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

IN THE MATTER OF:

SEC En Banc Case No. 08-06-84
For: Appeal from CFD Order dated 19 July 2006

FILINVEST DEVELOPMENT CORP.,
Appellant.

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DECISION

For consideration is the Letter-Appeal of Filinvest Development Corporation (FDC) dated 09 August 2006 appealing the Order dated 19 July 2006 of the Corporation Finance Department (CFD) which denied FDC's request for reconsideration of penalty.

FACTS OF THE CASE

In 2002, Reco Grandhomes Pte. Ltd. (RECO) subscribed to Php 1.2 Billion worth of convertible bonds issued by Filinvest Land Inc. (FLI).

On 12 December 2005, FDC filed with the Commission Form 17-C reporting that FDC entered into a "Bond Purchase and Sale Agreement" with RECO whereby FDC purchased from RECO the said convertible bonds issued by FDC's subsidiary, FLI, in exchange for FDC's payment of about Php 1.3 Billion in cash and the transfer of ownership from FDC to RECO of 310 million existing shares in FLI (FLI shares).

On 10 January 2006[1], the Government of Singapore Investment Corporation Pte. Ltd. (GIC), the owner of RECO, filed with the Commission Form 23-B disclosing its acquisition of 309,520,254 FLI shares on 14 December 2005.

[1] Based on FDC's letters dated 17 February 2006, 07 March 2006 and 09 August 2006, it has been asserting that GIC filed with the Commission said SEC Form 23-B on or about 06 January 2006. However, the Director of CFD, in a Memorandum dated 15 December 2009, clarified that the index card of the handling securities specialist indicates that said form was only filed on 10 January 2006.

On 16 January 2006, FDC also filed Form 23-B disclosing its disposal of 309,520,254 FLI shares on 14 December 2005.

In a letter dated 26 January 2006, CFD directed FDC to show cause why it should not be held liable for violation of SRC Rule 23 by belatedly filing Form 23-B on 16 January 2006, which was already six (6) days beyond the due date.

On 20 February 2006, FDC replied by raising the defense of excusable oversight due to its good faith belief that FDC's filing of Form 17-C on 12 December 2005 and GIC's filing of Form 23-B on or about 6 January 2006[2] had substantially satisfied the disclosure requirements of the SRC and its Implementing Rules and Regulations.

However, in a letter dated 21 February 2006, CFD found the reasons raised by FDC as unmeritorious and assessed it with a penalty of Four Million One Hundred Forty Eight Thousand One Hundred Seventy One Pesos (Php4,148,171.00)[3].

In a letter dated 7 March 2006, FDC requested reconsideration reiterating its position that it had substantially complied with the disclosure requirements under the law.

Nonetheless, in an Order dated 19 July 2006, CFD denied the said request.

ISSUE

The issues are:

(a) whether the filing of Form 17-C by FDC on 12 December 2005 and the filing of Form 23-B by GIC on 10 January 2006 can be considered as full, accurate and fair disclosure of the transaction that resulted in the change in ownership of FLI shares from FDC to RECO; and

(b) whether the penalty imposed upon FDC is too severe compared to FDC's omission.

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[2] *See* Note 1.

[3] Considering that this is FDC's second violation of SRC Rule 23 and pursuant to the Revised Consolidated Scale of Fines (SEC Memorandum Circular No.6, Series of 2005), the said penalty was assessed as follows:

REPORT	BASIC FINE	PENALTY PER DAY	TOTAL PENALTY
SEC FORM 23-B	309,520,254 shares x P1.34 each = P414,757,140 x 1% = **Php4,147,571.00**	P100/day x 6 days = Php **600.00**	**Php 4,148,171.00**

RULING

The answer to both issues is in the NEGATIVE.

Section 23.1 of the Securities Regulation Code[4] (SRC) reads:

> *"**Sec. 23. Transactions of Directors, Officers and Principal Stockholders.** — 23.1. Every person who is directly or indirectly the beneficial owner of more than ten per centum (10%) of any class of any equity security which satisfies the requirements of Subsection 17.2, 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."* (emphasis supplied)

In relation to the aforesaid provision, the Implementing Rules and Regulations of the SRC, specifically SRC Rule 23, reads:

> *"1. Every person who is directly or indirectly the beneficial owner of ten percent (10%) or more of any class of any security of a company which satisfies the requirements of Subsection 17.2 of the Code, or who is a director or an officer of the issuer of such security, shall:*
>
> *xxx xxx xxx*
>
> *B. **within ten (10) days after the close of each calendar month** thereafter, if there has been any change in such ownership during the month, file a statement with the Commission, and with an Exchange if the security is listed on that Exchange, on Form 23-B indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during that calendar month; and*
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> *xxx xxx xxx"* (emphasis supplied)

[4] Republic Act No. 8799(2000).

The foregoing provisions merely demonstrate the state's policy of insuring full and fair disclosure of securities in order to protect the investors.[5] Such rule on disclosure is designed to assist in an informed investment decision those contemplating the purchase, holding or disposition of securities, thereby providing for the integrity of fair and orderly trading of securities.[6]

On the first issue, this Commission holds that the filing of Form 17-C by FDC on 12 December 2005 and the filing of Form 23-B by GIC on 10 January 2006 do not fully, accurately and fairly disclose the transaction that resulted in the change in ownership of FLI shares.

First, FDC's report in Form 17-C does not accurately disclose the number of shares conveyed by FDC to RECO. The said report provides:

> *"Filinvest Development Corporation ('FDC') has purchased from the existing bondholder the P1.2-Billion Convertible Bonds issued by FDC's subsidiary, Filinvest Land, Inc. ('FLI'), in 2002. The corresponding "Bond Sale and Purchase Agreement" was signed by FDC this afternoon. As payment for the bonds, the bondholder will receive a total payment of about P1.3 Billion in cash and* ***310 million existing FLI shares*** *owned by FDC. The purchase price covers the principal balance of the Convertible Bonds plus accrued interest and accumulated premium. In turn, FLI has expressed its intention to negotiate with FDC certain amendments to the terms of the Convertible Bonds in order to reduce the overall financial cost of the Convertible Bonds and extend their maturity by close to four years until 2010."* (emphasis supplied)

It should be noted that the actual transaction between FDC and RECO involved 309,520,254 shares only and not 310,000,000 shares. Thus, the report inaccurately included 479,746 shares.

Second, FDC's report in Form 17-C does not truthfully disclose the date of the said transaction. Based on GIC's Form 23-B and FDC's Form 23-B, the date of the said transaction occurred on 14 December 2005. On the other hand, FDC's Form 17-C was filed on and reported the transaction date as 12 December 2005, which is two (2) days ahead of the actual transaction disclosed by Form 23-B of both GIC and FDC. Thus, FDC's Form 17-C untruthfully reported a transaction which, in fact, has not yet occurred.

Lastly, FDC cannot rely upon GIC's Form 23-B as a full disclosure of the said transaction. GIC's disclosure in Form 23-B does not fully reveal the parties to the

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[5] *See* Sec. 2 of Securities Regulation Code.
[6] V. Gerard Comizio, *Keeping Corporate Information Secret: Confidential Treatment under the Securities Act of 1933 and the Securities Exchange Act of 1934*, 18 New Eng. L. Rev. 787 (1982-1983).

transaction. A careful examination of the said form merely reveals that GIC acquired 309,520,254 FLI shares. The form does not indicate that the said shares were acquired from FDC nor does it mention the percentage of beneficial ownership of FDC in FLI after the transaction. Thus, the disclosure made in GIC's Form 23-B cannot be fully relied upon in relation to the matters that FDC needs to disclose on its own Form 23-B.

Therefore, the Commission believes that the filing of Form 17-C by FDC on 12 December 2005 and the filing of Form 23-B by GIC on 10 January 2006 cannot be considered as substantial compliance of, nor a substitute for the disclosure required in FDC's Form 23-B.

On the second issue, this Commission holds that the penalty imposed upon FDC is only commensurate to its violation. It should be noted that the present case is already FDC's second violation of SRC Rule 23. In relation to FDC's first violation, CFD's Order dated 28 January 2005 reads:

> *"FILINVEST DEVELOPMENT CORPORATION having violated SRC Rule 23 for failure to file its Statement of Changes in Beneficial Ownership of Securities (SEC Form 23-B) covering its acquisition of Seventy Eight Million One Hundred One Thousand Three Hundred Nine (78,101,309) shares in FILINVEST LAND, INC. (FLI) was required to pay a fine of Fifty Thousand Pesos (P50,000.00) which it paid on January 28, 2005 under O.R. No. 5216722.*
>
> *The company is warned that, henceforth it shall endeavor to take such measures as will ensure full compliance with the requirements of the said Rule,* ***otherwise, the Commission will be constrained to impose heavier penalties upon the corporation and/or its responsible officer/s.****"* (emphasis supplied)

Thus, the second violation of FDC cannot be imbued with good faith nor an excusable oversight worthy of consideration since FDC was forewarned that a second violation of SRC Rule 23 will merit stiffer penalties.

WHEREFORE, premises considered, the instant appeal is hereby **DENIED** for lack of merit. Appellant Filinvest Development Corporation is ordered to settle the penalty of Four Million One Hundred Forty Eight Thousand One Hundred and Seventy One Pesos (Php4,148,171.00), to be paid in cash or by Manager's or Cashier's check to this Commission within fifteen (15) days from receipt of this Decision. Let the Corporation Finance Department be furnished with a copy of this Decision for its appropriate action.

SO ORDERED.

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Mandaluyong City, 25 November 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner