This section gives the commission very broad powers of regulation.

Does this section not violate the very idea of a self-regulatory organization?

Senator Roco. Absolutely, Mr. President. We are glad that our colleague has also caught this. As of last night, we deleted the term "without limitation." In fact, there was some refinement as regards subsection (C) on the listing or striking from the listing of any security.

The committee even considered deleting the whole statement and the qualifications as it would not have altered the situation. On the other hand, it was felt that by enumerating, it might give clarity later on for the regulators and the SRO that is being regulated. But the term "without limitation" certainly will be deleted with the consent of the Chamber.

Senator Santiago. That is eminently acceptable.

My last question will refer to Section 42.5. This is found on page 68, lines 23 to 26 and goes on to page 69, lines 5 to 23 of the bill. This section provides that the commission is authorized, by order, if it is necessary in the public interest, for the protection of investors, after due notice and hearing:

(B) To suspend for a period not exceeding twelve months or to expel any member who is found to have willfully violated any provision of this Act, any other laws administered by the Commission; and

(C) To remove from office or censure any officer or director of any self-regulatory organization if it finds that such officer or director has willfully violated any provision of this Act, any other law administered by the Commission, the rules or regulations thereunder, or the rules of such self-regulatory organization, willfully abused his authority, or without reasonable justification or excuse has failed to enforce compliance with such provisions.

Please allow me to emphasize in paragraph (B) the phrases: "To suspend for a period not exceeding twelve months or to expel any member." And in paragraph (C), the phrase "to remove from office or censure any officer or director."

These sections (B) and (C) refer to internal decision-making by the Philippine Stock Exchange. My question is: Should these powers not be reserved for the PSE and not the SEC?

Senator Roco. Again, Mr. President, there was an effort to balance these powers. One of the assumptions, in fact, of the proposed bill is that the stock exchange itself has been fairly generous with opportunities for some members in the stock exchange at the expense of the investing public. So there is some suspicion as regards some activities of the stock exchange.

Again, in fairness to the lady senator, because it is a valid point, the crafting of the balance between the SRO and the SEC was discussed by those two. And to the extent that they can now live with this kind of specific procedures, we thought that was the better part of prudence to therefore sustain their own agreements. In a way, it was an exercise of self-regulation.

Senator Santiago. I shall seriously think over the comments in preparation for the amendment stage; and I shall bring up during the amendment stage the points on which there has been mutual agreement.

That was my last question, and I would like to thank the gentleman for responding to them.

Senator Roco. Thank you, Mr. President. We would like to thank the lady senator for the effort of going through the sections. It is a tedious bill. I do not envy any of our colleagues who decides to seriously read every line of this bill. But we congratulate those who do.

Thank you, Mr. President.

Senator Drilon. Mr. President, may I ask the Chair to recognize Sen. John H. R. Osmeña for some questions

The President. Sen. John H. Osmeña is recognized.

Senator J. Osmeña. Thank you, Mr. President.

Will the distinguished sponsor yield for some questions?

Senator Roco. Certainly, Mr. President, to the chairman of the Committee on Finance.

Senator J. Osmeña. Is that the only reason?

Senator Roco. We have never argued with the chairman of the Finance Committee, Mr. President.

Senator J. Osmeña. Thank you, Mr. President.

I am a little confused; I am not schooled in law. On page 3, on the definition—this question was really triggered by the questions of Senator Santiago—in 3.8, the gentleman defined an underwriter as "any person who is licensed to guarantee the distribution and sale of securities of any kind by another company," and the gentleman answered her, but I did not quite hear the answer.

Senator Roco. The question that was given, as I remember, was: Is it not a fact that an underwriter should, in fact, totally absorb whatever may not be sold in the undertaking? If I am the underwriter and I am with full guarantees, what one was unable to sell, I absorb. In other words, I guarantee the purchase of whatever securities.

Senator J. Osmeña. Does the underwriter guarantee?

Senator Roco. Yes, Mr. President. There are two types. The underwriter can be, with a firm commitment that the securities offered will be bought. And if nobody else buys, the underwriter—and we have seen it recently in a transaction—therefore absorbs the shares and he tries to sell in the ordinary course of the secondary market.

But there are underwriters who will only undertake best efforts. One has an offer, I underwrite it. I give him the money. But if some are not picked up, then my best efforts, so long as I can show best efforts. To that extent, he suffers the risk of the unpurchased securities.

Senator J. Osmeña. Therefore, that is the reason the underwriter must be licensed because he guarantees. He must be licensed so that there is a regulatory agency that will measure or determine his capability to guarantee.

Senator Roco. Yes. Just to be very candid, Mr. President. There can be an underwriting agreement even with somebody who is not licensed. There are two of us. He offers securities and I underwrite; but just between the two of us, so long as the SEC does not get wind of it and nobody in the public suffers, then it is fine.

But the reason we want the license is precisely to give the SEC the ability to monitor the activities. There is also an Investment Houses Law that requires them before undertaking such activities to be licensed.

Senator J. Osmeña. Therefore, Mr. President, does that explain the reason there is no section in this bill which defines the responsibilities of underwriters?

We have a section here which deals with dealers, brokers, salesmen and associated persons. I was going over the entire bill, I was looking for that section on underwriters and I could not find any. So where and what law governs the conduct of this business?

Senator Roco. At the beginning of the interpellations, Mr. President, the Minority Leader also asked about the Investment Company Act. But in this particular case, the law is the Investment Houses Law. I understand, if my memory serves me right, there is also a bill that should have been probably referred to the Committee on Banks, Financial Institutions and Currencies as well, that seeks to modify the Investment Houses Law. There are rules governing underwriters and underwriting. And these activities are therefore covered by the law.

Senator J. Osmeña. It is not a law yet; it is a proposal.

Senator Roco. No, it is a law, but there is a pending bill to also modify it.

Senator J. Osmeña. Can the staff give us the number of the ... Is it a Commonwealth Act? A Republic Act?

SUSPENSION OF SESSION

Senator Roco. Mr. President, may we ask for a one-minute suspension of the session?

The President. The session is suspended for one minute, if there is no objection. [*There was none.*]

It was 6:16 p.m.

RESUMPTION OF SESSION

At 6:16 p.m., the session was resumed.

The President. The session is resumed. Senator Roco is recognized.

Senator Roco. The basic law is contained in Presidential Decree No. 129. But there had been modifications, I am told, covered by RA No. 3866. But I will have this checked, just as a legal proposition, and give it to our distinguished friend.

Senator J. Osmeña. That is why I stood up, Mr. President, because I was curious and I was disturbed. Conceivably, we are to understand that dealer and broker are not synonymous with underwriter.

Senator Roco. No, Mr. President, in fact, the dealer buys and sells for himself; and the broker buys and sells for others.

In the bill, one of the major departures from the present law is that we will insist that a dealer cannot also be a broker. Because when one is buying for himself and I order from him, he might get it low and I will always end up getting it high. Although under the rules of the SEC, it may be difficult. They have rules that can catch this. But in the law, we have proposed. And although there was initial resistance on the part of some of our brokers and dealers, they have yielded that now they will consent. Dealers cannot be brokers. Because we will never know when they are passing on the laws or keeping the game for themselves.

Senator J. Osmeña. Mr. President, going back to the underwriter. The underwriter guarantees the purchase of a certain amount of shares that has been offered to the public. Is that not the correct role of the underwriter?

Senator Roco. When done with a firm commitment, the underwriter ends up absorbing. It will be...

Senator J. Osmeña. Because the definition says, underwriter means any person who is licensed to guarantee the distribution and sale of these securities.

Senator Roco. Yes, Mr. President.

Senator J. Osmeña. If he does not sell the securities, he now becomes what? A dealer or a broker?

Senator Roco. If covered by the concept, because again there are two kinds of...

Senator J. Osmeña. Yes, because the contract obviously should have a specific time frame. Let us say, within 90 days "A" will guarantee "B" that the shares of "B's" corporation are going to be sold. Then at the end of that time frame, "A" cannot sell them. So "A" has to buy them because he guaranteed it.

Senator Roco. Yes, "A" is the underwriter with a firm commitment.

Senator J. Osmeña. So "A" buys it. Does he buy it for his own benefit?

Senator Roco. We leave that to "A" because he undertook the risk of a firm commitment. So long as it is bought for the issuer, "B" is home free.

Senator J. Osmeña. If an underwriter therefore buys it and keeps it, he becomes a dealer.

Senator Roco. He is an underwriter with a firm commitment.

Senator J. Osmeña. The business of the underwriter, the way I understand it, is simply somebody who will, in effect, trade in a larger volume. Most underwriters are banks. They are not in the business to keep the shares of stock. Is that not correct?

Senator Roco. That is correct, Mr. President

Senator J. Osmeña. That is the understanding—that they are not in that business. Yet, there is no provision of law which says that one cannot keep the shares for more than a certain period of time.

Senator Roco. But that is exactly what an underwriter with a firm commitment is supposed to be. If one gets stuck with unsold securities, he absorbs. What he does with it, whether he tries to sell it in the secondary market and there are buyers, fine, because he is not in the business of buying for himself. He is in the business of guaranteeing that what he said with a firm commitment will be sold even if he gets stuck with the bill. Underwriters do not want to get stuck with the bill because that is not their business.

Senator J. Osmeña. Precisely, that is our understanding.

Senator Roco. Yes, Mr. President.

Senator J. Osmeña. But there is no law that says that the guarantee must be in the form of a monetary consideration, that the underwriter never acquires ownership of the issue. There is no law on that. Is there?

Senator Roco. This is governed by the law between the parties, by the contract. That is why the underwriter can be firm or on best effort. If one is an underwriter with a weak heart, he says "best effort" because he does not want to end up owning securities. He does not have the intention to own. So, it is a question of bargaining.

So, if one is the issuer, he looks for somebody with a firm commitment. If it is a great offer, he has no problem. But if it is not a great offer, it is also very difficult to get an underwriter to give him a firm commitment. The underwriter will probably just give him the best efforts guarantee. And so, if it does not appeal to the market, he returns it.

Senator J. Osmeña. Mr. President, conceivably—speaking in a hypothetical sense—an underwriter could become a dummy.

Senator Roco. If the gentleman wants to demonstrate a little, it will help.

Senator J. Osmeña. All right. I have an issue that I am selling. But I may not be able to really sell it or the market may be weak. So,

I will go around and give the underwriter money so that the underwriter can now pay me back for the shares that he has bought and hold it in my behalf for whatever reason.

I may not want my wife to know that I have shares. Or, I may be a foreign company and, therefore, would like to conceal the ownership of these shares through the use of the device of an underwriter, therefore violating the constitutional limits on foreign ownership of certain enterprises.

Senator Roco. Mr. President, in the two examples cited by our good friend, one, if he is the owner trying to sell, well, there might be conceivable reasons he wants to hide what he already owns; then why does he want to sell? I mean, if he is pretending not to be the owner, but it was his own from the beginning.

Senator J. Osmeña. Mr. President, let me explain it further. There may be instances wherein a share may be listed by an issuer because listing will enhance the value of his share. The banks treat listed shares differently from unlisted shares.

If I am corporation X and I want to list, the Securities and Exchange Commission and the Stock Exchange required that I offer at least 25 percent to the public, but I know that my shares is not worth anything because it is "*bulok*," I will look for an underwriter and tell him, "Here is money. You will be my underwriter. I will issue the 25 percent you hold it." And then I will go to the bank and say, "I have a listed share."

Senator Roco. If there are people foolish enough to do that and disclosing all these... Because the proposed bill will require full disclosure, and if they do not have full disclosure, they will be penalized. But if somebody exerts all the effort to hide from his wife his securities by going to such a circuitous rule, maybe we should look at his fear of the wife.

Senator J. Osmeña. Mr. President, it was the top of my head that I used the wife, but the second example is more realistic.

Senator Roco. In the second example, Mr. President...

Senator J. Osmeña. No, the example of a worthless share.

Senator Roco. In the second example of a foreign company that may be going around the Anti-Dummy Law it is the owner. In this particular case, the beginning of the transaction is, the issuer; it has full control and disposition over the securities in question.

Senator J. Osmeña. No. In this case it may be the issuer.

Senator Roco. Yes, even if it is not the issuer, then what is it?

Senator J. Osmeña. Corporation A, Mr. President...

Senator Roco. Foreign?

Senator J. Osmeña. No, Corporation A is a Filipino corporation engaged in a business where only Filipinos can own more than 40%—60%/40%. Here is a foreign company who now owns 40 percent and therefore it has reached the top of its limits.

Senator Roco. So it makes an issue.

Senator J. Osmeña. It wants to buy 15% from the Filipino who owns 60 percent. It therefore goes to an underwriter and it puts up a pseudo offer, and the underwriter now picks up the 15 percent funded by money from the foreigner so that the foreigner, effectively, using the underwriter as a dummy has 55 percent.

Senator Roco. If a lawyer suggests that—there are simpler ways to go about and achieving that goal. But if they do so, then it probably is a manipulative device under the bill. And if somebody is willing to risk that, well, that is his own lookout; that will be his lookout. But it does not go into the essence of the underwriter. They are just as stuck with the parties...

Senator J. Osmeña. When the gentleman say "lookout," it is his own financial danger?

Senator Roco. Not only that; it is criminal. Because he gets into a violation of the Anti-Dummy Law, he gets into the violation of the fraud provisions, and if he profits, he can be hit by double or treble damages that the committee proposes.

Senator J. Osmeña. But there is no law that prohibits that? Is there a limit to the length of time an underwriter can hold an issue?

Senator Roco. No, Mr. President. Again, let me go back a little. The role of the underwriter licensed to answer or to guarantee for the distribution of the sale of securities is defined by the contract between the parties. It is not easy to get underwriters. If the gentleman wants to sell whatever securities he has, he will have to convince underwriters that they either give him a firm commitment or a best effort to sell. They are geniuses if they sell them.

I doubt if there will be underwriters, unless they are fly-by-night who will be willing to undertake. As a market proposition, it is too risky. One has to give that underwriter really serious money to get him enmeshed in that kind of activity.

So, while I appreciate that difficulty being posed, the actuality of market risk may preclude that possibility.

Senator J. Osmeña. Is the sponsor willing to accept an amendment even if it may directly and actually affect... Since the

sponsor is defining "underwriter" here, we can provide a section here which will say that: "A person who holds a share beyond a certain period of time no longer becomes an underwriter but becomes a dealer." Or that "An underwriter cannot hold shares for more than a certain period of time." To avoid or to prevent a situation like that.

Senator Roco. Mr. President, the committee will certainly examine that possibility. But if we want to encourage capital market formation, one of the critical actors will be an underwriter. And imposing that kind of a role where one changes his status by law from just underwriter into dealer, and the dealer now has other limitations, may be difficult. We are frightening the underwriters from helping the Philippine issuers.

Senator J. Osmeña. We are therefore, Mr. President, placed in a position whereby very realistically, an underwriter may be used as a dummy by a foreign company to violate the constitutional limitations of the contract.

Senator Roco. That is a fact of life right now. There are illegal guys, there are guys who violate the law. Regardless of this bill, there are people who are violating the anti-dummy law. If we catch them, we put them in jail.

So, it is not a function, it is not an opportunity or an illegality created because of this bill. That possibility is there today. Even if we throw away this bill. That has nothing to do with the bill—the illegal minds.

Senator J. Osmeña. I will look at Republic Act...

Senator Roco. I will give the gentleman the better citation. I will have it checked.

Senator J. Osmeña. I know this to be a real case that is presently being contemplated.

Senator Roco. Let me just give the facts given by the staff. To be an underwriter under the Philippine law, one needs P300 million minimum paid-up capital. One does not fool around and raise all these just to hide especially if it is an effort to violate the anti-dummy law. So, the economic magnitude of just getting licensed should require a certain degree of prudence in the people running the underwriter.

Maybe we can solve the difficulty of our friend, Mr. President, when we get into the amendments of the Investment Houses Law.

Senator J. Osmeña. That might not be. Why do we incorporate that bill?

Senator Roco. Only because I have difficulty mixing laws, aside from the rider possibility. When we start mixing the Investment

Company Act, which was also raised by the distinguished Minority Leader, and then we mix it also with the Investment Houses Act, the difficulty, legislationwise, becomes triple. It becomes very difficult. For me, it becomes very difficult. I am sure it will become very difficult.

Senator Osmeña III. Mr. President.

The President. Sen. Sergio Osmeña is recognized.

Senator Osmeña III. With the permission of the distinguished sponsor and the gentleman from Cebu. I am aware of the problem that the gentleman from Cebu is trying to solve, although it cannot be solved in this manner. Because normally, it is not even the underwriter who holds the shares. It could be an investment banker or a securities dealer.

There are what are known as "market makers." These are underwriters or dealers that undertake for a fee—I do not know how it is paid—to stabilize the market with certain shares. They buy and sell for their own account. This is done in the New York Stock Exchange.

For example, there are market makers in IBM shares, GM shares, et cetera. *Para hindi masyadong malaki iyong gap* between those who are selling and those who are buying. When there is too much GM shares being offered in relation to buy orders for GM shares, then this guy just absorbs the balance to make a market for GM shares and vice versa. If there is a bigger demand for GM shares than what is being offered for sale, he gets some shares from his stock and sells them.

So, if the sponsor contemplates the amendments that might be proposed by the gentleman from Cebu, we would unwittingly be putting roadblocks in the development of our capital markets. Because these are the people who will buy and sell for their own account in order to help stabilize the supply and demand for certain types of shares in a given stock exchange.

Thank you, Mr. President.

Senator J. Osmeña. Mr. President, for the record, at the proper time, I think we will be amazed at the audacity of a foreign company which, in writing to no less than the President of the Philippines, has divulged its intention to effect this scheme.

Thank you, Mr. President.

Senator Roco. We certainly appreciate the information given. When the two gentlemen from Cebu stand up together and the Presiding Officer is also from Cebu, we know there must be a serious problem somewhere.

The President. Not in Bicol.

Senator Roco. It becomes compounded.

Senator Drilon. Mr. President, since there are no more interpellations, I move to close the period for interpellations.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

SUSPENSION OF SESSION

Senator Drilon. May I ask for one-minute suspension of the session, Mr. President.

The President. The session is suspended, if there is no objection. [*There was none.*]

It was 6:34 p.m.

RESUMPTION OF SESSION

At 6:38 p.m., the session was resumed.

The President. The session is resumed. Senator Roco is recognized.

Senator Roco. Mr. President, I think the Majority Leader will explain the agreement. We will present the committee amendments tomorrow. We will suspend now.

Senator Drilon. Mr. President.

The President. The Majority Leader is recognized.

Senator Drilon. Mr. President, the sponsor has manifested that there are committee amendments. The committee amendments will be presented on the floor tomorrow morning.

SUSPENSION OF CONSIDERATION OF S. NO. 1220

So, Mr. President, I move to suspend consideration of Senate Bill No. 1220.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

MOTION OF SENATOR DRILON
(Inclusion of Senators Legarda-Leviste and Osmeña (J) as *Ad Hoc* Committee Members to Review and Assess the Damage Caused by Supertyphoon *Iliang* in Regions I and II)

Senator Drilon. Mr. President, may we manifest the inclusion on the part of the Minority, with the permission of the Minority Leader, the membership of Senator Legarda-Leviste as a member of the *Ad Hoc* Committee to review and assess the damage caused by supertyphoon *Iliang* in Regions I and II.

The President. Is it to increase the membership?

Senator Drilon. We move to increase the membership and the election of Senator Legarda-Leviste as a member of the committee.

The President. In order not to have an even number, may we add two members. Because we have five, and if we add now Senator Legarda-Leviste, that would be six. So we might as well have one more.

MOTION OF SENATOR DRILON
(To increase the Membership of the *Ad Hoc* Committee on the Supertyphoon *Iliang*)

Senator Drilon. May I amend my motion then to increase the membership of the *Ad Hoc* Committee to review and assess the damage caused by supertyphoon *Iliang* to seven.

The President. The sixth is Senator Legarda-Leviste. Who will be the seventh?

Senator Drilon. The seventh is Senator John Osmeña.

The President. Is there any objection? [*Silence*] There being none, the two motions are approved.

CONSIDERATION OF S. CT. RES. NO. 4
(Amending S. Ct. Res. No. 3 on Legislative Calendar)

Senator Drilon. Mr. President, I move that we consider Senate Concurrent Resolution No. 4.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

Consideration of Senate Concurrent Resolution No. 4 is now in order. With the permission of the Body, the Secretary will read only the title of the resolution without prejudice to inserting in the *Record* the whole text thereof.

The Secretary. Proposed Senate Concurrent Resolution No. 4, entitled

CONCURRENT RESOLUTION AMENDING
CONCURRENT RESOLUTION NO. 3 PROVIDING
FOR THE LEGISLATIVE CALENDAR FOR THE

shoes and we have to import foreign technicians to understand *lahar*.

But here, on the basis of the premises of the gentleman, we will seek the help of the Minority and the Majority so that an appropriate focus of research, maybe for Bicol and the Pacific side, maybe as we have mandated the SUCs, they should now start recommending on what to do or what we can do to minimize the effect of typhoons. Maybe Mindanao. We can have an integrated view, again, from the human resource of our educational leaders. Here we will elicit the help of all our distinguished friends.

Senator Guingona. Yes, at the right time.

Senator Roco. I thank the gentleman, Mr. President, for his patience. But we are concerned that good laws, and they have traced just in terms of the Intellectual Property Rights Law, may have its defects but maybe it does not warrant this charge of being one-sided, that is why we thought we would rise.

Senator Guingona. But the intellectual property rights is forever.

Senator Roco. No, Mr. President, patents of 20 years, I think, or 30 years, and copyrights can be modified. It is against republicanism to say that a law is forever. An element of republicanism precisely says that all laws can be changed, so it is never forever.

Senator Guingona. But as it is, we will ask for an amendment at the right time.

Senator Roco. Thank you, Mr. President.

The President. Thank you, Senator Roco.

The Majority Leader is recognized.

**MOTION OF SENATOR DRILON
(Referral of the Privilege Speech of Senator
Guingona to the Economic Affairs and Trade and
Commerce Committees)**

Senator Drilon. Mr. President, may we move that the privilege speech of Sen. Teofisto Guingona Jr., together with the interpellations, be referred to the Committee on Economic Affairs as the primary committee, and to the Committee on Trade and Commerce as the secondary committee.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

SUSPENSION OF SESSION

Senator Drilon. Mr. President, may we ask for a one-minute suspension of the session.

The President. The session is suspended, if there is no objection. *[There was none.]*

It was 5:28 p.m.

RESUMPTION OF SESSION

At 5:45 p.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

**BILL ON SECOND READING
S. No. 1220--The Securities Act of 1998
(Continuation)**

Senator Drilon. Mr. President, I move that we resume consideration of Senate Bill No. 1220 as reported out under Committee Report No. 6

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of Senate Bill No. 1220 is now in order.

Senator Drilon. Mr. President, we are now in the period of committee amendments. For this purpose, may we ask the Chair to recognize the chairman of the Committee on Banks, Sen. Raul S. Roco, for the committee amendments.

The President. Senator Roco is recognized.

Senator Roco. Thank you, Mr. President.

Mr. President, the Committee on Banks has come up with a draft as of 9 November 1998 in an effort to facilitate the discussion in having one reference point for purposes of amendment. As agreed upon between the Majority Leader and the Minority Leader, we will seek the approval of this draft as of 9 November 1998 appropriately marked so that the deletions are bracketed, the additions are engrossed and in capitals, as legislative draftmanship requires, subject to three reservations so that by tomorrow, the staff will come up with a draft as of 10 November 1998. But I can mention now the reservations so these will not clutter the records.

If I am allowed to do so, Mr. President, I will make the reservations.

SUSPENSION OF SESSION

Senator Drilon. May I ask for a one-minute suspension of the session, Mr. President.

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 5:47 p.m.

RESUMPTION OF SESSION

At 5:48 p.m., the session was resumed.

The President. The session is resumed. Senator Roco is recognized.

Senator Roco. May we therefore move, Mr. President, that we present an omnibus motion by way of committee amendments looking at the draft dated 9 November 1998 and seek the support of the Chamber for this to contain all the committee amendments, except for three portions, so that tomorrow's version will not contain those portions anymore if the Chamber accepts our recommendations.

The addition on page 2, from 3.3 on line 16 of the draft dated 9 November 1998—all these definitions on futures contracts, options, call options, put options, straddle, warrant, convertible bond—was an accommodation to some of our colleagues who wanted these definitions. But the committee does not feel strongly about this. The original recommendation was not to put this in so we ask that this be ignored by the staff when we reproduce the 10 November copy.

So from page 2, line 16 up to line 11 on page 3, these will all be deleted. Whoever among our colleagues wants to put the definition, then we can debate on it, Mr. President.

Senator Guingona. Mr. President.

The President. Yes, the Minority Leader is recognized.

Senator Guingona. Just a clarification, if the distinguished sponsor will not mind, Mr. President.

Senator Roco. Yes. Of course, Mr. President.

Senator Guingona. Just for procedure. I understand that the original report was submitted by four committees, is that correct?

Senator Roco. The committee report was jointly submitted

as appropriately signed by the Committee on Banks, Financial Institutions and Currencies. I do not know why the Committee on Constitutional Amendments, Revision of Codes and Laws is here. Maybe because it is a code. Then the Committee on Trade and Commerce, it was signed by the chairman; and by the Committee on Economic Affairs. So that is correct, there are four committees that originally reported this one.

Senator Guingona. I assume that they would agree to the procedure proposed. I, personally, have no objection but I would just like to ask why the word "derivative" is included and the omission on lines 16 to 11?

Senator Roco. The derivative, Mr. President, is included, maybe because it is a new notion. The derivative, as we see, is the one that precisely must be deregulated, because these are new instruments in securities and interests that are traded. So that is the reason.

But the others—future contracts, options, warrants—are specie of derivatives. And so I have no problem with deleting the specific definitions. But the concept of a derivative, as an instrument deriving economic value from other assets, is a relatively new notion in terms of securities law. These were inventions. That is why it is included, Mr. President.

Senator Guingona. I see. I thank the gentleman for that.

The 16th to 18th lines—futures contract is an agreement that specify the delivery of a commodity. We previously and formally agreed to do away with commodities trading.

Senator Roco. That is correct. That is in the subsequent section, Mr. President. That is my second reservation that all the references—there is a section on that—on commodities market, will be deleted.

This was an accommodation to the bill. This was brought about, precisely, by the concerns and observations of the Minority Leader.

The first bill amending the Securities Act was numbered 204, which was introduced by Sen. Sergio Osmeña III. We could not ignore it because it was referred to us; and it was meant to modify the Securities Act. So we put it in physically because it was the same basic juridical framework. We had no problems putting it in.

But the agreement in the caucus was that the provisions on the commodity market—there are, I think, two or three sections—will be deleted. So that tomorrow's draft of 10 November will no longer contain these specific definitions and the sections on commodities.

We can explain to the staff later on where these are. I will find these also.

Senator Guingona. Thank you, Mr. President.

Senator Roco. So that is the second reservation, Mr. President, and that has been agreed upon in the caucus.

The third is the proposed amendment on page 21, Mr. President. This is not marked because it is under the original...

SUSPENSION OF SESSION

May I ask for a suspension of the session, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the session is suspended for a few minutes.

It was 5:55 p.m.

RESUMPTION OF SESSION

At 5:58 p.m., the session was resumed.

The President. The session is resumed. Senator Roco is recognized.

Senator Roco. Mr. President, the second reservation was as regards commodity interest contracts as previously agreed upon in the caucus. That is in reference to Section 12, commodity interest contracts; 12.1 shall be deleted all the way to 12.2 or from line 12 on page 21 to line 3 on page 22. The pre-need plans will remain.

As a consequence of that, Mr. President, on page 31, Section 21, the reference to commodity interest contracts will likewise be deleted. *Mutatis mutandis*, I mean, we modify as we go along all other sections affected.

Senator Drilon. Maybe, the sponsor would also like to delete the reference to commodity interests on line 11 on page 21.

Senator Roco. Yes, Mr. President. Again the motion will be: we modify as required by the change. That is the third, Mr. President.

Senator Guingona. Mr. President.

The President. The Minority Leader is recognized.

Senator Guingona. The pre-need portion on page 22, there is still dispute as to whether this should belong to the

Insurance Commission. Since this is already a complicated law by itself, if the distinguished sponsor will not mind, let us give it to the Insurance Commission.

Senator Roco. Mr. President, that is dangerous. Right now, there is no regulatory agency covering pre-need plans and that was the result of the study. Then all the pre-need insurance companies agreed that they be subject therefore to SEC regulation and to be subsequently moved to Insurance Commission when we get to the amendments of the Insurance Code. But right now, the SEC, no one, and even the Insurance Commissioner, does not seem to cover pre-need plans. And yet, these are significant amounts of money. That is the result of the committee study, Mr. President. So, we can debate on that at the period of individual amendment.

But the agreement in the caucus was on commodity interests and the author was willing to have it deleted. We are perfectly happy. If the author will not fight for what he authored, why will we? So that was yielded by Sen. Sergio Osmeña III.

The third, Mr. President, we will ask the staff that from page 59 of the present report, there will be no further modifications. We will then complete committee amendments from page 59, line 26. This is the original report. Because after the discussions with the dealers and the brokers, our committee—in fact we called a special hearing because the stock brokers are concerned—is still grappling with how to enunciate the rule on dealers and brokers.

In any event, the staff will be helped by the staff of the committee. From page 59 of the present report, beginning on line 26, the present report will be as is.

The committee amendments as of today will end on page 59. Our committee will request time to therefore modify the portions on the dealer.

In other words, the present report stands as is from page 59. So that the draft of 10 November will be modified all the way until we reach page 59 of the present report, whatever the pages may be. From page 59, it will still be subject to committee amendments.

From page 59 of the present report, Mr. President, our committee has only, I think...

Senator Drilon. Mr. President, just for clarity.

The President. The Majority Leader is recognized.

Senator Drilon. The committee chairman is manifesting

that up to Section 37 of the bill, the committee amendments are indicated in the draft of 9 November 1998.

Senator Roco. That is right.

Senator Drilon. So that at the appropriate time, he will move for the adoption of the committee amendments from Sections 1 to Section 37 as reflected in the draft captioned 9 November 1998.

Senator Roco. That is correct, Mr. President. But from page 59, we will have to go back to the old...

Senator Drilon. From Section 38.

Senator Roco. From Section 38, we go back to the present. It will be subject to committee amendments, Mr. President. I think there are 10 or 20 committee amendments but the substantial issue on dealer/broker will have to be addressed by the committee.

Mr. President, the end result of this is, tomorrow the staff will produce a draft as of 10 November. That draft will contain what we see in the draft of 9 November 1998 except that there are deletions of the definitions, the specific definitions on futures contract, options, I mean, whoever wants to put it back will listen. These are specific derivatives.

So that one, Mr. President, was not really in the original report, but those who want to put it in the report later on must submit it so that there can be an appropriate debate.

Then the second aspect deleted is on the commodity interests; that will go. So that from Section 38.1, the draft will carry the present report. The committee amendments, in other words, Mr. President, will be only from Section 1 to 37.6. Tomorrow, as we debate, just so the Chamber will be looking at one consolidated piece of paper otherwise, I do not envy whoever wants to study this.

May we ask the staff to give the chairman of the Finance Committee a copy of...

The President. Please furnish the chairman of the Finance Committee.

**OMNIBUS MOTIONS OF
SENATORS ROCO AND DRILON
(To Adopt All Proposed Committee Amendments)**

Senator Roco. So the motion, Mr. President, in brief is, may we seek the support of the Chamber for an omnibus motion

adopting all the proposed committee amendments from Section 1 to Section 37.6, because that is the end.

Senator Drilon. There is a motion, Mr. President, to approve the committee amendments found in Sections 1 to 37.6 of the draft dated 9 November 1998. This is up to page 51 of this draft of 9 November 1998 up to line 23. There is that motion.

Senator Roco. That is correct. Section 38 onwards, Mr. President, for clarity of presentation, will pick up from the original report.

The President. There is a motion with respect to Sections 1 to 37.6 on the November 9, 1998 draft and up to page 51, Section 38.

Senator Drilon. The motion, Mr. President, is to adopt the committee amendments from Section 1 to Section 37.6 as found from page 1 up to page 51, line 23 of the draft of November 9, 1998.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

The following is the draft of Senate Bill No. 1220 as of November 9, 1998 containing the committee amendments found in Sections 1 to 37.6:

Senate Bill No. 1220
(In substitution of S. Nos. 204 and 529)

THE SECURITIES ACT OF 1998

*Be it enacted by the Senate and House of
Representatives of the Philippines in Congress
assembled:*

CHAPTER I
Title and Definitions

SECTION 1. *Title.* - This Act shall be known as "The Securities Act of 1998."

SEC. 2. *Declaration of State Policy.* - It is hereby declared to be the policy of the State to encourage private corporations to broaden the base of their ownership, to enhance a socially-conscious free market that regulates itself, [and] TO promote the development of a capital market and encourage the widest participation of ownership and democratization of wealth, TO favor publicly-listed corporations, and to minimize if not totally eliminate insider trading and

other manipulative devices which create distortionS [of] IN the free market.

To achieve these ends, the Securities Act of 1998 is hereby enacted, to be administered by a more efficient and strengthened Securities and Exchange Commission, hereafter the Commission.

SEC. 3. *Definitions* . - For purposes of this Act, unless the context otherwise requires:

3.1. "Securities" are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract or instrument. It includes:

(A) Shares of stock, bonds, debentures, notes, evidences of indebtedness, asset-backed securities;

(B) Investment contracts, certificates of interest or participation in a profit sharing agreement, [asset-backed securities,] certificates of deposit for a future subscription;

(C) Fractional undivided interests in oil, gas or other mineral rights;

(D) Derivatives like option and warrants;

(E) Certificates of assignments, certificates of participation, trust certificates, voting trust certificates or similar instruments;

(F) Proprietary or non proprietary membership certificates in corporations; and

(G) Other instruments as may in the future be determined by the Commission.

3.2. "DERIVATIVES" ARE INSTRUMENTS THAT DERIVE THEIR ECONOMIC VALUES FROM UNDERLYING ASSETS SUCH AS TREASURY BILLS, STOCKS, COMMODITIES AND LIKE INSTRUMENTS THAT ARE TRADED, INCLUDING BUT NOT LIMITED TO, FUTURES CONTRACT, OPTIONS, WARRANTS, AND CONVERTIBLES.

3.3[2]. "Issuer" is the originator, maker, obligor, or creator of the security.

3.4[3]. "Dealer" means any person who buys and sells securities for his own account in the ordinary course of business and holds himself out as such.

3.5[4]. "Salesman" is a natural person, employed by a dealer, issuer or broker to buy and sell securities.

3.6.[5] "Broker" is a person engaged in the business of buying and selling securities for the account of others.

3.7[6]. "Clearing Agency" is any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities, to provide facilities for comparison of data respecting the terms of settlement of securities transactions. Such term may also include a securities depository.

3.8[7]. "Transfer agent" means any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in: (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry.

3.9[8]. "Underwriter" means any person who is licensed to guarantee the distribution and sale of securities of any kind by another company.

3.10[9]. "Promoter" [includes: (A)] REFERS TO any person who, acting alone or in conjunction with one or more persons, directly or indirectly, takes initiative in founding and organizing the business or enterprise of the issuer[;] AND/or [(B) any person who,] in connection [with the founding and organizing of the business of an issuer] THEREWITH, directly or indirectly receives [in] consideration [of] IN services or property [or both services or property ten *per centum* (10%) or more of any class of securities of the issuer or ten *per centum* (10%) or more of the proceeds from the sale of any class of such securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely as consideration of property shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise].

- 3.11[10]. "Prospectus" refers to the document made by or on behalf of an issuer, underwriter or dealer to sell or offer for sale [any] securities offered to the public [by] THROUGH a registration statement filed with the Commission [pursuant to Sections 5 and 8 of this Act].
- 3.12[11]. "Registration statement" refers to the application for the [registration] RECORDING of securities required to be filed with the Commission [pursuant to Sections 5 and 8 of this Act, and includes any amendments thereto, and any supporting documents (including any prospectus) attached thereto and made a part thereof or incorporated therein by reference].
- 3.13[12]. "Associated person of a broker or dealer" means any employee thereof who directly exercises control or supervisory authority, but does not include a salesman or person whose functions are solely clerical or ministerial.
- 3.14[13]. "Self-regulatory organization" means any securities exchange, clearing or depository agency or other securities-related organization or association so organized [and] WHICH has the capacity to comply with and [to] enforce compliance [by] FROM its members, with the provisions of this Act or rules and regulations promulgated thereunder and the rules of the organization[, including the imposition of sanction for violation thereof].
- [3.14. "Commodity interest contracts" [means contracts] REFERS TO WRITTEN AGREEMENTS, providing for the making or taking of delivery at a prescribed time in the future of a specified quantity and quality of a commodity (or the cash value thereof), which are customarily offset prior to the delivery date. [For purposes of this definition, the term "commodity" means any goods, articles, services, rights and interests including any group or index of any of the foregoing.]
- 3.15. "Pre-Need Plans" [means] REFERS TO contracts which provide for the performance of future services or the payment of future monetary considerations at the time of actual need, for which planholders pay in cash or installment at stated prices, with or without interest or insurance coverage and includes life, pension, education, interment, and other plans which the Commission
- may from time to time approve.
- 3.16. "Securities account" refers to [that account brought about by an agreement under which] THE RECORD OF TRANSACTIONS KEPT BY a securities intermediary [maintains the account] for and in behalf [the] OF ANOTHER person [for whom the account is opened and maintained, is entitled to exercise the rights that comprise the security].
- 3.17. "Securities intermediary" [means:] REFERS TO A REGISTERED CLEARING AGENCY OR A PERSON REGISTERED OR LICENSED BY THE COMMISSION TO MAINTAIN SECURITIES ACCOUNTS FOR OTHERS, OR A BANK THAT IN THE ORDINARY COURSE OF BUSINESS UNDERTAKES TO MAINTAIN SUCH ACCOUNTS FOR OTHERS.
- [(A) A registered clearing agency; or]
- [(B) A person who is registered or licensed by the Commission, or]
- [(C) A bank that maintains securities accounts for others.]
- 3.18. "Uncertificated security" means a security that is not [represented] EVIDENCED by a physical title.
- 3.19. "INSIDER" MEANS: (A) THE ISSUER; (B) A DIRECTOR OR OFFICER (OR PERSON PERFORMING SIMILAR FUNCTIONS) OF, OR A PERSON CONTROLLING THE ISSUER; (C) A PERSON WHOSE RELATIONSHIP OR FORMER RELATIONSHIP TO THE ISSUER GIVES OR GAVE HIM ACCESS TO MATERIAL INFORMATION ABOUT THE ISSUER OR THE SECURITY THAT IS NOT GENERALLY AVAILABLE TO THE PUBLIC; OR (D) A PERSON WHO LEARNS SUCH INFORMATION BY A COMMUNICATION FROM ANY OF THE FOREGOING INSIDERS [AS DEFINED IN PARAGRAPHS (A), (B) AND (C) OF THIS SUBSECTION, WITH KNOWLEDGE OR REASON TO BELIEVE THAT THE PERSON FROM WHOM HE LEARNS THE INFORMATION IS SUCH AN INSIDER AND THE INFORMATION IS NOT GENERALLY AVAILABLE TO THE PUBLIC].

[THE TERMS DEFINED UNDER THIS SECTION SHALL BE UNDERSTOOD IN THE MANNER THEY ARE USED IN THE ORDINARY USAGE OF TRADE: PROVIDED, THAT THE COMMISSION SHALL HAVE THE POWER, BY RULES AND REGULATIONS TO DEFINE TECHNICAL, TRADE, ACCOUNTING, AND OTHER TERMS USED IN THIS ACT.]

SEC. 4. *Administrative Agency.* -

4.1. This Act shall be administered by the Commission [which is] ACTING AS a collegial body, composed of five Commissioners, [inclusive of the Chairman,] who shall be appointed by the President[, and the] FOR A term of [office of each Commissioner shall be] seven (7) years: *Provided, however,* That upon expiration of his term, a Commissioner shall serve as such until his successor shall have been appointed and qualified: *Provided, further,* That no Commissioner shall be appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed except for the unexpired portion of such term: *Provided, finally,* That upon the effective date of this Act the Chairman and Associate Commissioners then in office shall forthwith serve as Commissioners through the remainder of the terms prescribed for such offices under Presidential Decree 902-A, as amended. [The Commission shall have the organization, powers, and functions provided by this Act and other existing laws as the same may from time to time be amended or supplemented.]

4.2. The salary of the Chairman and the Associate Commissioners shall be fixed by the President of the Philippines at a sum commensurate to the importance and responsibility attached to position.

[4.3. (A) The Chairman shall be the Chief Executive Officer of the Commission and his functions shall be to:

(i) Execute and administer the policies, decisions, orders and resolutions approved by the Commission;

(ii) Direct and supervise the operations and internal administration of the Commission;

(iii) Sign appointments of subordinate officials and employees made by the Commission and

enforce decisions on administrative discipline involving them;

(iv) With the consent of the Commission, make temporary assignments, rotate and transfer personnel in accordance with the provisions of the civil service law;

(v) Submit an annual budget and other budget supplements to the Commission for its approval;

(vi) Delegate his authority, in whole or in part, to other officials of the Commission, in accordance with the rules and regulations of the Commission; and

(vii) Perform such other duties as may be authorized by the Commission.

(B) In carrying out any of his functions under the provisions of this Subsection 4.3, the Chairman shall be governed by the general policies of the Commission and by such regulatory decisions, findings and determinations as the Commission may by law be authorized to make.]

4.3. THE CHAIRMAN, AS CHIEF EXECUTIVE OFFICER OF THE COMMISSION, SHALL EXECUTE AND ADMINISTER THE POLICIES, DECISIONS, ORDERS AND RESOLUTIONS APPROVED BY THE COMMISSION AND SHALL HAVE THE GENERAL EXECUTIVE CONTROL, DIRECTION AND SUPERVISION OF THE WORK AND OPERATION OF THE COMMISSION AND OF ITS MEMBERS, BODIES, BOARDS, OFFICES, PERSONNEL AND ALL ITS ADMINISTRATIVE BUSINESS. IN CARRYING OUT ANY OF ITS FUNCTIONS, HE SHALL BE GOVERNED BY THE GENERAL POLICIES OF THE COMMISSION AND BY SUCH REGULATORY DECISIONS, FINDINGS AND DETERMINATIONS AS THE COMMISSION MAY BE AUTHORIZED BY LAW TO MAKE.

4.4 (A) There shall be a Secretary appointed by the Commission, who shall be of equal rank or level with that of a Director of a Department and shall be the recorder and official reporter of the proceedings of the Commission and shall have the authority to administer oaths in all matters coming under the jurisdiction of the Commission.

(B) There shall be an Executive Director appointed by the Commission who shall be responsible for the effective implementation of the policies, rules and standards promulgated by the Commission, to coordinate and supervise the activities of the different operating units; to report to the Chairman on the operations of such units; and to perform such functions as may be assigned to him by the Chairman and/or by the Commission.

- 4.5. The Commission shall hold meetings en banc for the conduct of business as often as may be necessary at such times as the Chairman may fix or such number of Commissioners constituting a quorum shall request. The notice of the meeting shall be given to all Commissioners and the presence of at least three (3) Commissioners shall constitute a quorum. In the absence of the Chairman, the most senior Commissioner shall act as presiding officer of the meeting.

[To constitute action of the Commission in respect of any matter, the Commissioners of the Commission shall be required to act en banc and assent to such action by a majority thereof comprising a quorum at any meeting at which such action is considered or, if action is taken without a meeting by a majority of all Commissioners: *Provided, however,* That the Commission, en banc, is authorized, by rule, regulation or order, to delegate any of its functions to any department or office of the Commission, an individual Commissioner, or staff member of the Commission, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter: *Provided, further,* That the Commission, en banc, may not delegate, and shall be required to act en banc, in respect of the adoption of any rule or regulation, the denial, alteration or supplementation of any rule of a self-regulatory organization, or in the exercise of its quasi-judicial function under Presidential Decree 902-A, as amended].

- 4.6. (A) THE COMMISSION SHALL ACT AS A COLLEGIAL BODY, BUT IT MAY DELEGATE, BASED ON VALID STANDARDS ANY OF ITS FUNCTIONS TO ANY DEPARTMENT OR OFFICE OF THE COMMISSION, AN INDIVIDUAL COMMISSIONER OR STAFF MEMBER OF THE COMMISSION: *PROVIDED, HOWEVER,* THAT IT SHALL ACT EN BANC

IN RESPECT OF THE ADOPTION OF ANY RULE OR REGULATION, THE DENIAL, ALTERATION OR SUPPLEMENTATION OF ANY RULE OF A SELF-REGULATORY ORGANIZATION OR IN THE EXERCISE OF ITS REVIEW OR APPELLATE AUTHORITY.

(B) With respect to the delegation of any functions, as provided in paragraph (A) of Subsection 4.6, the Commission, en banc, shall retain a discretionary right to review the action of any department or office, individual Commissioner, or staff member of the Commission, upon its own initiative, or upon petition of a party to or intervenor in such action. The vote of one Commissioner shall be sufficient to bring any such action before the Commission, en banc, for review.

If no review is sought within the prescribed time or the Commission, en banc, declines to exercise review, the action taken pursuant to delegated authority shall for all purposes be deemed the action of the Commission.

- [4.7. The Commission is authorized to reorganize its internal structure as, from time to time, it determines to be necessary and appropriate in the public interest to carry out its responsibilities under this Act and other laws which it administers. This shall include the power to fix the remuneration and other emoluments of its personnel based on job evaluation and qualifications, to increase or decrease the number of departments, divisions, extension offices, and any other organizational structures within the Commission, to reassign functions and personnel among departments, divisions, extension offices, and any other organizational structures, and to name or rename departments, divisions, offices, and any other organization structures.]

- 4.7. THE COMMISSION SHALL PROVIDE FOR ITS ORGANIZATION AND STAFF OF OFFICERS AND EMPLOYEES AND UPON RECOMMENDATION OF THE CHAIRMAN, FIX THEIR REMUNERATION AND OTHER EMOLUMENTS. ALL POSITIONS IN THE COMMISSION SHALL BE GOVERNED BY THE COMPENSATION, POSITION CLASSIFICATION SYSTEMS AND QUALIFICATIONS STANDARDS APPROVED BY THE COMMISSION BASED ON A COMPREHENSIVE JOB ANALYSIS OF

ACTUAL DUTIES AND RESPONSIBILITIES. THE COMMISSION SHALL, THEREFORE, BE EXEMPT FROM EXISTING LAWS, RULES, AND REGULATIONS ON COMPENSATION, POSITION CLASSIFICATION AND QUALIFICATION STANDARDS. THE COMMISSION SHALL HOWEVER, ENDEAVOR TO MAKE ITS SYSTEM CONFORM AS CLOSELY AS POSSIBLE WITH THE PRINCIPLES UNDER COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989 (REPUBLIC ACT NO. 6758, AS AMENDED).

NO OFFICER OR EMPLOYEE OF THE COMMISSION SUBJECT TO CIVIL SERVICE LAW SHALL BE DISMISSED EXCEPT FOR CAUSE AS PROVIDED BY LAW.

- 4.8. The Commission shall ACT WITH TRANSPARENCY AND SHALL [, except as otherwise expressly provided,] have the power to promulgate [such] rules, [and] regulations. ORDERS, AND OPINIONS as it may consider appropriate [in the public interest or for the protection of investors] to [effectuate] ENFORCE the INTENT, purposes and policies of the provisions [hereof] OF THIS ACT. THE MONETARY BOARD OF THE BANGKO SENTRAL NG PILIPINAS SHALL, HOWEVER, HAVE THE POWER TO PROMULGATE ITS OWN RULES ON THE MONETARY AND CREDIT ASPECTS OF SECURITIES ISSUANCES.

CHAPTER II

Registration of Securities

SEC. 5. Requirement of Registration of Securities.-

- 5.1. No securities [, except of a class exempt under Section 6 hereof or unless sold in any transaction exempt under Section 7 hereof,] shall be sold or offered for sale or distribution within the Philippines, unless a registration statement registering the securities to be offered has been filed with the Commission and is in effect.
- 5.2. No securities required to be registered pursuant to Subsection 5.1 shall be sold unless prior to such sale information on the securities, in such form and with such substance as the Commission [by rule] may prescribe, is made available to each prospective purchaser. [Notwithstanding the provisions of

Subsection 5.1 hereof and of the succeeding sections regarding exemptions, no commercial paper as defined in Section 3 hereof shall be issued, endorsed, sold, transferred or in any other manner conveyed to the public, unless registered in accordance with the rules and regulations that shall be promulgated in the public interest and for the protection of investors by the Commission. The Commission, however, with due regard to public interest and the protection of investors, may, by rules and regulations, exempt from registration any commercial paper that may otherwise be covered by this paragraph. In either case, the rules and regulations shall be promulgated by the Commission with the concurrence of the approval of the Monetary Board of the Bangko Sentral ng Pilipinas. The Monetary Board shall, however, have the power to promulgate its own rules on the monetary and credit aspects of commercial paper issues, which may include the imposition of ceilings on issues by any single borrower, and the authority to supervise the enforcement of such rules and to require issuer of commercial papers to submit their financial statements and such periodic reports, when required by both the Commission and the Monetary Board, shall be uniform.]

- 5.3. The Commission [by rule] may permit securities required to be registered under Subsection 5.1 to be offered for sale after the filing of a registration statement for such securities, but prior to its effectivity, upon such terms and conditions as the Commission [by rule] may prescribe [in the public interest or for the protection of investors]: *Provided, however,* That no offer for sale under this subsection shall be made by means of any written communication except a preliminary prospectus conforming in form and content to requirements for preliminary prospectuses which the Commission [by rule] may prescribe.
- 5.4. The Commission [by rule] may specify the terms and conditions under which any written communication, including any summary prospectus, shall be deemed not to constitute an offer for sale under this Section.
- 5.5. A record of the registration of securities shall be kept in a Register of Securities in which shall be recorded orders entered by the Commission with respect to such securities. Such register and all documents or information with respect to the

securities registered therein shall be open to public inspection at reasonable hours on business days.

SEC. 6. *Exempt Securities.* -

- 6.1. [Except as expressly provided, t] The requirement of registration under Subsection 5.1 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: *Provided*, That the Commission may require compliance with the form and content of disclosures the Commission may [by rule] prescribe.

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

(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 Regulatory Board, the Bangko Sentral ng Pilipinas, or the Bureau of Internal Revenue.

- 6.2. 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 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.

SEC. 7. *Exempt Transactions.* -

- 7.1. The requirement of registration under Subsection 5.1 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 other similar lien holder 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.

(C) 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.

(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, where 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 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.

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

(I) Subscriptions for shares of the capital stock of a corporation prior to the incorporation thereof or in pursuance of an increase in its authorized capital stock 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 corporation which should be subscribed before it can be registered and duly incorporated, or its authorized capital increased.

(J) 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.

(K) The sale of securities by an issuer to fewer than 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 managed 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 by rule 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.

7.2. The Commission by rule 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 subsection, 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 such as by reason of the small amount involved or the limited character of the public offering.

7.3. Any person claiming any exemption under this Section, shall file with the Commission a notice identifying the exemption relied upon on such form and at such time as the Commission by rule may prescribe and with such notice shall pay to the Commission a fee equivalent to one-tenth of one *per centum* of the maximum aggregate price or issued value of the securities.

SEC. 8. Procedure for Registration of Securities.-

8.1. All securities required to be registered [for offer and sale] under Subsection 5.1 shall be registered through the filing by the issuer in the MAIN office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission [by rule] shall prescribe. The registration statement shall include [or have annexed thereto] any prospectus required or permitted to be delivered under Subsections 5.2, 5.3 and 5.4.

8.2. In promulgating rules governing the content of any registration statement (including any prospectus made a part thereof or annexed thereto), the Commission may require the registration statement to contain the information or documents described in Schedule A appended to this Act, may dispense with any such requirement, or may require additional information or documents, including written information from an expert, depending on the necessity thereof [for the protection of public investors,] or their applicability to the class of securities sought to be registered [, as the case may be].

8.3. The registration statement shall be signed by the issuer, its principal executive officer, its principal operating officer, its principal financial officer, its comptroller or principal accounting officer, a majority

of members of its board of directors, or persons performing functions similar to any of the foregoing. The written consent of the expert named as having certified any part of the registration statement or any document used in connection therewith shall also be filed. Where the registration statement includes shares to be sold by selling shareholders, a written certification by such selling shareholders as to the accuracy of any part of the registration statement contributed to by such selling shareholders shall also be filed.

- 8.4. (A) Upon filing of the registration statement, the issuer shall pay to the Commission a fee of not more than one-tenth of one *per centum* of the maximum aggregate price at which such securities are proposed to be offered.

(B) Notice of the filing of the registration statement shall be immediately published by the issuer, at [the] ITS OWN expense [of the issuer], in two newspapers of general circulation in the Philippines, once a week for two consecutive weeks, or in such other manner as the Commission by rule shall prescribe, reciting that a registration statement for the sale of such security has been filed, and that the aforesaid registration statement, as well as the papers attached thereto are open to inspection at the Commission during business hours, [by any person,] and copies thereof, [photo static] PHOTOSTATIC or otherwise, shall be furnished to [every applicant] INTERESTED PARTIES at such reasonable charge as the Commission may prescribe.

- 8.5. Within forty-five (45) days after the date of filing of the registration statement, or by such later date to which the issuer has consented, the Commission shall declare the registration statement effective or rejected, unless the applicant is allowed to amend the registration statement as provided in Section 10 hereof. The Commission shall enter an order declaring the registration statement to be effective if it finds that the registration statement together with all the other papers and documents attached thereto, is on its face complete and that the requirements have been complied with. The Commission may impose such terms and conditions as may be necessary or appropriate for the protection of the investors.

- 8.6. Upon effectivity of the registration statement, the issuer shall state in every prospectus that such

effectivity shall not be deemed a finding by the Commission that the registration statement is true and accurate on its face or that it does not contain an untrue statement of fact or omit to state a material fact, or be held to mean that the Commission has in any way recommended, endorsed or given approval to the security included in the registration statement. It shall be unlawful to make, or cause to be made, to any prospective purchaser any representation contrary to the foregoing.

- 8.7. The Commission, for the guidance of investors, may require the issuer to submit the security for rating by rating agencies accredited by the Commission and to include such rating in the registration statement and prospectus.

SEC. 9. *Rejection and Revocation of Registration of Securities.* -

- 9.1. The Commission may, after due notice and hearing, reject a registration statement and refuse registration of the security thereunder, or revoke the effectivity of a registration statement and the registration of the security thereunder by issuing an order to such effect, setting forth its findings in respect thereto, if it finds that:

(A) The issuer:

- (i) Has been judicially declared insolvent;
- (ii) Has violated any of the provisions of this Act, the rules promulgated pursuant thereto, or any order of the Commission of which the issuer has notice in connection with the offering for which a registration statement has been filed;
- (iii) Has been or is engaged or is about to engage in fraudulent transactions;
- (iv) Has made any false or misleading representation of material facts in any prospectus concerning the issuer or its securities;
- (v) Has failed to comply with any requirement that the Commission may impose as a condition for registration of the security for which the registration statement has been filed; or

(B) The registration statement is on its face incomplete or inaccurate in any material respect or

includes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading; or

- (C) The issuer, any officer, director or controlling person of the issuer, or person performing similar functions, or any underwriter:
- (i) Has been convicted, by a competent judicial or administrative body, upon plea of guilty, or otherwise, of an offense involving moral turpitude, fraud, embezzlement, counterfeiting, theft, estafa, misappropriation, forgery, bribery, false oath, or perjury, or of a violation of securities, commodities, banking, real estate, insurance, mining, investment and other related laws; or
 - (ii) Is enjoined or restrained by the Commission or other competent judicial or administrative body from engaging in securities, commodities, banking, real estate, insurance, mining, investment and other related laws or from willfully violating laws governing such activities; or
 - (iii) Is subject to an Order of the Commission or other competent judicial or administrative body refusing, revoking or suspending any registration, license or other permit required under this Act, the rules and regulations promulgated thereunder, or any other law, to engage in any activity involving securities, commodities, banking, real estate, insurance, mining, investment or other related activities;
 - (iv) Is subject to an order of a self-regulatory organization suspending or expelling him from membership or participation therein or from association with a member or participant thereof;
 - (v) Has been found by final Order of the Commission or other competent judicial or administrative body to have willfully violated any provisions of securities, commodities, banking, real estate, insurance, mining, investment or other related laws, or have willfully aided, abetted, counseled, commanded, induced or procured such violation.

For purposes of this subsection, the term "competent judicial or administrative body" shall include a foreign court of competent jurisdiction and a foreign financial regulator.

- 9.2. The Commission may compel the production of all the books and papers of such issuer, and may administer oaths to, and examine the officers of such issuer or any other person connected therewith as to its business and affairs, and may also require [a balance sheet exhibiting the assets and liabilities] THE FINANCIAL STATEMENTS of any such issuer [or his income statement or both,] to be certified to by an independent certified public accountant.
- 9.3. If any issuer shall refuse to permit an examination to be made by the Commission, its refusal shall be [proper] ground for the refusal or revocation of the registration of its securities.
- 9.4. If the Commission deems it necessary, it may issue an Order suspending the offer and sale of the securities pending any investigation. The Order shall state the grounds for taking such action, but such Order of suspension although binding upon the persons notified thereof, shall be deemed confidential, and shall not be published. Upon the issuance of the Suspension Order, no further offer or sale of such security shall be made until the same is lifted or set aside by the Commission. Otherwise, such sale shall be void.
- 9.5. Notice of issuance of such Order shall be given to the issuer and every dealer and broker who shall have notified the Commission of an intention to sell such security.
- 9.6. A registration statement may be withdrawn by the issuer only with the consent of the Commission.

SEC. 10. *Amendments to the Registration Statement.-*

- 10.1. If a registration statement is on its face incomplete or inaccurate in any material respect, the Commission shall issue an Order directing the amendment of the registration statement. Upon compliance with such Order, the amended registration statement shall become effective in accordance with the procedure mentioned in Subsection 8.5 hereof.
- 10.2. An amendment filed prior to the effective date of

the registration statement shall recommence the forty-five (45) day period within which the Commission shall act on a registration statement. An amendment filed after the effective date of the registration statement shall become effective only upon such date as determined by the Commission.

- 10.3. If any change occurs in the facts set forth in a registration statement, the issuer shall file an amendment thereto setting forth the change.
- 10.4. If, at any time, the Commission finds that a registration statement contains any false statement or omits to state any fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may conduct an examination, and, after due notice and hearing, issue an Order suspending the effectivity of the registration statement. If the statement is duly amended, the Suspension Order may be lifted.
- 10.5. In making such examination the Commission or any officer or officers designated by it may administer oaths and affirmations and shall have access to, and may demand the production of, any books, records or documents relevant to the examination. Failure of the issuer, underwriter, or any other person to cooperate, or his obstruction or refusal to undergo an examination, shall be a ground for the issuance of a Suspension Order.

SEC. 11. *Suspension of Registration.* -

- 11.1. If, at any time, the information contained in the registration statement filed is or has become misleading, incorrect, inadequate or incomplete in any material respect, or the sale or offering for sale of the security registered thereunder may work or tend to work a fraud, the Commission may require from the issuer such further information as may in its judgment be necessary to enable the Commission to ascertain whether the registration of such security should be revoked on any ground specified in this Act. The Commission may also suspend the right to sell and offer for sale such security pending further investigation, by entering an order specifying the grounds for such action, and by notifying the issuer, underwriter, dealer or broker known as participating in such offering.
- 11.2. The refusal to furnish information required by the Commission may be a ground for the issuance of an

Order of Suspension pursuant to Subsection 12[11].1. Upon the issuance of any such Order and notification to the issuer, underwriter, dealer or broker known as participating in such offering, no further offer or sale of any such security shall be made until the SAME IS LIFTED OR SET ASIDE BY THE Commission [orders otherwise]. Otherwise, such sale shall be void.

- 11.3. Upon issuance of an Order of Suspension, the Commission shall conduct a hearing. If the Commission determines that the sale of any security should be revoked, it shall issue an Order prohibiting sale of such security. Until the issuance of a final Order, the suspension of the right to sell, though binding upon the persons notified thereof, shall be deemed confidential, and shall not be published, unless it shall appear that the Order of Suspension has been violated after notice. If, however, the Commission finds that the sale of the security will neither be fraudulent nor result in fraud, it shall forthwith issue an Order revoking the Order of Suspension, and such security shall be restored to its status as a registered security as of the date of such Order of Suspension.

CHAPTER III
Regulation of Commodity Interests and
Pre-Need Plans

SEC. 12. *Commodity Interest Contracts.* -

- 12.1. No person shall offer, sell, or enter into commodity interest contracts except in accordance with the rules and regulations the Commission may prescribe. Such regulations may include, without limitation:

(A) Prohibiting fraud, manipulation, fictitious transactions, undue speculation and other unfair and abusive trading practices;

(B) Registering commodity Exchanges and commodity associations, providing for approval by the Commission of the rules thereof (including terms of commodity interest contracts traded on such Exchanges or in markets supervised by such associations) and requiring enforcement of such rules, in a manner similar to that provided in this Act for the regulation of Exchanges;

(C) Licensing market professionals, such as

future brokers, commodity trading advisors and salesmen;

(D) Imposing requirements on the persons referred to in paragraphs (B) and (C), with respect to disclosure, reporting, record keeping, examination, capital, bonding and other financial responsibility, and segregation of margin deposits and other customer funds.

12.2. The Commission shall prohibit transactions with respect to all or specified commodity interest contracts if it finds, after due notice and hearing, that such transactions will be inimical to the public interest of the country or may cause grave or irreparable injury.]

SEC. 13. *Pre-Need Plans.* - No person shall sell or offer for sale to the public any pre-need plan except in accordance with rules and regulations which the Commission shall prescribe. Such rules shall regulate the sale of pre-need plans by, among other things, requiring the registration of pre-need plans, licensing persons involved in the sale of pre-need plans, requiring disclosures to prospective plan holders, prescribing advertising guidelines, providing for uniform accounting system, reports and record keeping with respect to such plans, imposing capital, bonding and other financial responsibility, and establishing trust funds for the payment of benefits under such plans.

CHAPTER IV Reportorial Requirements

SEC. 14. *Periodic and Other Reports of Issuers.*-

14.1. Every issuer [with a class of securities] satisfying the requirements in Subsection 14.2 hereof shall file with the Commission:

(A) [An annual report w] Within 135 days, AFTER THE END OF THE ISSUER'S FISCAL YEAR, or such other time as the Commission [by rule shall] MAY prescribe, [after the end of the issuer's fiscal year,] AN ANNUAL REPORT which shall include, AMONG OTHERS, a balance sheet, profit and loss statement and statement of cash flows, for such last fiscal year, certified by an independent certified public accountant, and a management discussion and analysis of results of operations; and

(B) Such other periodical reports for interim fiscal periods and current reports on significant

developments of the issuer as the Commission may prescribe as necessary to [update and] keep current information on the operation of the business and financial condition of the issuer.

14.2. The reportorial requirements of Subsection 14.1 shall apply to the following:

(A) An issuer which has sold a class of its securities pursuant to A registration under Section 8 hereof: *Provided, however,* That the obligation of such issuer to file reports shall be suspended for any fiscal year after the year such registration became effective if such issuer, as of the first day of any such fiscal year, has less than 100 holders of such class of securities or such other number as the Commission shall prescribe and it notifies the Commission of such;

(B) An issuer with a class of securities listed for trading on an Exchange; and

(C) An issuer with assets of at least P50,000,000 or such other amount as the Commission shall prescribe, and having 200 or more holders each holding at least 100 shares of a class of its equity securities: *Provided, however,* That the obligation of such issuer to file reports shall be terminated ninety (90) days after notification to the Commission by the issuer that the number of its holders holding at least 100 shares is reduced to less than 100.

14.3. Every issuer of a security listed for trading on an Exchange shall file with the Exchange a copy of any report filed with the Commission under Subsection 14.1 hereof.

14.4. All reports (including financial statements) required to be filed with the Commission pursuant to Subsection 14.1 hereof shall be in such form, contain such information and be filed at such times as the Commission [by rule] shall prescribe, and shall be in lieu of any periodical or current reports or financial statements otherwise required to be filed under the Corporation Code.

14.5. Every issuer which has a class of equity securities satisfying any of the requirements in Subsection 14.2 shall furnish to each holder of such equity security an annual report in such form and containing such information as the Commission [by rule] shall prescribe.

14.6. Within such period as the Commission [by rule] may prescribe preceding the annual meeting of the holders of any equity security of a class entitled to vote at such meeting, the issuer shall transmit to such holders an annual report in conformity with Subsection 14.5.

14.7. The Commission[, by rule or order,] may exempt any issuer from the provisions of this Section.

SEC. 15. *Reports by [10%] 5% Holders of Equity Securities.* -

15.1. In every case in which an issuer [has a class of equity security that] satisfies the requirements of Subsection 14.2 [(B) or 14.2 (C)] hereof, any person who [, after acquiring directly or indirectly the beneficial ownership of any such equity security, is] ACQUIRES directly or indirectly the beneficial ownership of more than [ten] FIVE *per centum* [(10%)] (5%) of such class or in excess of such lesser *per centum* as the Commission by rule may prescribe, shall, within ten days after such acquisition or such reasonable time as fixed by the Commission, submit to the issuer of the security, to the Exchange where the security is traded, and to the Commission a sworn statement containing the following information and such other information as the Commission may require in the public interest or for the protection of investors:

(A) The personal background, identity, residence, and citizenship of, and the nature of such beneficial ownership by, such person and all other persons by whom or on whose behalf the purchases are effected; in the event the beneficial owner is a juridical person, the lines of business of the beneficial owner shall also be reported;

(B) If the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have that will effect a major change in its business or corporate structure;

(C) The number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by: (i) such person, and (ii) each associate of such person, giving the background, identity, residence, and citizenship of each such associate; and

(D) Information as to any contracts, arrangements, or understanding with any person with respect to any securities of the issuer including but not limited to transfer, joint ventures, loan or option arrangements, puts or calls, guarantees or division of losses or profits, or proxies naming the persons with whom such contracts, arrangements, or understanding have been entered into, and giving the details thereof.

15.2 If any change occurs in the facts set forth in the statements, an amendment shall be transmitted to the issuer, the Exchange and the Commission.

15.3 The Commission, may permit any person to file in lieu of the statement required by Subsection 15.1 hereof, a notice stating the name of such person, the shares of any equity securities subject to Subsection 15.1 which are owned by him, the date of their acquisition and such other information as the Commission may specify, if it appears to the Commission that such securities were acquired by such person in the ordinary course of his business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer nor in connection with any transaction having such purpose or effect.

CHAPTER V
Civil Liabilities

SEC. 16. *Civil Liabilities on Account of False Registration Statement.* -

16.1. Any person acquiring a security, the registration statement of which or any part thereof contains on its effectivity an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make such statements not misleading, and who suffers damage, may sue and recover damages from the following enumerated persons, unless it is proved that at the time of such acquisition he knew of such untrue statement or omission:

(A) The issuer and every person who signed the registration statement;

(B) Every person who was a director of, or any other person performing similar functions, or a partner in, the issuer at the time of the filing of the registration statement or any part, supplement or

amendment thereof with respect to which his liability is asserted;

(C) Every person who is named in the registration statement as being or about to become a director of, or a person performing similar functions, or a partner in, the issuer and whose written consent thereto is filed with the registration statement;

(D) Every person [whose profession gives authority to a statement made by him,] who, with his written consent, which shall be filed with the registration statement, has been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement [in such registration statement], report, or valuation, which purports to have been prepared or certified by him.

(E) Every selling shareholder who contributed to and certified as to the accuracy of a portion of the registration statement, with respect to that portion of the registration statement which purports to have been contributed by him.

(F) Every underwriter with respect to such security.

If the person who acquired the security did so after the issuer has made generally available to its security holders an income statement covering a period of at least twelve months beginning from the effective date of the registration statement, then the right of recovery under this subsection shall be conditioned on proof that such person acquired the security relying upon such untrue statement in the registration statement or relying upon the registration statement and not knowing of such income statement, but such reliance may be established without proof of the reading of the registration statement by such person.

16.2. Notwithstanding the provisions of Subsection 16.1, no person, other than the issuer, shall be liable as provided therein if he proves that:

(A) Before the effective date of the part of the registration statement with respect to which his liability is asserted: (i) He had resigned from or had taken such steps as are permitted by law to resign

from, or ceased or refused to act in, every office, capacity or relationship in which he was described in the registration statement as acting or agreeing to act; and (ii) He had advised the Commission and the issuer in writing that he had taken such action and that he would not be responsible for such part of the registration statement; or

(B) (i) As regards any part of the registration statement not purporting to be a copy of or extract from a report or valuation of an expert, and not purporting to be made on the authority of a public official document or statement, he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements not misleading; and (ii) As regards any part of the registration statement purporting to be made upon his authority as an expert or purporting to be a copy of or extract from a report or valuation of himself as an expert: (a) He had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or (b) Such part of the registration statement did not fairly represent his statement as an expert or was not a fair copy of or extract from his report or valuation as an expert; and (iii) As regards any part of the registration statement purporting to be made on the authority of an expert (other than himself) or purporting to be a copy of or extract from a report or valuation of an expert (other than himself), he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement of the expert or was not a fair copy of or extract from the report or valuation of the expert; and (iv) As regards any part of the registration statement purporting to be a statement made by a

public official or purporting to be a copy of or extract from a public official document, he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue, or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement made by the public official or was not a fair copy of or extract from the public official document.

16.3. In determining, for the purpose of paragraph (B) of Subsection 16.2, what constitutes reasonable investigation and reasonable ground for belief, the standard of reasonableness shall be that required of a prudent man in the management of his own property.

16.4. The suit authorized under Subsection 16.1 may be filed to recover [such] damages [as shall represent] double the difference between the amount paid FOR THE SECURITY AND EITHER ITS VALUE AT THE TIME HE BROUGHT SUIT OR THE PRICE AT WHICH HE DISPOSED OF IT [and committed to be paid for the security, not exceeding the price at which the security was offered to the public, and: (A) The value thereof as of the time such suit was brought, or in case the security has been disposed of; (B) The price at which such security shall have been disposed of in the market before the suit; or (C) The price at which such security shall have been disposed of after the filing of the suit but before judgment]. No underwriter shall be liable in any suit or as a consequence of suits authorized under Subsection 16.1 hereof for damages in excess of the total price at which the securities underwritten by him [and distributed to the public] were offered to the public.

16.5. The persons specified in Subsection 16.1 hereof shall be jointly and severally liable for the payment of damages. However, any person who becomes liable for the payment of such damages may recover contribution from any other person who, if sued separately, would have been liable to make the same payment, unless the former was guilty of fraudulent representation and the latter was not.

16.6. In no case shall the amount recoverable under this Section exceed double the AMOUNT PAID FOR

THE SECURITY [price at which the security was offered to the public and such exemplary damages as may be awarded].

16.7. Notwithstanding any provision of law to the contrary, all persons, including the issuer, held liable under this Section, shall contribute equally to the total liability adjudged herein. In no case shall the principal stockholders, directors and other officers of the issuer or persons occupying similar positions therein, recover their contribution to the liability from the issuer. However, the right of the issuer to recover from the guilty parties the amount it has contributed under this Section shall not be prejudiced.

16.8. In any suit under this or any other subsection of this Act, the Commission may, in its discretion, require the payment of the costs of such suit, including reasonable attorney's fees. Costs may be allowed by the Commission to the prevailing party litigant.

SEC. 17. Civil Liabilities Arising in Connection with Prospectus, Communications and Reports. -

17.1. Any person who:

(A) Offers to sell or sells a security in violation of Chapter II, or

(B) Offers to sell or sells a security, whether or not exempted by the provisions of this Act, by the use of any means or instruments of transportation or communication, by means of a prospectus or other written or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall fail in the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable to the person purchasing such security from him, who may sue to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

17.2. Any person who shall make or cause to be made any statement in any report, or document filed

pursuant to this Act or any rule or regulation thereunder, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable to any person who, not knowing that such statement was false or misleading, and relying upon such statements shall have purchased or sold a security at a price which was affected by such statement, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading.

17.3. Every person who becomes liable to make payment under this Section and Sections 18 through 21 may recover contribution as in cases of contract from any person who, if joined in the original suit, would have been liable to make the same payment.

SEC. 18. *Civil Liability for Fraud in Connection with Securities Transactions.* - Any person who engages in any act or transaction in violation of Subsections 23.5 or [24.5] 25.5, or Section 31, or any rule or regulation of the Commission thereunder, shall be liable to any other person who purchases or sells any security, grants or refuses to grant any proxy, consent or authorization, or accepts or declines an invitation for tender of a security, as the case may be, for the damages sustained by such other person as a result of such act or transaction.

SEC. 19. *Civil Liability for Manipulation of Security Prices.* - Any person who willfully participates in any act or transaction in violation of Section 29 shall be liable to any person who shall purchase or sell any security at a price which was affected by such act or transaction, and the person so injured may sue to recover the damages sustained as a result of such act or transaction.

SEC. 20. *Civil Liability on Account of Insider Trading.* -

20.1. Any insider who violates Subsection 32.1 and any person in the case of a tender offer who violates Subsection 32.5 (A)(i), or any rule or regulation thereunder, by purchasing or selling a security while in possession of material information not generally available to the public, shall be liable in a suit brought by any investor who, contemporaneously with the purchase or sale of securities that is the subject of the violation, purchased or sold securities of the same class unless such

insider, or such person in the case of a tender offer, proves that such investor knew the information or would have purchased or sold at the same price regardless of disclosure of the information to him.

20.2. The actual damages that may be [imposed] AWARDED shall NOT be [equal to] LESS THAN THREE TIMES the difference between the [price at which such investor purchased or sold the security] PURCHASE OR SALE PRICE and the market value [which] OF such security [would have had at the time of the purchase or sale if the information known to such insider, or such person in the case of a tender offer, had been publicly disseminated and absorbed by the market prior to such time: *Provided, however,* That in no event shall the total amount of all damages imposed exceed the profit gained or loss avoided in the transactions that comprised the violation] AT REASONABLE PERIOD AFTER PUBLIC DISSEMINATION OF THE NON-PUBLIC INFORMATION.

20.3. An insider who violates Subsection 32.4, or any person in the case of a tender offer who violates Subsection 32.5 [(B)] (A), or any rule or regulation thereunder, by communicating material non-public information, shall be jointly and severally liable under Subsection 20.1 with, and to the same extent as, the insider, or person in the case of a tender offer, to whom the communication was directed and who is liable under Subsection 20.1 by reason of his purchase or sale of a security.

SEC. 21. *Civil Liability with Respect to [Commodity Interest Contracts and] Pre-need Plans.* -

21.1. Any person who engages in any act or transaction in willful violation of any rule or regulation promulgated by the Commission under Section 12 or 13, which the Commission denominates at the time of issuance as intended to prohibit fraud in the offer and sale of pre-need plans or to prohibit fraud, manipulation, fictitious transactions, undue speculation, or other unfair or abusive practices with respect to commodity interest contracts, shall be liable to any other person sustaining damage as a result of such act or transaction.

21.2. As to each such rule or regulation so denominated, the Commission by rule shall prescribe the elements of proof required for recovery and any limitations on the amount of damages that may be imposed.

SEC. 22. *Limitation of Actions.* -

- 22.1. No action shall be maintained to enforce any liability created under Sections 16 or 17 of this Act unless brought within two years after the discovery of the untrue statement or the omission, or, if the action is to enforce a liability created under Subsection [15.1] 17.1 (A), unless brought within two years after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under Section 16 or Subsection 17.1 (A) more than five years after the security was bona fide offered to the public, or under Subsection 17.1 (B) more than five years after the sale.
- 22.2. No action shall be maintained to enforce any liability created under any other provision of this Act unless brought within two years after the discovery of the facts constituting the cause of action and within five years after such cause of action accrued.
- 22.3. All suits to recover damages or otherwise impose civil liability pursuant to this Chapter V shall be brought before the Commission, which shall have exclusive jurisdiction to hear and decide such suits.

EXEMPLARY DAMAGES MAY ALSO BE AWARDED IN CASES OF BAD FAITH, FRAUD, MALEVOLENCE OR WANTONNESS IN THE VIOLATION OF THIS ACT OR THE RULES AND REGULATIONS PROMULGATED THEREUNDER.

CHAPTER V
Protection of Shareholder Interests

SEC. 23. *Tender Offers.* -

- 23.1. (A) It shall be unlawful for any person, directly or indirectly, to make a tender offer for, or a request or invitation for tenders of, any class of any equity security which satisfies the requirements of Subsection 14.2 [(B) or (C)] if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than ten *per centum* (10%) of such class, or in excess of such lesser *per centum* as the Commission may prescribe, unless at the time copies of the offer or request or invitation are first published or sent or given to security holders, such person has filed with the Commission and furnished the issuer a statement containing such of the information required in

Section 15 of this Act as the Commission may prescribe. All requests or invitations for tender, or advertisements making a tender offer or requesting or inviting tenders of such a security, shall be filed as a part of such statement as the Commission may prescribe. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the Commission may prescribe [as necessary or appropriate in the public interest or for the protection of investors], and shall be filed with the Commission and sent to the issuer not later than the time copies of such materials are first published or sent or given to security holders.

(B) Any solicitation or recommendation to the holders of such a security to accept or reject a tender offer or request or invitation for tenders shall be made in accordance with such rules and regulations as the Commission may prescribe [as necessary or appropriate in the public interest or for the protection of investors].

(C) Securities deposited pursuant to a tender offer or request or invitation for tenders may be withdrawn by or on behalf of the depositor at any time [until the expiration of seven days after the time definitive copies of the offer or request or invitation are first published or sent or given security holders] THROUGHOUT THE PERIOD THAT THE TENDER OFFER REMAINS OPEN AND IF THE SECURITIES DEPOSITED HAVE NOT BEEN PREVIOUSLY ACCEPTED FOR PAYMENT, and AT any time after sixty days from the date of the original tender offer or request or invitation, except as the Commission may otherwise prescribe [by rules, regulations, or order as necessary or appropriate in the public interest or for the protection of investors].

(D) Where any person makes a tender offer, or request or invitation for tenders, for less than all the outstanding equity securities of a class, and where a greater number of securities is deposited pursuant thereto within [ten days after copies of the offer or request or invitation are first published or sent or given to security holders] THE PERIOD THE TENDER OFFER REMAINS OPEN than such person is bound or willing to take up and pay for, the securities taken up shall be taken up as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by

each depositor. The provisions of this subsection shall also apply to securities deposited within ten days after notice of an increase in the consideration offered to security holders, as described in paragraph (E) of this subsection, is first published or sent or given to security holders.

(E) Where any person varies the terms of a tender offer or request or invitation for tenders before the expiration thereof by increasing the consideration offered to holders of such securities, such person shall pay the increased consideration to each security holder whose securities are taken up and paid for whether or not such securities have been taken up by such person before the variation of the tender offer or request or invitation.

23.2. The provisions of Subsections [14.1] 15.1 and 23.1 (A) shall not apply to the ownership of, or to any offer for, or request or invitation for tenders of, any equity security:

(A) If the acquisition of such security, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months would not exceed two *per centum* (2%) of that class; or

(B) By the issuer of such security; or

(C) Which the Commission, by rules or regulations or by order, shall exempt as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purpose of said Sections.

23.3. When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for the purposes of Section 15 and Subsection 23.1 (A).

23.4. In determining, for purposes of Section 15 and Subsection 23.1 (A), any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

23.5. It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation. The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

SEC. 24. *Purchases by Issuers.* -

24.1. The Commission shall promulgate rules and regulations providing for reporting, disclosure and the prevention of fraudulent, deceptive or manipulative practices in connection with the purchase by an issuer, by tender offer or otherwise, of any equity security of a class issued by it that satisfies the requirements of Subsection 14.2 [(B) or 14.2 (C)]. Such rules and regulations may require such issuer to provide holders of equity securities of such class with such information relating to the reasons for such purchase, the source of funds, the number of shares to be purchased, the price to be paid for such securities, the method of purchase and such additional information as the Commission deems necessary or appropriate in the public interest or for the protection of investors, or which the Commission deems to be material to a determination by holders whether such security should be sold.

24.2. For the purpose of this Section, a purchase by or for the issuer or any person controlling, controlled by, or under common control with the issuer, or a purchase subject to the control of the issuer or any such person, shall be deemed to be a purchase by the issuer. The Commission shall have the power to make rules and regulations implementing this subsection [in the public interest and for the protection of investors], including exemptive rules and regulations covering situations in which the Commission deems it unnecessary or inappropriate that a purchase of the type described in this subsection shall be deemed to be a purchase by the issuer for the purpose of some or all of the provisions of Subsection 24.1.

SEC. 25. *Proxy Solicitations.* - With respect to any class of equity security that satisfies the requirements of Subsection 14.2 [(B) or 14.2 (C)]:

25.1. The Commission is authorized to promulgate rules and regulations governing the solicitation of proxies, consents and authorizations with respect to any such class of equity security. Notwithstanding any provision of the Corporation Code to the contrary, such rules and regulations may, among other things, require the filing with the Commission of a proxy statement and other materials proposed for use in any solicitation, prescribe the form and content of such materials and of any proxy, consent or authorization, fix the periods within which a solicitation may occur, impose restrictions on the time in which and the purpose for which a proxy, consent or authorization may be effective, and prevent fraudulent and deceptive practices in connection therewith.

25.2. The Commission is authorized to promulgate rules and regulations governing the obligations of any member of an Exchange, any broker or dealer, or any bank, association, or other entity that exercises fiduciary powers, to give, or to refrain from giving a proxy, consent or authorization with respect to any such class of equity security, and which is carried for the account of a customer thereof.

25.3. Unless proxies, consents, or authorizations with respect to any such class of equity security are solicited by or on behalf of the management of the issuer from the holders of record of such security in accordance with the rules and regulations prescribed under Subsection 25.1, such issuer shall, prior to any annual or other meeting of the holders of such security (or the taking of any action without a meeting) and in accordance with rules and regulations prescribed by the Commission, file with the Commission and transmit to all holders of record of such security an information statement containing information substantially equivalent to that which would be required in a proxy statement if a solicitation were made.

25.4. Notwithstanding any provision of the Corporation Code to the contrary, notice of any annual or special meeting of the holders of any equity security of a class entitled to vote at such meeting shall be mailed or otherwise transmitted at least fifteen (15) days prior thereto.

25.5. No solicitation of a proxy, consent or authorization shall be made by means of a proxy statement, form of proxy or consent, notice of meeting or other communication, written or oral, which is materially false or misleading, or which fails to disclose material facts necessary to correct any statement in an earlier communication made with respect to the solicitation of a proxy, consent or authorization for the same meeting or subject matter, which has become false or misleading.

SEC. 26. *Fees for Tender Offers and Certain Proxy Solicitations.* - At the time of filing with the Commission of any statement required under Section 23 for any tender offer or Section 24 for issuer repurchases, or [of proposed proxy or consent solicitation materials under] Section 25 FOR PROXY OR CONSENT SOLICITATION [that concerns an acquisition, merger, consolidation or proposed sale or disposition of substantially all of the assets of any issuer], the Commission may require [by rule] that the person making such filing pay a fee of one-tenth of one *per centum* of:

26.1. The proposed aggregate purchase price in the case of a transaction under Section 23 or 24; or

26.2. The proposed payment in cash, and the value of any securities or property to be transferred in the acquisition, merger or consolidation, or the cash and value of any securities proposed to be received upon the sale or disposition of such assets in the case of a solicitation under Section 25.

SEC. 27. *Internal Record Keeping and Accounting Controls.* - Every issuer which has a class of securities that satisfies the requirements of Subsection 14.2 shall:

27.1. Make and keep books, records, and accounts which, in reasonable detail accurately and fairly reflect the transactions and dispositions of assets of the issuer;

27.2. Devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (A) Transactions and access to assets are pursuant to management authorization; (B) Financial statements are prepared in conformity with generally accepted accounting principles that are adopted by the Accounting Standards Council and the rules promulgated by the Commission with regard to the preparation of financial statements;

and (C) Recorded assets are compared with existing assets at reasonable intervals and differences are reconciled.

SEC. 28. Transactions of Directors, Officers and Principal Stockholders. -

- 28.1. Every person who is directly or indirectly the beneficial owner of more than ten *per centum* of any class of any equity security which satisfies the requirements of Subsection 14.2 [(B) or 14.2 (C)], or who is a director or an officer of the issuer of such security, shall file, at the time either such requirement is first satisfied or within ten days after he becomes such a beneficial owner, director, or officer, a statement with the Commission and, if such security is listed for trading on an Exchange, also with the Exchange, of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten (10) days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission, and if such security is listed for trading on an Exchange, shall also file with the Exchange, a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.
- 28.2. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall [insure] INURE to and be recoverable by the issuer, irrespective of any intention of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted before the Commission by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter, but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at

the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection.

- 28.3. It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such issuer if the person selling the security or his principal: (A) Does not own the security sold; or (B) If owning the security, does not deliver it against such sale within twenty days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this subsection if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.
- 28.4. The provisions of Subsection 28.2 shall not apply to any purchase and sale, or sale and purchase, and the provisions of Subsection 28.3 shall not apply to any sale, of an equity security not then or thereafter held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market, otherwise than on an Exchange, for such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

CHAPTER VII

Prohibitions on Fraud, Manipulation
and Insider Trading

SEC. 29. Manipulation of Security Prices; Devices and Practices. -

- 29.1. It shall be unlawful for any person, directly or indirectly:

(A) To create a false or misleading appearance of active trading in any listed security for trading on an Exchange or any other trading market:

- (i) By effecting any transaction in such security which involves no change in the beneficial ownership thereof, or
- (ii) By entering an order or orders for the purchase or sale of such security with the knowledge that an order or orders of substantially the same size, time and price, for the sale or purchase of any such security, has or have been or will be entered by or for the same or different parties.

(B) To effect, alone or with one or more other persons, a series of transactions in securities that: (i) Raises their price to induce the purchase of a security, whether of the same or a different class of the same issuer or of a controlling, controlled, or commonly controlled company by others; (ii) Depresses their price to induce the sale of a security, whether of the same or a different class, of the same issuer or of a controlling, controlled, or commonly controlled company by others; or (iii) Creates active trading to induce such a purchase or sale.

(C) To induce the purchase or sale of any security listed for trading on an Exchange or transacted on any other trading market by the circulating or disseminating of information that the price of any such security will or is likely to rise or fall because of market operations of any one or more persons conducted with the purpose of raising or depressing the price of such security.

(D) To make false or misleading statement with respect to any material fact, which he knew or had reasonable ground to believe was so false or misleading, regarding any security listed or traded on an Exchange or transacted on any other trading market for the purpose of inducing the purchase or sale of such security.

(E) For a consideration received directly or indirectly from a dealer or broker or other person selling or offering for sale or purchasing or offering to purchase the security, to induce the purchase or sale of any security on an Exchange or transacted on any other trading market by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.

(F) To effect, either alone or with one or more other persons, any series of transactions for the purchase and/or sale of any security listed for trading on an Exchange or transacted on any other trading market for the purpose of pegging, fixing or stabilizing the price of such security.

29.2. No person, by use of any facility of any Exchange or of any other trading market, shall:

(A) Effect a short sale, or use or employ any stop-loss order in connection with the purchase or sale of any security on an Exchange or effected on any other trading market except in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) Use or employ, in connection with the purchase or sale of any security, any manipulative or deceptive device or contrivance.

29.3. It shall be unlawful for any Exchange or any other self-regulatory organization administering a trading market to adopt and enforce artificial measures of price control of any nature whatsoever without the prior approval of the Commission which may be given only if it serves the public interest and benefits investors.

29.4. The foregoing provisions notwithstanding, the Commission, having due regard to the public interest and the protection of investors, may, by rules and regulations, allow certain acts or transactions that may otherwise be prohibited under this Section.

SEC. 30. Regulation of Option Trading. -

30.1. No person shall offer, sell, enter into, acquire an interest in, or, in the case of a member of an Exchange or other self-regulatory organization, guarantee an option or privilege (including any put, call, or straddle) on a security, a certificate of deposit, or a group or index of securities (including any interest therein or based on the value thereof) except in accordance with rules and regulations promulgated by the Commission.

30.2. The Commission is authorized to regulate trading of any option or privilege by permitting such transactions on such terms and conditions as the Commission may prescribe, and may prohibit any

option transaction if it determines that such prohibition is necessary and appropriate in the public interest or for the protection of investors.

30.3. The terms "put", "call", "straddle", "option", or "privilege" as used in this Section shall not include any registered warrant, right or convertible security.

SEC. 31. *Fraudulent Transactions.* - It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities to:

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

31.2. 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

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

SEC. 32. *Insider's Duty to Disclose When Trading.*-

32.1. It shall be unlawful for an insider to sell or buy a security of the issuer, while in possession of material information with respect to the issuer or the security that is not generally available to the public, unless: (A) the insider proves that the information was not gained from such relationship; or (B) if the other party selling to or buying from the insider (or his agent) is identified, the insider proves: (i) that he disclosed the information to the other party, or (ii) that he had reason to believe that the other party otherwise is also in possession of the information. A purchase or sale of a security of the issuer made by an insider defined in Subsection [32.2 (B)] 3.27 [of this Section], or such insider's spouse, parents, siblings or children, shall be presumed to have been effected while in possession of material non-public information if transacted after such information came into existence but prior to dissemination of such information to the public and the lapse of a reasonable time for the market to absorb such information: *Provided, however,* That this presumption shall be rebutted upon a showing by the purchaser or seller that he was not aware of the material non-public information at the time of the purchase or sale.

[32.2. "Insider" means: (A) The issuer; (B) A director or officer (or person performing similar functions) of, or a person controlling the issuer; (C) A person whose relationship or former relationship to the issuer gives or gave him access to material information about the issuer or the security that is not generally available to the public; or (D) A person who learns such information by a communication from any of the foregoing insiders as defined in paragraphs (A), (B) and (C) of this subsection, with knowledge or reason to believe that the person from whom he learns the information is such an insider and the information is not generally available to the public.]

[32.3] 32.2 For purposes of this Section, information is "material NON-PUBLIC" if: (A) IT HAS NOT BEEN GENERALLY DISCLOSED TO THE PUBLIC AND [The information] would likely affect the market price of the security after being disseminated to the public and the lapse of a reasonable time for the market to absorb the information; or (B) [A reasonable person would consider the information important under the circumstances in determining his course of action whether to buy, sell or hold a security in the light of such factors as the degree of its specificity, the extent of its difference from information generally available previously, and its nature and reliability] WOULD BE CONSIDERED BY A REASONABLE PERSON IMPORTANT UNDER THE CIRCUMSTANCES IN DETERMINING HIS COURSE OF ACTION WHETHER TO BUY, SELL OR HOLD A SECURITY.

[32.4] 32.3. It shall be unlawful for any insider to communicate material non-public information about the issuer or the security to any person who, by virtue of the communication, becomes an insider as defined in Subsection [32.2] 3.27, where the insider communicating the information knows or has reason to believe that such person will likely buy or sell a security of the issuer while in possession of such information.

[32.5] 32.4. (A) It shall be unlawful where a tender offer has commenced or is about to commence for:

- (i) Any person (other than the tender offeror) who is in possession of material non-public information relating to such tender offer, to buy or sell the securities of the issuer that are

sought or to be sought by such tender offer if such person knows or has reason to believe that the information is non-public and has been acquired directly or indirectly from the tender offeror, those acting on its behalf, the issuer of the securities sought or to be sought by such tender offer, or any insider of such issuer; and

- (ii) Any tender offeror, those acting on its behalf, the issuer of the securities sought or to be sought by such tender offer, and any insider of such issuer to communicate material non-public information relating to the tender offer to any other person where such communication is likely to result in a violation of Subsection [32.5] 32.4 (A) (i) of this subsection.

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

- 32.6. It shall be unlawful for a person controlling any person who violates Subsection 32.1, [32.4] 32.3 or [32.5] 32.4 to knowingly or recklessly disregard that such controlled person was likely to engage in such violation and fail to take appropriate steps or adopt procedures to prevent such violations.

CHAPTER VIII

Regulation of Securities Market Professionals

SEC. 33. *Registration of Brokers, Dealers, Salesmen and Associated Persons.* -

- 33.1. No person shall engage in the business of buying or selling securities in the Philippines 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.
- 33.2. No registered broker or dealer shall employ any salesman or any associated person, and no issuer shall employ any salesman, who is not registered as such with the Commission.
- 33.3. The Commission, by rule or order, may conditionally or unconditionally exempt from Subsections 33.1 and 33.2 any broker, dealer, salesman, associated person of any broker or dealer, or any

class of the foregoing, as it deems consistent with the public interest and the protection of investors.

- 33.4. The Commission shall promulgate rules and regulations prescribing the qualifications for registration of each category of applicant, which shall, among other things, require as a condition for registration that:

(A) If a natural person, the applicant satisfactorily pass a written examination as to his proficiency and knowledge in the area of activity for which registration is sought;

(B) In the case of a broker or dealer, the applicant satisfy a minimum net capital as prescribed by the Commission, and provide a bond or other security as the Commission may prescribe to secure compliance with the provisions of this Act; and

(C) If located outside of the Philippines, the applicant files a written consent to service of process upon the Commission pursuant to Section 60 hereof.

- 33.5. A broker or dealer may apply for registration by filing with the Commission a written application in such form and containing such information and documents concerning such broker or dealer as the Commission by rule shall prescribe.

- 33.6. Registration of a salesman or of an associated person of a registered broker or dealer may be made upon written application filed with the Commission by such salesman or associated person. The application shall be separately signed and certified by the registered broker or dealer to which such salesman or associated person is to become affiliated, or by the issuer in the case of a salesman employed, appointed or authorized solely by such issuer. The application shall be in such form and contain such information and documents concerning the salesman or associated person as the Commission by rule shall prescribe. For purposes of this Section, a salesman shall not include any employee of an issuer whose compensation is not determined directly or indirectly on sales of securities of the issuer.

- 33.7. Applications filed pursuant to Subsections 33.5 and 33.6 shall be accompanied by a registration fee in such reasonable amount prescribed by the Commission.

33.8. Within thirty (30) days after the filing of any application under this Section, the Commission shall by order: (A) Grant registration if it determines that the requirements of this Section and the qualifications for registration set forth in its rules and regulations have been satisfied; or (B) Deny said registration.

33.9. The names and addresses of all persons approved for registration as brokers, dealers, associated persons or salesmen and all orders of the Commission with respect thereto shall be recorded in a Register of Securities Market Professionals kept in the office of the Commission which shall be open to public inspection.

33.10. Every person registered pursuant to this Section shall file with the Commission, in such form as the Commission shall prescribe, information necessary to keep the application for registration current and accurate, including in the case of a broker or dealer changes in salesmen, associated persons and owners thereof.

33.11. Every person registered pursuant to this Section shall pay to the Commission an annual fee at such time and in such reasonable amount as the Commission shall prescribe. Upon notice by the Commission that such annual fee has not been paid as required, the registration of such person shall be suspended until payment has been made.

33.12. The registration of a salesman or associated person shall be automatically terminated upon the cessation of his affiliation with said registered broker or dealer, or with an issuer in the case of a salesman employed, appointed or authorized by such issuer. Promptly following any such cessation of affiliation, the registered broker or dealer, or issuer, as the case may be, shall file with the Commission a notice of separation of such salesman or associated person.

SEC. 34. Revocation, Refusal or Suspension of Registration of Brokers, Dealers, Salesmen and Associated Persons. -

34.1. Registration under Section 33 of this Act may be refused, or any registration granted thereunder may be revoked, suspended, or limitations placed thereon, by the Commission if, after due notice and hearing, the Commission determines the applicant or registrant:

(A) Has willfully violated any provision of this Act, any rule, regulation or order made hereunder, or any other law administered by the Commission, or in the case of a registered broker, dealer or associated person has failed to supervise, with a view to preventing such violation, another person who commits such violation;

(B) Has willfully made or caused to be made a materially false or misleading statement in any application for registration or report filed with the Commission or a self-regulatory organization, or has willfully omitted to state any material fact that is required to be stated therein;

(C) Has failed to satisfy the qualifications or requirements for registration prescribed under Section 33 and the rules and regulations of the Commission promulgated thereunder;

(D) Has been convicted, by a competent judicial or administrative body of an offense involving moral turpitude, fraud, embezzlement, counterfeiting, theft, estafa, misappropriation, forgery, bribery, false oath, or perjury, or of a violation of securities, commodities, banking, real estate or insurance laws;

(E) Is enjoined or restrained by a competent judicial or administrative body from engaging in securities, commodities, banking, real estate or insurance activities or from willfully violating laws governing such activities;

(F) Is subject to an order of a competent judicial or administrative body refusing, revoking or suspending any registration, license or other permit under this Act, the rules and regulations promulgated thereunder, any other law administered by the Commission;

(G) Is subject to an order of a self-regulatory organization suspending or expelling him from membership or participation therein or from association with a member or participant thereof;

(H) Has been found by a competent judicial or administrative body to have willfully violated any provisions of securities, commodities, banking, real estate or insurance laws, or has willfully aided, abetted, counseled, commanded, induced or procured such violation; or

(I) Has been judicially declared insolvent.

For purposes of this subsection, the term "competent judicial or administrative body" shall include a foreign court of competent jurisdiction and a foreign financial regulator.

34.2. (A) In cases of charges against a salesman or associated person, notice thereof shall also be given the broker, dealer or issuer employing such salesman or associated person.

(B) Pending the hearing, the Commission shall have the power to order the suspension of such broker's, dealer's, associated person's or salesman's registration: *Provided*, That such order shall state the cause for such suspension. Until the entry of a final order, the suspension of such registration, though binding upon the persons notified thereof, shall be deemed confidential, and shall not be published, unless it shall appear that the order of suspension has been violated after notice.

34.3. The order of the Commission refusing, revoking, suspending or placing limitations on a registration as herein above provided, together with its findings, shall be entered in the Register of Securities Market Professionals. The suspension or revocation of the registration of a dealer or broker shall also automatically suspend the registration of all salesmen and associated persons affiliated with such broker or dealer.

34.4. It shall be sufficient cause for refusal, revocation or suspension of a broker or dealer's registration, if any associated person thereof or any juridical entity controlled by such associated person has committed any act or omission or is subject to any disability enumerated in paragraphs (A) through (I) of Subsection 34.1 hereof.

SEC. 35. Transactions and Responsibility of Brokers and Dealers.-

35.1. No broker or dealer shall deal in or otherwise buy or sell, for its own account or for the account of customers, securities listed on an Exchange issued by any corporation where any stockholder, director, associated person or salesman, or authorized clerk of said broker or dealer and all the relatives of the foregoing within the fourth civil degree of consanguinity or affinity, is at the time holding office

in said issuer corporation as a director, president, vice-president, manager, treasurer, comptroller, secretary or any office of trust and responsibility, or is a controlling person of the issuer.

35.2. No broker or dealer shall effect any transaction in securities or induce or attempt to induce the purchase or sale of any security except in compliance with such rules and regulations as the Commission shall prescribe to ensure fair and honest dealings in securities and provide financial safeguards and other standards for the operation of brokers and dealers, including the establishment of minimum net capital requirements, the acceptance of custody and use of securities of customers, and the carrying and use of deposits and credit balances of customers.

CHAPTER IX

Exchanges and Other Securities Trading Markets

SEC. 36. Prohibition on Use of Unregistered Exchange; Regulation of Over-the-Counter Markets. -

36.1. No broker, dealer, salesman, associated person of a broker or dealer, or Exchange, directly or indirectly, shall make use of any facility of an Exchange in the Philippines to effect any transaction in a security, or to report such transaction, unless such Exchange is registered as such under Section 37 of this Act.

36.2. (A) No broker, dealer, salesman or associated person of a broker or dealer, singly or in concert with any other person, shall make, create or operate, or enable another to make, create or operate, any trading market, otherwise than on a registered Exchange, for the buying and selling of any security, except in accordance with rules and regulations the Commission may prescribe.

(B) The Commission may promulgate rules and regulations governing transactions by brokers, dealers, salesmen or associated persons of a broker or dealer, over any facilities of such trading market and may require such market to be administered by a self-regulatory organization determined by the Commission as capable of insuring the protection of investors comparable to that provided in the case of a registered Exchange. Such self-regulatory organization must provide a centralized marketplace for trading and must satisfy requirements comparable to those prescribed for registration of Exchanges in Section 37 of this Act.

SEC. 37. *Registration of Exchanges.* -

37.1. Any Exchange may be registered as such with the Commission under the terms and conditions hereinafter provided in this Section and Section 41 hereof, by filing an application for registration in such form and containing such information and supporting documents as the Commission by rule shall prescribe, including the following:

(A) An undertaking to comply and enforce compliance by its members with the provisions of this Act, its implementing rules or regulations and the rules of the Exchange;

(B) The organizational charts of the Exchange, rules of procedure, and a list of its officers and members;

(C) Copies of the rules of the Exchange; and

(D) An undertaking that in the event a member firm becomes insolvent or when the Exchange shall have found that the financial condition of its member firm has so deteriorated that it cannot readily meet the demands of its customers for the delivery of securities and/or payment of sales proceeds, the Exchange shall, upon order of the Commission, take over the operation of the insolvent member firm and immediately proceed to settle the member firm's liabilities to its customers.

37.2. Any provision of the Corporation Code to the contrary notwithstanding, no registration of an Exchange shall be granted unless the rules of the Exchange provide for:

(A) The expulsion, suspension, or disciplining of a member and persons associated with a member for conduct or proceeding inconsistent with just and equitable principles of fair trade, and for violations of provisions of this Act, or any other Act administered by the Commission, the rules, regulations and orders thereunder, or the rules of the Exchange;

(B) A fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking to be a member, the barring of any person from association with a member, and the prohibition or limitation of any person from access to services offered by the Exchange;

(C) A fair representation of its members to serve on the board of directors of the Exchange and in the administration of its affairs, and that any natural person associated with a juridical entity that is a member shall himself be deemed to be a member for this purpose;

(D) The board of directors of the Exchange to include in its composition: (i) the president of the Exchange, and (ii) persons who represent the interests of issuers and public investors and who are not associated with any broker or dealer or member of the Exchange;

(E) The president and other management of the Exchange to consist only of persons who are not members and are not associated with any broker or dealer or member of the Exchange;

(F) The transparency of transactions on the Exchange;

(G) The equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls;

(H) Prevention of fraudulent and manipulative acts and practices, promotion of just and equitable principles of trade, and, in general, protection of investors and the public interest; and

(I) The transparent, prompt and accurate clearance and settlement of transactions effected on the Exchange.

37.3. If the Commission finds that the applicant Exchange is capable of complying and enforcing compliance by its members, and persons associated with such members, with the provisions of this Act, its rules and regulations, and the rules of the Exchange, and that the rules of the Exchange are fair, just and adequate, the Commission shall cause such Exchange to be registered. If, after notice due and hearing, the Commission finds otherwise, the application shall be denied.

37.4. Within ninety (90) days after the filing of the application the Commission may issue an order either granting or denying registration as an Exchange, unless the Exchange applying for registration shall withdraw its application or shall

consent to the Commission's deferring action on its application for a stated longer period after the date of filing. The filing with the Commission of an application for registration by an Exchange shall be deemed to have taken place upon the receipt thereof. Amendments to an application may be made upon such terms as the Commission may prescribe.

37.5. Upon the registration of an Exchange, it shall pay a fee in such amount and within such period as the Commission may fix.

37.6. Upon appropriate application in accordance with the rules and regulations of the Commission and upon such terms as the Commission may deem necessary for the protection of investors, an Exchange may withdraw its registration or suspend its operations or resume the same.

Senator Roco. Then a grammatical motion, Mr. President. To be consistent then, there may be renumberings. Appropriate renumbering will be done by the staff, just for a motion.

The President. So the staff will do the renumbering.

Senator Roco. It is *mutatis mutandis*, Mr. President.

Senator Drilon. May we now request the good senator to prepare a new draft now containing the amendments of the committee as approved by the Chamber up to page 51, line 23 of the draft of November 9, 1998.

Senator Roco. In fact, all the way till the end so that our colleagues can read through them in one sitting.

Senator Drilon. But there are no proposed amendments yet starting on page 51.

Senator Roco. That is correct.

Senator Drilon. All right, that is clear so that our colleagues can go through and propose individual amendments on the basis

now of the draft containing the committee amendments approved by the Chamber.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

Senator Roco. Thank you, Mr. President.

SUSPENSION OF CONSIDERATION OF S. NO. 1220

Senator Drilon. I move that we suspend consideration of Senate Bill No. 1220 under Committee Report No. 6.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

SUSPENSION OF SESSION

Senator Drilon. Mr. President, I move that we suspend the session for one minute.

The President. Is there any objection? *[Silence]* There being none, the session is suspended for one minute.

It was 6:10 p.m.

RESUMPTION OF SESSION

At 6:11 p.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

ADJOURNMENT OF SESSION

Senator Drilon. Mr. President, I move that we adjourn the session until three o'clock tomorrow afternoon.

The President. Is there any objection? *[Silence]* There being none, the session is adjourned until tomorrow, November 10, 1998, at three o'clock in the afternoon.

It was 6:11 p.m.

line 18, it says "Public Education and Information Campaign." This looks like a good paragraph-provision. Is there no existing program on this regarding DENR's environmental concern at present? Any ongoing program, Mr. President?

Senator Honasan. Actually, there are education and information programs incorporated in the mandate of the agencies concerned. But these are, on the whole, either forgotten or disregarded especially by the enforcers and the monitoring agencies themselves.

It is our hope that with the creation of a more focused body with a clearer mandate, like the Presidential Air Quality Commission backed up by this legislative move, we can clarify and impose these standards and at the same time incorporate in the mandate of these agencies all the necessary wherewithal to educate our people and give them the necessary information especially about the long-term adverse effects.

Senator Magsaysay. Finally, Mr. President, I would appreciate it if the sponsor of the bill will ask the DENR Secretary or the Office of the DENR to give us a report on the number of smoke-emitting vehicles nationwide that have been impounded five years ago up to the present year, 1998. I would like to see whether the political will is there or they are not just following the laws. That would be an indication of the political will.

So that while we are discussing the bill, we will see if the DENR is the right agency, or we will just have to spin off within the DENR an agency that will be connected with the DOTC, without adding a budget, to have that final, focused, single approach on pollution problem.

Thank you, Mr. President.

Senator Honasan. Mr. President, we would like to reassure the distinguished senator that we will do these, and also for the local government units to assume some of the devolved functions.

Thank you very much, Mr. President.

SUSPENSION OF CONSIDERATION OF S. NO. 1255

Senator Drilon. I move that we suspend consideration of Senate Bill No. 1255 under Committee Report No. 8.

The President. Is there any objection? [Silence] There being none, the motion is approved.

SUSPENSION OF SESSION

Senator Drilon. I move for a one-minute suspension of the

session, Mr. President.

The President. Is there any objection? [Silence] There being none, the session is suspended for one minute.

It was 5:18 p.m.

RESUMPTION OF SESSION

At 5:24 p.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

MOTION OF SENATOR DRILON (Reconsideration of the Approval of *Journal of November 9, 1998*)

Senator Drilon. Mr. President, may I move that we reconsider the previous approval of the *Journal* of the session of November 9, 1998—Session No. 31—in order to clarify certain portions of the *Journal* and clearly reflect the approval of the committee amendments on Senate Bill No. 1220.

The President. Is there any objection to the motion to reconsider the approval of the *Journal* of Session No. 31 dated November 9, 1998 to reflect the...

Senator Drilon. To reflect the approval of certain committee amendments on Senate Bill No. 1220.

The President. Is there any objection? [Silence] There being none...

Senator Guingona. Mr. President.

The President. The Minority Leader is recognized.

Senator Guingona. It is not really an objection, Mr. President. I just would like to state that on very substantial amendments, we would like for the *Journal* to reflect that we would have certain questions and maybe certain opposition which should be subject of approval.

The President. Yes, there is no objection on the part of the Minority Leader.

With that qualification, there is no objection, so the motion is hereby approved.

CORRECTION OF THE JOURNAL

Senator Drilon. We therefore move to amend page 469

of the *Journal* under the caption "ADOPTION OF THE NOVEMBER 9 DRAFT" and the paragraph following such caption.

We move to amend the caption, which should now read: ADOPTION OF THE COMMITTEE AMENDMENTS AS CONTAINED IN THE NOVEMBER 9 DRAFT.

I repeat, Mr. President, for clarity. The caption should now read: ADOPTION OF THE COMMITTEE AMENDMENTS AS CONTAINED IN THE NOVEMBER 9 DRAFT.

The President. So that is the whole...

Senator Drilon. And the paragraph following the caption will now read: "There being no objection, the Body APPROVED THE COMMITTEE AMENDMENTS AS CONTAINED IN THE NOVEMBER 9 DRAFT OF THE BILL subject to the exceptions stated by Senator Roco."

I will repeat for clarity, Mr. President. The paragraph should now read: "There being no objection, the Body APPROVED THE COMMITTEE AMENDMENTS AS CONTAINED IN THE NOVEMBER 9 DRAFT OF THE BILL subject to the exceptions stated by Senator Roco. FURTHER, THE MINORITY LEADER STATED HIS RESERVATIONS AND OBJECTIONS WHICH WILL BE MADE OF RECORD AT THE APPROPRIATE TIME."

With that, Mr. President, we move for the approval of the

Journal of Session No. 31, as amended.

The President. Is there any objection to the amendment spelled out earlier by the Majority Leader with respect to that portion of page 469, the paragraph captioned under the draft entitled DRAFT AS OF NOVEMBER 9, 1998 as read by the Majority Leader? [Silence] There being none, the motion is hereby approved.

APPROVAL OF THE JOURNAL AS AMENDED

Senator Drilon. We move again for the approval of the *Journal*, as amended.

The President. So with the approval of that amendment, there is a motion to approve the *Journal*, as amended. Is there any objection? [Silence] There being none, the motion is hereby approved.

ADJOURNMENT OF SESSION

Senator Drilon. Mr. President, there is no further business on the agenda, I move to adjourn until 3:00 p.m., November 11, 1998.

The President. Is there any objection? [Silence] There being none, the session is adjourned until 3:00 p.m., November 11, 1998.

It was 5:30 p.m.

BILL ON SECOND READING
S. No. 1220 - Securities Act of 1998
(Continuation)

Senator Drilon. Mr. President, I move that we resume consideration of Senate Bill No. 1220, as reported out under Committee Report No. 6.

The President. Is there any objection? [*Silence*] There being none, resumption of consideration of Senate Bill No. 1220 is now in order.

Senator Drilon. Mr. President, we are still in the period of committee amendments.

May we ask the Chair to recognize Sen. Raul S. Roco, the chairman of the Committee on Banks, Financial Institutions and Currencies.

Senator Roco. Yes. The staff is just waiting for a go signal to distribute the November 10 version.

Senator Drilon. Yes. For purposes of the debates and the committee amendments, may we ask the staff to distribute the version as of November 10, 1998 already containing the committee amendments previously approved from Sections 1 to 37. We now start with Section 37 for purposes of the committee amendments.

May we ask the Chair to recognize Senator Roco.

The President. Senator Roco is recognized.

Senator Roco. Thank you, Mr. President. Because of the thickness of the document, Mr. President, we are having some technical difficulties making sure that everything coincides.

May I just ask our colleagues to look at page 64, because from page 1 to 65, we approved the committee amendments the last time. But I could not continue because of some difficulty in grappling with the concept of the dealers and the brokers.

COMMITTEE AMENDMENTS

If all our colleagues now are on page 64, Mr. President, the first committee amendment—and this one I will have to fax our colleagues because I have to read them.

Beginning with line 3 all the way to line 26 which was in the original report, we ask that they be deleted—from line 3 to line 26. Delete all those lines and in lieu thereof, we move that the one on line 37—and here, I have some difficulty, Mr. President, because of the typing.

In line 27, in lieu thereof, we now propose the new 37.1. I shall read it, Mr. President, because I do not know if the gentleman has the final version.

The new 37.1 shall read:

IT SHALL BE UNLAWFUL FOR ANY MEMBER-BROKER OF AN EXCHANGE TO EFFECT ANY TRANSACTION ON SUCH EXCHANGE FOR ITS OWN ACCOUNT, THE ACCOUNT OF AN ASSOCIATED PERSON, OR AN ACCOUNT WITH RESPECT TO WHICH IT OR AN ASSOCIATED PERSON THEREOF EXERCISES INVESTMENT DISCRETION: *PROVIDED, HOWEVER, THAT THIS SECTION SHALL NOT MAKE UNLAWFUL-*

(A) ANY TRANSACTION BY A MEMBER-BROKER ACTING IN THE CAPACITY OF A MARKETMAKER;

(B) ANY TRANSACTION REASONABLY NECESSARY TO CARRY ON AN ODD-LOT TRANSACTION;

(C) ANY TRANSACTION TO OFFSET A TRANSACTION MADE IN ERROR;

and the one printed here, the lengthy letter (D) should be ignored.

Letter (D) will only be as follows: (D) ANY OTHER TRANSACTION OF A SIMILAR NATURE which is the letter (E) in the draft.

So letter (E) will now read: (E) ANY OTHER TRANSACTION OF A SIMILAR NATURE. That is the first recommended committee amendment as regards Section 37.1.

If the Chamber in its collective wisdom would consider that, we will seek its approval.

Senator Guingona. Mr. President.

The President. The Minority Leader is recognized.

Senator Guingona. I appreciate the corrections, Mr. President, but as I understand it, we were just supposed to consider up to page 59.

Senator Roco. Yes, Mr. President. But the paging became different because some of the earlier amendments lengthened the pages. That is why I am now looking at the paging of the

November 10 draft which is with the gentleman.

Senator Guingona. For purposes of clarity, can we have this retyped as changed by the distinguished sponsor?

Senator Roco. Yes, Mr. President. In fact, I will request that I will not close the period of committee amendments if I can read first all these amendments now. I only have three pages of committee amendments. By tomorrow, we can furnish the gentleman with a clean copy and maybe we can finally approve it on Third Reading. I cannot rearrange it unless the Chamber allows me to do so.

Senator Guingona. Mr. President, if the distinguished sponsor can make the changes and then just present them to us tomorrow with a clean copy, I think that would simplify it. Because sometimes it takes us a hard time to follow. The gentleman can just make the changes he wishes to propose and present them to us tomorrow.

Senator Roco. May I just clarify, Mr. President. We modified 37.1 as printed here. That is the only thing that departs. All the others are already there as I will be presenting them. Maybe I can go on an omnibus motion again for the rest.

SUSPENSION OF SESSION

May I ask for a one-minute suspension of the session, Mr. President.

The President. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 4:39 p.m.

RESUMPTION OF SESSION

At 4:41 p.m., the session was resumed.

The President. The session is resumed. Senator Roco is recognized.

Senator Roco. Mr. President, with apologies to all our colleagues, I have been exerting every effort to confuse the Minority Leader and I am afraid I am not succeeding. Because of this, I will try to do it again.

The President. Try harder this time.

Senator Roco. I have already a motion, Mr. President, as regards the new Section 37.1 which commences on page 64 of the draft of November 10, 1998 in line 27 and it goes all the way

to page 65. Here, I will explain, and in formal discussion, ignore the "(D)", and we will redo this; and "(E)" becomes "(D)". That is the only departure from what is printed already. So, if we can bear with that, I will ask that committee amendment for Section 37.1 be accepted with those modifications.

Yes, I have read "(D)", "ANY OTHER TRANSACTION OF A SIMILAR NATURE." So, if this is acceptable, I will...

The President. What is the pleasure of the Majority Leader?

Senator Drilon. There is a motion for the approval of the committee amendment on page 64 which will now be Section 37.1 as read by the sponsor.

Senator Roco. Yes, Mr. President.

Senator Drilon. There is a motion for the approval of the committee amendment.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Roco. Thereafter, Mr. President, from Section 37.2 appearing on page 65 of the draft of November 10 onwards until the end, the amendments are either in capital letters to indicate they are new, or bracketed to indicate they are deleted. By the precedent of the last motion, may we seek an omnibus motion for the Chamber to approve the committee amendments from page 65 onwards. Then tomorrow I will give the Chair the clean draft.

Senator Guingona. Mr. President, I understand the distinguished sponsor is still going to introduce some changes in the penalties. I think it would be better if the proposed changes be included in tomorrow's draft.

Senator Roco. Yes, I will do that, Mr. President. But if this is acceptable, then what I would propose to have is a nicer law, because here the penalties appear in the middle. Normally, the penalties appear in the end. But for some reason, even in the old law, the penalties are in the middle. It was only when we were again reviewing with the technical group that I noticed that the penalties were in the middle.

So I propose to transform them all towards the end. But tomorrow these will already be transformed, but these will not yet be accepted. We will again ask that these be accepted tomorrow, except that for lack of material time we could not do it for today's session. Maybe I am succeeding already with the Minority Leader.

If we are perplexed, Mr. President, may I ask that the recommendations of the committee be accepted in the meantime? We are not yet closing the committee amendments.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

Senator Drilon. Just a point of clarification. The *Record of the Senate* should reproduce the committee amendments as appearing in the November 10, 1998 draft starting with Section 37.

Senator Roco. Or maybe after we submit it tomorrow so that it will only be one reproduction. The Secretariat will reproduce it only once because it is very thick. So the final acceptance of the committee amendments is already perfected and then it is simpler for everybody, if this is all right, Mr. President.

May we ask for a suspension.

SUSPENSION OF CONSIDERATION OF S. NO. 1220

Senator Drilon. We move to suspend the consideration of Senate Bill No. 1220, Mr. President.

The President. Is there any objection? *[Silence]* There being none, Senate Bill No. 1220, under Committee Report No. 6 is hereby suspended.

SUSPENSION OF SESSION

Senator Drilon. May we ask for a one-minute suspension of the session.

The President. Is there any objection? *[Silence]* There being none, the session is suspended.

It was 4:48 p.m.

RESUMPTION OF SESSION

At 4:54 p.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

SUSPENSION OF SESSION

Senator Drilon. Mr. President, I move that we suspend the session until ten o'clock tomorrow morning.

The President. Is there any objection? *[Silence]* There being none, the session is suspended until ten o'clock tomorrow morning.

It was 4:54 p.m.

RESOLUTION URGING THE SENATE COMMITTEE ON LOCAL GOVERNMENT TO STUDY AND REVIEW THE PROVISIONS OF THE LOCAL GOVERNMENT CODE RELATING TO THE DEVOLUTION OF HEALTH SERVICES TO LOCAL GOVERNMENT UNITS, WITH THE END IN VIEW OF AMENDING THE PERTINENT PROVISIONS IN ORDER TO REMEDY THE PROBLEM

Introduced by Senator Sergio Osmeña III

The President. Referred to the Committee on Local Government

The Secretary. Proposed Senate Resolution No. 276, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON AGRICULTURE AND FOOD TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE REASON WHY THE DEPARTMENT OF FINANCE (DOF) HAS NOT SIGNED THE IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 8435, OTHERWISE KNOWN AS THE AGRICULTURE AND FISHERIES MODERNIZATION ACT (AFMA) OF 1997

Introduced by Senator Sergio Osmeña III

The President. Referred to the Committee on Agriculture and Food

COMMUNICATIONS

The Secretary. Indorsements from Director Carlito C. Gaddi of the Office of the President of the Philippines, respectfully referring to the Senate the following:

Letter of SP Secretary Danilo A. Delima of the Province of Cotabato, transmitting Resolution No. 419, current series, of the Sangguniang Panlalawigan requesting a review of the GATT and AFTA treaties;

The President. Referred to the Committees on Trade and Commerce; and Economic Affairs

The Secretary. Letter of SB Secretary Erma L. Duque of Kapalong, Davao, transmitting Resolution No. 80, current series, of the Sangguniang Bayan of Kapalong, Davao, opposing the ratification of the Visiting Forces Agreement;

The President. Referred to the Committees on Foreign Relations; and National Defense and Security

The Secretary. Letter from Director Aurora T. Aquino of the Office of the President of the Philippines, transmitting to the Senate a certified copy of Executive Order No. 38, dated October 30, 1998 entitled

DIRECTING THE AUDIT OF ASSESSMENTS, REVENUES AND RECEIPTS OF THE BUREAU OF INTERNAL REVENUE.

The President. Referred to the Committee on Ways and Means

The Majority Leader is recognized.

BILL ON SECOND READING

S. No. 1220 - The Securities Act of 1998 (Continuation)

Senator Pimentel. Mr. President, I move that we resume consideration of Senate Bill No. 1220.

The President. Is there any objection? [Silence] There being none, resumption of consideration of Senate Bill No. 1220 is now in order.

Senator Pimentel. May I ask that Senator Roco be recognized.

SUSPENSION OF SESSION

Senator Roco. May we request a one-minute suspension of the session, Mr. President. My staff is bringing down the papers.

The President. The session is suspended for one minute, if there is no objection. [There was none.]

It was 10:24 a.m.

RESUMPTION OF SESSION

At 10:29 a.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

Senator Pimentel. Mr. President, we would like to request that the senator from Bicol, Visayas, and Mindanao, Sen. Raul S. Roco, be recognized for his presentation of committee amendments to Senate Bill No. 1220 under Committee Report No. 6, The Securities Act of 1998.

The President. Sen. Raul S. Roco is recognized to continue his discussion on Committee Report No. 6 on Senate Bill No. 1220.

Please proceed, Senator Roco.

Senator Roco. Thank you, Mr. President. First, a prefatory statement. All the things I am about to move have been cleared first with the Majority Leader and the Minority Leader in an effort to have a clean draft for all the members of the Chamber for Monday's discussion.

**MOTION OF SENATOR ROCO
(Using the November 11, 1998 Draft of
S. No. 1220 as Reference Point)**

Second, Mr. President, as regards my proposed amendments, pursuant to the agreement with the Chamber, may I move that I be allowed to refer now to the draft as of November 11, 1998, copies of which have been distributed to all the senators.

If I can have an approval of that motion, Mr. President, just to use this as the reference point; otherwise, it will not tally.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

Senator Roco. Thank you, Mr. President.

Mr. President, there are 16 additional committee amendments as a result of agreements and modifications earlier done. These are all contained in a nine-page memorandum here that I will submit to the Secretariat. This is just in the interest of facility and accuracy.

**MOTION OF SENATOR ROCO
(The 16 Additional Committee Amendments
Be Considered as Read)**

I will move, however, that this be considered read, line by line as though actually read, so that the *Journal* and the *Record* will show that it was actually read.

In the interest of convenience, since only Senator Pimentel is ready and able to listen to me; and Senator Honasan has already told me that he has reviewed this thoroughly; and the Senate President needs to attend to other matters in preparation for the APEC, may we ask that these committee amendments be considered actually read and reflected in the records. May we just approve that motion first, Mr. President.

It is a memorandum dated November 12, 1998, containing all

the modifications and refinements as a consequence of the amendments to the draft, and that we will introduce 16 final committee amendments, transpose some sections, like the penalties which is put at the back, return some sections that disappeared before but because of the amendments, they will now have to be reintroduced. These were all precleared, Mr. President.

The President. Is there any objection? [*Silence*] There being none, the motion is approved—that the 16 amendments contained in the Memorandum dated November 12, 1998 be considered as actually read.

The following is the written Memorandum dated November 12, 1998 containing the 16 Committee amendments:

1. On page 6, line 5, after the word, "INSIDERS", delete the phrase "AS DEFINED". Thereafter, delete lines 6-9;
2. On page 6, delete lines 10-14 and in lieu thereof, insert the following in lines 15-17:

THE TERMS NOT OTHERWISE DEFINED UNDER THIS ACT SHALL BE CONSTRUED IN THEIR USUAL AND COMMONLY UNDERSTOOD TRADE, BUSINESS, COMMERCIAL OR INVESTMENT MEANING.

3. On page 6, line 20, insert a period (".") after the word "body". Thereafter, insert the following:

THE CHAIRMAN, AS CHIEF EXECUTIVE OFFICER OF THE COMMISSION, SHALL EXECUTE AND ADMINISTER THE POLICIES, DECISIONS, ORDERS AND RESOLUTIONS APPROVED BY THE COMMISSION AND SHALL HAVE THE GENERAL EXECUTIVE CONTROL, DIRECTION AND SUPERVISION OF THE WORK AND OPERATION OF THE COMMISSION AND OF ITS MEMBERS, BODIES, BOARDS, OFFICES, PERSONNEL AND ALL ITS ADMINISTRATIVE BUSINESS. IN CARRYING OUT ANY OF ITS FUNCTIONS, HE SHALL BE GOVERNED BY THE GENERAL POLICES OF THE COMMISSION AND BY SUCH REGULATORY DECISIONS, FINDINGS AND DETERMINATIONS AS THE COMMISSION MAY BE AUTHORIZED BY LAW TO MAKE.

4. On page 6, delete line 31 all the way to page 7, line 15;
5. On page 7, lines 18-19, after the word "Philippines insert the phrase: "BUT SHALL NOT BE MORE THAN THAT RECEIVED BY A MEMBER OF THE MONETARY BOARD"; Thereafter, delete the phrase found in lines 19-20 which reads: "at a sum commensurate to the importance and responsibility attached to the position";
6. On page 8, delete lines 13-23. With the above amendments, renumber the subsection numbers in Section 4 accordingly;
7. On page 10, line 2, delete the word "VALID". Thereafter, after the word "STANDARDS", insert the phrase "OF EFFICIENCY";
8. On page 10, line 5, delete the word "IT" and in lieu thereof insert the phrase "THE COMMISSION";
9. On page 10, lines 6-9, after the word "BANC", delete the phrase: "IN RESPECT OF THE ADOPTION OF ANY RULE OR REGULATION, THE DENIAL, ALTERATION OR SUPPLEMENTATION OF ANY RULE OF A SELF-REGULATORY ORGANIZATION OR";
10. On page 10, line 10, after the word "AUTHORITY", insert the phrase: "AND IN THE ADOPTION, ALTERATION OR SUPPLEMENTATION OF ANY RULE OR REGULATION";
11. On page 11, lines 10-11, between the words "THE" and "COMPENSATION", insert the phrase, "CIVIL SERVICE LAW AND BY THE";
12. On page 11, delete lines 21-23;
13. On page 11, lines 27-28, delete the open bracket ("[" between the words "appropriate" and "in" and delete the close bracket ("]") between the words "investors" and "to";
14. On page 17, lines 27 up to page 18, line 30, reintroduce the old Section 7 of the Revised Securities Act as Section 8 of S. No. 1220 in view of the earlier deletion of Section 12 in the original committee report, to read as follows:

"SECTION 8. *Commodity Futures Contracts.*
- Notwithstanding the provisions regarding

exemptions, commodity futures contracts may be registered or otherwise regulated, and futures commission merchant, futures brokers, floor brokers, pool operators and advisors licensed and supervised in accordance with the rules and regulations that shall be promulgated in the public interest and for the protection of investors by the Commission, with the approval of the Monetary Board of Bangko Sentral ng Pilipinas. Such rules and regulations may, among other things, provide for the establishment and maintenance by futures commission merchants, futures brokers, floor brokers, pool operators and advisors of bank accounts exclusively for margin deposit of and/or other receipts from customers, the monitoring of withdrawals from such account through periodic reports and/or examination, the requirement that at least one of the signatories to the fund withdrawals from such account must be a Filipino citizen and a resident of the Philippines, the posting by futures commission merchants, futures brokers, floor brokers, pool operators and advisors of a bond in an amount sufficient to meet possible claims against them, taking into account the volume of margin deposits held by them, the establishment of a common compensation fund to be contributed by all futures commission merchants, futures brokers, floor brokers, pool operators and advisors and subject to the control and supervision of the commission, and the registration and use by futures commission merchants, futures brokers, floor brokers, pool operators and advisors of official receipts to evidence commissions received by them from customers. However, the Commission shall, after proper notice and opportunity for hearing, prohibit transactions with respect to all or specified commodity futures contract if it shall find that such transactions will be inimical to the economic interest of the country or may cause grave or irreparable injury or prejudice to the investing public."

With the insertion of the new Section 8, renumber all the affected sections and subsections and references thereto accordingly;

15. On page 31, transpose all the lines beginning from line 28 up to page 41, line 8 and transfer the same to page 97, line 14 up to page 103, line 16. As transposed, the new Sections 51, 52, 53, 54, 55, 56, 57, and 58 will read as follows:

"SECTION 51. *CIVIL LIABILITIES ON*

ACCOUNT OF FALSE REGISTRATION STATEMENT.-

"51.1 ANY PERSON ACQUIRING A SECURITY, THE REGISTRATION STATEMENT OF WHICH OR ANY PART THEREOF CONTAINS ON ITS EFFECTIVITY AN UNTRUE STATEMENT OF A MATERIAL FACT OR OMITS TO STATE A MATERIAL FACT REQUIRED TO BE STATED THEREIN OR NECESSARY TO MAKE SUCH STATEMENTS NOT MISLEADING, AND WHO SUFFERS DAMAGE, MAY SUE AND RECOVER DAMAGES FROM THE FOLLOWING ENUMERATED PERSONS, UNLESS IT IS PROVED THAT AT THE TIME OF SUCH ACQUISITION HE KNEW OF SUCH UNTRUE STATEMENT OR OMISSION:

"(A) THE ISSUER AND EVERY PERSON WHO SIGNED THE REGISTRATION STATEMENT;

"(B) EVERY PERSON WHO WAS A DIRECTOR OF, OR ANY OTHER PERSON PERFORMING SIMILAR FUNCTIONS, OR A PARTNER IN, THE ISSUER AT THE TIME OF THE FILING OF THE REGISTRATION STATEMENT OR ANY PART, SUPPLEMENT OR AMENDMENT THEREOF WITH RESPECT TO WHICH HIS LIABILITY IS ASSERTED;

"(C) EVERY PERSON WHO IS NAMED IN THE REGISTRATION STATEMENT AS BEING OR ABOUT TO BECOME A DIRECTOR OF, OR A PERSON PERFORMING SIMILAR FUNCTIONS, OR A PARTNER IN, THE ISSUER AND WHOSE WRITTEN CONSENT THERETO IS FILED WITH THE REGISTRATION STATEMENT,

"(D) EVERY PERSON WHO, WITH HIS WRITTEN CONSENT, WHICH SHALL BE FILED WITH THE REGISTRATION STATEMENT, HAS BEEN NAMED AS HAVING PREPARED OR CERTIFIED ANY PART OF THE REGISTRATION STATEMENT, OR AS HAVING PREPARED OR CERTIFIED ANY REPORT OR VALUATION WHICH IS USED IN CONNECTION WITH THE REGISTRATION STATEMENT, WITH RESPECT TO THE STATEMENT, REPORT,

OR VALUATION, WHICH PURPORTS TO HAVE BEEN PREPARED OR CERTIFIED BY HIM.

"(E) EVERY SELLING SHAREHOLDER WHO CONTRIBUTED TO AND CERTIFIED AS TO THE ACCURACY OF A PORTION OF THE REGISTRATION STATEMENT, WITH RESPECT TO THAT PORTION OF THE REGISTRATION STATEMENT WHICH PURPORTS TO HAVE BEEN CONTRIBUTED BY HIM.

"(F) EVERY UNDERWRITER WITH RESPECT TO SUCH SECURITY.

"IF THE PERSON WHO ACQUIRED THE SECURITY DID SO AFTER THE ISSUER HAS MADE GENERALLY AVAILABLE TO ITS SECURITY HOLDERS AN INCOME STATEMENT COVERING A PERIOD OF AT LEAST TWELVE MONTHS BEGINNING FROM THE EFFECTIVE DATE OF THE REGISTRATION STATEMENT, THEN THE RIGHT OF RECOVERY UNDER THIS SUBSECTION SHALL BE CONDITIONED ON PROOF THAT SUCH PERSON ACQUIRED THE SECURITY RELYING UPON SUCH UNTRUE STATEMENT IN THE REGISTRATION STATEMENT OR RELYING UPON THE REGISTRATION STATEMENT AND NOT KNOWING OF SUCH INCOME STATEMENT, BUT SUCH RELIANCE MAY BE ESTABLISHED WITHOUT PROOF OF THE READING OF THE REGISTRATION STATEMENT OR BY SUCH PERSON.

"SECTION 52. CIVIL LIABILITIES ARISING IN CONNECTION WITH PROSPECTUS, COMMUNICATIONS AND REPORTS.

"52.1. ANY PERSON WHO:

"(A) OFFERS TO SELL OR SELLS A SECURITY IN VIOLATION OF CHAPTER II, OR

"(B) OFFERS TO SELL OR SELLS A SECURITY, WHETHER OR NOT EXEMPTED BY THE PROVISIONS OF THIS ACT, BY THE USE OF ANY MEANS OR INSTRUMENTS OF TRANSPORTATION OR COMMUNICATION,

BY MEANS OF A PROSPECTUS OR OTHER WRITTEN OR ORAL COMMUNICATION, WHICH INCLUDES AN UNTRUE STATEMENT OF A MATERIAL FACT OR OMITTS TO STATE A MATERIAL FACT NECESSARY IN ORDER TO MAKE THE STATEMENTS, IN THE LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY WERE MADE, NOT MISLEADING (THE PURCHASER NOT KNOWING OF SUCH UNTRUTH OR OMISSION), AND WHO SHALL FAIL IN THE BURDEN OF PROOF THAT HE DID NOT KNOW, AND IN THE EXERCISE OF REASONABLE CARE COULD NOT HAVE KNOWN, OF SUCH UNTRUTH OR OMISSION, SHALL BE LIABLE TO THE PERSON PURCHASING SUCH SECURITY FROM HIM, WHO MAY SUE TO RECOVER THE CONSIDERATION PAID FOR SUCH SECURITY WITH INTEREST THEREON, LESS THE AMOUNT OF ANY INCOME RECEIVED THEREON, UPON THE TENDER OF SUCH SECURITY, OR FOR DAMAGES IF HE NO LONGER OWNS THE SECURITY.

"52.2. ANY PERSON SHALL MAKE OR CAUSE TO BE MADE ANY STATEMENT IN ANY REPORT, OR DOCUMENT FILED PURSUANT TO THIS ACT OR ANY RULE OR REGULATION THEREUNDER, WHICH STATEMENT WAS AT THE TIME AND IN THE LIGHT OF THE CIRCUMSTANCES UNDER WHICH IT WAS MADE FALSE OR MISLEADING WITH RESPECT TO ANY MATERIAL FACT, SHALL BE LIABLE TO ANY PERSON WHO, NOT KNOWING THAT SUCH STATEMENT WAS FALSE OR MISLEADING, AND RELYING UPON SUCH STATEMENTS SHALL HAVE PURCHASED OR SOLD A SECURITY AT A PRICE WHICH WAS AFFECTED BY SUCH STATEMENT, FOR DAMAGES CAUSED BY SUCH RELIANCE, UNLESS THE PERSON SUED SHALL PROVE THAT HE ACTED IN GOOD FAITH AND HAD NO KNOWLEDGE THAT SUCH STATEMENT WAS FALSE OR MISLEADING.

"SECTION 53. *CIVIL LIABILITY FOR FRAUD IN CONNECTION WITH SECURITIES TRANSACTIONS.* - ANY PERSON WHO ENGAGES IN ANY ACT OR TRANSACTION IN VIOLATION OF SUBSECTIONS 16.5 OR

18.5, OR SECTION 24, OR ANY RULE OR REGULATION OF THE COMMISSION THEREUNDER, SHALL BE LIABLE TO ANY OTHER PERSON WHO PURCHASES OR SELLS ANY SECURITY, GRANTS OR REFUSES TO GRANT ANY PROXY, CONSENT OR AUTHORIZATION, OR ACCEPTS OR DECLINES ANY INVITATION FOR TENDER OF A SECURITY, AS THE CASE MAY BE, FOR THE DAMAGES SUSTAINED BY SUCH OTHER PERSON AS A RESULT OF SUCH ACT OR TRANSACTION.

"SECTION 54. *CIVIL LIABILITY FOR MANIPULATION OF SECURITY PRICES.* - ANY PERSON WHO WILLFULLY PARTICIPATES IN ANY ACT OR TRANSACTION IN VIOLATION OF SECTION 22 SHALL BE LIABLE TO ANY PERSON WHO SHALL PURCHASE OR SELL ANY SECURITY AT A PRICE WHICH WAS AFFECTED BY SUCH ACT OR TRANSACTION, AND THE PERSON SO INJURED MAY SUE TO RECOVER THE DAMAGES SUSTAINED AS A RESULT OF SUCH ACT OR TRANSACTION.

"SECTION 55. *CIVIL LIABILITY WITH RESPECT TO COMMODITY FUTURES CONTRACTS AND PRE-NEED PLANS.* -

"55.1. ANY PERSON WHO ENGAGES IN ANY ACT OR TRANSACTION IN WILLFUL VIOLATION OF ANY RULE OR REGULATION PROMULGATED BY THE COMMISSION UNDER SECTION 8 OR 13, WHICH THE COMMISSION DENOMINATES AT THE TIME OF ISSUANCE AS INTENDED TO PROHIBIT FRAUD IN THE OFFER AND SALE OF PRE-NEED PLANS OR TO PROHIBIT FRAUD, MANIPULATION, FICTITIOUS TRANSACTIONS, UNDUE SPECULATION, OR OTHER UNFAIR OR ABUSIVE PRACTICES WITH RESPECT TO COMMODITY FUTURES CONTRACTS, SHALL BE LIABLE TO ANY OTHER PERSON SUSTAINING DAMAGE AS A RESULT OF SUCH ACT OR TRANSACTION.

"55.2. AS TO EACH SUCH RULE OR REGULATION SO DENOMINATED, THE COMMISSION BY RULE SHALL PRESCRIBE THE ELEMENTS OF PROOF REQUIRED FOR RECOVERY AND ANY LIMITATIONS ON THE

AMOUNT OF DAMAGES THAT MAY BE IMPOSED.

“SECTION 56. *CIVIL LIABILITY ON ACCOUNT OF INSIDER TRADING.* -

“56.1. ANY INSIDER WHO VIOLATES SUBSECTION 25.1 AND ANY PERSON IN THE CASE OF A TENDER OFFER WHO VIOLATES SUBSECTION 25.4(A)(I), OR ANY RULE OR REGULATION THEREUNDER, BY PURCHASING OR SELLING A SECURITY WHILE IN POSSESSION OF MATERIAL INFORMATION NOT GENERALLY AVAILABLE TO THE PUBLIC, SHALL BE LIABLE IN A SUIT BROUGHT BY ANY INVESTOR WHO, CONTEMPORANEOUSLY WITH THE PURCHASE OR SALE OF SECURITIES THAT IS THE SUBJECT OF THE VIOLATION, PURCHASED OR SOLD SECURITIES OF THE SAME CLASS UNLESS SUCH INSIDER, OR SUCH PERSON IN THE CASE OF A TENDER OFFER, PROVES THAT SUCH INVESTOR KNEW THE INFORMATION OR WOULD HAVE PURCHASED OR SOLD AT THE SAME PRICE REGARDLESS OF DISCLOSURE OF THE INFORMATION TO HIM.

“56.2. AN INSIDER WHO VIOLATES SUBSECTION 25.3, OR ANY PERSON IN THE CASE OF A TENDER OFFER WHO VIOLATES SUBSECTION 25.4 (A), OR ANY RULE OR REGULATION THEREUNDER, BY COMMUNICATING MATERIAL NON-PUBLIC INFORMATION, SHALL BE JOINTLY AND SEVERALLY LIABLE UNDER SUBSECTION 56.1 WITH, AND TO THE SAME EXTENT AS, THE INSIDER, OR PERSON IN THE CASE OF A TENDER OFFER, TO WHOM THE COMMUNICATION WAS DIRECTED AND WHO IS LIABLE UNDER SUBSECTION 56.1 BY REASON OF HIS PURCHASE OR SALE OF A SECURITY.

“SECTION 57. *LIMITATION OF ACTIONS.*—

“57.1. NO ACTION SHALL BE MAINTAINED TO ENFORCE ANY LIABILITY CREATED UNDER SECTIONS 51 OR 52 OF THIS ACT UNLESS BROUGHT WITHIN TWO YEARS AFTER THE DISCOVERY OF THE

UNTRUE STATEMENT OR THE OMISSION, OR, IF THE ACTION IS TO ENFORCE A LIABILITY CREATED UNDER SUBSECTION 52.1(A), UNLESS BROUGHT WITHIN TWO YEARS AFTER THE VIOLATION UPON WHICH IT IS BASED. IN NO EVENT SHALL ANY SUCH ACTION BE BROUGHT TO ENFORCE A LIABILITY CREATED UNDER SECTION 51 OR SUBSECTION 52.1(A) MORE THAN FIVE YEARS AFTER THE SECURITY WAS *BONA FIDE* OFFERED TO THE PUBLIC, OR UNDER SUBSECTION 52.1(B) MORE THAN FIVE YEARS AFTER THE SALE.

“57.2. NO ACTION SHALL BE MAINTAINED TO ENFORCE ANY LIABILITY CREATED UNDER ANY OTHER PROVISION OF THIS ACT UNLESS BROUGHT WITHIN TWO YEARS AFTER THE DISCOVERY OF THE FACTS CONSTITUTING THE CAUSE OF ACTION AND WITHIN FIVE YEARS AFTER SUCH CAUSE OF ACTION ACCRUED.

“SECTION 58. *JURISDICTION OF THE COMMISSION TO AWARD DAMAGES; AMOUNT OF DAMAGES TO BE AWARDED.* -

“58.1. ALL SUITS TO RECOVER DAMAGES PURSUANT TO SECTIONS 51, 52, 53, 54, 55 AND 56 SHALL BE BROUGHT BEFORE THE COMMISSION, WHICH SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DECIDE SUCH SUITS. THE COMMISSION IS HEREBY AUTHORIZED TO AWARD DAMAGES IN AN AMOUNT NOT EXCEEDING DOUBLE THE AMOUNT OF THE TRANSACTION PLUS ACTUAL DAMAGES, EXCEPT IN THE CASE OF INSIDER TRADING WHERE THE COMMISSION MAY AWARD DAMAGES IN AN AMOUNT NOT EXCEEDING TRIPLE THE AMOUNT OF THE TRANSACTION PLUS ACTUAL DAMAGES.

“EXEMPLARY DAMAGES MAY ALSO BE AWARDED IN CASES OF BAD FAITH, FRAUD, MALEVOLENCE OR WANTONNESS IN THE VIOLATION OF THIS ACT OR THE RULES AND REGULATIONS PROMULGATED THEREUNDER.

“THE COMMISSION IS ALSO AUTHORIZED TO AWARD ATTORNEY'S

FEEES NOT EXCEEDING TWENTY PERCENT (20%) OF THE AWARD.

"58.2. THE PERSONS SPECIFIED IN SECTIONS 51, 52, 53, 54, 55 AND 56 HEREOF SHALL BE JOINTLY AND SEVERALLY LIABLE FOR THE PAYMENT OF DAMAGES. HOWEVER, ANY PERSON WHO BECOMES LIABLE FOR THE PAYMENT OF SUCH DAMAGES MAY RECOVER CONTRIBUTION FROM ANY OTHER PERSON WHO, IF SUED SEPARATELY, WOULD HAVE BEEN LIABLE TO MAKE THE SAME PAYMENT, UNLESS THE FORMER WAS GUILTY OF FRAUDULENT REPRESENTATION AND THE LATTER WAS NOT.

"58.3. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, ALL PERSONS, INCLUDING THE ISSUER, HELD LIABLE UNDER SECTIONS 51, 52, 53, 54, 55 AND 56, SHALL CONTRIBUTE EQUALLY TO THE TOTAL LIABILITY ADJUDGED HEREIN. IN NO CASE SHALL THE PRINCIPAL STOCKHOLDERS, DIRECTORS AND OTHER OFFICERS OF THE ISSUER OR PERSONS OCCUPYING SIMILAR POSITIONS THEREIN, RECOVER THEIR CONTRIBUTION TO THE LIABILITY FROM THE ISSUER. HOWEVER, THE RIGHT OF THE ISSUER TO RECOVER FROM THE GUILTY PARTIES THE AMOUNT IT HAS CONTRIBUTED UNDER THIS SECTION SHALL NOT BE PREJUDICED.

With the transposition of Chapter V, renumber all the affected chapters and sections accordingly.

16. On page 111, lines 1-2, between the words "SUPERVISE" AND "PRE-NEED", insert the phrase: "COMMODITY FUTURES CONTRACTS AS PROVIDED IN SECTION 8 AND".

Senator Roco. Having read it again, may we ask for approval of the proposed committee amendments in the nine pages that I have read containing 16 proposed committee amendments.

Senator Pimentel. Mr. President, just this slight suggestion: subject to style, because the Secretariat, according to the manifestation of Senator Roco, will have to readjust the

positioning of some of these amendments with corresponding sections of the bill under consideration.

The President. Subject to that modification proposed by the Majority Leader.

Senator Roco. If those committee amendments will be approved and accepted by our Chamber, I still have a final motion to make.

May we have an approval of the committee amendments as read contained in these nine pages, proposing further committee amendments to 16 points.

The President. There is a motion for the approval of the 16 amendments consisting of nine pages and read into the *Record*.

Is there any objection? [*Silence*] There being none, the motion is approved.

MOTION OF SENATOR ROCO
(Acceptance of Bill Draft of November 11, 1998
as Final Version)

Senator Roco. With that approval, Mr. President, may we now formally move that the draft of November 11, 1998 as distributed to all the members of the Chamber be now accepted as the final version of Senate Bill No. 1220, with all the accepted committee amendments. So that this will be the bill, the committee report, together with all the committee amendments accepted and approved by the Body.

The President. There is a motion to consider the November 11 draft as the final draft with all the accepted committee amendments. Is there any objection? [*Silence*] There being none, the motion is approved.

Senator Roco. In view thereof, Mr. President, may we ask the Secretariat to distribute this as soon as possible and ask the Majority Leader now to move to close the period of committee amendments?

The President. The Majority Leader is recognized.

Senator Pimentel. Mr. President, in view of the manifestation of the principal sponsor, Senator Roco, that these are all the committee amendments which have been introduced this morning, I move that the period of committee amendments be closed.

Senator Roco. With the entry of the Minority Leader, Mr. President, we will be ready for the individual amendments.

The President. Did the Minority Leader hear the final motion?

Senator Pimentel. May I ask that the Minority Leader be recognized, Mr. President.

The President. The Minority Leader is recognized.

Senator Guingona. Mr. President, it was the understanding of the sponsor and the Majority Leader that these committee amendments be approved in order to expedite the proceedings with the colatilla or condition that we would have the opportunity to question and, as if it were a working draft, propose the objections, amendments or modifications of these particular committee amendments. We agreed to that procedure.

Senator Pimentel. Mr. President, the procedure agreed upon is to be respected with the suggestion that probably we will have to await a clean copy of the proposed bill which will now include the committee amendments that have been introduced. Despite the apparent enthusiasm of the Minority Leader to start interrogating the sponsor, probably we will have to await the clean copy and this will be ready by Monday.

Senator Roco. Yes, Mr. President. I have been unsuccessfully attempting to confuse the Minority Leader but he refuses to be confused. So we will wait for Monday. But I need an approval to close the committee amendments, so that this can be distributed and ready for individual amendments and the discussion as mentioned by the Minority Leader.

The President. What is the final motion now?

Senator Roco. Just to terminate the committee amendments.

The President. With that explanation, is there any objection to the motion? *[Silence]* There being none, the motion is approved.

Senator Roco. Thank you, Mr. President.

SUSPENSION OF CONSIDERATION OF S. NO. 1220

Senator Pimentel. Mr. President, may we now move to suspend consideration of Senate Bill No. 1220 as reported out under Committee Report No. 6, the Securities Act of 1998, and move on to other matters?

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

ADJOURNMENT OF SESSION

Senator Pimentel. Mr. President, since there are no other matters, I move that we adjourn the session until three o'clock, Monday afternoon.

The President. Is there any objection? *[Silence]* There being none, the session is adjourned until Monday at three o'clock in the afternoon.

It was 10:40 a.m.

The President Pro Tempore. Referred to the Committees on Local Government; and Constitutional Amendments, Revision of Codes and Laws.

COMMITTEE REPORT

The Secretary. Committee Report No. 11 prepared and submitted jointly by the Committees on Ways and Means, Trade and Commerce and Constitutional Amendments, Revision of Codes and Laws on Senate Bill No. 1330 with Senators Flavier and Enrile as authors thereof, entitled

AN ACT TO PROVIDE THE RULES FOR THE IMPOSITION OF COUNTERVAILING DUTIES ON THE IMPORTATION OF SUBSIDIZED PRODUCTS, COMMODITIES OR ARTICLES OF COMMERCE, AMENDING FOR THE PURPOSE SECTION 302 OF THE TARIFF AND CUSTOMS CODES, AS AMENDED, AND FOR OTHER PURPOSES,

recommending its approval in substitution of Senate Bill Nos. 87 and 765.

Sponsors: Senators Enrile, Magsaysay Jr. and Roco

The President Pro Tempore. To the Calendar for Ordinary Business

BILL ON SECOND READING
S. No. 1220 -- The Securities Act of 1998
(Continuation)

Senator Drilon. Mr. President, I move that we resume consideration of Senate Bill No. 1220, as reported out under Committee Report No. 6.

The President Pro Tempore. Is there any objection? [Silence] There being none, resumption of consideration of Senate Bill No. 1220 is now in order.

Who is the sponsor?

Senator Drilon. Senator Roco, Mr. President. After we resume consideration, we will call on Senator Roco.

The President Pro Tempore. Senator Roco is recognized.

Senator Drilon. We are now in the period of individual amendments. May I ask the Chair to recognize the Minority Leader, Sen. Teofisto T. Guingona Jr., for the individual amendments. But before that, Mr. President, there was a new version distributed to the senators. This is the version dated

November 12 which already includes the committee amendments approved by the Chamber. We therefore ask our colleagues that for purposes of the debate on the individual amendments, this version be used as basis.

Senator Guingona. Mr. President.

The President Pro Tempore. My version here is dated November 11, Mr. President.

SUSPENSION OF SESSION

Senator Drilon. May I ask for a one-minute suspension of the session, Mr. President.

The President Pro Tempore. The session is suspended for one minute, if there is no objection. [There was none.]

Please provide the Minority Leader with an updated version.

It was 3:26 p.m.

RESUMPTION OF SESSION

At 3:27 p.m., the session was resumed.

The President Pro Tempore. The session is resumed. Senator Guingona is recognized.

Senator Guingona. May I refer the distinguished sponsor to page 2.

Senator Roco. Mr. President.

The President Pro Tempore. Senator Roco is recognized.

Senator Roco. Before the distinguished Minority Leader commences, may I just mention why the date became November 12. Last Thursday, although it was technically a continuation of the November 11 session, we did approve the last committee amendments. So the staff could not theoretically put it as November 11 because it, in fact, happened on November 12. That was the time there was a briefing on national security. It is reflected in the *Journal*. So, it is now called the draft of November 12. Should there be any departure, we will just refer to the one that was dated November 11 but this is now as duly approved and cleaned up by the staff.

I will now proceed to page 2.

The President Pro Tempore. May the Chair know if Senator Guingona is now provided with the latest version as of November 12?

Senator Guingona. Yes, Mr. President.

Senator Roco. All the members are provided, Mr. President. It is in the booklet.

The President Pro Tempore. The Minority Leader may proceed.

Senator Guingona. Thank you, Mr. President.

May we know from the distinguished sponsor the further meaning of "derivatives" as defined in Section 2. It says here: "Derivatives are instruments that derive their economic values from underlying assets such as treasury bills."

May the distinguished sponsor please clarify. There is a treasury bill for P1 million. What is the derivative of this P1 million treasury bill?

The President Pro Tempore. Senator Roco, the sponsor, may answer.

Senator Roco. Yes, Mr. President.

If our distinguished colleague will remember the so-called "Bancom scandal." What happened, Mr. President? I do not know whether it will happen again because we have the smaller-denominated treasury bills--the treasury bills used to be denominated in big amounts, as in the example given by the Minority Leader of P1 million.

The holder of the treasury bill may now sell through scripts portions of that treasury bill. Because not everybody can afford that P1 million, they create a secondary market by creating a script, 10 scripts, for instance, covering the P1 million. So the persons who have only P100,000 can now participate in the P1 million treasury bill but they have bought only one-tenth of the treasury bill.

It is called "derivative" because the value is derived from the P1 million. But if they go to a bank, they cannot get the P1 million but they can sell and continue selling in tertiary or subsequent markets that P100,000.

In the Bancom scandal, what happened was it was traded with so many because they lost control over the script. So different people were holding the same scripts.

I am just simplifying the examples, Mr. President. Supposing script No. 1 was traded to, let us say, Senator Enrile but it was also traded to Sen. Sergio Osmeña III. So the two of them were holding P100,000 and it represented the same P100,000 of the treasury bill.

Now so long as nobody collects, everybody can be happy, Mr. President. But supposing everybody now tries to collect and we have 20 people holding 10 scripts representing P100,000 each. That is when the Bancom scandal collapsed. That is when the women who were selling the scripts disappeared.

Senator Guingona. I would like to thank the gentleman for that. The issuer of treasury bill is the Central Bank. Is that not correct?

Senator Roco. The treasury bill is from the Treasury.

Senator Guingona. As authorized by the Central Bank.

Senator Roco. Of course, yes.

Senator Guingona. The one who issues the script is a private person.

Senator Roco. It could be a private person, Mr. President, or it could be a public entity. But the concept of "derivative" precisely is that we try to share, we maximize value from the big amounts.

There is another way of trying to understand the derivatives. In fact, the treasury bill can be substituted by stocks. If I have 30 percent of the stock, I can again create a secondary market for it by dividing the stock into smaller denominations.

On commodities, I do not like to use sugar because it is covered by a special law. If I have one ton of camote--well, not everybody can afford to buy the one ton of camote--I can split it into 10 so that the one ton of camote is now worth, let us say, a thousand pesos and 10 people can own the one ton of camote, but the value rests on something other than piece of paper. That is why it is called derivatives, Mr. President.

Senator Guingona. I would like to thank the gentleman for that, but may I just stick to treasury bills for the time being. The one who issues the scripts, are they brokers?

Senator Roco. Mr. President, we are looking at paragraph 3.2. It is just a definition of terms. I mean, we are not referring to any particular rule governing it. It just means that when derivative comes out here, that is what it means.

So the specifics of the trading on derivatives can be public or private. I do not know whether brokers do it. I do not know whether dealers do it. So I am not sure of the thrust of the gentleman, Mr. President.

Senator Guingona. My point is that derivatives, as I understand it, are more of gambling, more of speculation rather

than investments. As I understand it, please correct me if I am wrong, there are still no rules governing derivatives. As a matter of fact, there is virtually no trading being conducted on derivatives.

I wonder whether the distinguished sponsor, because of the speculative and gambling nature of derivatives, will not mind deleting until such time that the Exchange shall have established the necessary rules and safeguards on derivatives.

Senator Roco. There are rules and regulations governing financial derivatives from the Bangko Sentral. They have been in existence for some time.

Senator Guingona. If there are rules, may the gentleman tell this representation who issues the scripts?

Senator Roco. I can, Mr. President, except that it is out of the topic. We are not reviewing here the rules and regulations of derivatives financially covered by the Bangko Sentral regulations. We are just defining a term as used in the Securities Act.

As for derivatives, I do not know how the gentleman reached the conclusion that they are gambling. All transactions in the capital market have a risk. It can do up in price or it can go down. In that sense, it is a risk. People sell risk; people buy opportunity. That is all there is in the Securities Act, Mr. President.

It is one of contemporary, and by contemporary it is not even new. It is only contemporary, but it has probably been in existence for more than 30 years.

One of the methods being used by the financial institutions for hedging or protecting themselves in the future is through derivatives. We are not yet reviewing the rules on derivatives. That is why I do not want to get into this path. It is outside the topic.

Does the gentleman disagree with the definition? This definition is a textbook definition. It can even be removed here, and it does not matter. But in contemporary banking practices, one cannot exist as a bank unless one engages in derivatives like futures. It is only the way the banks now lower their risk factor as regards foreign currency fluctuations.

That is contemporary banking. One cannot have commodity trading unless there are derivatives. We cannot prevent derivative because anybody who has value, whether real estate or commodities, can always convert it into script representing value. So, I do not know what the problem of our distinguished colleague is.

Senator Guingona. Can there be more amounts than the original issue in derivatives?

Senator Roco. If there is a violation of law, yes.

Senator Guingona. I heard the distinguished sponsor say that he does not mind if this whole section is removed.

Senator Roco. Of course not. The whole section on definition can be removed.

Senator Guingona. If we cannot be enlightened as to who issues the scripts, as to whether there are rules and regulations and what are the rules, how can we insert the definition of derivatives?

Senator Roco. I recommend that if the gentleman is not enlightened, he read Circular No. 102 dated December 29, 1995 issued by the BSP Rules on Derivatives. I can furnish him all these rules so that he can study them. But it is not the function of sponsorship to precisely defend all these.

The whole world is covered by securities and derivatives. It is not the function of sponsorship to therefore go to the tedious education of somebody who wants to understand derivatives. It is only a definition.

Senator Guingona. I wish I had the knowledge of the distinguished sponsor, but we do not, and he is sponsoring this. I hope he will not take offense that we are just inquiring. I think we have a legitimate right to do so, Mr. President.

Senator Roco. Mr. President, the gentleman is saying that he cannot understand. What can I do if he cannot understand?

SUSPENSION OF SESSION

Senator Drilon. May I ask for a one-minute suspension of the session, Mr. President.

The President Pro Tempore. Is there any objection? *[Silence]* There being none, the session is suspended for one minute.

It was 3:39 p.m.

RESUMPTION OF SESSION

At 3:42 p.m., the session was resumed.

The President Pro Tempore. The session is resumed. The Majority Leader is recognized.

Senator Drilon. Mr. President, after a discussion with both gentlemen, there is a motion on the part of the Minority Leader as regards paragraph 3.2.

The President Pro Tempore. The Minority Leader is recognized. He has the floor.

GUINGONA AMENDMENT

Senator Guingona. Mr. President, I move that we delete lines 19 to 23 of page 2.

Senator Roco. Before we accept, Mr. President, we are accepting because on page 6--this was a consensus produced by the debate--in lines 15 to 17, we have a catchall provision on the definitions:

The terms not otherwise defined under this act shall be construed in their usual and commonly understood trade, business, commercial or investment meaning.

It is covered by existing text. It is accepted, Mr. President.

The President Pro Tempore. What is accepted?

Senator Roco. The deletion of Section 3.2 on page 2 from lines 19 to 23.

Unfortunately, Mr. President, Senator Tatad is not here. So I am accepting with the reservation that he might want it back because it was his request that this be placed here. Since he is not here to defend his proposal, we will wait for him to come back.

The President Pro Tempore. There is a motion to delete the paragraph designated as 3.2 and the sponsor has accepted.

Senator Roco. Yes, with the reservation, Mr. President, that Senator Tatad may come back and try to put it back.

The President Pro Tempore. So this is an open-ended...

Senator Roco. It was not in the old committee report. So the committee does not have a problem with that. But during the debate, Senator Tatad brought in three books on derivatives and futures, and precisely made the representation that this be included so that he is himself clarified. Obviously, the two Minority Leaders do not see eye to eye.

For now, because Senator Tatad is not here, we will accept but we can reserve that for...

Senator Drilon. Mr. President, it is accepted by the committee without prejudice to probably a motion for reconsideration that Senator Tatad may ask for when he comes back. So it is accepted by the committee.

The President Pro Tempore. Is there any objection? [Silence] There being none, the amendment is approved.

The Minority Leader has the floor. He may continue.

Senator Guingona. Thank you, Mr. President.

Senator Enrile. Mr. President, what page are we now?

Senator Roco. Page 2.

Senator Guingona. We just finished page 2.

Senator Enrile. I would like to propose an amendment on page 2, Mr. President. This is November 12, page 2, line 29.

Senator Guingona. Mr. President, I would just like to reiterate that when we acceded to the amendments of the committee being accepted, there was a reservation on our part because usually, that is only a working draft to be approved but the committee amendments were approved with the reservation that we would be given an opportunity to object to all of the committee amendments.

However, the distinguished senator from Cagayan has already manifested his desire to introduce an amendment on the next page and we yield to that. But I would just like to remind that that was the understanding.

Senator Drilon. Yes, Mr. President. We stand by that understanding with the Minority Leader. It is just for orderly discussion that we go page by page. The committee amendment on page 2 is found in lines 19 to 23. That is the reason we have allowed the debates on 3.2 and the subsequent individual amendment.

We are now in the period of individual amendments so the gentleman from Cagayan is correct in proposing an amendment in line 29. It is in order, Mr. President.

The President Pro Tempore. Yes, Senator Enrile is recognized.

ENRILE AMENDMENT

Senator Enrile. Thank you, Mr. President.

Mr. President, in line 29, the word "Salesman" is defined and I would like to be sure that the word "Salesman" would include AGENT, an agent who is himself a salesman because he is employed as such by the broker or dealer.

The purpose of my proposed amendment is to prevent the possibility that the dealer or broker would designate a person as

agent performing the function of a salesman and escape responsibility simply because we define the word "salesman" and we do not define the word "agent".

So with that as an explanation of my proposed amendment, I would like to insert in line 29 after the word "Salesman" and before the close quotation mark the words WHICH INCLUDES AGENT.

The President Pro Tempore. Are we reading from the same text?

Senator Roco. Line 29, yes.

Senator Enrile. "Salesman WHICH INCLUDES AGENT is a natural person, employed by a dealer, issuer or broker to buy and sell securities."

Senator Roco. May the gentleman find it more acceptable if it says, the "Salesman is a natural person, employed as such or as an AGENT by a dealer, issuer or broker.

So that "employed as salesman or AGENT. EMPLOYED AS SUCH...

Senator Enrile. ...OR AS AN AGENT. I agree.

Senator Roco. If that is acceptable, Mr. President, just for the flow of words, we accept.

Senator Enrile. That is much better, Mr. President, coming from a graduate of San Beda.

Senator Roco. Flattery will get one everywhere in this Chamber, Mr. President. Thank you.

The President Pro Tempore. For clarity of the record, will the gentleman please repeat the amending language.

Senator Enrile. In accordance with the suggestion of the sponsor, Mr. President, this line 29 will read: "Salesman" is a natural person, employed as such or as an agent by a dealer, issuer or broker to buy and sell securities."

Senator Roco. We accept the amendment, Mr. President.

The President Pro Tempore. The committee has accepted the amendment. Is there any objection? [*Silence*] There being none, the amendment is approved.

SUSPENSION OF SESSION

Senator Drilon. Mr. President, may we ask for a one-minute suspension of the session before we proceed to the next page?

The President Pro Tempore. The session is suspended for one minute, if there is no objection. [*There was none.*]

It was 3:51 p.m.

RESUMPTION OF SESSION

At 3:57 p.m., the session was resumed, with the Hon. Ramon B. Magsaysay Jr. presiding.

The Presiding Officer [Sen. Magsaysay]. The session is resumed. The Majority Leader is recognized.

Senator Drilon. Mr. President, may we ask the Chair to continuously recognize the Minority Leader for his individual amendments.

The Presiding Officer [Sen. Magsaysay]. We shall continue to recognize the Minority Leader for his input and amendments.

Senator Guingona. Thank you, Mr. President.

On page 5, there is here a reference in line 18...

Senator Roco. Just a minute, Mr. President. On page 3, the gentleman has no individual amendments.

Senator Guingona. None, Mr. President.

Senator Roco. Just for clarity, Mr. President. On page 4, there are no individual amendments.

I am also mentioning this because our other colleagues may--although we can always go back, but this is so that we progress.

Senator Guingona. Mr. President, I just would like to make a reservation because I have individual amendments set aside. I am now concentrating on the committee amendments.

Senator Roco. So we will go back for other individual amendments for the Minority Leader as he wishes.

The Presiding Officer [Sen. Magsaysay]. So are there committee amendments?

Senator Drilon. No, Mr. President. The Minority Leader is manifesting that the amendments he is proposing now are those which touch on the committee amendments. Later on, he reserves his right to propose individual amendments on the other provisions which were not covered by the committee amendments. The mere fact that we have "finished page 3" does not mean that we cannot go back to page 3 for individual amendments.

The Presiding Officer [Sen. Magsaysay]. Please go ahead, Senator Guingona.

Senator Guingona. Thank you, Mr. President.

On page 5, lines 18 to 22, in the definition of "Securities Intermediary" there is a clearing house of the Philippine Securities Exchange. Is there none?

Senator Roco. Yes, there is a clearing house, Mr. President.

Senator Guingona. Are other functions more or less parallel?

SUSPENSION OF SESSION

Senator Roco. Mr. President, may we have a one-minute suspension of the session because we are trying to make the source for this.

The Presiding Officer [Sen. Magsaysay]. Is there any objection? [Silence] There being none, the session is suspended for one minute.

It was 4:00 p.m.

RESUMPTION OF SESSION

At 4:01 p.m., the session was resumed.

The Presiding Officer [Sen. Magsaysay]. The session is resumed.

Senator Roco. This is not a committee amendment, Mr. President. This is in the old report. In the original bill as filed; in fact, this is not a committee amendment, but it was mistyped--in all capital letters.

Senator Guingona. I am sorry. Still on page 5, there is the definition of "INSIDER". "THE ISSUER"; and it says in line 31, "A DIRECTOR OR PERSON PERFORMING SIMILAR FUNCTIONS". May we know the persons referred to here?

Senator Roco. In some corporations, Mr. President, there are nondirectors who sit as advisers, for instance, and who sit on the Board--and so I imagine--and they listen. There are also consultants--and I am not sure if they are specifically mentioned--who also attend board meetings. There are technical men who are not officers because they are not in the roster of officers and are not directors but have access to inside information because of what they do on assignment.

Senator Guingona. Would these refer to trustees?

Senator Roco. May I just read the whole section, Mr. President, to refresh my memory?

The Presiding Officer [Sen. Magsaysay]. Please go ahead.

Senator Roco. May we just have an illustration of a trustee, if it is the officer in a bank holding a trust account. Is this what we are referring to?

Senator Guingona. Yes, Mr. President.

Senator Roco. Maybe this is a failure on my part, Mr. President. I am not sure how a trustee may have inside information simply because he is a trustee. But if the trustee sits as adviser or attends the board meeting even if he is not an officer or director, then it will apply to him, but not because he is a trustee *per se*.

But there may be other ways. I mean he may be a trustee in the sense of a nominee in the Board of Directors, so he is a trustee for the actual director. If this is what is meant, then it will involve that trustee. But by the time he will be covered by the term "director" because he is acting then as director. So, if there is another instance where the Minority Leader visualizes a trustee getting inside information, then we can expand the sense.

Senator Guingona. I thank the gentleman for his answer.

In line 31, it says, "OR A PERSON CONTROLLING THE ISSUER". The person controlling the issuer would actually be his superior.

Senator Roco. Mr. President, there are instances when a controlling stockholder, even if he has 30 percent shares, does not like to be a director or an officer for reasons known only to himself. So that will be a controlling person controlling the issuer, because all these directors will only be too happy to please him. That is not unusual. There are also foreign portfolio investors who also control, so they will be covered by this definition.

Senator Guingona. Letter (C) is "A PERSON WHOSE RELATIONSHIP OR FORMER RELATIONSHIP TO THE ISSUER GIVES OR GAVE HIM ACCESS TO MATERIAL INFORMATION ABOUT THE ISSUER OR THE SECURITY THAT IS NOT GENERALLY AVAILABLE TO THE PUBLIC".

Senator Enrile. Mr. President.

The Presiding Officer [Sen. Magsaysay]. The distinguished gentleman from Cagayan is recognized.

Senator Enrile. With the permission of the distinguished Minority Leader. Going back to the phrase "a person controlling the issuer".

A situation may arise where corporation A is totally owned by corporation B. Corporation A, being the operating company, would be applying to list its shareholdings in the market, in the stock exchange for emission through a stock exchange. In which case, while corporation A will have its own board of directors, all the members of the board of corporation B, being the controlling stockholder, would be insiders because they will have a flow of information from corporation A. I think this is what is being contemplated.

Now, if corporation A is not controlled by a corporation but controlled by individual persons, then the individual stockholders who would constitute control and who must be informed about the activities of the corporation would be treated as insiders if they get information about the programs, projects and plans of corporation A.

Senator Guingona. With the permission of the sponsor. Would that apply down the line if there are several subsidiaries?

Senator Enrile. The layers of corporation that control--let us say corporation A is totally owned by corporation B. And then corporation B is totally controlled by another corporation which may be a conundrum as far as corporate structuring is concerned. That is a possibility. I would say that all the board members of all these levels of corporate structures would be treated as insiders if they have a flow of information.

Thank you, Mr. President.

The Presiding Officer [Sen. Magsaysay]. Thank you.

Senator Guingona. Letter C says, "a person whose relationship..." May we know if this is "official relationship"?

Senator Roco. I guess, Mr. President, if it does not fall under any of the above--a director or officer performing similar functions, a person controlling the issuer.

Senator Guingona. The wife is not covered by this?

Senator Roco. Mr. President, in rulings, the insider information is traceable to personal relations. But that becomes a question of fact. We have to prove that.

Senator Enrile. Mr. President.

The Presiding Officer [Sen. Magsaysay]. Senator Enrile is recognized.

Senator Enrile. With the permission again of the distinguished gentleman on the floor. Let us say that an oil exploration company is listed in the stock exchange. This oil exploration company has a contract with a driller to drill the concession area

of this oil exploration company and the driller learns that, through their drilling activities, they are going to hit a tremendous reservoir of oil. Then they start buying shares of stock of this oil exploration company in the market. Evidently, I think these people would be considered insiders under this proposed provision of this Act, considering the relationship to the issuer. Is this correct, Mr. President.

Senator Roco. Provided that the information was really secured through the sources from the inside, then it becomes covered. It is very significant, Mr. President. This is one of the major reforms. Because in the bill, as we modify it with the discussions, this is penalized now by treble damages.

Senator Enrile. But in the example that I have given, Mr. President, let us say that I am the drilling contractor. I am drilling oil for the company that issued the shares of stock. We have a contract, and I learned that there is going to be a major hit. I make reports to the company that hired me, the oil exploration company, whose shares of stock are being emitted in the market. We start buying the shares of stock of this company, or even my employees are buying the shares of stock of the company based on the information that we gathered through our drilling operation from that company. I think in this case, they will be covered by this provision because of their relationship or former relationship to the issuer. That is also true in the case of mining.

For instance, in the case of Lepanto whose shares of stock are traded in the market, they hired a drilling company to drill and determine the extent of the quantity of gold deposits in a particular area, to determine the extent of the gold in the vein that they have discovered. Now, the drilling company and its officers would be covered by this provision, because then they are the source of information that would be known to the company that employed them and whose shares of stock are being emitted in the market.

Senator Guingona. With the permission of the sponsor. Would the clerk who sees the transmission be covered?

Senator Enrile. I guess if he learns it, he will surely be treated as an insider. Why not? He is acting on the basis of the information that he gathered because of his being employed by the drilling company or the oil exploration company. Otherwise, he would not have that advantage were it not for the fact that he is related in that respect to either the drilling contractor of the issuing company or as a mere employee of the issuing company. So they will be covered by some provisions--a person who learns such information by a communication from any of the foregoing insiders.

Senator Roco. That is correct, Mr. President.

Senator Guingona. It says here, "from any of the foregoing insiders." But the clerk, who sees the message accidentally, did

not get it from the issuer, or he did not get it from a relation of the issuer. He merely learns about it by accident.

Senator Roco. It may be a person--and that is where the driller and the contractors may come in--whose relationship to the issuer, because of the contract between the issuer and the driller, the people working with the driller obviously they will know that they just struck oil. But because of that relationship, then they will be covered as insiders.

They are not prohibited from trading, but they must trade to notify everybody so that everybody is on the same level of information. There is nothing with trading, Mr. President, but one must wait for that information to be put to the market. That is the essential element of this.

So, in the example given in the discussion, that will be covered to me by C if he were to prosecute. Or, in certain instances, a person who learns such information by communication from any of the foregoing, that will cover probably the wife.

But in a decided case--and this is a long time ago, Mr. President--in a 1974 case on the U.S., the janitor who was cleaning the office picked up a carbon paper. I call attention to this because now we hardly use carbon paper.

Based on that carbon paper, he was considered an insider trader because he was a janitor in the office of the executives. So, he was considered an insider trader.

Senator Enrile. Mr. President, with the permission again of the distinguished gentleman. Let us take a current case in our economy today, the PLDT. I have heard it said in various cocktail parties and gatherings: "*Mamili na kayo ng PLDT shares at magpapalit ang management niyan. Bibilhin ng First Pacific ang mga bloke-bloke ng shares of stocks.*" Many people acted on the basis of this information because they were assured. The informant knew that this is going to happen.

These people, if one can prove it, not just mere suspicion or rumor, but one can prove that they knew that this is going to happen because of an information given by knowledgeable people, by insiders, people who are in the know like members of the board; financial analysts who are performing the financial analysis of the transaction and so forth and so on; and lawyers who are doing the documentation; or the people who are negotiating, these people would be considered as insiders. And if they trade, their trading would be an insider's trading.

Senator Guingona. Mr. President, with the qualification perhaps that it be not of public knowledge. But in the example given, it is already of public knowledge that there is going to be a transfer.

So, the insider trading ingredient of not being generally known is missing.

Senator Enrile. No, Mr. President. This thing was going on even before there was a public announcement. I heard about this two or three months ago. They were telling me, "Do you not want to buy?" Shares of PLDT at that time were selling at something like a little less than P900. They said: "*Siguradong aakyat iyan sa more than P1,000*". They were very sure.

"May go signal na iyan," ang sabi nila.

Senator Guingona. Would it be because the new owners would push through with the metering?

Senator Enrile. No, Mr. President. It was because of the negotiations going on. *Mayroong* negotiation to acquire SSS shares; negotiation to acquire GSIS shares; negotiation to acquire a bloc of shares in America; negotiations to acquire the personal bloc of shares of Tony Cojuangco; approaches to the Marcoses, to acquire their interests; or not to raise any issue with respect to PITC.

These were goings-on. We cannot hide these. So many people learned about these as early as three months ago or even further back.

Now, those people who learned about these goings-on, if they acquired shares of stock and if that is proven that they acted on the basis of that information unknown to the public--I mean to the gentleman and me because we just depended on the releases to the public afterwards--then these people would be inside traders.

Senator Guingona. No, but--with the permission of the sponsor, Mr. President.

Senator Enrile. Thank you, Mr. President.

Senator Guingona. No, no. To Senator Enrile, please.

The Presiding Officer [Sen. Magsaysay]. The senator from Cagayan may go on.

Senator Enrile. Is the gentleman asking me to come back?

Senator Guingona. Yes, Mr. President.

The insider trading information would be valid if there was an event that would increase the price of the company because of prospective profits. Unless the change of hands is merely transfer of equities, unless there is a showing of why there will be profit under the new management may not be considered insider trading *ipso facto*.

Senator Enrile. Mr. President, profit is not material here. It is the question of rise and fall in the market, in the price of the stock in the market based on certain information that is in the possession of the one trading. Whether that company will make money or not is immaterial. We are talking of the price movement in the market as a consequence of an information unknown to the public but known to the person who is buying or selling the shares.

Senator Guingona. Yes. But if there is a transfer of equities merely without showing why, where would be the general impression of improvement?

Senator Enrile. The attention of the public is triggered and excited by this change of management because the people coming in would provide in the mind of the public better management, more efficient management and therefore, better image to the company and thereby enhance the price of the shares of stock in the market as it is mentioned now. In fact, they are buying shares of this company at a premium.

So it is immaterial whether PLDT's profit position will improve or not. It is a question of the effect of that information--change of management on the price of these shares of stock in the market.

Senator Guingona. In the first example of the distinguished senator of oil being discovered, there is certainly the prospect of increased profits. In the case of mining, second example also. But change of hands without any inkling as to how they can increase the profit of the company...

Senator Roco. Mr. President, maybe I can help because--I mean, the debate between the two gentleman shall continue...

The Presiding Officer [Sen. Magsaysay]. The sponsor may continue.

Senator Roco. Yes, at some appropriate time during the period of individual amendments, maybe if the Minority Leader has an amendment, then they can have a debate. But as far as the discussion is concerned, what our distinguished friends may want to look at is, insider trading as a violation is defined under page 54, "Insider's Duty To Disclose."

In the Insider's Duty To Disclose here is where we have--and this is an old law; this is not even a new law. I mean, we did not want to tamper with it because it was too difficult.

What is important is that there is material and nonpublic information. This is where, I guess, the legal opinion of Senator Enrile will emanate.

On page 55, we call attention to--it has not been generally disclosed to the public which would likely affect the market price of the security to the public and the lapse of a reasonable time or would be considered--I am calling attention to lines 20 to 23 on page 55--by a reasonable person important under the circumstances in determining his course of action whether to buy or sell or hold a security.

This is where the legal opinion--that whether one gained or lost money is not important. It is that one acted on the basis of nondisclosed public and material information that he, as a reasonable investor, would have considered.

So, one may lose money because everytime he gains money, somebody loses. If one loses money by his own foolishness, that is fortunate. But under the law, somebody will still suffer. Under this provision, by strengthening the concept of "disclose, make public anything material that will influence an investor, tell the world." After one tells, it is up to him.

In the specific example of information gotten in the stock exchange, the two gentleman were probably both correct. At a certain point when they were discussing, when discussions probably on the transaction were covered by nondisclosure and confidential information, that was inside information. Potential change of management is material. Potential change of management can influence one's decision to buy or sell.

But at a certain point, with so much "tsismis", it was generally known to the public without formal disclosure. So, one is already at risk whether in fact it is Pacific. Maybe Pacific coming in is good or bad, depending on one's judgment. Maybe Pacific not coming in and Bell Company coming in is better for him.

So people started transacting no longer on inside information but on the basis of how they assess market reaction to the information that was set at play. We are no longer covered now. Maybe one gets into manipulative devices.

These are not firm legal positions because the standards are very difficult. But as far as insider trading is concerned, the important thing to remember is, material, it is not disclosed, and a reasonable investor would have been affected on how he bought or sold his holding.

So, the insider element, we were defining initially.

Senator Guingona. Thank you. Based on that criteria, Mr. President, would a clerk in the Supreme Court who knows about a pending judgment favorable, for example, to San Miguel or PLDT and who purchased stocks consequently be an insider?

Senator Roco. Again, we are making *exfreidiare* pronouncements and the legal minds can differ. In this particular case, Mr. President, the clerk, definitely, will violate the anti-graft law because he is not himself in the business of transacting shares. But one can argue that he is an insider if that same potential decision was known to the insiders.

Senator Guingona. No, no. Only he knew about it and he immediately bought.

Senator Roco. I would think--and I am not certain that my legal opinion will be sustained by the court--he will be prosecuted for violation of the anti-graft and corruption law because what he does...I mean, he did not get it from the insider.

As we know, records from the Supreme Court are technically public. Of course, decisions are not yet public. So, he is getting an insider from the Supreme Court. He is not an insider from the corporation. In other words, classified. He is probably going to violate the Penal Code. He is not entitled to use any information that is classified or confidential under the Penal Code. If he does that, he is violating the Penal Code.

An insider trading violator under this example, one can argue both ways. That is my legal opinion, Mr. President. Fortunately, we are not in the Supreme Court.

The Presiding Officer [Sen. Magsaysay]. Is the gentleman satisfied with the explanation?

Senator Guingona. Yes, of course, Mr. President.

Senator Roco. Thank you, Mr. President.

Senator Guingona. I have a different opinion but, as he said, it can be argued either way.

The Presiding Officer [Sen. Magsaysay]. Shall we continue with the amendments?

Senator Guingona. Yes, Mr. President.

May I know if a girlfriend is included in relationship?

Senator Roco. Even a former girlfriend. [Laughter] It says here, "relationship or former relationship to the issuer." [Laughter] Yes, Mr. President, but I hope we should not become personal about this.

Senator Guingona. On page 6, starting with line 20. May I ask the basic question. The Philippine Stock Exchange is supposed to be self-regulatory. Does the committee amendment here give supervision and regulation over the Philippine Stock Exchange or does it include control?

Senator Roco. Under the total context, under certain instances, there is control because SEC has visitorial powers. In other words, the SRO is a corporation by itself. So there are certain things that are under the control of the SEC. But as an SRO *per se* operating, for instance, when they issue rules and regulations, that is not under the control in the sense that the SEC can tell them to reverse. That is the judgment. But should the SEC find that a rule or regulation is not in order, then the Commission, by collegial action and by rule, will issue and the SRO will have to adapt to the rule.

Senator Guingona. So under this proposal, the Securities and Exchange Commission can change a rule of the Philippine Stock Exchange.

Senator Roco. Again, Mr. President, just for facility of discussion. The distinguished Minority Leader may look at page 74, Section 35, because here we are discussing SRO in relation to the collegial body. We are only in the collegial body. Not now but maybe tomorrow, if the Minority Leader would so wish. The whole of Section 35, from pages 74 to 80 are new provisions. This is where the area of debate is.

Let me just put on record that all the provisions here have been accepted by all sectors. Over the past three, four years, these were negotiated by the SEC, by the SRO, and even the balance of powers here were specifically cleared with everybody concerned because we cannot have self-regulatory agencies that are not self-regulatory. So they even had participation.

The Minority Leader, Mr. President, may want to look at Section 35 on page 74 all the way to page 80. Here in Section 4, we are just speaking of the Commission as a collegial entity.

The reason being, Mr. President, right now we have problems--well, we do not have problems--but the Chairman of the SEC is under suit. Right or wrong, it is not for us to decide. But during the discussions of the suit and in the public announcements, some claim that there was too much power in the Chairman.

In fact, the original version given to me by the SEC, the Stock Exchange and those who were involved really decapitated the Chairman. And I was the one who was worried for the SEC. I mean, how can we have a chairman with no powers?

I believe in collegiality, Mr. President. The chairman must have necessary powers to lead, and so I put it back. That is the committee really. But for purposes of the SRO debate, we may want to discuss it when we get to page 74.

Senator Guingona. Thank you, Mr. President. But before I leave that, could the distinguished sponsor inform us whether under this proposal, the chairman can issue a temporary restraining order without consulting anymore the Commission?

Senator Roco. As I remember, and if I miss it, the intention is, when there are orders, rules or regulations, the SEC must act collegially.

Senator Guingona. Even in instances where there is a sort of an emergency, does one need to act with dispatch? A buyer, for example, complaining that she cannot get paid for the stocks that she sold from this broker and this broker is about to leave the country, can the chairman of the Commission, in the absence of some who cannot constitute a quorum, not act immediately?

Senator Roco. The committee is open to a discussion on this as a policy matter. May I present my tentative position, just for the purpose of building ideas.

When I was a practicing lawyer, we could always invent an urgency. One is not lawyer worth his salt if he cannot invent something as urgent even if nothing is happening in the world. This matter of urgency is just a question of crafting. One can tell a story so simply; it is never urgent. But one can tell a story as though the world were about to collapse.

Matters of urgency, since they are really a way of presenting an argument, should not expand. I am for the original concept of collegiality.

If we can identify and isolate really very urgent matters--and that is hardly ever because the law does not only say it must be urgent, but for restraining orders, it must not be compensable or measurable by pecuniary estimation--I think we are also supposed to consider if there is no other fast, adequate remedy that can protect the litigant. Unless we can define this urgency, I am not sure we want an exception.

Senator Guingona. Would the distinguished sponsor agree to extreme necessity to be verified by the Commission *en banc* at the soonest possible time?

Senator Roco. I think if we can consult the SEC, they would say, "Yes." But we must define it and then it is subject to ratification.

Senator Guingona. Yes, it is subject to ratification.

Senator Roco. Again, Mr. President, I am not firm on my position. I am just thinking it through. I think the Chamber should consider it carefully.

At this juncture, the Presiding Officer, Senator Magsaysay, relinquished the Chair to the Senate President Pro Tempore.

Restraining orders have been known to obstruct justice and property rights. If we reach a point here of restraining orders being

issued by individuals, then we should work in again the supersedeas bond concept. That if the one restrained puts up double the potential damages claimed, it will be lifted automatically.

In the literature I have read on the judiciary system of the Philippines, one of the criticisms is precisely the cavalier way of many judges. I am sure at some point in time, even the SEC--and we do not mean to impugn it now--issues restraining orders. Maybe it cannot even be faulted because a good story teller and a good litigator can convince that something is urgent even if everything is peaceful under God's sky.

So, I am very careful about that. We can discuss, if the Minority Leader has a recommendation. We will certainly examine it at his leisure.

Senator Guingona. But the distinguished sponsor will not object if, for example, the board is constituted and it delegates or empowers the chairman to issue temporary restraining orders under certain guidelines?

Senator Roco. Yes. We will consider it, Mr. President. Actually, it is the definition of "urgency" that will be very difficult.

In the case of corporations, I have seen instances when corporations--sometimes proprietary, sometimes club, sometimes corporations engaged in trading, sometimes listed--end up with two boards.

One of the worst things that happen to these corporations is that they have two governing boards because there was a restraining order. If the restraining order came after the election and after the board was proclaimed, there is a set of jurisprudence which will say that this board is already elected. Then they will say the restraining order will nullify.

This is an eternity of discussions that lawyers always welcome. It increases the attorney's fees. It is a great day for law practitioners and investors. Even in newspapers today, they say so. When there are quarrels in corporations, the investor advises the lawyers and the accountants are happy.

That is why I am wary of restraining orders: But we will be open to a discussion of the guidelines if there is a suggestion, Mr. President.

Senator Guingona. I thank the sponsor for that.

On page 7, line 18, referring to the salary of the chairman and the associate commissioners...

Senator Roco. This is an error, Mr. President. *Tama, pinalitan na.*; It used to be "not be less."

Senator Guingona. Is it an error?

Senator Roco. Yes, Mr. President.

Senator Guingona. It says, "Shall be fixed by the President of the Philippines but shall not be less than that received..."

Senator Roco. "Shall not be more". *Tama iyan*. "Not more than that received by a member of the Monetary Board."

Senator Guingona. "Not be more".

Senator Roco. Yes, that is correct. The page was already replaced.

Senator Guingona. "Not be more".

Senator Roco. In other words, as I understand it, Mr. President, the Monetary Board members get I think P150,000.00.

Senator Guingona. The chairman of the Monetary Board receives P300,000.00.

Senator Roco. I did not know that. I thought it was P150,000.

Senator Guingona. I understand it was the distinguished sponsor who sponsored this.

Senator Roco. Yes, that is why it was P150,000.00.

Senator Guingona. It is P150,000.00.

Senator Roco. They complain because P150,000.00, in dollar terms is \$5,000.00 or \$6,000.00, and the chairman of the Monetary Board of Singapore gets, if I am not mistaken, Mr. President, US\$50,000.00 a month.

Senator Guingona. This is another exception to the Standardization Law.

Senator Roco. Yes, Mr. President. It is patterned after the Land Bank.

Senator Guingona. Does the gentleman not think it is high time we lifted the Standardization Law altogether and go back to where we were?

Senator Roco. I will go along with that, Mr. President. For now we are just adopting what we adopted for the government banks -- Land Bank, Development Bank of the Philippines, and the PESA which was here when we discussed. Remember I also put in the model. This is not even strictly the Bangko Sentral model. It is now the modified version being applied by the government banks.

Imagine the SEC, Mr. President, just on fees alone, collects more than a billion pesos which goes back to the national government and we do not necessarily tamper with it in the budget.

So there is plenty of flexibility for the compensation of the SEC.

Senator Guingona. Not only will the officials be exempt from the Standardization Law, they will also be exempt from the Civil Service Law insofar as classifications?

Senator Roco. No, both under PD No. 902-A, Mr. President, and this present draft, if they are covered by Civil Service rules.

And not only that, Mr. President, we oblige them as we oblige the other agencies to have...

On page 11, Mr. President, it states:

"THE COMMISSION SHALL PROVIDE FOR ITS ORGANIZATION AND STAFF OF OFFICERS AND EMPLOYEES AND UPON RECOMMENDATION OF THE CHAIRMAN, FIX THEIR REMUNERATION AND OTHER EMOLUMENTS. ALL POSITIONS IN THE COMMISSION SHALL BE GOVERNED BY THE CIVIL SERVICE LAW AND BY THE COMPENSATION, POSITION CLASSIFICATION SYSTEMS AND QUALIFICATIONS STANDARDS APPROVED BY THE COMMISSION BASED ON A COMPREHENSIVE JOB ANALYSIS OF ACTUAL DUTIES AND RESPONSIBILITIES."

And then as we have mandated with other financial institutions, "THE COMMISSION SHALL, THEREFORE, BE EXEMPT FROM EXISTING LAWS, RULES, AND REGULATIONS ON COMPENSATION, POSITION CLASSIFICATION AND QUALIFICATION STANDARDS. THE COMMISSION SHALL HOWEVER, ENDEAVOR TO MAKE ITS SYSTEM CONFORM AS CLOSELY AS POSSIBLE WITH THE PRINCIPLES UNDER THE COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989." What Land Bank did, Mr. President...

So while people got an increase in compensation, the salary grade, let us say, of the distinguished gentleman is salary grade 27. Instead of P28,000, he may now be paid P50,000. But salary grade 26 is then correspondingly behind the gentleman and that is what happened. So we will adhere to that total structure. But in terms of compensation, we now give it to the management to determine provided they are within the ceiling.

The committee, Mr. President, is open to a review of that ceiling. We thought only that since what the Monetary Board does for fiscal and monetary functions and what the SEC does for commercial and establishments are basically

two sides of the total financial picture, and if the Monetary Board gets paid P150,000.00, then they cannot go beyond that so that they are balanced.

Senator Guingona. Now, at the bottom of page 11, we have the Bangko Sentral having its own rules and monetary credit aspects. Does this refer to T-Bills, banks and financial institutions?

Senator Roco. On monetary and credit aspects of securities, issuances, that is correct, Mr. President.

Senator Guingona. How about the commission houses of...

Senator Roco. This is a very specific area, Mr. President. Again, this is covered by MOA. The committee gave it out to the members at the beginning of the sponsorship. It is now part of the record--where exactly the distinction lies because the Bangko Sentral was sought to be kept away from commercial activities although it still has, I think, one or two, and we are trying to keep the SEC on the other hand, not as authorized kibitzer for monetary and fiscal policy, but we cannot help that they interact. It is of record; I can dig it up and give it again to the Chamber.

Senator Guingona. Thank you, Mr. President.

Now on page 17, Section 8, is this the provision existing today?

Senator Roco. Yes, this was the original Section 7 that followed the section on exempt transactions when, as agreed upon during the interpellations, we deleted all the portions of the bill of Sen. Sergio Osmeña. I precleared with the Majority and the Minority. We have to put this back because it was not the intention of the committee to delete it but to accommodate the bill of Senator Osmeña but who gave it up which might affect even his authorship because maybe he will now disappear as author. But it is of no consequence, Mr. President.

So, it is a pure return of an old provision, unless somebody has other thoughts about it.

Senator Guingona. We made some inquiries as to the present status of commodity trading.

Senator Roco. Yes, Mr. President.

Senator Guingona. And that does not seem to be any commodity trading at all.

Senator Roco. That is correct, Mr. President. To our knowledge, that is so.

Senator Guingona. So, since we are going to consider a new law on commodities trading separate from this one, would the sponsor not agree to saying that pending the enactment of a new law on commodities exchange, the same shall remain suspended?

Senator Roco. Maybe, the distinguished Minority Leader may tell us though what then will cover commodities markets if we do that before we finally approve. That will be even a more difficult area, Mr. President, because we do not have actual extensive experience on commodity trading.

In securities, at least, we already have and it is difficult enough. But if we delete this, then who and what law will cover commodities trading? That is my problem.

Senator Guingona. It will be suspended because of this law until such time that we enact a commodities law. There is no trading anyway now.

Senator Roco. But tomorrow, somebody may decide to do so and then if one is not covered by law, he can argue that he is still covered by the General Provisions of the Securities Act.

Senator Guingona. The law will be promulgated and from promulgation, it will be suspended until the new law is enacted and made effective. Would the distinguished sponsor agree to such proposal?

Senator Roco. The Minority Leader will have to explain what law will prevail.

Senator Guingona. The law prevails as is until this one is promulgated.

Senator Roco. So that if we were to say that until otherwise mandated by a subsequent law, the Commission shall continue to regulate and supervise commodity futures' contract as provided in Section 8 and preneed plans.

Senator Guingona. No. Just say that until such time as a new law governing commodities shall have been promulgated, the same shall be suspended.

Senator Drilon. There will be no commodities trading.

Senator Roco. I do not think that is a sound policy, Mr. President, because then we shall have an activity when there is no one regulating.

Senator Guingona. But I thought that the distinguished sponsor said, there is no trading as of now.

Senator Roco. But tomorrow, there can be.

Senator Guingona. Yes, if there is one tomorrow, then the law governs until this bill of the distinguished sponsor becomes effective.

Senator Roco. But when this becomes effective, Mr. President, what happens? There is no law that governs commodities trading.

Senator Guingona. It will be suspended until the new law.

Senator Roco. I do not think that is a sound policy, Mr. President. But what we can see clearly is that until subsequently mandated by a future law, then the Commission shall continue its regulatory powers under Section 8 here because it is a stop gap. But it is a clear commitment under law that that will then be superseded, and that is what we have put in Section 70 under Transitory Provisions.

I do not know how long that commodities market may take before we draft it or we approve it into law. I do not even know how long it will take to approve this. So to have an activity that is now deprived of legal standing is, in the view of our committee, not a sound policy.

Senator Guingona. On page 28, the issuer is obligated to make periodic reports aside from an annual report. Is that correct?

Senator Roco. Yes, Mr. President. I think there is also a quarterly report. I guess, if the SEC would require it, there can be other reportorial requirements.

Senator Guingona. How about the brokers and the dealers? They also have similar obligations?

SUSPENSION OF SESSION

Senator Roco. May I ask for a one-minute suspension of the session, Mr. President. There is a section to that effect.

The President Pro Tempore. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 4:55 p.m.

RESUMPTION OF SESSION

At 5:01 p.m., the session was resumed.

The President Pro Tempore. The session is resumed.

Senator Roco. Mr. President, earlier I sought a one-minute suspension of the session because we were looking for the

reporting requirements for the brokers and dealers. It is covered on page 95, and it is now Section 48. It used to be Section 54. Fundamentally, this is old law, but with probably cleaning up, because it was more complicated, yes, this is old law, it is very slightly amended.

In answer to the question of the Minority Leader, brokers and dealers are in fact required to make reports.

Senator Guingona. I thank the gentleman for his answer. May I go to civil liabilities?

Senator Roco. Yes, please, Mr. President. This is Section...?

Senator Guingona. Chapter V on page 31.

Senator Roco. Line 30. We moved them all. This is what we transformed, transported them all together. The gentleman will notice that they were all crossed, not because they were deleted, but because they were transferred--I precleared this--to Section 51 on page 99.

The reason, Mr. President, is that under the present law, the civil liabilities were already being defined but we did not know what violations we had committed. So, we put all the civil liabilities and the penal provisions towards the end. Now we know what we are penalizing and what we are imposing civil liabilities for.

But on page 99, Section 51, these are all capitalized only because of the transposition. They were all capitalized based on the old law. Yes, it is so difficult to go through them.

So, these are in the old law until we get to Section 53--that is a new provision--Sections 55.1, 55.2, our new provision; Section 56 is new because of the insider trading modifications, and the rest on limitations of actions on page 104, et cetera. These are in the old law.

On page 104, line 29, we added exemplary damages as within the powers of the Commission; and on page 105, we put in that: "THE COMMISSION IS ALSO AUTHORIZED TO AWARD ATTORNEY'S FEES NOT EXCEEDING TWENTY PERCENT (20%) OF THE AWARD."

This is new, and while we are at it, Mr. President, we call attention to it because here, we not only impose double or treble damages, but we encourage attorneys, as in the U.S. practice, to get significant awards. Under U.S. practice, they may even be awarded up to 30 percent.

A long time ago, I aspired to get 30 percent of somebody's foolishness but I was not allowed by the client. But here, if the

lawyers of investors can be more conscious, maybe they will be given an incentive of 20 percent of the award.

I call attention to it, Mr. President, because I am a lawyer. At some point in the future, maybe I will practice again. Those are all.

While it is deleted on page 31, it gets back on page 99 with the modifications I have called attention to, Mr. President.

Senator Guingona. So that whole chapter is deleted?

Senator Roco. It was transposed together with the punitive provisions. That is why it was all crossed out and bracketed. All of them, Mr. President, that whole chapter.

Senator Guingona. Under the transposed liabilities on page 99 of Section 51 under the old law, up to Section 53.

Senator Roco. Under the old law, it was Section 16.

Senator Guingona. Up to Section 53 under the present. The old law is from Section 51 up to Section 53 of page 102, is that correct?

Senator Roco. All the way to Section 58, Mr. President.

But in the process, there are some portions that are totally new and some that are slightly modified. Section 51.1, for instance, of the old law is amended, but it is probably...

Senator Guingona. Under the old law, have there been substantial liabilities imposed on violating brokers?

Senator Roco. The SEC members who are helping us, Mr. President, are shaking their heads in the negative.

Senator Guingona. There are none.

Senator Roco. I think, significant, there have been none. But there have been some administrative impositions.

Senator Guingona. Yes. But as far as civil liabilities are concerned for the one who sold and could not get back his money, so far no liabilities have been imposed.

Senator Roco. That is the information being given to us. May I suggest a reason, Mr. President. In our country, any major case involving a significant amount generally get settled. It is unusual that multimillion peso cases ever reach their final adjudication.

Even when they get to the Supreme Court, there is a certain amount of negotiations. When they are very big amounts, even

when we plow through the Supreme Court, it is very difficult. And when we do, we get a Supreme Court decision where they amount to bad law. Maybe a good compromise decision, but they are bad law. That is one reason probably.

In fact, when we were practicing, Mr. President, the norm with corporate disputes was settlement. Maybe that is an explanation.

Senator Guingona. Yes, Mr. President. It is an explanation to which I agree. But I think the distinguished sponsor will also agree that it is no justification.

Senator Roco. To me, maybe the SEC should precisely be more strict in what we proposed to do. Maybe this new bill, if approved, may, in fact, embolden the SEC. The appointing power, of course, must also put people who would want to do that.

Senator Guingona. But the old provisions have been improved only by an increased amount of civil liability. Would that be correct, Mr. President.

Senator Roco. There was an increased amount of damages, but this is borrowed. In fact, in the Rico law or in the Rico bill that the distinguished Minority Leader filed, the same provisions will recur.

The concept of double or treble damages, Mr. President, is borrowed not from securities practice but from anti-trust practice. The principle is for the greedy. Let us make greed, also make the greedy afraid. If they manipulate, if they engage in insider trading because of greed, we will impose a penalty that capital plus interest, plus earnings times two will be the penalty.

The hope is that greed prevents people from also being greedy. We do not know because we have not seen it happen. But that is the concept behind the double and the treble damages. It is a small amendment but it has very telling effects because we are not talking. The original recommendation of the drafting committee that lasted three, four to five years was just the profit. It was just the profit. But when we started computing profit, the moment there was no profit, there was no more penalty. But if we are already duped, if we are subjected to manipulation, then that must be penalized.

The concept of this bill now is full disclosure. Let everybody be on notice. If they still want to be foolish and buy something in the stock market that is not worth buying, the law can no longer protect the foolish.

Senator Guingona. Considering that no one has been adjudged guilty and become liable and considering the explanation of the distinguished sponsor, would he object to criminal liability being imposed?

Senator Roco. As an addition, Mr. President, no. In fact, there are also criminal liabilities imposed. We must make sure that the burden of evidence--and I am sure the Minority Leader will share this concern--should be very clear in the civil liability. So that it is, maybe, even less than preponderance. If there is a requirement, for instance, to disclose, the mere fact that he did not do so, he gets penalized, because it is so easy that he did. He should show a piece of paper, received by the SEC, saying, "Received on this day." If he cannot produce that, that is too bad for him. We penalize him, and then he can do into all the legal remedies.

But in criminal liabilities, on page 112, Section 69--the penalties are also there. Again, the committee is not married to any of these penalties. We can make it higher. So we will not object as a direct answer to the question. The committee will not interpose any objection to putting penal provisions.

Senator Guingona. I would like to get the benefit of the distinguished sponsor's thinking. Since he has agreed to having criminal penalties imposed, would it be better to deputize the SEC officials and personnel in charge of the prosecution? Or would that be a separate undertaking? Because, as the distinguished sponsor knows, it may take time before the civil liabilities are determined. But the time the Commission recommends prosecution, it may take two or three years and, by that time, the witnesses, the documents and evidences may no longer be available. So, can we have the benefit of this expert?

Senator Roco. Yes, Mr. President. I will just ask for time. I mean, my own reaction is that that is alluring. That is an idea that seems acceptable because apparently, when it becomes a criminal case we transfer it to the fiscal, the normal prosecutory arm. And any knowledge that a normal fiscal may have about corporate and business law may be really accidental. Because it is not something that they do on regular basis.

I just do not want to commit myself on this and I guess I must consult the SEC because the SEC now will have adjudicatory, administrative, and prosecutory arms although it is doing it separately. If we can just mature the idea a little, Mr. President, I find it inviting, but may I just have discussions with those who will be involved. It will also require new personnel, a new department for the SEC, and there are consequences of this action. But offhand, until I hear views to the contrary from those who will implement this, I find right now no objection necessarily to that.

Senator Guingona. Yes, Mr. President. The basic idea is that the prosecution will still be undertaken by the Department of Justice but they deputize--

Senator Roco. Can be deputized.

Senator Guingona. --certain personnel.

Senator Roco. Yes, Mr. President. We should get contributions from all those concerned.

Senator Drilon. With the permission of the gentlemen on the floor, just on that point.

The matter of deputization can be done even without so providing it in the law. During this representation's term as secretary of Justice--and I am sure during the time of the Minority leader as secretary of Justice--we deputize specialized agencies to prosecute special laws in the courts without need of any specific authority in the law.

So, it is a matter of judgment on the part of the secretary of Justice without need for any provision in the law to deputize and allow specialized agencies to prosecute criminal cases arising from violation of these special laws.

Thank you, Mr. President.

The President Pro Tempore. The interpellation may proceed.

Senator Guingona. I thank the gentleman for that. My only concern is--and I would like to ask the views of the distinguished sponsor--the defense attorneys will again claim that the civil aspect be first finished as is provided and, therefore, a prejudicial question. So the time element may again be a factor. However, we will try to polish it.

Senator Roco. Two factors, Mr. President. The committee will study the prejudicial question issue and maybe we can make it fall outside the prejudicial question issue.

The other one, I am being informed by the Commission that when it gets to the prosecution, it is correct. So, it is delegated to them. But then, the actual prosecution is now handled by the fiscal and they become supporting.

That is what is being sought, so that the trial tactics and prosecution become the work of the fiscals and, if they are more experienced, they will really be better off so long as they are given competent advice on the corporate law issue. So, that makes sense.

The SEC itself, because it has a prosecutory arm, unless the officials themselves develop particular competence in trial tactics as regards corporate law. That is why I am saying that it is an inviting idea because litigation involving corporate disputes is different from litigations involving criminal acts like murder and other felonies.

It becomes different. Here, there is a lot of *mala prohibita*; the mere fact that one does not submit a piece of paper is enough punishment. But then how one proves a piece of paper when all are now in electronics, in the computer, is another question.

I accept the advice, Mr. President, because we have two, in fact, we have three former secretaries of Justice. So I just ask for time to mull over it and maybe I will discuss it with the two of them on what may be the best procedure so long as it advances the need for fast prosecution and an open, transparent capital market.

Senator Guingona. I thank the gentleman for that, Mr. President.

Senator Roco. Yes, Mr. President.

Senator Guingona. Now may I go to the Brokers/Dealers aspect--Page 67. It is page 67, line 25?

Senator Roco. Yes. This is the portion when we prohibit brokers from being dealers.

Senator Guingona. May I lay some premises.

Senator Roco. Yes, please.

Senator Guingona. First, the majority of the stockholders are honest stockholders and they would not like to tarnish their names. Of course, there are a few rotten eggs who are greedy and who will bend the rules and who will manipulate. But by far, most of the brokers, at least those whom I know, are basically honest professionals who want to improve their profession. Would that be an acceptable premise?

Senator Roco. The law says we presume regularity and good faith, so I guess that applies to brokers and dealers. But that has not prevented criminal law from being promulgated. That is why we have the Penal Code.

Senator Guingona. Of course, Mr. President.

Senator Roco. Although we assume people are innocent, Mr. President, we still look at it with incredulous eyes when somebody protests his innocence too strongly.

So, Mr. President, the premise is accepted. That is what the law says.

Senator Guingona. Second, this existing practice of having dual broker/dealer relationship vested in one entity, one corporation, stock brokerage of one person, is the subject already of rules and regulations by the Philippine Stock Exchange, as well as supervised by the Securities and Exchange Commission. In

other words, there are rules and safeguards already against the possible conflict of interests of a broker/dealer.

Senator Roco. Not these provisions, Mr. President. These are new.

Senator Guingona. Are there?

Senator Roco. Of course, there are. But what I am saying is that this Section 31 is lifted and is in response, in fact, to the brokers and the dealers. May we also give some prefatory statements for purposes of clarifying the records.

It is true, Mr. President, that dealers and brokers are presumed to be honest, but that is not necessarily borne out when there are investigations. Some, as the gentleman concedes, are rotten eggs. One rotten egg may be bad enough.

Second. For instance, the rules separating dealers from brokers is a sacred rule. One cannot be acting for himself and be an agent for another. One cannot serve God and Mammon--when one, therefore, puts his interest above that of his principal. That is a rule that applies to lawyers. We cannot serve our client and compete with the client because, one way or the other, the client will suffer. The same will be true for investors.

In the U.S., they are so conscious of this rule that brokers almost always refuse to accept board directorship. But here, brokers, dealers, directors are all over the place. So, they are insiders, they deal for themselves, and they deal for others. This rule is sought to cure that defect. This is a major reform provision.

This rule brought the brokers here on a typhoon-drenched day. They were here to lobby against this. It is not illegal to lobby. We are a democratic society. We called them to a meeting. Senator Flavier was there. I think Senator Barbers was also there. We asked them to identify why or what is their position. They said they have to consider odd-lots, or they have to perform marketmaker function.

The example of market-making is something like this. These are actual. One is a broker. Somebody from the U.S. says, "Sell all my shares. It is worth US\$100,000.00."

But the broker has a buyer in the Philippines that has US\$90,000.00. Rather than lose the sale, he buys for themselves the US\$10,000.00 and wait to sell it at some other time. Market-making--the American law concept.

We accepted that and now it is an exception. What was the other thing that they were saying? There are odd-lot transactions. One buys San Miguel in groups of 20 but because of the dividends they break up. So, he has 1,017 shares. The buyer orders 1,000

shares. Because there are 1,017, the broker absorbs the 17 shares. But those, Mr. President, can be understood in the logic of brokering. He is the agent trying to save the deal. We put that in the exceptions.

Since the exceptions came from the brokers and the dealers, we feel justified in adopting an American rule and practice. "Dealers, you want to buy and sell for yourself? Fine. But do not buy and sell for others. If you want to buy and sell for others, fine. But do not compete with his principal."

That is why, here, Mr. President--I know where the distinguished Minority Leader is leading to--we feel that if there must be a reform in the Securities Act, this is one of the major reforms.

Senator Guingona. I would like to thank the distinguished gentleman for that, Mr. President.

The proposal, if enacted, will not prevent the relative of the broker to establish a dealership. Will it? In other words, it is just like the political ban--the congressman or senator can no longer run, so he allows his wife, child or oldest son to run instead.

What I am leading to, with due respect to the good intentions of this proposal, is that it may only open the avenues to further violations of what is already an accepted practice, not only here but also in many other brokerage exchanges. And the fact is that brokers earn from commission much more that they would earn from dividends or from the profits that they make.

So if we scrutinize the broker's transactions, most of them would have 95 percent for clients and only 5 percent, 3 percent or 4 percent for their own account. Perhaps, it covers the exceptions cited herein. Apart from that, there are time indications in a ticket, computerized, where the purchase or the sale of a transaction is given including the client for whom it was bought or sold. These recorded tickets or transactions are given daily. And if a client complains, that broker, although he may deny and say it is a mistake, will be in hot water.

What I am trying to say, Mr. President, is, with all due respect to the good intentions of this bill, there are sufficient safeguards in the law. Majority of the brokers to whom I have talked to do not favor. I have talked to some whom I personally know are honest. They were telling me that although the intention is good, it may only open the avenues for relatives to organize dealerships. So we will not accomplish what good objectives the distinguished sponsor has.

Senator Roco. I find it difficult, Mr. President, to visualize an honest person who is already trying to avoid the law. What kind of honest person is this? If they pass that law, then we will avoid the law. That is what they are saying.

The argument, Mr. President, was presented to the Committee. They are honest. Yes, it sounds like the time somebody said. "The rich do not steal." But that is not good argument.

Violation, circumvention of a law does not argue against the law. Murder is prohibited but there are murders. So because we cannot enforce the law on murder, we should abolish the Penal Code. This does not stand to logic, Mr. President.

There are so many laws that are avoided and violated but it is the nature of civil society that laws are there so that they can be prosecuted.

In this particular case, Mr. President, they say they will lose nothing anyway. Out of the 187 or something brokers, No. 1 to 20 represents more than 60 percent of the transactions, No. 21 to 187 represents 40 percent. They have very small margins.

When in the market we hear that there is churning; they buy and sell to themselves. When they engage in insider trading, there is a complicity. That happens because they can buy for themselves; they can buy for others.

This provision is sought to precisely modify that practice. By their own admission, they will lose very little anyway. When they are prohibited from being a dealer at the same time, 95 percent to 99 percent of their profits anyway are made from commissions. So they have nothing to lose.

Why are they feeling so aggrieved because of the potential conflict of interests sacrificing investor confidence? That observation is not just ours. Those who have engaged in the stock market have seen that.

The tragedy is, while the small ones then initiate this, the big ones benefit because *sasabay*. So, the foreign portfolio investors, when there is something going on that is foolish, cannot be faulted because they will just take advantage of the opportunities created by the small ones. We just generate profit for the big-time guys.

Mr. President, the wisdom of this provision is borne out by the American experience, and I guess it is very difficult to mention a stock ruling that can compare in practice and wisdom with the American rules. It addresses the objection of the dealers, market-making, odd-lot, correction of errors. There is nothing else they can complain about.

Senator Guingona. May we know the definition of market maker again?

Senator Roco. This was the example, Mr. President. When to consummate the transaction, a broker who had no intention of

buying for himself buys a certain portion of the shares so that the original transaction is consummated. The example I gave was the US\$100,000. That is actual, and the buyers could only absorb US\$90,000. To make the transaction, the broker bought the US\$10,000.

Here, he became at risk. But as we can see, there he was acting as broker saving a transaction. It is different when he is also buying for himself.

Those are the two operations that we want to keep separate now.

Senator Guingona. Would that isolated transaction create a market?

Senator Roco. That is what they meant by marketmaker. That is their term--to create a market. In other words, to consummate the transaction. That happens everyday.

When one is buying for somebody else, *kung may butal* or the buyer or the seller cannot absorb, the broker buys for himself. But that is not the intention. He buys really for the client, but he absorbs now a little risk to make the market. That is how they use it.

Senator Guingona. For clarification, I thought that transaction alluded to as an example would fall under letter (B) on page 68.

Senator Roco. Yes, Mr. President. All these are just specifics. But because they mentioned it, odd-lot transaction is also market-making. Those are the nature.

A transaction made in error, instead of rescinding or nullifying the sale, they just absorb it because they were in error. And other transactions of a similar nature.

With those exceptions, Mr. President, a good broker can make money because they themselves say they make 95 percent of their money from commissions.

That is the situation, Mr. President. In fact, even the lawyer who used to be here and participating in our drafting disappeared after we put this provision here. He has not appeared since the time of the typhoon. When the dealers and brokers were lobbying here, he has not appeared again. I do not know. I gave good words about his work. I hope they did not fire him. He had nothing to do with this.

So, that is the situation, Mr. President.

Senator Guingona. If the gentleman would oblige--I think the Securities and Exchange officials will have records of the

success of brokerages under this exception cited--I will appreciate the same.

Senator Roco. Yes, Mr. President. They will give us as much.

Personally, Mr. President, I cannot put my finger to the reasoning of our distinguished brokers because they clearly state that their profit coming from dealership is only five, and that is one broker, generally one percent. So that is on the records. That is in the hearings. They said that.

In fact, I immediately turned to them--Senator Flavier is nodding his head--"in which case we have no problem. We will not lose money."

But they said, "How about to market-making?"

"Then we put it here."

"How about odd-lot?"

"Then we put it here."

So they should have no problems. But the principle is very established. "If you act for yourself, do not act for others. If you act for others, do not act for yourself. Because when do you give opportunity for yourself and when do you give to the investor?"

They have never explained that, Mr. President, because we cannot.

It is very difficult to say that "I have kept the opportunity for myself instead of giving it to my client, Senator Flavier."

Under the law, under moral norms, under the law on agency, the principal must be superior to the agent. And when they act for themselves and they act as agents...I am sorry Senator Enrile is here, otherwise he will be jumping up already because this one is very strong as well. He himself is a dealer-broker and he says, "Give it away. I am just one of the small ones."

Senator Guingona. If the representatives of the Securities and Exchange Commission made those manifestations, then that is all right.

How will the license now be given to them? Will it state that they will be authorized stockbrokers and dealers with the following exceptions?

Senator Roco. I guess then we will now ask the SEC to come up with new rules because if one is a dealer, then he is a dealer. If one is a broker, he is a dealer. I guess almost all of them will become just brokers.

Senator Guingona. But we have granted them exceptions.

Senator Roco. It does not matter. They will still be brokers because this is the nature of an act and a broker. That is why there are exceptions. Just market-making. It is when we need to complete the transaction.

That is why, again, these are very circuitous and labyrinthine rules under the Securities rules and regulations. I guess, in having addressed the two exceptions actually...In fact we are the ones who put this error.

They were talking of market-making and odd-lot and we have addressed it. When we found that this was also the practice in the U.S., we yielded to that observation. So when they do that, they are not dealers. They are brokers. They will not be given a license to be a dealer.

Senator Guingona. No, but the exceptions will be given to them.

Senator Roco. Yes, they will have to show because they are excess. In all instances where the member-broker effect a transaction for its own account or an account of an associated person...

Senator Guingona. Except...

Senator Roco. I am looking at 31.

It shall disclose to such customer at or before the completion of the transaction that it is acting for its own account, that this fact shall be reflected in the order ticket and the confirmation slip.

This is totally a new provision. The moment they cannot produce a disclosure, they are penalized. Because what is the defense? The defense is only, "I disclose." It is an exception. If they cannot produce the piece of paper which says, "I disclose," they suffer double damages.

So it becomes simple, Mr. President, and I hope, manageable for the Securities and Exchange Commission.

Senator Guingona. When we make a transaction made in error as an exception, are we not opening the doors to a broker precisely to say, "I made a mistake. I was really buying for my client, not for myself."

Senator Roco. Error here, Mr. President, is mathematical. For instance, they recorded 1,000 when the order was 900. Somebody has just to absorb. Now, precisely because they are professionals, I think the professional is more worried about error. If they keep

admitting it, if they say that this was an error, it reflects on their professionalism and I do not know whether they will be too willing to publicize the error.

In fact, they did not even ask for this but when we saw it under American practice, we thought it was an appropriate exception. But it is more mathematical error.

The committee, Mr. President, is perfectly amenable to delete this because odd-lot transaction and market-making were the two concerns of the brokers.

Senator Guingona. How about any other transaction of a similar nature?

Senator Roco. The reason we put this, Mr. President, is originally, I just put an *ad jus dem generis*--of a similar nature. I do not know of what other examples. But one of the recommendations here was therefore to give it to the Securities and Exchange Commission. I was saying, "No" because it must be in the nature of market-making or odd-lot or error. That is all. Of course, that becomes litigable and we leave it to the discretion of the Securities and Exchange Commission.

Mr. President, I will have to be excused so...

At this juncture, the President Pro Tempore relinquished the Chair to Sen. Ramon B. Magsaysay Jr.

Senator Guingona. Since the distinguished sponsor has to go, I will refrain from further questions and would like to thank him for his patience.

Senator Roco. Yes, Mr. President. We also welcome the observations of the good Minority Leader. We can assure the Minority Leader that we went through a lot of reflection on this and without going into finding fault with brokers and dealers in the stock market. There are among them people who are unscrupulous. It is not contagious, but we hope the law helps the better angels in their nature.

Thank you, Mr. President.

Senator Drilon. Mr. President, the Minority Leader has manifested on the record that he has raised all the questions on the committee amendments approved by this Body. Therefore, in the next session, we will now proceed with a page-by-page debate on the period of individual amendments.

We will therefore be requesting our colleagues to please prepare their individual amendments on this Securities Act because it is indeed a complicated piece of legislation and the implications

are wide-ranging. Therefore there is need to review carefully the proposed amendments.

SUSPENSION OF CONSIDERATION OF S. NO. 1220

With that, Mr. President, we now move to suspend consideration of Senate Bill No. 1220 under Committee Report No. 6.

The Presiding Officer [Sen. Magsaysay]. Is there any objection? [*Silence*] There being none, the motion is approved.

Senator Drilon. Mr. President, just a few more administrative matters before we adjourn.

May we make of record that the printed copies of Proposed Senate Resolution Nos. 187, the Basic Telecommunications Services and 188, the Information Technology Agreement, were distributed today, 16 November 1998. This is for purposes of counting the three-day rule under our Constitution.

We wish to manifest that these printed copies of the two resolutions were distributed today to our colleagues in the Senate.

On another matter, Mr. President, may we correct our earlier statement on the matter of what constitutes the majority in the Senate--in the Chamber right now with 23 senators.

We stand corrected on our previous opinion. In the case of *Avelino vs. Cuenco*, the Supreme Court expressly rules that 12 senators constitute a majority of the Senate of 23 senators. So there is a clear ruling in the case of *Avelino vs. Cuenco* which applies to the situation in the Chamber today. There are 23

senators and therefore the quorum is 12 in accordance with the decision of the Supreme Court.

The Presiding Officer [Sen. Magsaysay]. We note the report of the Majority leader.

**MOTION OF SENATOR DRILON
(Referral of S. No. 575 to the Justice and Human Rights Committee as the Primary Committee)**

Senator Drilon. Finally, Mr. President, may we move that Senate Bill No. 575 authored by this representation which proposed amendments to the penalties for falsification of the Torrens Certificate of Title be referred primarily to the Committee on Justice and Human Rights. It was previously referred on August 5 on First Reading to the Committee on Constitutional Amendments. Similar bills are now being heard by the Committee on Justice and Human Rights, and therefore we move that Senate Bill No. 575 be referred to the Committee on Justice and Human Rights as the primary committee.

The Presiding Officer [Sen. Magsaysay]. Is there any objection? [*Silence*] There being none, the motion is approved.

ADJOURNMENT OF SESSION

Senator Drilon. There are no other business on calendar, Mr. President. We therefore move that we adjourn the session until three o'clock tomorrow afternoon.

The Presiding Officer [Sen. Magsaysay]. Is there any objection? [*Silence*] There being none, the session is adjourned until three o'clock in the afternoon, November 17, 1998.

It was 5:52 p.m.

Senator Biazon. Yes, Mr. President. I think we will come to that at the proper time. The situation as far as the debt-servicing potential surplus is concerned is that we need to examine first the behavior of the peso.

The danger of projecting at present is when the remittances slow down after the holiday season. This could be a factor in the movement of the peso vis-a-vis the dollar.

Senator Drilon. Yes. But we are assuming that presently the peso will deteriorate to about P46 by the end of 1999. That is quite a pessimistic view of our exchange rate if we view it from where it stands today. But there is, however, some problem.

If we believe what we read in the newspapers, there is a move to allocate P30 million for each congressman as CDF. The P30 million for each congressman multiplied by 200 congressional districts, that is P6 billion. So there goes whatever changes and assumptions we will make in our debt service budget which will be the source of funds for this.

Senator Blazon. Would it not be possible, Mr. President, that the P30 million per congressman will be generated by cutting some items in the budget?

Senator Drilon. I think it will be generated by cutting some items in the budget, and that is the debt service.

Senator Blazon. We will have to see yet their submission when they elevate the approved budget. I understand it is not yet approved there in the House of Representatives. We will see.

Senator Drilon. Given that circumstance, will the good senator support the President's call to scrap the pork barrel?

Senator Biazon. In 1994, this humble representation, together with some of the members of the Chamber, proposed for the scrapping of the pork barrel.

Senator Drilon. Because that can be the source of this proposal for the creation for new teachers' positions and funding the requirements under Republic Act No. 8551. Would the gentleman agree with this representation?

Senator Blazon. Thank you, Mr. President, for providing us the light as far as the search for support for this resolution is concerned.

Senator Drilon. Thank you, Mr. President. I no longer have any question. At this point, may we move to close the period of interpellations.

The Presiding Officer [Sen. Magsaysay]. Is there any objection? [*Silence*] There being none, the motion is approved.

Senator Biazon. Thank you, Mr. President.

SUSPENSION OF CONSIDERATION OF
S. JT. RES. NO. 7

Senator Drilon. Mr. President, I move to suspend consideration of Senate Joint Resolution No. 7 under Committee Report No. 10.

The Presiding Officer [Sen. Magsaysay]. Is there any objection? [*Silence*] There being none, the motion is approved.

SUSPENSION OF SESSION

Senator Drilon. May I ask for a one-minute suspension of the session, Mr. President.

The Presiding Officer [Sen. Magsaysay]. Is there any objection? [*Silence*] There being none, the session is suspended for one minute.

It was 4:11 p.m.

RESUMPTION OF SESSION

At 4:12 p.m., the session was resumed

The Presiding Officer [Sen. Magsaysay]. The session is resumed. The Majority Leader is recognized.

BILL ON SECOND READING
S. No. 1220 -- The Securities Act of 1998
(Continuation)

Senator Drilon. Mr. President. I move that we resume consideration of Senate Bill No. 1220 under Committee Report No. 6.

The Presiding Officer [Sen. Magsaysay]. Is there any objection? [*Silence*] There being none, resumption of consideration of Senate Bill No. 1220 is now in order.

Senator Drilon. Mr. President, we are now in the period of individual amendments. May I ask the Chair to recognize the principal sponsor, Sen. Raul S. Roco.

The Presiding Officer [Sen. Magsaysay]. The sponsor is recognized. Senator Roco, please continue.

Senator Roco. Thank you, Mr. President.

Senator Drilon. May we suggest to the good sponsor that we go page by page on this proposed bill.

Senator Roco. Yes, Mr. President. Yesterday, we had modified until page 4. So, if there are no further individual amendments on page 4...

Senator Drilon. May we suggest, with the permission of the Chair, that we start from page 1. We are using the version as of November 12, 1998, just for the guidance of the Chamber, Mr. President. Is that correct?

Senator Roco. Yes, Mr. President.

The Presiding Officer [Sen. Magsaysay]. We shall then start on page 1 for individual amendments.

Senator Roco. Yes, Mr. President.

Page 1. *[Silence]* May we proceed to page 2. *[Silence]* On page 3? *[Silence]* May we go to page 4, Mr. President.

Senator Enrile. Page 4, Mr. President.

The Presiding Officer [Sen. Magsaysay]. Senator Enrile is recognized.

ENRILE AMENDMENT

Senator Enrile. In line 18, after the word "salesman", I would propose to insert the words OR AN AGENT--

Senator Roco. To be consistent, Mr. President.

Senator Enrile. --and then place a comma (.). After the word "or", insert the article A. So the line will read: "supervisory authority, but does not include a salesman OR AN AGENT, or A person whose functions are solely clerical or ministerial."

The Presiding Officer [Sen. Magsaysay]. Does the sponsor approve?

Senator Roco. It is accepted, Mr. President.

The Presiding Officer [Sen. Magsaysay]. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Guingona is recognized.

GUINGONA AMENDMENT

Senator Guingona. Mr. President, in line 26 page 4, after the word "organization" the ones that were deleted, I move that we

put them back from the phrase "organization, including the imposition of sanction for violation thereof." Remove the brackets because this is an SRO which has been expressly allowed to suspend members.

Senator Enrile. Mr. President.

The Presiding Officer [Sen. Magsaysay]. Senator Enrile is recognized.

Senator Enrile. The penalties are supposed to be provided by law. The tendency of the bracketed words is to delegate the power to impose penalties to the Commission. We should establish the penalties not only for violations of the Securities Act but including rules and regulations issued by the Commission to implement them.

Senator Guingona. I asked the distinguished sponsor yesterday the basic question of whether the Securities and Exchange Commission has simply regulatory and supervisory powers--whether it has the power of control. He answered that it includes the power of control.

However, the same proposal authorizes--somewhere in the latter portion--the SROs to impose penalties. I think this is in line with the thrust of the sponsor to really give the Securities and Exchange Commission the power to discipline its own members. And if we give it the power to discipline its own members, giving it a prior right to do so, and if it does not, then the Commission will do it. It is logical, Mr. President, that it be given the right to discipline and to impose sanction for violations thereof.

Senator Enrile. I defer to the judgment of the sponsor, Mr. President.

The Presiding Officer [Sen. Magsaysay]. What does the sponsor say?

Senator Roco. Yes, Mr. President. We have no particular objection in removing the brackets.

The Presiding Officer [Sen. Magsaysay]. Is there any objection? *[Silence]* There being none, the amendment is approved, removing the brackets in line 26 after the word "organization" up to the end of the sentence, and putting back that phrase "including the imposition of sanction for violation thereof."

Senator Roco. That is correct. May we proceed to page 5, Mr. President.

Just so as not to mislead our colleagues, lines 18 to 22 should be in small letters. That has been settled yesterday.

If there are no amendments on page 5, may we proceed to page 6.

The Presiding Officer [Sen. Magsaysay]. Are there no amendments on page 6? *[Silence]* Then we move to page 7.

Senator Roco. May be it will facilitate, Mr. President, if we jump to the page where there are amendments.

Senator Enrile. Mr. President.

The Presiding Officer [Sen. Magsaysay]. Senator Enrile is recognized.

Senator Enrile. Before I propose an amendment, I just want a clarification.

I refer to line 20, beginning with line 19 up to line 20 of page 6: "This Act shall be administered by the Commission ACTING AS a collegial body."

Does that mean that the Commission cannot act by division?

Senator Roco. I think they can, Mr. President. It is defined either in PD No. 902-A or subsequently here. Because there are also provisions in 4.5 in terms of delegation of authority. That is on page 10.

On page 10, line 1, the Commission shall act as a collegial body and may delegate based on standards or efficiency in any of its functions to any department or office of the Commission, individual commissioner or staff member of the Commission.

ENRILE AMENDMENT

Senator Enrile. What is the need of putting the word "acting" here, Mr. President? Why not just say "BY THE COMMISSION AS A COLLEGIAL BODY?"

Senator Roco. That may be better English, Mr. President. We accept if that is a proposed amendment.

Senator Enrile. So I move that we delete the word "acting" in line 20 before the word "as".

Senator Roco. We accept the amendment, Mr. President.

The Presiding Officer [Sen. Magsaysay]. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Roco. Instead of going page by page, Mr. President, if we have amendments, then we just go and if somebody has an antecedent amendment, then we go by the rules.

The Presiding Officer [Sen. Magsaysay]. If the sponsor feels that it will expedite the passage of his landmark bill, we have no objection.

Senator Drilon. Mr. President, may I suggest that we go page by page because we also had the committee amendments incorporated *in toto* without specifying each one.

Senator Roco. Yes, Mr. President. When I saw Senator Jaworski, I thought we could go fastbreak.

The Presiding Officer [Sen. Magsaysay]. Then please continue.

Senator Roco. On page 7, Mr. President.

The Presiding Officer [Sen. Magsaysay]. Are there any amendments on page 7? *[Silence]* On page 8?

Senator Guingona. Mr. President.

The Presiding Officer [Sen. Magsaysay]. The Minority Leader is recognized.

Senator Guingona. Mr. President, on page 8, after line 5, this may go up to page 11 depending on the sponsor's wishes. The proposed amendment reads:

Senator Roco. Excuse me, Mr. President, this 4.3 has been deleted. That is part of a deleted section. So on page 7, 4.3.a, all these had been deleted.

Senator Guingona. So, deleted *na*.

Senator Roco. Then it goes to page 10.

Senator Guingona. We will present these on page 11.

Senator Roco. So all these on page 8 have been deleted and then we have the new 4.3, at the bottom of page 8...

Senator Enrile. May we go to page 6, Mr. President.

The Presiding Officer [Sen. Magsaysay]. Senator Enrile is recognized.

Senator Enrile. Beginning on page 6, line 31, all the way to page 7, line 15, is it the intention to delete this provision which defines the tenure of the Commission?

Senator Roco. The reason, Mr. President, is when we checked, it was already in PD No. 902-A.

Senator Enrile. So it is already in the law.

Senator Roco. It is in PD No. 902-A. So we thought there was no need to repeat it, unless we repeat it word for word, so that we show that there is no alteration from PD No. 902-A.

Senator Enrile. It is all right if it is already in the law.

Senator Roco. Yes, that is already there, Mr. President.

The Presiding Officer [Sen. Magsaysay]. So may we proceed, Senator Roco?

Senator Roco. So we are now on page 9, Mr. President.

The Presiding Officer [Sen. Magsaysay]. Are there any amendments on page 9?

Senator Roco. Again, the bottom part of page 9, Mr. President, has been totally deleted.

After we remove all the deletions, Mr. President, I think this will look like a manageable, 80 pages.

The Presiding Officer [Sen. Magsaysay]. This is from line 33 of page 9.

Senator Roco. Yes, Mr. President, lines 15 to 33.

The Presiding Officer [Sen. Magsaysay]. These are all deleted.

Senator Roco. Yes, that is bracketed, Mr. President.

Senator Drilon. Is the Central Bank Governor a member of the Monetary Board?

Senator Roco. Yes, Mr. President.

Senator Drilon. Does he receive a salary higher than an ordinary member?

Senator Roco. It is P150,000. It is higher by P30,000 from what I understand.

Senator Drilon. So, each member of the Monetary Board would receive P120,000?

Senator Roco. That is what I understand.

Senator Drilon. Now, is it the intention here that the Chairman will also receive the salary of the Governor of the Bangko Sentral ng Pilipinas?

Senator Roco. In the technical working group, we thought he would be slightly lower. So, we thought of the P120,000. In fact,

we can specify the amount so that we are not dependent on vague references. But the committee is open to make the salary of the chairman equal to that of the Governor of the BSP precisely on the philosophy that while BSP worries about auditory and fiscal activities, the SEC worries about the commercial activities.

Senator Drilon. May we know, Mr. President, what is the present pay scale of the chairman of the SEC and the associate commissioners of the SEC?

The Presiding Officer [Sen. Magsaysay]. On an annual basis.

Senator Roco. I think it is P30,000. Something like Salary Grade 20, whatever is the highest salary grade under the Salary Standardization Law.

Senator Drilon. And assuming that it is P30,000 for the chairman, the proposal is to raise it up to about P120,000?

Senator Roco. That is correct, Mr. President. Not necessarily. That will be the ceiling. That will depend upon the President.

Senator Drilon. That is right, but can the President bring it up to P120,000 without violating the Salary Standardization Act?

Senator Roco. That is correct, Mr. President.

Senator Drilon. Now, what will happen to the director of the Commission, the one who is immediately below in rank of the associate commissioner?

Senator Roco. Here, we mandate, Mr. President, that there will be, under 4.6, the organization on staff of officers and employees and upon recommendation of the chairman, fix their remuneration and other emoluments. We say that the Commission shall endeavor to make its system conform as closely as possible with the principles under compensation and position classification.

What happened, as it happened in the Bangko Sentral ng Pilipinas, is that everybody is roughly elevated in the same manner. So that, if the Chairman will receive P120,000, maybe they will say P90,000 is for the members and pay scale 26 will be P80,000, whatever, or 25.

Senator Drilon. Which means that the Commission may have a salary scale much much higher than the ordinary bureaucrat in the government.

Senator Roco. Which is what we have authorized Land Bank, DBP and EPZA. Does the gentleman remember the Osmeña...

Senator Drilon. Yes, but I do not recall that we used as a standard the salary of the Monetary Board members in those ones.

Senator Roco. No, Mr. President. In fact, in those previous ones, we did not impose a ceiling.

Senator Drilon. Yes, Mr. President.

Senator Roco. Here, we impose a ceiling. This is a ceiling.

Senator Drilon. Anyway, I assume we can go back to this page--

Senator Roco. Of course.

Senator Drilon. --once we have reviewed thoroughly the proposed salary scale. We reserve that right to propose amendments, Mr. President.

Senator Roco. In the salary scale, this will now depend on the Commission after it puts up its salaries. In fact, what we did forget is with Land Bank, DBP--I do not know what they are paying them now--in EPZA, it could go way beyond. I mean, whatever the president and the compensation boards of those organizations impose. Here, having learned from that omission, we put a ceiling.

Senator Drilon. Yes, but the ceiling, to me, is a little liberal, to say the least.

Senator Roco. We are not married to the amounts, Mr. President.

Senator Drilon. As I said, we will propose an amendment at the appropriate time after we have reviewed.

The Presiding Officer [Sen. Magsaysay]. May the Chair ask: Are we speaking of following the salary grade of the Civil Service on a monthly basis or is this exempt from the Salary Standardization Law?

Senator Roco. This will now depend upon the compensation and salary scale; it will be exempt.

The Presiding Officer [Sen. Magsaysay]. It will be exempt; and that is clear.

Senator Roco. That is the intention, Mr. President, and that is the one covered on page 11, Section 4.6.

The Presiding Officer [Sen. Magsaysay]. The sponsor may continue.

Senator Roco. Thank you, Mr. President.

So we are back to page 8.

The Presiding Officer [Sen. Magsaysay]. Are there any amendments on page 8? [Silence] Page 9? [Silence] Page 10?

Senator Guingona, the Minority Leader, is recognized.

Senator Guingona. Mr. President, before I propose an amendment, may I just ask a clarificatory question from the sponsor in line 10.

Senator Enrile. I have an anterior amendment, Mr. President.

The Presiding Officer [Sen. Magsaysay]. The senator from Cagayan may proceed with this anterior amendments.

ENRILE AMENDMENT

Senator Enrile. The sentence from lines 1 to 11, Mr. President. May I propose that in line 1, delete the words "shall act as a collegial" and insert instead the words *EN BANC*.

Then, in line 2, delete the words "body, but it", and after the comma (,) following the word "delegate", delete the words "based on valid standards" and in lieu thereof, insert the words **FORPURPOSES**.

Then in line 5 after the word "Commission", delete the semicolon (;) and all the words following it, beginning with the word "Provided, However, That if the Commission shall act *en banc* in respect of the adoption of any rule or regulation, the denial, alteration or supplementation of any rule...et cetera...", all the way to line 9 after the word "of", and in lieu thereof, insert the word **EXCEPT**.

Then in line 10, after the word "then", insert the words **ITS POWER TO**, and change the word "adoption" to **ADOPT**; the word "alteration", to **ALTER**; and the word "supplementation" to **SUPPLEMENT**, and remove the preposition "of" in line 11--"any rule or regulation"--so that this paragraph will read:

"The Commission *en banc*, may delegate for purposes of efficiency any of its functions to any department or office of the Commission, an individual commissioner or staffmember of the Commission **EXCEPT** its review or appellate authority and its power to"--remove the words "in the"--"to **ADOPT**, **ALTER** or **SUPPLEMENT** any rule or regulation."

The Presiding Officer [Sen. Magsaysay]. What does the sponsor say?

Senator Roco. Subject to style, Mr. President, because there are some tightenings, the Committee accepts the amendments.

Senator Enrile. In order to reduce the verbosity, Mr. President.

Senator Roco. Thank you, Mr. President. Again, another blow for Strunk and White.

The Presiding Officer [Sen. Magsaysay]. Is there any objection? [Silence] There being none, the amendments are approved.

Senator Guingona. Mr. President.

The Presiding Officer [Sen. Magsaysay]. Senator Guingona is recognized.

Senator Guingona. May I ask a clarification in lines 10 and 11, as amended--"To adopt, alter, supplement any rule or regulation."

This is, of course, without prejudice to the rules and regulations of the Philippine Stock Exchange, if done in good faith. In other words, I am referring to the case of Puerto Azul.

The Commission registered Puerto Azul and the Philippine Stock Exchange authorized to have it listed in the Philippine Stock Exchange and the Commission reversed the ruling. The Supreme Court, as I understand it, upheld the ruling of the Philippine Stock Exchange that since it had self-regulatory powers, although the Commission had regulatory powers, it could not just reverse if the actions of the Philippine Stock Exchange were done in good faith. Would this be an accurate interpretation of these two powers in lines 10 and 11?

Senator Roco. I am not sure that is the intention here. It is just stating a rule that the Commission *en banc* may delegate but that in two powers--in review or appellate authority, or in the issuance or adoption of rules--it must always be *en banc*. It cannot be delegated. That is all it is saying.

When we get to the SRO, there may be a section there that may be looked from the slight. But this one, Mr. President, should stand as it states because it merely clarifies that the Commission can delegate its *en banc* power but it cannot delegate its appellate power or its power to issue a rule or adopt, alter, or supplement an existing rule or regulation. That seems to be a very prudent course because that becomes law. That is all the present Section 4.5 states.

Senator Guingona. We will wait for the later portion. On page 11...

Senator Enrile. Mr. President.

The Presiding Officer [Sen. Magsaysay]. Senator Enrile is recognized.

ENRILE AMENDMENTS

Senator Enrile. On page 10, Mr. President, beginning with line 12, paragraph (B), delete the words "With respect to" and the small letter of the word "the" will be changed to a capital letter. Then after the preposition "of", delete the word "any". In line 14, after the word "retain", delete the article "a" and insert the article THE. Then substitute the word "right" with the word POWER.

Senator Roco. Maybe we should retain the discretion.

Senator Enrile. ..."shall retain THE discretionary power to review, upon its own initiative, or upon petition of ANY INTERESTED PARTY, ANY ACTION OF ANY DEPARTMENT OR OFFICE...."

Senator Roco. May we have that again, please, "shall retain THE discretionary power...."

Senator Enrile. I will read the entire sentence, Mr. President.

"The delegation of functions, as provided in paragraph (A) of Subsection 4.5 HEREOF, the Commission, *en banc*, shall retain THE discretionary POWER to review, upon its own initiative, or upon petition of ANY INTERESTED PARTY, ANY ACTION OF ANY DEPARTMENT OR OFFICE, INDIVIDUAL COMMISSIONER, OR STAFF MEMBER OF THE COMMISSION.

Senator Roco. Then what happens to "upon its own initiative"? Was this moved up?

Senator Enrile. Yes, in order to make it clearer.

Senator Roco. Yes. There is an awkwardness only in the construction because we now say "The delegation of functions, as provided in paragraph (A) of Subsection 4.5 HEREOF, the Commission, *en banc*,..." So we will have to put...

Senator Enrile. "shall retain the discretionary power..."

Senator Roco. I have no problem with the concept, Mr. President. Again, maybe, subject to style, because either we put "with respect to" or "the delegation of functions notwithstanding," then the Commission becomes the subject.

Senator Enrile. Because we already refer the...

SUSPENSION OF SESSION

Senator Roco. Mr. President, may I ask for a one-minute suspension of the session.

The Presiding Officer [Sen. Magsaysay]. The session is suspended for one minute, if there is no objection. [There was none.]

It was 4:43 p.m.

RESUMPTION OF SESSION

At 4:44 p.m., the session was resumed.

The Presiding Officer [Sen. Magsaysay]. The session is resumed. Senator Roco is recognized.

Senator Roco. Subject to style, Mr. President. I think there is no change in the concept.

Senator Enrile. Thank you, Mr. President.

Senator Roco. So that it will read: "The delegation of functions notwithstanding, as provided in paragraph (A) of Subsection 4.5, the Commission, *en banc*, shall retain the discretionary power to review, upon its own initiative or upon petition of any interested party or intervenor..." Maybe we can even delete "or intervenor".

Senator Enrile. Yes, "or any interested party".

Senator Roco. Yes, Mr. President.

Senator Enrile. "...any action of any department or office, individual Commissioner, or staff member," et cetera.

Senator Roco. That is correct, Mr. President.

The Presiding Officer [Sen. Magsaysay]. Is there any objection? [Silence] There being none, the amendments are approved, subject to style.

We are still on page 10, Mr. President.

Senator Roco. Page 11, Mr. President.

The Presiding Officer [Sen. Magsaysay]. Page 11.

Senator Guingona. Mr. President.

The Presiding Officer [Sen. Magsaysay]. Senator Guingona is recognized.

Senator Guingona. On Page 11, line 6, insert new paragraphs to read:

THE CHAIRMAN MAY, UPON APPLICATION BY A PARTY AT ANY STAGE OF THE ACTION OR PROCEEDING BEFORE THE COMMISSION PRIOR TO JUDGMENT OR FINAL ORDER, ISSUE TEMPORARY RESTRAINING ORDERS TO RESTRAIN THE COMMISSION, OR

CONTINUANCE OF THE ACT OR ACTS COMPLAINED OF, OR REQUIRE THE PERFORMANCE OF AN ACT OR ACTS: PROVIDED, THAT SUCH TEMPORARY RESTRAINING ORDERS SHALL BE ISSUED ONLY IN URGENT CASES WHERE THE COMMISSION *EN BANC* CANNOT BE IMMEDIATELY CONVENED AND WHERE IT IS NECESSARY TO PREVENT IRREPARABLE DAMAGE TO LEGITIMATE INVESTORS.

THE TEMPORARY RESTRAINING ORDER ISSUED BY THE CHAIRMAN SHALL BE EFFECTIVE FOR A PERIOD OF TEN (10) DAYS FROM ITS ISSUANCE UNLESS RATIFIED BY THE COMMISSION *EN BANC* WITHIN SAID PERIOD, IN WHICH CASE, IT SHALL BE EFFECTIVE FOR A PERIOD OF TWENTY (20) DAYS.

IN NO EVENT SHALL THE TEMPORARY RESTRAINING ORDER BE ISSUED BY THE CHAIRMAN UNLESS THE PARTY APPLYING FOR THE SAME SHALL POST A BOND IN SUCH AMOUNT AS MAY BE SUFFICIENT TO COMPENSATE THE PARTY AGAINST WHOM IT IS ISSUED FOR ANY DAMAGE HE MAY SUFFER.

Senator Roco. May we have a copy of the amendment, Mr. President? And then just from listening to it, may we suggest that the supersedeas bond be put in.

SUSPENSION OF SESSION

May I ask for a short suspension of the session, Mr. President.

The Presiding Officer [Sen. Magsaysay]. Is there any objection? [Silence] There being none, the session is suspended.

It was 4:47 p.m.

RESUMPTION OF SESSION

At 4:56 p.m., the session was resumed with Sen. Aquilino Q. Pimentel presiding.

The Presiding Officer [Sen. Pimentel]. The session is resumed. Senator Roco is recognized.

Senator Roco. Just an inquiry, Mr. President. There has been some transmutation of Senator Magsaysay. Who is this good-looking fellow who is now sitting on the rostrum? I thought Senator Magsaysay was...

The Presiding Officer [Sen. Pimentel]. Senator Magsaysay relinquished the position voluntarily.

Senator Roco. In which case, Mr. President, the press cannot speculate on the change of leadership in the Senate.

Mr. President, if I understood the Minority Leader, we can accept this, subject to style, but we will ask the staff to hew as closely as possible to the words of the *Rules of Court* as regards restraining orders so that we do not reinvent juridical standards.

The 10 days is therefore there; 20 days, if ratified by the Commission *en banc*; the bond shall be there for those who may suffer and then a supersedeas bond, again in the words of the *Rules of Court*, will be put in. In those essential points are what I understood of the discussion, then the committee accepts, subject to style.

The Presiding Officer [Sen. Pimentel]. So subject to style, the amendment is accepted. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Roco. So do I take it, Mr. President, that it is approved?

The Presiding Officer [Sen. Pimentel]. Subject to style.

Senator Roco. Yes, Mr. President.

We are now on...

GUINGONA AMENDMENTS

Senator Guingona. Mr. President, on the same page, page 11, if the sponsor will agree, in line 24, place "4.7" in brackets and remove the brackets on "[4.8]".

Senator Roco. As a consequence of the new paragraph?

Senator Guingona. Yes, Mr. President.

Senator Roco. Maybe we should have omnibus motion that as a consequence of the new paragraph, all the subsequent sections shall therefore be renumbered but this will be part of the cleaning process by the staff, if we can authorize it, Mr. President.

The Presiding Officer [Sen. Pimentel]. Is there any objection to the proposal? [Silence] There being none, the proposal is approved.

Senator Guingona. On page 12, if there are no other anterior amendments, line 14, Mr. President...

Senator Roco. Mr. President, upon the instance of the Majority Leader, may we revisit page 7. During the break, the Majority Leader suggested that in lines 18, 19 of page 7, we just delete this and return the bracketed portion as originally embodied in the report so that instead of imposing a ceiling, we have a sum commensurate to the importance of responsibilities attached to the position. We so move.

The Presiding Officer [Sen. Pimentel]. Is there any objection to that motion? [Silence] There being none, the motion is approved.

Senator Roco. We are now on page 12, Mr. President.

Senator Guingona. On page 12, line 14, after the word "purchaser", add the following: THE FORMS AND DETAILS WHICH THE COMMISSION MAY PRESCRIBE IN THE BALANCE SHEET AND INCOME STATEMENT, THE APPRAISAL AND VALUATION OF ASSETS AND ANY OTHER INFORMATION REQUIRED IN THE REGISTRATION OF SECURITIES SHALL, AS MUCH AS POSSIBLE AND TO THE EXTENT POSSIBLE, CONFORM, BE CONSISTENT AND ALIGNED WITH THE FORMS, INFORMATION AND DETAILS PRESCRIBED BY THE BUREAU OF INTERNAL REVENUE FOR TAX, CROSS-CHECKING AND VERIFICATION PURPOSES.

FOR THIS PURPOSE, THE COMMISSION AND THE BIR SHALL JOINTLY ISSUE THE NECESSARY RULES AND REGULATIONS.

The Presiding Officer [Sen. Pimentel]. That is in line 14.

Senator Guingona. Yes, Mr. President. It is just for uniformity in the disclosure, Mr. President, of a company or persons seeking the registration of securities so that he will not have one for the BIR and another for the Securities and Exchange Commission.

Senator Roco. May we suggest, Mr. President, to the Minority Leader, that the full set of proposed amendments be typewritten.

May we also suggest for expediency that he furnish the chairman of the Committee so that we can study them, at leisure and proceed tomorrow, and then to the extent that we could accept. Then, we can go fast. Because of the lengthy modification, Mr. President, I am just not ready to say yes immediately.

The Presiding Officer [Sen. Pimentel]. Senator Guingona is recognized.

Senator Guingona. We are furnishing him right now. But there are others which we likewise would be willing to do, if they are long.

Senator Roco. Yes. In fact, Mr. President, if the Minority Leader is amendable, I have to beg off by 5:30. But if the distinguished Minority Leader is amenable, he can give me the modifications now. Maybe we can go fast or he may let me have two minutes.

The Presiding Officer [Sen. Pimentel]. Five thirty is just a few minutes away. What are a few minutes among friends?

Senator Drilon. Mr. President, may we also share in the proposed amendments?

Senator Roco. Yes, Mr. President.

Senator Drilon. So that we will all be able to participate if we have...

Senator Roco. What is another 23 copies among friends?

The Presiding Officer [Sen. Pimentel]. So, are we adjourning?

Senator Roco. No, Mr. President.

Senator Guingona. So if the distinguished sponsor will agree, I will give him a set of our proposed amendments tomorrow.

Senator Roco. All right. May I get it tomorrow morning and have it sent also to the rest of our colleagues? I can have consultations already when there are...

Senator Guingona. Yes, Mr. President.

Senator Roco. Because like these forms, it may cost delay. I have no objection to the concept, but it is better to visualize already with the technical group, and so to the extent that we could accept, Mr. President, we can even go omnibus.

Senator Guingona. Tomorrow morning, Mr. President.

Senator Roco. So with that, Mr. President, unless there are individual amendments other than what the Minority Leader will be proposing, may we seek a suspension if that is...

The Presiding Officer [Sen. Pimentel]. The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF S. NO. 1220

Senator Drilon. May we move that we suspend consideration of Senate Bill No. 1220.

The Presiding Officer [Sen. Pimentel]. Is there any objection? *[Silence]* There being none, the motion is approved.

SUSPENSION OF SESSION

Senator Drilon. May we ask for a one-minute suspension of the session, Mr. President.

The Presiding Officer [Sen. Pimentel]. The session is suspended, if there is no objection. *[There was none.]*

It was 5:04 p.m.

RESUMPTION OF SESSION

At 5:05 p.m., the session was resumed.

The Presiding Officer [Sen. Pimentel]. The session is resumed. The Majority Leader is recognized.

ADJOURNMENT OF SESSION

Senator Drilon. Mr. President, I move that we adjourn the session until tomorrow at three o'clock in the afternoon, November 18, 1998.

The Presiding Officer [Sen. Pimentel]. Is there any objection? *[Silence]* There being none, the session is adjourned until tomorrow, November 18, 1998 at three o'clock in the afternoon.

It was 5:06 p.m.

Others may have reservations on the possible abuse that local chief executives might commit in their supervision and control of PNP personnel in their localities. These concerns may be well-placed. However, the proposed bill has provided safeguards which the National Police Commission may exercise its power to revoke or suspend the deputation of local chief executives.

Once this is done, Mr. President, this is resolved by the Napolcom, the burden is now on the local government units to show that they are prepared and have the maturity to discharge the additional powers delegated to them aimed at empowering them for the maintenance of peace and order. To abuse these powers is to render nugatory the intent and spirit of the proposed bill.

Thus, Mr. President, I join the chairpersons of the Committee on Local Government and the Committee on National Defense and Security, including their members, in their call for the approval of Senate Bill No. 1261 which I consider a landmark legislation. The speed with which the proposed measure was deliberated upon and reported to this august Chamber speaks well of the commitment of the leadership and membership of the Senate in giving the Philippine National Police and local government units the much needed support to curb all forms of crimes and criminality in the country.

In ending, Mr. President, I distinctly recall that President Joseph Estrada, in his first State-of-the-Nation Address before Congress, minced no words in declaring an all-out war against crime. He even pledged to use all the powers that his office can muster for the strengthening of the government's law enforcement machinery.

True to his words, President Estrada again echoed his proposal for reforms in the Philippine National Police and the strengthening of local government units by calling for the immediate passage of a legislation to give life and meaning to his peace and order initiatives.

Taking his lead in this significant endeavor, we, my esteemed colleagues, can do no less.

And what better way to show our solidarity with the Executive department headed by President Estrada than to give our resounding approval to Senate Bill No. 1261.

Thank you very much, Mr. President, and good day.

The Presiding Officer [Sen. Biazon]. The Majority Leader is recognized.

Senator Drilon. Mr. President, a number of our colleagues have signified their intention to avail of the period of interpellations.

However, they also requested for an opportunity to go over the Committee Report.

SUSPENSION OF CONSIDERATION OF S. NO. 1261

In which case, I move to suspend consideration of Senate Bill No. 1261 under Committee Report No. 9.

The Presiding Officer [Sen. Biazon]. Is there any objection? [Silence] There being none, the motion is approved.

Senator Drilon. The bill will be called again tomorrow for the period of interpellations, Mr. President.

SUSPENSION OF SESSION

At this stage, may I ask that we suspend the session to prepare our colleagues for the period of amendments on the Securities Act.

The Presiding Officer [Sen. Biazon]. Is there any objection? [Silence] There being none, the session is suspended.

It was 4:40 p.m.

RESUMPTION OF SESSION

At 4:45 p.m., the session was resumed with the Hon. Aquilino Q. Pimentel Jr. presiding.

The Presiding Officer [Sen. Pimentel]. The session is resumed. The Majority Leader is recognized.

BILL ON SECOND READING S. No. 1220 — The Securities Act (Continuation)

Senator Drilon. Mr. President, I move that we resume consideration of Senate Bill No. 1220 as reported out under Committee Report No. 6.

The Presiding Officer [Sen. Pimentel]. Is there any objection? [Silence] There being none, resumption of consideration of Senate Bill No. 1220 is now in order.

Senator Drilon. We are now in the period of individual amendments. I ask that Senator Roco be recognized.

The Presiding Officer [Sen. Pimentel]. Senator Roco is recognized.

Senator Roco. Thank you, Mr. President.

Yesterday, by agreement with now the undoubted Minority Leader pending reconsideration.

The Presiding Officer [Sen. Pimentel]. Congratulations!

Senator Roco. Undisputed for the next 15 days and if our other colleagues do not arrive in the next 15 days, the one who will reign therefore as the Minority Leader...until further notice.

The distinguished Minority Leader gave us three pages of amendments. I do not know what is the pleasure of the Majority and the Minority Leaders. We can go through it one by one, for the record.

We will begin with page 13.

At this juncture, the session was suspended without a formal motion.

It was 4:47 p.m.

RESUMPTION OF SESSION

At 4:53 p.m., the session was resumed.

The Presiding Officer [Sen. Pimentel]. The session is resumed. Senators Roco and Guingona are recognized.

Senator Roco. Thank you, Mr. President.

GUINGONA AMENDMENTS

Senator Guingona. Yes, thank you, Mr. President.

In accordance with the agreement reached yesterday, we have reduced into writing our proposals for further amendments and these consist only of three pages.

Senator Roco. Yes, Mr. President, may we begin with page 13. There is a proposal to delete Section 5.3.

Again, may we ask the distinguished Minority Leader for the reason behind this deletion.

Senator Guingona. The time that the securities are being sold, Mr. President, in order to protect the public, should be when the Commission shall have already reviewed and approved the registration based on prospectus and financial statements. But if securities are allowed to be traded before these are registered, there may be misrepresentations that may come up prejudicial to the public.

Senator Roco. No, Mr. President, when we were discussing this with the technical group that includes both private and the SEC, the public sector, this section is, in fact, utilized today so that people can be informed about a potential sale, and it is allowed by

the SEC only for institutional investors. Even if we prohibit the making of prospectus or issuing a prospectus before actual registration, we cannot prevent those who want to make a sale from announcing it in the newspaper just so that they test the market.

Now, the Committee has no strong feelings against deleting. But if the intention of our distinguished Minority Leader is as stated, may he accept a modification so that by retaining 5.3 but adding in the last sentence the phrase EXCEPT FOR INSTITUTIONAL INVESTORS so that we restrict the issuance of the prospectus before registration only to institutional investors, the Minority Leader may also achieve the same goal.

Senator Guingona. Yes. That would be acceptable, Mr. President.

Senator Roco. If that modification can be accepted, Mr. President, then we retain 5.3, but we allow it only for institutional investors. Is this acceptable?

Senator Guingona. Yes, it is acceptable. It is an amendment to our proposed amendment.

Senator Roco. So with that amendment as amended, the committee accepts, Mr. President.

The Presiding Officer [Sen. Pimentel]. Is there any objection? *[Silence]* The Chair hears none; the amendment is approved.

Senator Roco. There is a proposal on page 13, after line 27 --and all our colleagues have a copy--to add 5.6. Maybe the Minority Leader wants to read it so that the records will reflect the amendment.

Senator Guingona. Yes. The proposed amendment reads as follows, Mr. President:

5.6 THE COMMISSION, IN A DECISION MADE *ENBANC*, MAY AUDIT THE FINANCIAL STATEMENTS, ASSETS AND OTHER INFORMATION OF A FIRM APPLYING FOR REGISTRATION OF ITS SECURITIES WHENEVER IT DEEMS THE SAME NECESSARY TO INSURE FULL DISCLOSURE OR TO PROTECT THE INTEREST OF THE INVESTORS AND THE PUBLIC IN GENERAL.

Many times, Mr. President, the presentation is based on a financial statement submitted by a CPA which is usually presented to favor the client. That is why sometimes, if there is ground, there may be a necessity to audit the financial statement of the certified public accountant. Not everything that is stated in the financial statement may reflect the truth. There are many accounting practices that are dubious or are resorted to disclose assets when these are, in truth and in fact, liabilities, so that the financial picture will be favorable.

The Commission, may--if it finds that there is sufficient ground to verify an *en banc* decision--need not announce it, but we should give them the power to audit the company applying for registration. It need not be a management audit. It is just an audit to protect the public.

Senator Roco. Yes, Mr. President. The committee is persuaded and we are happy to accept the amendment.

The Presiding Officer [Sen. Pimentel]. Is there any objection? [*Silence*] There being none, the amendment is approved.

Senator Guingona. On page 14, line 8, between the words "thereof" and "provided," we propose to insert the following statement:

Provided, THAT SUCH EXEMPTION IS ALSO GRANTED TO SECURITIES ISSUED OR GUARANTEED BY THE PHILIPPINE GOVERNMENT IN THE COUNTRY ISSUING THE SECURITY.

The purpose of that is just to enunciate the principle of reciprocity. When we give exemption from registration to securities issued by other governments, they should reciprocate by granting similar privilege to our firms.

Senator Roco. Yes, Mr. President. Again, in principle, this representation is open and is not hostile to the proposal. May the gentleman, however, consider just shortening it by saying, "ANY SECURITY ISSUED OR GUARANTEED BY THE GOVERNMENT OF ANY COUNTRY WITH WHICH THE PHILIPPINES MAINTAINS DIPLOMATIC...OR BY ANY STATE, PROVINCE OR POLITICAL SUBDIVISION THEREOF...AND THAT GRANTS RECIPROCAL RIGHTS."

So that we just add it, ON THE BASIS OF RECIPROCITY after the word "thereof" and then we have the final proviso. Subject to refinement and style.

Senator Guingona. Yes, Mr. President. Subject to style.

Senator Roco. The only reason we wish to use reciprocity is because both in private and international law, they have fixed definitions and so we do not have to work for new definitions.

The Presiding Officer [Sen. Pimentel]. Is there any objection to that proposal subject to style? [*Silence*] There being none, the amendment is approved.

Senator Roco. Having approved that, Mr. President, may we just put on record that there are those in trade and some people in foreign affairs who are saying that this might be disputed under the World Trade Organization. But having listened to them, I

thought that we were able to put reciprocity provisions in the liberalization of banks and I do not see any good argument that indicates reciprocity should not work here. But I wanted the Chamber to be fully cognizant especially because they are discussing that right now in the technical level of the APEC. So we are put on notice.

Senator Guingona. Unless there are anterior amendments on pages 15, 16, 17...

Senator Roco. All the way to page 19.

Senator J. Osmeña. On page 16, Mr. President.

The Presiding Officer [Sen. Pimentel]. Sen. John Osmeña is recognized.

Senator J. Osmeña. Thank you, Mr. President.

On page 16, line 24, paragraph (k), the sale of securities by an issuer to fewer than 20 persons in the Philippines during any 12-month period is considered exempt.

Senator Roco. Considered an exempt transaction.

Senator J. Osmeña. My layman's knowledge of this provision is that this is based on a Supreme Court decision. Is that not correct, Mr. President?

Senator Roco. If my recollection is correct, there is a provision in Corporation Law which says that less than 20 stockholders in a corporation is basically a close corporation or, if the gentleman wishes to call it, a family corporation. So if there are less than 20 stockholders, they are allowed leeway that is not allowed corporations with more than 20 stockholders. In other words, more than 20, it is public.

Senator J. Osmeña. I understand, Mr. President, that there was a Supreme Court decision. In fact, the arbitrary number was 19.

Senator Roco. That is below 20. I do not recall right now.

Senator J. Osmeña. Be that as it may, what is the rationale therefore? Is it because the investors know each other and they are familiar with the business?

Senator Roco. One can incorporate as a close corporation and he can select, so to speak, his friends. But he can incorporate as a public corporation or an open corporation and he can enlarge it. The sale of his shares may be sold to more than 20, in which case, he must register. But below 20--fewer than 20, like 19 or below, we can consider that. By all means he can select his 18 friends.

Senator J. Osmeña. Mr. President, I am going the other direction. From my understanding, the selection of 20, which is unarbitrary, I mean, why not 21? Why not 22? Why not 25? It is because the circumstances surrounding that particular transaction are such that the buyer and the seller may most in all likelihood know each other. They are familiar with the business. They are not innocent buyers, so to say, in a wide market who could be deceived into buying shares which are watered down, like that.

Now, if this provision is expanded, would the Committee consider increasing this number in certain situations?

Senator Roco. I guess we have to listen to the situation.

Senator J. Osmeña. Given the premises, Mr. President, that the sale is among people who know each other or who are familiar with the activity which is encompassed by the corporation, and that given the premise that this familiarity protects them from fraud because they are involved or they are aware or, geographically, they are cognizant of the existence, my idea was that, if the Committee will accept, in the case of recreational facilities, social facilities, golf clubs and the like, will the gentleman have an existing area of 18-hole golf course, a club house and all the rest, that this requirement could be expanded to a much higher number? Would the Committee be adverse to such a proposal?

Senator Roco. There is no built-in animosity to the idea except that I am not ready to predict all the legal effects because there is a tax effect.

If the distinguished gentleman will consider it, I will have it researched for a while on all the effects. Are we thinking of a 100?

Senator J. Osmeña. My amendment, in effect, will be to add a line after page 26, after the word period (.) put a comma (,) to state that: "However, in the case of recreational and social clubs with existing facilities, then 1,000 would be allowed."

So we would allow golf clubs with existing facilities, because there are some clubs that go into speculative sales. In other words, they use brochures, there are no courses, there are no facilities, and then they sell. But there are courses now, there are clubs which have facilities already and they would be selling to the public.

I have no strong feelings about it, because it is not really a problem getting this registration. But it would certainly take the work of...

Mr. President, I am just giving the idea. We will come back to that later on.

Senator Roco. Maybe on Monday, we will have a recommendation for our distinguished friend, Mr. President.

Senator J. Osmeña. Thank you, Mr. President.

SUSPENSION OF SESSION

Senator Drilon. Mr. President, may I ask for a one-minute suspension of the session.

The Presiding Officer [Sen. Pimentel]. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 5:10 p.m.

RESUMPTION OF SESSION

It was 5:15 p.m., the session was resumed.

The Presiding Officer [Sen. Pimentel]. The session is resumed. Senators Roco and Guingona are recognized.

Senator Guingona. Thank you, Mr. President. On page 19 after line 21...

Senator Jaworski. Excuse me, Mr. President. May I be recognized to propose an amendment on page 18?

The Presiding Officer [Sen. Pimentel]. Senator Jaworski is recognized.

JAWORSKI AMENDMENT

Senator Jaworski. Mr. President, in line 28, after the word "transaction", could we add the following: ARE MAINLY SPECULATIVE IN NATURE SUCH THAT THEY TAKE THE FORM OF GAMBLING.

The rationale here, Mr. President, is such form of commodity futures contract was held as illegal because it is a form of gambling as decided by the Supreme Court in the case of *Onapool Philippine Commodities, Inc. vs. Court of Appeals No. 90707* on February 1, 1993. It was held in that case that if there is no actual delivery of goods and commodities or when the parties do not intend to have the goods or commodities delivered and that in reality, the parties merely speculated on the rise or fall in the price of the goods, commodity which is subject matter of the transaction, the same is a form of gambling as provided under Article 2018 of the Civil Code.

Senator Roco. May we have the phrase again, Mr. President.

Senator Jaworski. It starts in line 24: "However, the Commission shall, after proper notice and opportunity for hearing, prohibit transactions with respect to all or specified commodity futures contract if it shall find that such transactions

ARE MAINLY SPECULATIVE IN NATURE, SUCH THAT THEY TAKE THE FORM OF GAMBLING OR will be inimical to the economic interest of the country or may cause grave or irreparable injury or prejudice to the investing public."

Senator Roco. It is accepted, subject to style, Mr. President.

The Presiding Officer [Sen. Pimentel]. Is there any objection? [Silence] There being none, the amendment is approved, subject to style.

Senator Jaworski. Thank you, Mr. President.

Senator Roco. I also thank the gentleman, Mr. President.

GUINGONA AMENDMENTS

Senator Guingona. If there are no amendments on page 18, Mr. President, on page 19, after line 21, we propose the following paragraph to be numbered 9.3: THE INFORMATION REQUIRED FOR THE REGISTRATION OF ANY AND ALL SECURITIES SHALL INCLUDE AMONG OTHERS THE EFFECT OF THE SECURITIES ISSUE ON OWNERSHIP, ON THE MIX OF OWNERSHIP, ESPECIALLY FOREIGN AND LOCAL OWNERSHIP.

Senator Roco. It is accepted, Mr. President.

The Presiding Officer [Sen. Pimentel]. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Guingona. There are no more amendments on page 20. We propose an amendment on page 21, after line 17, to add the following statement: THE COMMISSION SHALL UNDERTAKE MEASURES TO FACILITATE THE ESTABLISHMENT OF CREDIBLE AND OBJECTIVE LOCAL RATING AGENCIES. THE TRAINING OF PERSONNEL OF SUCH RATING AGENCIES, AND THE ESTABLISHMENT OF COOPERATIVE RELATIONSHIPS OF SUCH RATING AGENCIES WITH INTERNATIONAL RATING AGENCIES FOR THE PURPOSES OF EXPANDING INFORMATION NETWORK AND TECHNOLOGY TRANSFER.

The reason for this, Mr. President, is there is only one local credit rating agency in the country today, the Credit Information Bureau. This is still a young, developing organization. It needs to beef up its personnel and have more training. This can only be encouraged by the Commission itself.

Senator Roco. Maybe, the distinguished gentleman just confirmed the information that the Credit Information Bureau is really a private entity.

So, these are private initiatives, Mr. President. I was wondering, if we add this, we will now put them to be trained and even to be helped by the Commission in establishing cooperative relationships.

I am just asking the distinguished gentleman if we are not mixing policy objectives. So, the credits, precisely, these are useful because they are private. And to the extent that they are credible and they establish credibility by themselves in the market, then that is fine. If they are incredible, no matter what they say about the credit standing of people, that will be disregarded. But if they are now trained by the SEC, I am not sure, we might be intruding into even their self-evolution of credibility.

Senator Guingona. If we leave it as is, Mr. President, the growth of these credit rating agencies will be very slow. I think it is incumbent upon the government to take the initiative. The means and methods, we leave it to the Commission. But we should be made aware.

Senator Roco. We, in fact, inquired from the commission and they do not know if they can undertake the training. So, it is a very difficult proposition.

When the philosophy is to leave it to the market to rate itself then, I guess, we have to leave the market or the businessmen to do that. When we ask the SEC to train a group of people so that they will have the rating capacity, we may torpedo the very objective of this private effort.

So, may we ask the gentleman to refrain from amending this now and we can discuss it privately. Even the SEC, Mr. President, is not willing to undertake the training. Right now they are very burdened.

I am referring not only to capacity because it must now build up a budget and group to do this but also philosophically...

Senator Guingona. I understand we are not pushing through the salary standardization increase.

Senator Roco. We did not, Mr. President. But we put back the original to be determined by the Office of the President commensurate to the duties.

Senator Guingona. Well, if they themselves are not in favor...

Senator Roco. If we can request that it be not submitted anymore, then we may proceed with the next. There are enough modifications, Mr. President.

In fact, this was the only real difficulty we had of all the

proposed amendments, except for the new one, but we will come to that later on.

Senator Guingona. All right. We will defer that for the time being. I think there are other amendments on pages 22 to 63.

The Presiding Officer [Sen. Pimentel]. No amendments from what page, Senator Guingona?

Senator Guingona. From page 22, Mr. President.

Senator Roco. From page 22 all the way to page 62. The next proposed amendment is on page 63. So we invite our colleagues to have a look at page 63.

Senator Guingona. On page 63, we are proposing an additional provision after line 3, Section 29.

Senator Roco. If the Minority Leader will please read it for the record.

Senator Guingona. Section 29. *DEVELOPMENT OF SECURITIES MARKET PROFESSIONAL.* - THE COMMISSION, IN JOINT UNDERTAKING WITH SELF-REGULATORY ORGANIZATIONS, ORGANIZATIONS AND ASSOCIATIONS OF FINANCE PROFESSIONALS AS WELL AS PRIVATE EDUCATIONAL AND RESEARCH INSTITUTIONS, SHALL UNDERTAKE OR FACILITATE/ORGANIZE CONTINUING TRAINING, CONFERENCES/SEMINARS UPDATING PROGRAMS, RESEARCH AND DEVELOPMENT AS WELL AS TECHNOLOGY TRANSFER OR THE LATEST AND ADVANCED TRENDS IN ISSUANCE AND TRADING OF SECURITIES, DERIVATIVES, COMMODITY TRADES AND OTHER FINANCIAL INSTRUMENTS, AS WELL AS SECURITIES MARKETS OF OTHER COUNTRIES.

Senator Roco. Mr. President, we can accept the amendment, subject to transposition to a more appropriate section. There are some sections that will probably be more in conjunction with this. But we will find it because of the number of pages.

So, we can accept that subject to transposition and finding the appropriate section later on.

The Presiding Officer [Sen. Pimentel]. Is there any objection? *[Silence]* There being none, the amendment is approved, subject to transposition to a proper location.

Senator Guingona. If there are no other amendments from page 64 to page 96, Mr. President...

Senator J. Osmeña. Mr. President.

The Presiding Officer [Sen. Pimentel]. Sen. John Osmeña is recognized.

Senator J. Osmeña. Mr. President, page 69, Section 39.3, line 15 reads: "The Commission shall have the authority to determine the number, size and location of stock exchanges, other trading markets and commodity exchanges and other similar organizations in the light of national or regional requirements for such activities with the view to promote, enhance, protect, conserve or rationalize investment."

The question, Mr. President, as a premise to an amendment, is whether the Commission--because it says here "number"--would, in effect, be saying that only one stock exchange in the entire Philippines can be maintained.

Senator Roco. Purely theoretically, Mr. President, the answer will have to be yes as a possibility. But the section was, in fact, introduced and modified--because this is also in the old law--precisely to accommodate the possibility of the Cebu Stock Exchange. Then, we shall have more rational development.

Senator J. Osmeña. Definitely, Mr. President. The Naga Stock Exchange.

Senator Roco. We will forego and we will just join the Cebu Stock Exchange.

OSMEÑA AMENDMENTS

Senator J. Osmeña. My amendment, Mr. President, so that there is no doubt is, we will insert before the word "the" in line 15 the phrase *IN ADDITION TO THE EXISTING PHILIPPINE STOCK EXCHANGE IN THE NATIONAL CAPITAL REGION.* So that immediately, we set the predicate "In addition to."

Senator Roco. It is perfect. The Committee accepts the amendment.

Senator J. Osmeña. Thank you. Therefore, since there is already an exchange in Cebu, so as not to have any problems, at the end of line 20, after the word "investment", change the period (.) to a comma (,) and add the phrase: *AND WHEN A REGISTERED EXCHANGE HAS NOT BEEN OPERATING FOR FIVE YEARS MAY ISSUE A PERMIT TO A SECOND EXCHANGE.*

My original idea here was to say that "any exchange not operating for five years is disauthorized." But then we may have suits later on.

Senator Roco. I take it that it is not operating in Cebu.

Senator J. Osmeña. It is not operating. It has never operated since 1956.

The Presiding Officer [Sen. Pimentel]. With the permission of the gentlemen, may we approve the first amendment first?

Senator J. Osmeña. Mr. President, the two amendments are related.

The Presiding Officer [Sen. Pimentel]. Yes.

Senator Roco. The second amendment may be more difficult, Mr. President, only because there may be vested property rights.

Senator J. Osmeña. That is why my amendment is, instead of saying that "anything that is existing or that has not been operating is cancelled", so that we may not tread on vested rights question. We will just say that it can allow a second one to be established.

Senator Roco. My concern is that, under the present law, in fact, the SEC can now cancel. But if we put in the second amendment, we hamstrung the SEC from doing that. It will lose flexibility.

So, the first amendment is perfect. It allows expansion. And then we leave it to the details of administration to handle the problem. If somebody now files a second Cebu, the premier Cebu, stock exchange, the first thing the SEC will have to do is probably disallow the existing moribund exchange.

Senator J. Osmeña. Because it says it can issue two exchanges. It can issue a second so that there are no vested rights.

Senator Roco. But it is better to allow flexibility without the second amendment.

Senator J. Osmeña. So, I will withdraw the second amendment. I will just introduce the first amendment which is, in line 15, before the word "the", add the phrase IN ADDITION TO THE EXISTING PHILIPPINE STOCK EXCHANGE (,); then change the capital "T" to a small "t".

Senator Roco. Yes, Mr. President. That has already been accepted.

Senator J. Osmeña. Thank you, Mr. President.

The Presiding Officer [Sen. Pimentel]. Is there any objection to the proposed amendment? [Silence] There being none, the amendment is approved.

Senator Guingona. Mr. President.

The Presiding Officer [Sen. Pimentel]. Senator Guingona is recognized.

Senator Guingona. On page 96, line 16, between the words "court" and "and", add the following phrase: NOTWITHSTANDING THE RULES ON PREJUDICIAL QUESTIONS, THE DEPARTMENT OF JUSTICE, MAY UPON REQUEST OF THE COMMISSION, DEPUTIZE THE LAWYERS OF THE COMMISSION TO HEAR CRIMINAL CASES JOINTLY WITH THE CIVIL CASES RELATIVE TO LISTED AND REGISTERED CORPORATIONS OR BROKERS.

SUSPENSION OF SESSION

Senator Roco. May I ask for a one-minute suspension of the session, Mr. President.

The Presiding Officer [Sen. Pimentel]. Is there any objection? [Silence] There being none, the session is suspended.

It was 5:33 p.m.

RESUMPTION OF SESSION

At 5:46 p.m., the session was resumed.

The Presiding Officer [Sen. Pimentel]. After the longest minute in my life, the session is resumed.

Senator Guingona is recognized.

Senator Guingona. Mr. President, because of the longest minute, I will withdraw the proposed amendment on page 96 for further studies which we may present later.

The Presiding Officer [Sen. Pimentel]. The amendment is withdrawn.

Senator Roco. Thank you, Mr. President.

Senator Guingona. Also, the amendment on page 100 is likewise withdrawn for the moment, Mr. President.

The Presiding Officer [Sen. Pimentel]. The amendment on page 100 is withdrawn.

Senator Roco. Thank you, Mr. President.

With the consent of the Minority and the Majority Leader, may I just touch on some amendments that our colleague who is not present has requested on page 3, line 16.

SANTIAGO AMENDMENT

Senator Santiago has requested that after the word "guarantee", we insert the phrase ON A FIRM-COMMITMENT BASIS OR A BEST-EFFORT BASIS.

The committee can accept only the first part ON A FIRM-COMMITMENT BASIS. But OR A BEST-EFFORT BASIS may tend to confuse. So, we will accept, Mr. President, the first part of the proposed amendment.

So that it will read: "Underwriter" means any person who is licensed to guarantee ON A FIRM-COMMITMENT BASIS the distribution and sale of securities of any kind by another company.

So the only phrase we add, Mr. President, is ON A FIRM-COMMITMENT BASIS.

The Presiding Officer [Sen. Pimentel]. Which will be inserted in line 17 of this new draft, draft of November 12. Not line 16.

Senator Roco. I am sorry, the staff put line 16.

The Presiding Officer [Sen. Pimentel]. So the amendment that was read by Senator Roco will be page 3, line 17.

Senator Roco. Yes, page 3, line 17.

The Presiding Officer [Sen. Pimentel]. Yes. Between the word "guarantee" and the words "the distribution..."

Senator Roco. Insert the phrase ON A FIRM-COMMITMENT BASIS.

The Presiding Officer [Sen. Pimentel]. Is there any objection to the proposed amendment? [Silence] There being none, the amendment is approved.

Senator Roco. Then there was a proposal to delete on page 11-

The Presiding Officer [Sen. Pimentel]. Page 11.

Senator Roco. --Section 6.

SUSPENSION OF SESSION

May I ask for a one-minute suspension of the session, Mr. President.

The Presiding Officer [Sen. Pimentel]. The session is suspended for one minute, if there is no objection. [There was none.]

It was 5:50 p.m.

RESUMPTION OF SESSION

At 5:51 p.m., the session was resumed.

The Presiding Officer [Sen. Pimentel]. The session is resumed. Senator Roco is recognized.

Senator Roco. Mr. President, apparently our distinguished colleague was referring to the prior drafts. So we will just take it up tomorrow or on Monday. We will have to reconcile the lines because the amendment must have been based on an earlier draft and so it does not coincide with the numbering and the pages of the present draft. We will take it up later.

The Presiding Officer [Sen. Pimentel]. The Majority Leader is recognized.

Senator Drilon. The Minority Leader wishes to take the floor, Mr. President.

The Presiding Officer [Sen. Pimentel]. The Minority Leader is recognized.

Senator Guingona. Mr. President, this is just for clarification on page 90, the exclusions from the Corporation Code.

There are several provisions here on publicly held corporations on pages 90, 91, 92 and 93.

The Presiding Officer [Sen. Pimentel]. Starting from Chapter XII, I suppose.

Senator Guingona. Yes, Mr. President.

First, would this not have any constitutional challenge insofar as excluding certain corporations from the Corporation Code itself? Second, would this not deprive the minorities of their rights in some instances? The distinguished sponsor need not answer that now. Perhaps tomorrow.

Senator Roco. We will examine it from that point of view, Mr. President.

Senator Guingona. Specifically on page 91, letters (C) and (D).

Senator Roco. Yes, Mr. President. It is a very good question. We will come back tomorrow.

SUSPENSION OF CONSIDERATION OF S. NO. 1220

Senator Drilon. Mr. President, may I move to suspend consideration of Senate Bill No. 1220.

The Presiding Officer [Sen. Pimentel]. Is there any objection? [Silence] There being none, the motion is approved.

The Acting Secretary [Mr. Pineda]. Memorandum Circular No. 15, entitled

IN VIEW OF THE CONTINUOUS RAINS AND STRONG WINDS CAUSED BY SUPER TYPHOON "ILANG", WORK IN ALL GOVERNMENT OFFICES, INCLUDING GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS, ARE HEREBY SUSPENDED EFFECTIVE 3:00 O' CLOCK P.M. TODAY. GOVERNMENT AGENCIES PERFORMING VITAL FUNCTIONS SHALL, HOWEVER, MAINTAIN A SKELETAL WORKFORCE TO CONTINUE THEIR OPERATIONS

The President Pro Tempore. To the Archives

The Acting Secretary [Mr. Pineda]. Memorandum Circular No. 16, entitled

IN VIEW OF THE CONTINUING INCLEMENT WEATHER BROUGHT ABOUT BY TYPHOON "LOLENG", WORK IN ALL GOVERNMENT OFFICES, INCLUDING GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS, ARE HEREBY SUSPENDED EFFECTIVE 12:00 NOON TODAY, OCTOBER 23, 1998. IT IS UNDERSTOOD THAT VITAL GOVERNMENT AGENCIES CONCERNED WITH RESCUE OPERATIONS AND MANNING OTHER VITAL PUBLIC SERVICES SHOULD MAINTAIN EFFECTIVE SKELETAL FORCES IN THEIR RESPECTIVE OFFICES UNTIL 5:00 P.M. OR BEYOND AS THE EXIGENCY OF THE SERVICES REQUIRES

The President Pro Tempore. To the Archives

The Majority Leader is recognized.

MOTION OF SENATOR DRILON
(Transfer of Referral of Memorandum Circular No. 14 from the Committees on National Defense and Security and Local Government to the Committees on Urban Planning, Housing and Resettlement and Local Government)

Senator Drilon. Mr. President, may we move for a change of the referral of Memorandum Circular No. 14 from the Committees on National Defense and Security and Local Government to the Committees on Urban Planning, Housing and Resettlement; and Local Government.

The President Pro Tempore. Is there any objection? [Silence] There being none, the motion is approved.

BILL ON SECOND READING
S. No. 1220 -- The Securities Act of 1998
(Continuation)

Senator Drilon. Mr. President, I move that we resume consideration of Senate Bill No. 1220 as reported out under Committee Report No. 6.

The President Pro Tempore. Is there any objection? [Silence] There being none, resumption of consideration of Senate Bill No. 1220 is now in order.

Senator Drilon. Mr. President, we are still in the period of individual amendments. There are still a few amendments to be proposed by our colleagues. We hope to finish the period of individual amendments this morning, after which, we will resume consideration on Senate Bill No. 1255 under Committee Report No. 8.

I ask that the principal sponsor, Senator Roco and the Minority Leader, Senator Guingona, be recognized.

The President Pro Tempore. Senator Roco is recognized as well as Senator Guingona.

Senator Roco. Thank you, Mr. President.

Senator Guingona. Thank you, Mr. President.

On page...

Senator Roco. I think the gentleman is referring to page 100.

Senator Guingona. Yes. But before that, the general provisions on page 93 all the way to...

Senator Roco. Yes, Mr. President. As agreed upon yesterday, we will get back to the Minority Leader on Monday as regards the new provision on the preemptive right and the denial of stockholders.

Senator Guingona. Is it on Monday?

Senator Roco. Yes, on Monday because I thought that was the agreement. In fact, we started discussing on the new chapter. We will just make sure that it conforms to the totality of the bill.

GUINGONA AMENDMENTS

Senator Guingona. On page 96, line 16, we would like to propose the following: IN INSTANCES WHERE THE LAW ALLOWS INDEPENDENT CIVIL OR CRIMINAL PROCEEDINGS

OF VIOLATIONS ARISING FROM THE SAME ACT, THE COMMISSION SHALL TAKE APPROPRIATE ACTION TO IMPLEMENT THE SAME. It is subject to style, Mr. President.

Senator Roco. We accept the amendment, Mr. President.

The President Pro Tempore. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Guingona. On page 100, after line 24, I propose the following: ANY CERTIFIED AUDIT OF FINANCIAL STATEMENT/DOCUMENT BY AN AUDITOR/AUDITING FIRM WHICH IS PROVEN FALSE. THE COMMISSION SHALL ALSO VERIFY THE QUALIFIED CERTIFICATION OF AUDITORS/AUDITING FIRMS.

Senator Roco. May we ask the Minority Leader to put on record the purpose.

Senator Guingona. The purpose of this proposal, Mr. President, is to make the Securities and Exchange Commission exercise extraordinary vigilance because the securities that it lists will be for the public and any false statement there may mislead the public to invest. If the figures presented are wrong and it turns out that the stocks are not the true value as presented, the public will be prejudiced. So it must take extraordinary care.

There are certifications issued by auditors attesting to the fairness. Sometimes the certifications are qualified and they say this portion of the financial statement seems fair according to established standards, but we have not had time to examine the inventories, the accuracy of the other details therein mentioned.

Therefore, it should be incumbent upon the Commission to take the proper steps to protect the public and not just rely on a qualified certification, Mr. President.

The President Pro Tempore. Will the Minority Leader then restate his amendment?

Senator Roco. Mr. President, we were trying to craft the appropriate words. The Senate Committee can accept the concept of imposing a higher diligence on the part of auditors. If we look at the bill, it is covered already by Section (D) on page 100.

If the Minority Leader will agree, we can craft and we can modify a little. We can accept this proposed amendment, subject to style, on the basis of the standard that we must impose higher diligence requirements on the auditor, if this is acceptable to the Minority Leader.

Senator Guingona. Yes, Mr. President.

The President Pro Tempore. In that context, is the amendment accepted?

Senator Roco. Yes, Mr. President, in that context. Maybe we will put it under Subsection (D) instead of Subsection (F). We can accept on that basis.

The President Pro Tempore. Subject to that clarification. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Guingona. Thank you, Mr. President.

Senator Roco. Thank you, Mr. President.

Senator Flavier. Mr. President.

The President Pro Tempore. Senator Flavier is recognized.

FLAVIER AMENDMENT

Senator Flavier. Mr. President, this is really an amendment, but I am not yet certain under what section it should appear. I have already discussed this with the good sponsor. The issue revolves around the need to monitor the nonprofit and foundation types that are registered with the Securities and Exchange Commission.

It is my understanding that the SEC registers them. But whenever we inquire as to whether they are being monitored, especially in terms of their activities and their fund-raising and financial actions, there is no record existent. I feel that a specific amendment must be entered into the bill to cover this.

So with the indulgence of the good sponsor, we would like to work out a specific amendment and through his guidance put it in appropriate section in the bill, Mr. President.

The President Pro Tempore. What does the sponsor say?

Senator Roco. Yes, Mr. President. We discussed this initially and I assured the gentleman that we will look for the correct section. Only because of the length and thickness of the bill, we could not find the appropriate section.

I understand, Mr. President, that the intention of our distinguished friend from the Cordilleras is that if there is, for instance, a foundation--the Bongabong, Nueva Ecija foundation --and Senator Flavier puts money there for Bongabong, Nueva Ecija, then we want to make sure that the good people of Bongabong, in fact, receive the funds.

Senator Flavier. That is right, Mr. President. And also there is a continuing monitoring so that anybody can go to the

SEC to inquire as to the legitimacy and the activities of nonprofit foundations.

Thank you very much, Mr. President.

Senator Roco. The concept--and we will find the appropriate section--is acceptable to the committee, Mr. President.

The President Pro Tempore. It is always better to submit the precise amendment language to the members of the Senate for their approval. But if the sponsor agrees that the concept of this amendment is acceptable, and that he will be responsible jointly with Senator Flavio to work out the appropriate language conveying this idea in the appropriate section of the bill, then it can be submitted for consideration by the Senate.

Senator Roco. That is so, Mr. President. We accept the concept and we will work it out. By Monday, we should have an appropriate wording of the correct section.

The President Pro Tempore. This is the concept of a monitoring mechanism for foundations and other similar groups that accept funds from the government.

Senator Roco. Or from private sources, Mr. President.

The President Pro Tempore. Is there any objection? [Silence] There being none, the amendment is approved in principle, subject to style.

Senator Roco. Thank you, Mr. President.

Now, I have some duty to our colleagues who are not with us but are performing official functions abroad.

Under exempt securities on page 14, line 16, Senator Santiago proposed to delete the phrase "Housing and Land Use Regulatory Board" as well as "or the Bureau of Internal Revenue" in line 17, and in lieu thereof, replace them with the phrase AND OTHER GOVERNMENT FINANCIAL INSTITUTIONS SUBJECT TO THE PRIOR APPROVAL OF THE COMMISSION.

The committee can meet Senator Santiago halfway, Mr. President. We can delete the Bureau of Internal Revenue. But considering the asset back securitization that, I think, Senator Biazon is pushing, it may be better that "Housing and Land Regulatory Board" remains. The committee can accept the deletion of the phrase "or the Bureau of Internal Revenue" on page 14, line 17.

The President Pro Tempore. In the absence of the proponent, and on the authority of the sponsor's statement, can we consider this amendment?

Senator Enrile. Mr. President.

The President Pro Tempore. Senator Enrile is recognized.

Senator Enrile. May we request an explanation for the proposed deletions and for the suggested nonconformity so that we will understand.

The President Pro Tempore. The sponsor may respond to that.

Senator Roco. Yes, Mr. President.

Senator Enrile. What is the significance of the deletion of each agency in relation to what we are discussing?

Senator Roco. May I put it in context, Mr. President.

On page 14, line 13, Section (B), on exempt securities, we exempt 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--there are securities with the Insurance Commission--Housing and Land Use Regulatory Board--there are securities and when we get to securitization, this will be important--the Bangko Sentral ng Pilipinas...--it is covered by separate rules and regulations.

The Bureau of Internal Revenue, to our understanding, is not selling securities. What Senator Santiago wanted to delete is the "Housing and Land Use Regulatory Board" and the "Bureau of Internal Revenue."

If this is acceptable to the Body, we thought of retaining "Housing and Land Use Regulatory Board" but yielding to her on the "Bureau of Internal Revenue," accepting her *ejusdem generis* concept of adding the phrase, "And other government financial institutions, subject to the prior approval of the commission."

Senator Enrile. Mr. President, my first question, with the permission of the distinguished sponsor is: Are these original provisions of the Securities Act?

Senator Roco. These are under the 5(a), 3, 6, 8, as amended.

Senator Enrile. So they are existing provisions of the Securities Act.

Senator Roco. That is correct, Mr. President.

Senator Enrile. May we know why these provisions were inserted in the first place?

I imagine that if a security or its derivatives are uttered or emitted by an institution under the supervision of the Insurance Commission, the assumption is that there is an ample protection to the public because of the function of the Insurance Commission to supervise these. These are mostly insurance companies, the life and non-life insurance companies.

I would imagine that if the Insurance Commission is trusted enough and performs its job correctly, then the public is indeed protected if any member of that public should buy shares of stock or their derivatives from an insurance company or a trust company under the supervision of the Insurance Commission. That is why it is an exempt transaction, exempt security.

Senator Roco. It is not sought to be deleted. The paragraph remains, Mr. President.

Senator Enrile. Precisely. That also goes with the Housing and Land Use Regulatory Board. They are *in pari passu*. It is *in pari passu* with the Insurance Commission, as well as the Bangko Sentral. So the only problem is with respect to the Bureau of Internal Revenue.

Senator Roco. Yes, Mr. President. We have not heard of a security being issued.

Senator Enrile. Why was the Bureau of Internal Revenue stated in the original law, in the existing law? There must have been a reason the legislators in the past allowed the insertion of the Bureau of Internal Revenue as among those institutions of government whose supervision over a certain type of security or its derivatives emitted to the public would be exempt.

It is possible that in the course of enforcement of internal revenue laws, certain assets could be acquired and securitized by the Bureau. In which case, the full faith and credit of the Republic would be behind the emission or utterance of such security or its derivatives. Therefore, it is arguable that it ought to be an exempt security.

Senator Roco. We have no disagreement with the gentleman, Mr. President.

Senator Enrile. But on the other hand, the proposed amendment, where the gentleman now instead introduces financial institutions, is risky to the public because right now, many of these financial institutions are in trouble. They have been selling their shares of stock in the market. And if we are going to exempt these securities from the jurisdiction of the Securities and Exchange Commission, I think I will have to object to that proposition.

Senator Roco. In which case, Mr. President, we have been persuaded that we will not accept this modification. And since

we are doing this out of legislative consideration, we do not propose to be the one justifying the proposals of the other senators. We are perfectly happy with what we have done.

Senator Enrile. I think I will go along with the proposition that we should retain what is now in the books.

Senator Roco. In which case, Mr. President, the acceptance of the committee will not be given and if they are very serious about this, we will wait for our colleagues to come when they have an amendment in the ordinary course.

So we will not consider the other proposals, Mr. President. We will just submit to the *Rules*. If they are not here, then they cannot amend.

The President Pro Tempore. Yes. So are there any other individual amendments?

The Majority Leader is recognized.

Senator Drilon. There are no further individual amendments right now that we are aware of and I assume nothing...

Senator Roco. I do not know whether Senator Santiago can catch up on Monday, but I suspect Senator Tatad will be here by Monday.

Senator Drilon. Senator Santiago has manifested her desire to avail of the privilege hour on Monday, so I think she will be here.

Senator Roco. So maybe, Mr. President, we can then take it up if that is...

Senator Enrile. Mr. President.

The President Pro Tempore. Senator Enrile is recognized.

Senator Enrile. Mr. President, our legislative program has already been delayed and every opportunity has been given to every member of the Senate. I think that if there is any flaw in what we are crafting now as a piece of legislation, then let anyone interested file a bill to amend it but we should not tarry in approving pieces of legislation before us simply because some of our members are abroad. I think we should not be held hostage with the personal predilections of any member of the Chamber.

I most respectfully submit: I am not trying to be cute, but I think reality suggests that we should move fast to serve the interests of our people and country.

Senator Roco. Mr. President, we welcome the statements of the gentleman. It will certainly be favorable and it will be very

helpful to the committee because then we can relax. We have been toiling with these more than a hundred pages for, I guess, more than a month, so we will appreciate that.

But because there were letters received by the committee, we thought we would exert a little effort to reconsider them. I do not propose to carry also the burden of proof for their proposed amendments.

Senator Enrile. Mr. President, there is a basic *prinsipyo* or principle involved there. Suppose I will leave the country for three months and then I will write the Chamber and say, "Well, I want to propose some amendments to this particular legislation. Wait for me." Is it fair to the nation to do that; that the nation must act according to my own convenience? I do not think that is a correct proposition.

Senator Roco. We are very happy, Mr. President, that this is the proposed adherence to the rule because that is, in fact, the rule. So if the collective judgment of the Chamber accepts it now, we will welcome a closing of the period of individual amendments.

The President Pro Tempore. The Majority Leader is recognized.

Senator Drilon. Mr. President, we have been quite liberal in postponing the closure of the period of individual amendments, given the tradition of this Chamber to allow each member the opportunity to take a good look at the proposed legislation and proposed amendments, if any. But certainly, the views expressed by Senator Enrile are appropriate.

In fact, I was looking at the legislative history of Senate Bill No. 1220. We started the period of amendments as early as November 9, and we took it up daily from that point on. Therefore, Mr. President, I think it is appropriate at this point that we terminate the period of individual amendments and I so move.

Senator Enrile. I just want to add as a part of my explanation for taking the position I have taken.

Mr. President, of course, each one of us has his own way of dealing with his problems and his own affairs in this Chamber. If I leave the country and I want to insert an amendment to a pending legislation, I would have studied the piece of legislation before I left the country and then prepared a text of the amendment that I would want to be inserted and indicate the proper points in the proposed bill where those insertions ought to be taken in order not to delay the proceedings of the Chamber.

Thank you.

The President Pro Tempore. There is a motion to terminate the period of individual amendments. Is there any objection? *[Silence]* There being none, the motion is approved.

Senator Roco. Just for the record, Mr. President, we want to thank the members of the Chamber.

For the staff maybe of Senator Santiago, many of the points that she also raised were already considered even before these were proposed. There were three that we sought to have acted on, but I think the strict adherence to the rule that when one is not present, he cannot propose amendments, is good for the Chamber.

Thank you very much again, Mr. President.

APPROVAL OF S. NO. 1220 ON SECOND READING

Senator Drilon. Mr. President, I move that we vote on Second Reading on Senate Bill No. 1220 as amended, as reported out under Committee Report No. 6.

The President Pro Tempore. Is there any objection? *[Silence]* There being none, we shall now vote on Second Reading on Senate Bill No. 1220, as amended.

As many as are in favor of the bill, say *aye*.

Several Members. *Aye*.

The President Pro Tempore. As many as are against the bill, say *nay*. *[Silence]*

Senate Bill No. 1220, as amended, is approved on Second Reading. *[Applause]*

Senator Roco. Thank you, Mr. President.

Senator Drilon. The next bill on the agenda, Mr. President, is the Clean Air Act.

SUSPENSION OF SESSION

May I ask for a one-minute suspension in order to allow Sen. John Osmeña to prepare for the interpellation.

The President Pro Tempore. The session is suspended for one minute, if there is no objection. *[There was none.]*

It was 10:57 a.m.

The Secretary. Proposed Senate Resolution No. 302, entitled
 RESOLUTION IN AID OF LEGISLATION,
 DIRECTING THE SENATE COMMITTEE ON
 ENVIRONMENT AND NATURAL RESOURCES
 TO LOOK INTO THE EFFECTS OF THE
 SHIPBREAKING ACTIVITIES IN BALAMBAN,
 CEBU TO THE WELL-BEING OF THE PEOPLE
 AND THE ENVIRONMENT IN THE AREA,
 WITH THE END IN VIEW OF INSTITUTING
 REMEDIAL MEASURES THEREFOR AND FOR
 OTHER PURPOSES

Introduced by Senator Jaworski

The President. Referred to the Committee on Environment
 and Natural Resources

COMMUNICATIONS

The Secretary. Indorsement from Director Carlito C. Gaddi
 of the Office of the President of the Philippines, respectfully
 referring to the Senate, Resolution No. 01-1998, of the
 Municipal Cooperative Development Council, Victoria, Oriental
 Mindoro to fully implement the agricultural development
 program of the government per R.A. 8435, and to effect the
 amendment of R.A. 7160, returning the devolved agricultural
 personnel to the Department of Agriculture from the local
 government units.

The President. Referred to the Committees on Agriculture
 and Food; and Local Government

The Secretary. Letter from Ramon B. Cardenas, Senior
 Deputy Executive Secretary of the Office of the President of the
 Philippines, referring to the Senate the letter of Ms. Eunice A.
 Dolores, principal of the Quezon Central Elementary School,
 Palawan addressed to His Excellency, President Joseph Ejercito
 Estrada, requesting the reinstatement of the Pork Barrel of
 Congressmen.

The President. Referred to the Committee on Finance

The Majority Leader is recognized.

BILL ON THIRD READING

S. No. 1220 -- The Securities Act of 1998

Senator Drilon. Mr. President, we are supposed to be in the
 privilege hour at this point. But with the consent of the chamber,
 I move that we vote on Third Reading on Senate Bill No. 1220 under
 Committee Report No. 6. Copies of the bill were distributed to the
 members on November 20, 1998 to comply with the three-day rule.

The President. Is there any objection? [*Silence*] There
 being none, voting on Third Reading on Senate Bill No. 1220 is now
 in order.

The Secretary will please read only the title of the bill.

The Secretary. Senate Bill No. 1220, entitled

THE SECURITIES ACT OF 1998

The President. We shall now vote on the bill and the
 Secretary will call the roll.

The Secretary. *Senators*

Aquino-Oreta	Yes
Barbers	Yes
Biazon	Yes
Cayetano	Yes
Coseteng	Yes
Drilon	Yes
Enrile	Yes
Flavier	Yes
Guingona	Yes*

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. May I just explain my vote, Mr. President.

The President. Please proceed.

EXPLANATION OF VOTE OF SENATOR GUINGONA

Senator Guingona. I have introduced several amendments,
 and most of them were graciously accepted by the distinguished
 sponsor.

However, there was one amendment that I particularly wanted
 but which was not accepted. We intended to put up a Philippine
 Exchange Stabilization Fund in view of the fact that most of the
 foreign investments that came into the country were not,
 unfortunately, direct foreign investments but I think on 3:1 ratio,
 mostly portfolio investments. At the first sign of trouble in
 Thailand, the experience we had was that most of the portfolio
 investments were withdrawn, thereby adding to or aggravating
 the crisis.

We showed the proposed amendment to the distinguished
 sponsor but he said, unfortunately, that this is in the nature of a
 tax, although we said it is only a fee similar to that imposed by Chile.

* With explanation of vote

Since the distinguished sponsor refused to accept the amendment, we therefore acceded and we will see whether we can still introduce the same through the members of the House of Representatives in the Lower Chamber.

With that explanation, I vote *yes* to the measure.

The President. Please proceed.

The Secretary. *Senators*

Honasan	Yes
Jaworski	Yes
Legarda-Leviste	Yes
Magsaysay Jr.	Yes
Ople	Yes
John Osmeña	Yes
Sergio Osmeña III	Yes
Pimentel	Yes
Revilla	Yes
Roco	Yes*

Senator Roco. May I request to vote last, Mr. President. I am just requesting for a second round.

The President. All right. Second round then for Sen. Raul Roco.

The Secretary. *Senators*

Santiago	Yes
Sotto III	
Tatad	Yes
The Senate President	Yes

EXPLANATION OF VOTE OF SENATOR ROCO

Senator Roco. Thank you, Mr. President.

Mr. President, we just want to put on record our appreciation and gratitude to this Chamber for the patience they certainly have exhibited. This bill would certainly tax the patience of our colleagues.

We also appreciate very much the generous effort of Senators Guingona, Tatad, Santiago, Enrile, and those who were very active in proposing amendments because it was not an easy bill.

But in fairness, the credit should not only go to our Chamber now because this was the result of five years of work. It commenced five years ago; it was carried onward in the Tenth Congress when Senator Drilon was chairman of the Banks Committee; and we

* With explanation of vote

picked it up again in this Chamber. The reason we were able to facilitate and hasten the submission to this Chamber was that the five years of work paid off.

But we want to particularly mention our words of gratitude to SEC Commissioner Fe Gloria, SEC Director Beth Martin, Director Linda Daoang, Executive Director Eugenio Reyes, Director Jose Aquino, Atty. Crisela Perez.

Then from the Stock Exchange, Atty. Andio Castigador; and from the Capital Market Development Council which is a private association, Miss Marife Ramsani who probably deserves a law degree by now.

We also want to say, "Thank you" for the record so that it is reflected in the *Journal*, to Atty. Percival Flores and Harvey S. Buena of our staff because they spent probably 12 sleepless nights to make sure that the copies were produced, and the Secretariat, of course, for their tremendous support.

By voting *yes*, Mr. President, we would also want--if this is allowed by the *Rules* and if our colleagues would allow it--to request that all the members of the Chamber who are present today be made coauthors of the 1998 Securities Act.

I vote *yes* with gratitude, Mr. President.

The President. The Chair would like to thank Senator Roco.

APPROVAL OF S. NO. 1220 ON THIRD READING

With 22 affirmative votes, no negative vote and no abstention, Senate Bill No. 1220 is approved on Third Reading.

The Majority Leader is recognized.

Senator Drilon. Mr. President, during yesterday's session, Senators Barbers and Revilla made reservations to continue the interpellation on Sen. Aquilino Q. Pimentel Jr. in relation to the privilege speech delivered by Senator Pimentel on the matter of the death penalty.

With the consent of the Chamber, Senator Pimentel agreed that he will answer the questions that will be raised by our two colleagues to today's session.

However, it is no longer necessary, Mr. President, to call on Senator Pimentel and the two gentlemen, Senators Barbers and Revilla, considering that a resolution arising from the speech yesterday was filed by Senator Pimentel. We intend to take up this simple resolution today, at which time, Senators Barbers and Revilla will raise the questions that they intended to raise on Senator Pimentel after his privilege speech.

THURSDAY, MAY 18, 2000

RESUMPTION OF SESSION

At 10:06 a.m., the session was resumed with the Senate President, Hon. Franklin M. Drilon, presiding.

The President. The session is resumed.

The Majority Leader is recognized.

MOTION OF SENATOR TATAD

(Inclusion of Sen. Osmena (J.) in the Conference Committee on the Securities Act)

Senator Tatad. Mr. President, yesterday, we constituted the Senate panel to the Bicameral Conference Committee on the disagreeing provisions of the Securities Act. We would like to amend constitution of that panel by proposing the inclusion of Sen. John Henry Osmena.

The President. The inclusion of Sen. John Henry Osmena in the bicameral panel for the Securities Act is hereby proposed. Is there any objection? [Silence] There being none, the motion is approved. Sen. John Henry Osmena is so included in the said panel.

BILL ON SECOND READING

S. No. 2035 - City of Masbate

Senator Tatad. Mr. President I move that we consider Senate Bill No. 2035 as reported out under Committee Report No. 231.

The President. Is there any objection? [Silence] There being none, the motion is approved.

Consideration of Senate Bill No. 2035 is now in order. With the permission of the Body, the

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merging

Sponsors: Senators Renato L. *Companero* Cayetano, Revilla, Osmena (J.), Flavier, Serge Osmena, Jaworski and Drilon

The President. To the Calendar for Ordinary Business.

The Secretary. Committee Report No. 240 submitted by the Committee on Public Services on House Bill No. 7806 introduced by Representative Abueg Jr., et. al., entitled

AN ACT GRANTING THE PALAWAN TELEPHONE CO., INC., A FRANCHISE TO CONSTRUCT, ESTABLISH, INSTALL, MAINTAIN AND OPERATE LOCAL EXCHANGE NETWORK IN THE MUNICIPALITIES OF NARRA, ABORLAN, SOFRONIO ESPANOLA, BROOKE'S POINT, BATARAZA, BALABAC, QUEZON, RIZAL, ROXAS, TAYTAY, CORON, EL NIDO, PROVINCE OF PALAWAN

recommending its approval with amendments by substitution

Sponsor: Senator Sotto III

The President. To the Calendar for Ordinary Business.

The Majority Leader is recognized.

CONFERENCE COMMITTEE ON H. NO. 8015/S. NO. 1220
(The Securities Act of 1998)

Senator Tatad. Mr. President, to constitute the Senate panel to the Bicameral Conference Committee on the disagreeing provisions of the Securities Act, I hereby nominate Sen. Raul Roco as chairman and Senators Serge Osmena III, Ramon B. Magsaysay Jr. and Renato L. *Compañero* Cayetano as members.

The President. Is there any objection? *[Silence]*

There being none, the conferees of the Chamber to the Bicameral Conference Committee to discuss the disagreeing provisions of the Securities Act is hereby approved.

BILL ON SECOND READING
S. No. 1976 - ARMM Election Law

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MONDAY, JULY 17, 2000

Committee, that whatever action is taken under this condition shall not contribute to any anticompetitive tendency and shall certainly respect existing supply agreements.

Senator Enrile. That is correct, Mr. President. The distinguished gentleman from Camarines Sur correctly stated what happened in the Bicameral Conference Committee.

Senator Roco. Yes, Mr. President. Those are two points, especially because of the current situation where both in the US-Philippine situation and the agricultural situation between Australia and the Philippines, these concepts will be very important so that we avoid anti-competitive tendencies and we respect existing contracts.

Thank you, Mr. President.

Senator Enrile. Thank you, Mr. President.

The President. The Majority Leader is recognized.

APPROVAL OF CONFERENCE COMMITTEE REPORT

Senator Tatad. Mr. President, I move for the adoption of the report.

The President. Is there any objection? [Silence] There being none, the Conference Committee Report on the disagreeing provisions of Senate Bill No. 2033 and House Bill No. 7613 is hereby approved.

The following is the whole text of the conference committee report:

(Insert)

SUSPENSION OF SESSION

Senator Tatad. I move that we suspend the session for one minute.

The President. The session is suspended for one minute, if there is no objection. [*There was none*].

It was 5:43 p.m.

RESUMPTION OF SESSION

At 5:50 p.m., the session was resumed.

The President. The session is resumed.

Senator Tatad. Mr. President.

The President. The Majority Leader is recognized.

CONFERENCE COMMITTEE REPORT ON S. No. 1220/H. No. 8015
(The Securities Act of 1998)

Senator Tatad. Mr. President, we have before us the Bicameral Conference Committee Report on the disagreeing provisions of House Bill No. 8015 and Senate Bill No. 1220 on the Proposed Amendments to the Securities, Regulations and Enforcement Act.

To sponsor the report, I ask that the distinguished chairman of the Senate panel, the chairman of the Committee on Banks, Financial Institutions and Currencies, Sen. Raul S. Roco, be recognized.

SUSPENSION OF SESSION

The President. Before the Chair recognizes the Senator from Camarines Sur, with the permission of the Chamber, the session is suspended for a few minutes, if there is no objection. *[There was none.]*

It was 5:51 p.m.

RESUMPTION OF SESSION

At 5:53 p.m., the session was resumed.

The President. The session is resumed.

Sen. Raul S. Roco is recognized to render the report on the Bicameral Conference Committee on the disagreeing provisions of Senate Bill No. 1220 and House Bill No. 8015 on the Amendments to the Securities, Regulations and Enforcement Act.

REPORT OF SENATOR ROCO

Senator Roco. Thank you, Mr. President.

The Senate Conference Committee, Mr. President, is pleased to report the reconciliation of the disagreeing provisions of Senate Bill No. 1220, the Securities Act of 1998, and House Bill No. 8015, the Securities Act of 2000.

Mr. President, the report is signed by Jose Macario Laurel as chairman of the House committee; Pacifico Fajardo as co-chairman; in this respect: Gilberto Teodoro Jr., Jose Ma. Salceda, Erico Aumentado, and Oscar Moreno. And on the part of the Senate, it has been signed by Sen. Sergio R. Osmeña III, Sen. John H. Osmeña, Sen. Renato L. Compañero Cayetano, and the Senate chairman.

The report was arrived at after two extensive conference committees but there were more than 10-- although apparently only two were recorded--Technical Working Group meetings where it had participation, help and support of the chairman of the House Committee and some members of the House Committee, as well as the chairman of the Senate Committee, and some members of the Senate Committee.

The proposed bill, Mr. President, is now called the Securities and Regulation Code and that is one departure. Neither the House nor the Senate can claim that this is its version. This has been worked into, blended and merged. It is very difficult under the circumstances when we used to work on the 79 pages but which we have reduced to 73. It started with 150 pages actually.

And so the reduced and compact version will be a source of pride for some lawyers because it can now be better understood. Even in law schools, Mr. President, no law student was expected to understand the Securities Law. We did not even take it. I think, until very recently, it was not even part of the Bar examinations.

The Securities Regulation Code, Mr. President, was also partially in response to the situation in the BW Resources Corp. scandal where because of lax rules or monitoring by the Securities and Exchange Commission, there was the celebrated rise in price of BW Resources Corp. from P2 to P107 in the span of four or five months which benefitted many who may not have rightfully deserved the benefit.

On the proposed Securities and Regulation Code, Mr. President, by way of complying with the *Rules of the Senate*, may I just highlight the more important departures:

The Declaration of Policy stresses--and this is important for all of us--that we seek to establish a socially conscious free market by encouraging widest participation of ownership and enterprises, enhancing democratization of wealth and the promotion of the development of the capital market, and protecting investors thru full disclosure in transactions about securities.

This Declaration of State Policy, Mr. President, elucidates most of the sections and should always be read into account as we discuss the other sections.

The Definition of Terms, Mr. President, has been streamlined and is now very concise. The first major departure is as regards the Securities and Exchange Commission. The Securities and Exchange Commission has been authorized under this proposal to reorganize itself. As an administrative agency, we strengthened it and at the same time we take away the quasi-judicial functions. The quasi-judicial functions are now given back to the courts of general jurisdiction--the Regional Trial Court, except for two categories of cases.

In the case of corporate disputes, only those that are now submitted for final determination of the SEC will remain with the SEC. So, all those cases, both memos of the plaintiff and the defendant, that have been submitted for resolution will continue. At the same time, cases involving rehabilitation, bankruptcy, suspension of payments and receiverships that were filed before June 30, 2000 will continue with the SEC. In other words, we are avoiding the possibility, upon approval of this bill, of people filing cases with the SEC, in a manner of speaking, to select their court.

We put the SEC under the same qualifications as those of the Bangko Sentral ng Pilipinas. So, the qualifications for commissioners are the same as the qualifications for the Monetary Board members. For the same reason, Mr. President, the salary structure will be the same. If the members of the Monetary Board are

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receiving P100,000, then the commissioners will also receive P100,000 or something comparable to their salary. The remuneration, emoluments as well as the indemnification clause applicable to the Monetary Board, Mr. President, is also applicable now to the Securities and Exchange Commission. It is only right now with this bill that we clarify the independent functions, not only in terms of monetary policy, by giving it to the Monetary Board, but in matters of commerce and securities and capital formation, by giving them to the Securities and Exchange Commission, with sufficient powers to monitor and regulate capital formation in the Philippines.

That is the first major departure, Mr. President, in terms of the powers and responsibilities of the Securities and Exchange Commission. In registration of securities, exempt transactions, exempt securities, these are very technical and there are modifications but not of the major sort that requires my calling attention to it. Essentially, the registration and monitoring of securities are basically the same as the old law.

Pre-need plans, Mr. President, remain with the SEC. Originally, we wanted the SEC to concentrate on commerce, corporations and the securities regulation, but pre-need plan under the Senate report was really with the SEC and under the House report, it was recommended to remain with the SEC without prejudice to a subsequent law if we should decide to do so to have the pre-need plans transferred to the Office of the Insurance Commissioner.

The reportorial requirements shall strengthen the disclosure rules. One of the fundamental underlying principles here is full disclosure and the reportorial requirements amplifies this. The protection of shareholder's interest, Mr. President, is very important although this is covered by the present law. Under tender offer, there is a departure. There will be mandatory tender offers when there is an acquisition of 15% on a single moment, so that if there is a proxy contest and somebody wants to buy 15% to ensure a seat he

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must try to buy 15% of everybody. Or when it is the intention of any group or any individual to acquire 30% over one-year period trying to accumulate, that must also be applicable to all.

This was a clear policy decision, Mr. President. Under the present law, there is no compulsory tender offer. But if we want to enhance the stock market, the minority must feel that he will not be left in the *kangkungan* simply because he is small. The minority must have the chance of selling at a high price when somebody wants to gain control of a listed company. And so tender-offer rule is a new direction. This was debated for a long time and the committee seeks the approval of this new direction.

The proxy solicitation, Mr. President, again is clarified. The proxy solicitation is made to coincide with the 5% and 10% disclosure rule. Under the present law, when one acquires 10%, he must report, and 5%, in fact, must also be reported. So when a broker or dealer acquires 10% for himself or for others, then he must also report so that there can be no hidden owners anymore since transparency is mandated by the Constitution and transparency is sought to be implemented by this Securities Regulation Code. That is one of the modifications that we hope will keep the stock exchange honest and aboveboard. Prohibitions on fraud, manipulation and insider trading, Mr. President, may we stress....And we are happy that our colleague from the House, Congressman Fajardo, sits here before he actually becomes elected as senator by rights. Because according to the *Rules of the Senate*, a member of Congress--and not just a member of the Senate--can sit and join us. So as a member of Congress he joins us here. I hope he will not vote. But in any event, he has already voted because he has signed the report.

There is something very important that we want to stress. Today, even as I speak, the SEC officials have filed probably the charges against the violators or those who have violated the law under the BW Resources Corp.

transaction. Because they will have criminal cases, under the new provision, to the extent that it favors those who may have violated the law then, they can seek refuge from this law. To the extent that it is more stringent, of course, it cannot be made applicable to the violators of the old law.

It was clearly understood during the Bicameral Conference Committee meeting that the SEC will continue its prosecution under the old law, and that all prosecutions shall be under the old law so that we do not have technical constitutional questions.

To the extent that there may be something here that is favorable to them, they will seek to avail themselves of it. But these are more stringent. It will not be more favorable to them. So the prosecution of the violators of the Revised Securities Act will proceed under the SEC and under the Department of Justice pursuant to the existing law on the matter.

For future purposes, there is greater detail in showing what fraudulent transactions are and what manipulative devices may be.

The insider's duty to disclose insider trading, or what the American law calls 10B5, is retained so that we do not have to reinvent jurisprudence on the matter. For purposes of lawyers and those who are studying this, the conference committee understood that the philosophy and jurisprudence underlying insider trading in American law can be made applicable and persuasive in terms of applying it to the present proposed bill.

As regards the regulations of securities market professionals, they are nitty-gritty regulations by the SEC. The SEC though is given ample powers to even suspend or to even revoke licenses and registrations.

In one instance, should they disobey, the SEC can take away their licenses or registrations. There has been at least one instance in the recent past when the stock market, for instance, did not follow the SEC. I would imagine, when this becomes law, the stock market will not be very eager to violate the instructions of the Securities and Exchange Commission.

There are also ample provisions regarding exchanges and other securities trading market. In conformity with the express reservation of Senator Guingona, we just have a general provision that other kinds of commodities tradings and options will be provided for under future law. While they can apply analogically to the situation, there will be a time for making the appropriate law on the matter.

As to the SRO, Mr. President, it is required that majority of the stock exchange officers be nonbrokers and nondealers, and that three should be independent directors. This will be a feature that we hope will keep our stock market more credible in terms of the investing public.

The much vaunted and much lobbied-against provision keeping brokers and dealers, we hate to do some friends among the brokers, but the Senate committee adopted an American rule. We keep brokers. One wants to be a broker, fine. One wants to be a dealer and buy for himself, fine. But there are exceptions. For instance, market-making. Sometimes, just to be able to make a transaction, somebody is ordering 1,000,000 but what is for sale is 1,100,000. Just to proceed with the transaction---they call it "market-making"---the broker will buy the 100,000. That is understandable, sapagkat sayang naman iyong transaksiyon.

Odd lots, the same thing, Mr. President, basically, because there are fractions, which in similar circumstances, as may be defined by the SEC, will be exceptions.

We regret, Mr. President, that despite all the importunings, our hearings indicated that keeping brokers and dealers separate will be good for the market. So we hope our friends in the stock brokerage will understand that this is for the good of the Republic and, therefore, it will be good for them in due time.

We gave self-regulatory organizations self-regulatory powers under the supervision.... We removed control. Under the old PD No. 902-A, Mr. President, the SEC had the power of supervision and control, and we just made here administration and supervision over corporations' control. Even the SEC did not know why and how it could control corporations which were supposed to be run---their property controlled and their business operated and managed by the board of directors. That is one power that was stepped down in terms of the SEC.

The transactions in the stock market are very well-defined and they accommodate the developments in electronic commerce, Mr. President. So there is a recognition for undocumented securities. The electronic impulses registered by the clearing houses or by the stock market or by the SEC will be sufficient proof under the E-Commerce Law, among others. So this now blends with the E-Commerce Law. We do refer to uncertificated securities and this is also provided for.

The margin and credit is basically an old law, Mr. President, and very technical on how we want to trade margin. On the liabilities of persons, we followed the antitrust model of having double or treble damages based on the amounts involved, so that we dissuade people from manipulating or intervening in the market forces. This is pursuant again to American practice. Thirty percent of damages can be awarded as attorney's fees. We hope that the lawyers will become honest and in their cupidity, in their civilized and rational desire not only to abide by the law but to also collect attorney's fees, maybe there will be more suits against those who manipulate the stock market.

The injunction is all right.

There is a new provision, Mr. President, on settlement offers. Again, we borrowed this from the American practice. Others will call it a consent decree; others will call it a *nolo contendere*.

But essentially, if the SEC catches anybody violating the law, he can reasonably bargain for payment of fines instead of going through the procedure of being investigated and being sent to jail. This is a new practice, Mr. President, that we borrowed from the American law and we hope that it will have better results.

Both civil and criminal liabilities will be incurred for insider trading, Mr. President. Damages are up to treble in some instances.

It is understood, Mr. President, that when reports are given to the SEC, that becomes public. And for that reason, while there was a provision before government employees who may have access to information are also subject to insider information, we think that the moment it gets to them, that is public and it should be made known to all. Do not hide it. If they hide it, that is the one that should become punishable.

I guess that will cover most of the major provisions, Mr. President.

The penalties have also been increased.

The Transitory Provision provides, as I mentioned already, the matter of cases.

By way of calling attention to it, Mr. President, there is a partial use of income authority, on the part of the Commission, of up to P100 million. This should be up to P200 million, but for some reason, the staff seems

to feel... Is it really P100 million? I think we agreed to P200 million.

I am sorry, Mr. President. Yes, the P200 million was for the implementation of this...And there is a P100 million cap on utilization of income by the SEC based on its income. I understand it has an income of P400 million. So it contributes more than that.

Maybe, by way of stressing on the fees structure that the SEC can impose, there is a rule here of inverse fees--the larger the amount, the lower the fee.

In other words, it is an attempt by the law to make the SEC business-friendly. If we register P1 billion, the fee for registration is P1 million. If we register P10 million, maybe it is less than P1 million. So that we encourage people to have IPOs and to register with the SEC instead of punishing them for telling us what in heaven's name they are doing.

So those are the essential points, Mr. President, with the consent and with the permission of the Chamber to give that verbal report in lieu of an extended written report. We seek the support of the Chamber.

APPROVAL OF CONFERENCE COMMITTEE REPORT
ON S. NO. 1220/H. NO. 8015

Senator Tatad. Mr. President, I move for the approval of the report.

The President. Is there any objection? [Silence] There being none, the Bicameral Conference Committee Report on the disagreeing provisions on the amendments to the Securities Regulation and Enforcement Act is hereby approved.

Senator Roco. Thank you, Mr. President, and I would like also to thank my distinguished colleagues.

The following is the whole text of the conference committee report:

Insert

SUSPENSION OF SESSION

Senator Tatad. Mr. President, I move that we suspend the session until three o'clock tomorrow afternoon, Tuesday, 19th of July, 2000.

The President. The session is suspended until three o'clock in the afternoon of July 18, 2000, if there is no objection. [There was none.]

It was 6:18 p.m.