Republic of the Philippines
Department of Finance
Securities and Exchange Commission

FILINVEST DEVELOPMENT CORPORATION,

Appellant,

- versus -

SEC *En Banc* Case No. 04-15-369

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,

Appellee.

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DECISION

Pending consideration for the Commission is the *Motion to Withdraw "Memorandum on Appeal of Filinvest Development Corporation"* (Motion to Withdraw Appeal) filed by Filinvest Development Corporation (FDC) on 18 September 2015 praying that its Memorandum on Appeal be deemed withdrawn.[1]

In the Memorandum on Appeal[2] filed on 10 April 2015, FDC assailed the Order (Assailed Order)[3] of the Enforcement and Investor Protection Department (EIPD) holding the former liable for thirty-nine (39) counts of insider trading in violation of Section 27.1[4] of the Securities Regulation Code (SRC).[5] The EIPD held that FDC is an insider since it was a person controlling the issuer, i.e., Filivest Land, Inc. (FLI), as defined under Section 3.8 of the SRC.[6] As an insider, FDC executed thirty-nine (39) sell orders of FLI shares of stock from 17 January 2002 until 6 February 2002 while in possession of non-public, material information. Further, the EIPD stated that the material information is the issuance of convertible bonds by

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[1] *Motion to Withdraw Appeal* dated 14 September 2015.

[2] Memorandum on Appeal dated 10 April 2015.

[3] Assailed Order dated 23 March 2015.

[4] Section 27.1 of the SRC provides that 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 3.8, or such insider's spouse or relatives by affinity or consanguinity within the second degree, legitimate or common-law, shall be presumed to have been effected while in possession of material nonpublic 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 market to absorb such information: *Provided, however,* That this presumption shall be rebutted upon a showing by the purchaser or seller that he was aware of the material nonpublic information at the time of the purchase or sale.

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

[6] Section 3.8 of SRC defines an "insider" to include, among others, a person controlling the issuer.

FLI to GIC Real Estate Pte. Ltc. (GICRE), which may be converted to common shares at a price of not less than Php 1.70 but not more than Php 1.875 per share. In which case, on 23 March 2015, the EIPD imposed against FDC an administrative penalty in the amount of Seven Million Six Hundred Fifty Thousand Pesos (Php 7,650,000.00) pursuant to SEC Memorandum Circular No. 6, Series of 2005 (SEC MC 06-05). Thus, FDC prays that the Commission reverse the Order of the EIPD finding it liable for insider trading.

On 14 April 2015, FDC filed a *Submission* submitting to the Commission, for convenient reference, a "List of Annexes", which was not included in the Memorandum on Appeal.[7]

On 21 April 2015, the EIPD filed its *Reply Memorandum* praying that the Commission dismiss the instant appeal for lack of merit, and uphold its order finding FDC liable for the commission of insider trading.[8]

On 25 May 2015, FDC submitted an offer of settlement to the Commission pursuant to Section 55 of the SRC.[9]

On 4 August 2015, FDC received a letter from the EIPD informing it that the recommended settlement amount is Five Million Pesos (Php 5,000,000.00), and that a motion to withdraw the instant appeal should be included therein.[10]

On 14 September 2015, in compliance with the directive of the EIPD, FDC filed the Motion to Withdraw Appeal, as stated above, praying that the Memorandum on Appeal be deemed withdrawn.[11]

On 13 November 2015, the EIPD filed its *Manifestation*[12] stating that the Commission *En Banc* resolved, on 6 October 2015, to accept the Settlement Offer of FDC in the amount of Five Million Pesos (Php 5,000,000.00).[13] Pursuant to such resolution, the EIPD states that FDC paid the amount of Five Million Pesos (Php 5,000,000.00)[14] and the Commission posted the Notice of Settlement Agreement on the website of the Commission. Thus, EIPD states that the Motion to Withdraw Appeal may be granted and the appeal may be deemed withdrawn.[15]

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[7] Submission dated 13 April 2015.
[8] Reply Memorandum dated 17 April 2015.
[9] Motion to Withdraw, par. 3.
[10] *Id.*, par. 4.
[11] *Id.*, p. 3.
[12] Manifestation dated 12 November 2015.
[13] SEC En Resolution No. 569, series of 2015.
[14] Manifestation, par. 2 and Annex "A" (Original Receipt No. 1349543 issued by the Commission on 5 November 2015).
[15] *Id.*, par. 3.

We now resolve the Motion to Withdraw Appeal.

Under Rule 55.1 (Settlement Offer) of the Amended Implementing Rules and Regulations of the SRC, the proposer must, subject to the acceptance of the offer, waive all hearings and proceedings before the Commission.[16] In this case, pursuant to Rule 55.1, FDC upon the submission of its offer of settlement waived all hearings and proceedings before the Commission by the filing of the instant Motion to Withdraw. Further, the Commission En Banc resolved to accept such settlement offer. Thus, the granting of the Motion to Withdraw is warranted in this case and the Memorandum on Appeal is dismissed, considering such acceptance of the settlement offer by the Commission.

WHEREFORE, premises considered, considering the settlement offer submitted by Filinvest Development Corporation and the acceptance of the said settlement offer by the Commission,[17] the *Motion to Withdraw "Memorandum on Appeal of Filinvest Development Corporation"* filed by appellant is hereby **GRANTED**. This case is thus considered **CLOSED**.

SO ORDERED.

Pasay City, 9 August 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. ITERBO
Commissioner

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[16] SRC Rule 55.1(3)(D) provides:

"By submitting an offer of settlement, the proposer waives, subject to the acceptance of the offer:

i. all hearings pursuant to the statutory provisions under which the investigation or proceeding is to be or has been instituted;
ii. the filing of proposed findings of fact and conclusions of law;
iii. proceedings before, and an initial decision by, the appropriate office or division of the Commission so delegated;
iv. all post-hearing procedures; and
v. judicial review any court."

[17] SEC En Resolution No. 569, series of 2015.