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Senate  
Office of the Secretary

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SENATE  
P.S.R. No. **399**

RECEIVED BY: 

Introduced by Senator Miriam Defensor Santiago

RESOLUTION  
DIRECTING THE SENATE COMMITTEE ON CONSTITUTIONAL AMENDMENTS,  
REVISION OF CODES AND LAWS, TO CONDUCT AN INQUIRY,  
IN AID OF LEGISLATION, ON THE NEED TO REVISE THE  
SECURITIES REGULATION CODE TO CURB THE MONOPOLISTIC PRACTICES  
ANCHORED ON SOME OF ITS PROVISIONS

WHEREAS, the Constitution, Article 12, Section 19 provides, "The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed";

WHEREAS, philstar.com reported last 5 January 2011 that some sectors are alarmed about the monopolistic hold of the Philippine Dealing and Exchange Corp (PDEX) on the trading of government securities;

WHEREAS, inquirer.net reported last 1 February 2011 that Union Bank was of the argument that the granting of self-regulatory organization status to PDEX allowed it to monopolize 100 percent of the government securities (GS) market;

WHEREAS, in *Tatad v. Secretary of Energy*<sup>1</sup>, the Supreme Court defined a monopoly as a "privilege or peculiar advantage vested in one or more persons or companies, consisting in the exclusive right or power to carry on a particular business or trade, manufacture a particular article, or control the sale or the whole supply of a particular commodity. It is a form of market structure in which one or only a few firms dominate the total sales of a product or service";

WHEREAS, in July 2006, the Securities and Exchange Commission (SEC) formally recognized PDEX as a Self-Regulatory Organization (SRO) in the Inter-Dealer Market and it was thus vested with the responsibility of formulating the requisite market rules, undertaking surveillance and enforcing compliance in the inter-dealer market;

WHEREAS, in January 2008, PDEX was granted SRO status for the Over the Counter (OTC) market through which it was able to corner 100% of the Government Securities (GS) market;

WHEREAS; the SEC issued Memorandum Circular No. 6, s. 2006 on Rules Governing OTC markets which included government securities; it directed that "no broker or dealer shall participate in an OTC market unless said broker or dealer is a member of an SRO that has been registered with the Commission for the purpose of regulating and supervising the activities of the broker or dealer in an OTC market";

<sup>1</sup> 281 SCRA 330 (1997).

WHEREAS, by restricting the trade of government securities within the SRO, the SEC in effect created a barrier to entry which is defined as a condition that impedes entry by new competitors;

WHEREAS, this regulation is based on the interpretation by the SEC of Section 3.1, paragraph (g) of the Securities Regulation Code, which provides that securities include "other instruments as may in the future be determined by the Commission";

WHEREAS, the SEC has no power to regulate exempt securities since the Securities Regulation Code also provides that any security issued or guaranteed by the government is exempted from registration with the SEC;

WHEREAS, there is a need to inquire into these monopolistic practices and to harmonize the seemingly conflicting provisions of the Securities Regulation Code;

WHEREFORE, be it hereby resolved by the Philippine Senate, to direct the Senate Committee on Constitutional Amendments, Revision of Codes and Laws, to conduct an inquiry in aid of legislation, on the reported need to revise the Securities Regulation Code to curb the monopolistic practices anchored on some of its provisions.

Adopted,

*Miriam Defensor Santiago*  
MIRIAM DEFENSOR SANTIAGO

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