Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

ASTRA SECURITIES CORP.,
Complainant,

-versus-

SEC-CFD Case No. 2008-03

OMICO CORPORATION, EMILIO S. TENG, JUANA LOURDES M. BUYSON and **MA. ELENA ALQUEZA**, in their capacity as members of the Board of Inspectors and **TOMMY KIN HING TIA**,
Respondents.
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ORDER

For consideration of the Commission en banc is the verified complaint dated and filed on 27 October 2008 praying for, among others, the issuance of a Cease and Desist Order against respondent Omico Corporation ("Omico").

As a brief background, Omico Corporation ("Omico") is a listed company whose shares of stock are listed and traded in the Philippine Stock Exchange, Inc. Complainant Astra Securities Corp. ("Astra") is one of the stockholders of Omico.

Based on Section 1, Article II of Omico's Amended By-Laws, the regular annual meeting of its stockholders shall be held on the last Friday of May of each year. Accordingly, the 2008 Annual Stockholders' Meeting was set on 30 May 2008. Due to lack of quorum, however, the meeting on 30 May 2008 was adjourned.

On 22 August 2008, Omico's Board of Directors approved the setting of the date for the adjourned meeting to 03 November 2008. In line with the said meeting, Omico set the deadline for submission of proxies on 23 October 2008 and the validation of proxies on 25 October 2008. Respondents Emilio S. Teng, Juana Lourdes M. Buyson and Ma. Elena Alqueza were the members of the Board of Inspectors during the proxy validation. Due to alleged irregularities during the proxy validation, which may be tantamount to violations of the provisions of the Securities Regulation Code, complainant Astra filed the instant complaint with the Corporation Finance Department of the Commission.

Complainant Astra alleged that during the proceedings on proxy validation before the Board of Inspectors, its counsel objected and moved that the proxies issued by the Philippine Stock Exchange Trading Participants[1] (except Amkor Holdings, Pan Asia Securities Corporation, Chen Chang Li and Philip King) be declared invalid due to the following alleged violations:

1 The list of the Trading Participants can be found in paragraph 10 of the Complaint.

1. Proxy issuers, being brokers, did not obtain the required express written authorization of their clients when they issued the proxies in favor of respondent Tia, nor were these accompanied by any certification under oath that they had obtained the written consent of the persons in whose account the shares are held, in violation of SRC Rule 20 (11)(b)(xviii); and

2. Respondent Tia solicited proxies according to SRC Rule 20(2)(B)(ii)(b) without complying with the SRC Rule 20, in violation of Section 20.1[2] of the Securities Regulation Code.

Complainant thus prays, among others, for this Commission to:

1. Invalidate all the proxies issued in favor of respondent Tia;

2. Resolve the issues relating to the validation of proxies prior to the canvassing of votes for purposes of determining a quorum in the 03 November 2008 reconvened stockholders' meeting of respondent Omico; and

3. Issue a Cease and Desist Order, enjoining respondent Omico from holding the 03 November 2008 reconvened stockholders' meeting until this Commission resolves the issues relating to the validation of proxies

On 30 October 2008, respondents filed a *Manifestation* of even date stating therein that they came to know of the filing of the instant complaint and argued that the matter pertaining to controversies over nomination of directors, validation of proxies, and election of directors, as well as the issuance of a Cease and Desist Order that were within the jurisdiction of this Commission had already been transferred to the Regional Trial Court pursuant to Section 5.2 of the Securities Regulation Code.

The issue to be resolved in this case is whether there is a valid ground to issue a Cease and Desist Order.

We answer in the affirmative.

Pertinent to the instant proceeding are the following provisions of the Amended Implementing Rules and Regulation of the Securities Regulation Code, viz:

"SRC Rule 20- Disclosures to Stockholders Prior to Meeting
(formerly, SRC Rule 20 – The Proxy Rule)

xxx

B. Solicitation

xxx

2 SEC. 20. *Proxy Solicitations.* – 20.1. Proxies must be issued and proxy solicitation must be made in accordance with rules and regulations to be issued by the Commission;

ii. The terms shall not apply to:

xxx xxx

b. any solicitation made otherwise than on behalf of the registrant where the total number of persons solicited is not more than nineteen (19)."

On the other hand, SRC Rule 20(11)(b)(xviii) provides that:

"b. Proxy

xviii. No member of the Stock Exchange and no broker/dealer shall give any proxy, consent or authorization, in respect of any security carried for the account of a customer to a person other than the customer, without the express written authorization of such customer. The proxy executed by the broker shall be accompanied by a certification under oath stating that before the proxy was given to the broker, he had duly obtained the written consent of the persons in whose account the shares are held."

Relevant to the issuance of a Cease and Desist Order is the provision of Sec. 10-2 of the 2006 Rules of Procedure of the Commission, to wit:

"SEC. 10-2. Issuance of a CDO.- The Commission, through the OGC, after proper investigation or verification by the CED, ***motu proprio***, or upon verified complaint, may issue a CDO 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.

For other cases, however, the Commission En Banc may issue an order for the grant of a CDO as it may deem necessary and warranted in accordance with its powers under existing laws. The CDO shall also be available in the case of anonymous complaints or based on information that has come to its attention which requires immediate action to protect the interests of the public." (Emphasis ours)

Complainant Astra alleged irregularities in the proxy validation of Omico, viz:

1. There were no signature cards or specimen signatures against which the signatures appearing on the proxy documents could be compared, which is especially problematic considering that signatories of some proxy issuers are unknown;

2. Except for Amkor Holdings, Pan Asia Securities Corporation, Chen Chang Li and Philip King, the shares of the rest of the proxy issuers are lodged in the Philippine Central Depository (PCD) under PCD Nominee Corporation and are held for clients, which were in fact openly admitted

by some of the proxy issuers and yet no proof of consent of the clients were shown; and

3. While respondent Emilio S. Teng denied that respondent Tommy Kin Hing Tia solicited any proxies, the proxies executed in favor of the latter well exceeded nineteen (19).

There being a *prima facie* evidence that there is a violation of SRC Rule 20(11)(b)(xviii), which prohibits brokers/dealers from giving any proxy, consent or authorization, in respect of any security carried for the account of a customer, without the express written authorization of such customer, and SRC Rule 20 (2)(B)(ii)(b) with regard to proxy solicitation, respondents OMICO CORPORATION, EMILIO S. TENG, JUANA LOURDES M. BUYSON and MA. ELENA ALQUEZA, in their capacity as members of the Board of Inspectors and TOMMY KIN HING TIA, are hereby ordered to immediately **CEASE AND DESIST** from accepting and including the objected proxies issued in favor of Tommy Kin Hing Tia in determining the quorum and in electing the members of the board of directors during the annual meeting of the stockholders of Omico set on 03 November 2008 meeting before the issues relating to the validation of proxies are resolved, to prevent grave and irreparable injury or prejudice to the investing public.

Pursuant to Section 10-4 of the 2006 Rules of Procedure of this Commission, the respondents may file a formal request or motion for the lifting this Order within a non-extendible period of five (5) business days from receipt of this Order.

SO ORDERED.

Mandaluyong City, 30 October 2008.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

JESUS ENRIQUE G. MARTINEZ
Commissioner

RAUL J. PALABRICA
Commissioner

THADDEUS E. VENTURANZA*
Commissioner

* On leave.