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

PACIFIC PLANS, INC.,
Petitioner-appellant,

-versus-

HON. JOSE P. AQUINO, in his capacity as Acting Director of the Non-Traditional Securities and Instruments Department,
Respondent-appellee.
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SEC En Banc Case No. 04-07-97
For: Approval of Hedging Arrangement

DECISION

For consideration of the Commission *En Banc* is an appeal seeking the review and reversal of the letter dated 04 April 2007 issued by respondent-appellee Jose P. Aquino, in his capacity as Acting Director of the Non-Traditional Securities and Instruments Department ("NTD").

The relevant facts of the case are narrated below.

Petitioner-appellant Pacific Plans, Inc. ("PPI") (now known as Abundance Providers Entrepreneurs Corporation) is a pre-need corporation that was licensed to sell pre-need plans.

The Trust and Investment Division of Rizal Commercial Banking Corporation ("RCBC-TID") is the trustee of the traditional education plan trust fund ("Peptrad Trust Fund"), which is invested in the National Power Corporation (NAPOCOR) Bonds with a total face value of Forty Seven Million U.S. Dollars (US$47, 700,000.00) maturing on 12 July 2010.[1]

As a brief background, PPI filed a petition for rehabilitation on 07 April 2005, with the Regional Trial Court ("RTC") of Makati City, and the same was raffled to Branch 61. In a *Decision*[2] dated 27 April 2006, the RTC granted the petition. The decision provides, among others, for tuition support, which will be supported from either of the following: (1) outright sale of the NAPOCOR Bonds and conversion of dollar proceeds to peso, up to the equivalent of the tuition support requirements; or (2) forward sale of the underlying dollars to a financial institution who then issue notes credit linked with NAPOCOR bonds. Either way, the Rehabilitation Receiver was directed to obtain approval from the *Bangko Sentral ng Pilipinas* ("BSP") or other appropriate agency for the trustee bank to enter into a non-deliverable

[1] *Memorandum on Appeal* dated 19 April 2007, paragraph 3.2.
[2] Annex 1, Reply Memorandum filed on 07 June 2007.

forward ("NDF") transaction. If the required BSP approval for the NDF transaction cannot be secured, the Rehabilitation Receiver would then proceed to sell the NAPOCOR Bonds.

Appellant RCBC-TID then presented their proposal to NTD in a letter-request dated 19 February 2007 seeking confirmation that it may enter into an NDF arrangement or alternative hedging structures which can address the objective of hedging the foreign exchange risks of the Peptrad Trust Fund.

On 04 April 2007, appellee NTD issued the subject letter, which reads, in part:

> "This has reference to your letter dated February 19, 2007 requesting approval by the Commission to enter into a non-deliverable forward arrangement for the trust fund of Pacific Plans, Inc. (PPI).
>
> In the said letter you stated that a request of the same nature has been filed with the Bangko Sentral ng Pilipinas (BSP) on August 2, 2005. To clarify matters, this Department sent a letter dated February 27, 2007 to BSP Deputy Governor Nestor A. Espenilla, Jr. inquiring on the status of your request with their office.
>
> On March 16, 2007 BSP Deputy Director Judith E. Singson informed the Department that the proposed NDF transaction is still being evaluated by them.
>
> Be that as it may, we regret to inform you that non-deliverable forward arrangement is not among the investments that the trustee of a pre-need company can enter into."

Dissatisfied, appellant filed the instant appeal.

Meanwhile, or on 04 September 2007, PPI filed a *Manifestation* dated 31 August 2007 stating that the BSP in a letter dated 14 June 2007 approved the request of RCBC-TID to enter into a non-deliverable forward arrangement for PPI to allow the latter to hedge its foreign exchange exposures. A copy of the BSP letter was submitted to the Commission on 03 March 2010. The BSP letter reads in part as follows:

> "Please be informed that the Monetary Board, in its Resolution No. 630 dated 1 June 2007, approved the request of the Rizal Commercial Banking Corporation – Trust and Investment Division (RCBC-TID) to enter into a non-deliverable forward (NDF) arrangement for its client Pacific Plans, Inc. (PPI) to allow the latter to hedge its foreign exchange (FX) exposures of the PPI Traditional Education Plan Trust Funds using the following proposed hedging structures:
>
> a. Forward sale of National Power Corporation (NPC) Bonds and US Dollar (US$) proceeds thereof;
>
> b. Forward sale of FX only;

c. Forward sale of NPC Bonds and forward hedge of the US$ proceeds for periodic Pesos cashflows; and

d. Swap of NPC Bonds and forward hedge of the US$ proceeds from the Forward sale with issuance of Credit Linked Notes.

Provided, that:

a. All hedging structures will be done through other financial institutions on an arm's-length basis and RCBC will not be involved in any leg of the transactions;

b. The hedging structure to be selected should most be favorable to the planholders given market conditions at the time of deal closing;

c. RCBC TID shall seek the approval/consent of the Rehabilitation Court/Receiver on the use of the modified hedging structure.xxx"

The Rehabilitation Receiver then filed a *Manifestation with Motion to Admit [Modified Rehabilitation Plan]* dated 07 March 2008 with the RTC stating among others that the previous recommendation of the rehabilitation receiver for non-deliverable forward contracts which have helped in managing the movement of the Philippine peso did not happen because of a slow regulatory approval process.[3] The Rehabilitation Receiver then went on to recommend the conversion of the peso liabilities of PPI to United States Dollars (US Dollars) by assigning to each planholder/creditor a share of the remaining asset in the trust fund in the proportion of his share to the total liabilities in 2010 and payments in US Dollars in 2010.[4]

Acting on the recommendation of the Rehabilitation Receiver, the RTC issued a *Resolution* dated 28 July 2008 approving the Modified Rehabilitation Plan for the following reasons:

> "*First,* ... the Court takes cognizance that at the time the Alternative Rehabilitation Plan was approved on 27 April 2006, the exchange rate was Php52.02/US1.00. As of 15 July 2008, the exchange rate was Php45.35/US$1.00 or an appreciation of at least fourteen percent (14%). Since the NAPOCOR Bonds are denominated in United Stated dollars, it means that the NAPOCOR Bonds have lost their original value by at least fourteen percent (14%) since the approval of the Alternative Rehabilitation Plan on 27 April 2006. Ergo, the continued payment of tuition support in Philippine Pesos will lead to the certainty of the trust fund being substantially diluted when the planholders avail of the same upon maturity of the NAPOCOR Bonds in 2010.

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[3] Manifestation with Motion to Admit, par. 6, p. 2.
[4] Id, par. 7, p. 3.

Second, the conversion of the Philippine peso entitlements into United States Dollar entitlements would not diminish the pro-rata share of the planholders. xxx"

Considering that the proposed hedging transactions did not materialize and the subsequent approval by the Rehabilitation Court of the conversion of peso entitlements of the planholders to US Dollars entitlements and the payments in US Dollars, the Commission deems it proper to dismiss the case for being moot.

WHEREFORE, the instant petition is hereby **DISMISSED** for being moot.

SO ORDERED.

Mandaluyong City, 13 May 2010.

PE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner