



Republic of the Philippines
Department of Finance
Securities and Exchange Commission

In the Matter of:

**THE FIRST GALLEON FAMILY FUND, INC., THE
FIRST GALLEON FUND MANAGEMENT CORP.
AND EQUITABLE SECURITIES PHILIPPINES,
INC.**

SEC Admin Case No. 08-07-87

For: Petition for Revocation with
Prayer for Issuance of a Cease and
Desist Order

**ENFORCEMENT AND INVESTOR PROTECTION
DEPARTMENT,**

Petitioner.

X-----X

D E C I S I O N

This resolves the *Petition (for Revocation of Corporate Registration) with Prayer for Issuance of Cease and Desist Order*¹ filed on 01 December 2010 by Enforcement and Prosecution Department (**EPD**), now Enforcement and Investor Protection Department (**EIPD**), seeking to revoke the certificate of registration of THE FIRST GALLEON FAMILY FUND, INC.² (**FGFFI**), THE FIRST GALLEON FUND MANAGEMENT CORP. (**FGFMC**) and EQUITABLE SECURITIES PHILIPPINES, INC.³ (**ESPI**) on the ground of serious misrepresentation.

At the outset, it should be noted that the Commission already granted EPD's prayer for the issuance of a *Cease and Desist Order (CDO)* against FGFFI, FGFMC and ESPI in an *Order* dated 09 December 2010. The Commission made the CDO permanent in an *Order* dated 18 February 2011.

Facts of the Case

FGFFI is a domestic corporation registered with the Commission on 27 September 1990 bearing SEC Certificate of Registration No. 181897.⁴ Its primary purpose is "*To invest and re-invest in, sell, transfer, or otherwise dispose of the securities issued by the Philippine Government, its instrumentalities, subdivisions or agencies, prime commercial paper, equity securities and such other securities which the Securities and Exchange Commission may allow, and generally to carry on the business of an open-end investment company (mutual fund) in all the elements and details thereof.*"⁵

¹ Dated 30 November 2010.

² Formerly known as Magellan Income Fund Inc. – paragraph 12 of the Petition.

³ Formerly known as Ancemirco Development, Incorporated - paragraph 7 of the Petition.

⁴ Annex "G" of the Petition.

⁵ Annex "I" of the Petition.

FGFMC is also a domestic corporation registered with the Commission on 17 August 1990, bearing SEC Certificate of Registration No. 180370.⁶ Its primary purpose is *"To manage, provide and render administrative and portfolio management and investment advice, technical assistance and service for partnerships, corporations, natural persons and other entities, particularly open end investment companies (mutual funds) registered under the Investment Company Act (Republic Act No. 2969), and in connection therewith, as far as may be permitted by law, to provide continuous investment policy guidance and advice on the investment portfolio and arrange for the implementation of investment policy;"*⁷

Likewise, ESPI is a domestic corporation registered with the Commission on 27 June 1978, with SEC Certificate of Registration No. 80495⁸. Its primary purpose is *"To purchase, or otherwise acquire and own, hold, manage, use, underwrite, obtain an interest in, pledge, mortgage, assign, deal in, exchange, sell, distribute, and otherwise dispose of, alone or in conjunction with others, all kinds of securities, including, but not limited to, share of stock, bonds, debentures, notes, commodities, products, gold, drilling, monetary charges, trust certificates, trust indebtedness and any and all other kinds of properties of any corporation, association, partnership, syndicate, entity, person or governmental, municipal or public authority, domestic or foreign, and evidence of any interest therein; and to pay therefore stocks, bonds, or other evidences of indebtedness or securities of this or any other person, firm or corporation; and to promote, manage, participate in or act as principal, or agent for any underwriting, purchasing or selling syndicate or group, and otherwise to take part in and assist in any legal manner in the purchase, sale or disposition of any such securities; to own, manage and operate a seat or seats in a stock exchange or organization dealing with buying, selling, marketing, or underwriting of stocks, bonds, securities and the like and to furnish or disseminate information regarding stocks, bonds or securities."*⁹

Several Complaint-Affidavits supported by documents were filed with the Commission by investors, along with their requests for assistance regarding their investment with FGFFI.¹⁰ The complainant-investors allege that persons claiming to be agents of FGFFI offered them to avail of the "Smart/Super Smart Savings Program" (SSP). Some complainants-investors aver that the SSP was introduced to them by their friends who already invested in the Program. Some say that they became aware of the SSP through flyers which state that the said program is:

"a 60 month forced savings program for these [sic] who would like to become investors in The First Galleon Family Fund, Inc. but do not have immediately the amount required to invest in a mutual company. Through the Smart/Super Smart Savings Program, people from all walks of life can have access to a mutual fund company and enjoy the Free Benefits while they are still saving."¹¹

⁶ Annex "A" of the Petition.

⁷ Annex "C" of the Petition.

⁸ Annex "D" of the Petition.

⁹ Annex "F" of the Petition.

¹⁰ Annexes "J", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "T", "U", "V", "W", "X", "Y", "Z", "AA", "BB", "CC", "DD", "EE", "FF", "GG", "HH", "II" and "JJ" of the Petition.

¹¹ Annex "B" of Annex "J" of the Petition.

The copies of the flyers attached to the instant *Petition* also highlight that an investor can also open an account with merely three hundred to four hundred pesos (Php300.00-400.00), with higher earnings and add-on gifts ranging from 10%, 20% and 25%.¹²

The agents of FGFFI allegedly represented to the complainant-investors that the SSP is unique in that unlike the typical mutual fund which requires a one-time payment with the minimum amount of five thousand pesos (Php5,000.00), the SSP allows them to pay in installments, which will then be used to invest in the mutual funds issued by FGFFI when it reaches the threshold amount. It was also averred that investors may opt for daily, weekly or monthly contributions for five (5) years, and that if the investor chooses to pre-terminate or withdraw within the period, the full amount deposited plus the interest earned shall be returned within seven (7) days¹³.

Another benefit that attracted the investors to place their money in the program is the promise of a free comprehensive insurance protection package upon enrollment with the SSP¹⁴.

The marketing manager of FGFMC also allegedly said that aside from the benefits, the investors will get a commission if they recruit a down line (new investor) equivalent to 30% of the investment of their referral¹⁵.

Upon opening an account, the investors were given the following documents: 1.) proposal; 2.) Acknowledgement Receipt; 3.) Provisional and Official Receipts; 3.) Insurance Policies; 4.) Passbook; 5.) Statement of Account; 6.) Brochures; 7.) Depository Receipt.¹⁶

In their *Answer*¹⁷, Respondents FGFMC and ESPI aver that the EPD has no cause of action because there was no allegation to show that FGFMC and ESPI committed any of the acts that would be considered as grounds for revocation. They claim that they were never engaged in the sale of securities because the FGFMC is a mere underwriter of securities and a registered investment adviser of FGFFI, and the ESPI is a mere broker-dealer. Much is made of the statement that FGFMC, being only the manager of the resources and operations of FGFFI, the issuer of securities, and the statement that ESPI merely acts "as a stock broker, agent, mergers (sic), or counselors of any company..."¹⁸. FGFMC also makes much of the fact that the Commission's Market Regulation Department (MRD), now Market Securities Regulation Department (MSRD), wrote to FGFMC and ESPI on 02 August 2010 and 19 May 2010, respectively, acknowledging that FGFMC is an investment adviser and ESSPI is a broker-dealer. Respondents FGFMC and ESPI interpret this acknowledgement by MSRD as an admission that they are merely an investment adviser and broker-dealer and proof that they did not commit any act of offering to sell or selling securities.

¹² *Ibid.* See also attachments to Annex "K" of the *Petition*.

¹³ Paragraphs 22-23 of the *Petition*.

¹⁴ Paragraph 24 of the *Petition*.

¹⁵ Paragraphs 25; 27-30 of the *Petition*.

¹⁶ Paragraph 32 of the *Petition*; Note 10, *Supra*.

¹⁷ Dated 16 March 2011.

¹⁸ Page 9, par. 14, Note 13, *Supra*.

FGFMC and ESPI, a fund manager and licensed broker, respectively, launched Smart/Super Smart Savings Program for FGFFI. This is a fact admitted by FGFMC and ESPI in their *Answer*.¹⁹

In the same *Answer*, Respondents FGFMC and ESPI also argue that the *Petition* should be dismissed because the cause of action already prescribed. They argued that under Section 62.2 of the Securities Regulation Code²⁰ (SRC), "administrative cases for violations of said law, including Section 9 hereof, should be brought within two (2) years after the discovery of the facts constituting the cause of action and within five (5) years after such cause of action accrued."²¹ They argued that the alleged offer and sale of securities was committed sometime during the period from 1998 to 2000. It is also argued that assuming that the prescriptive period should be reckoned from the time of the discovery of the alleged violations, the Commission was already aware of the alleged violations in a letter dated 05 March 2004 from the MRD to ESPI²². In the said letter, the Commission received information from the public that the "ESPI/Galleon SMART SAVINGS PROGRAM" is being offered by FGFFI.

It should be noted that FGFFI did not file any *Answer* or responsive pleading to EPD's petition. Thus, in an *Order* dated 23 March 2011, the Commission, through the General Counsel, considered FGFFI to be "in default" pursuant to Section 3-12²³ of the 2006 SEC Rules of Procedure (2006 Rules).

EPD filed on 01 April 2011 its *Reply*²⁴ refuting all the allegations and arguments of Respondents' *Answer*. FGFMC and ESPI responded with a *Rejoinder*²⁵. The arguments set forth in these pleadings are discussed below.

Issues

Considering the allegations made in the pleadings, three issues need to be addressed to resolve this case, namely:

- I. Whether or not the Respondents, individually, or in collaboration, sold or offered to sell unregistered securities;
- II. Whether or not the action has already prescribed; and
- III. Whether or not the EIPD has a cause of action against the Respondents.

Ruling

¹⁹ Answer, p.2, par. 2.

²⁰ Republic Act. No. 8799 (2000).

²¹ Answer, p. 12, par. 23.

²² Annex "13" of the Answer.

²³ Section 3-12. 2006 Rules – Effect of Failure to Answer. – If the respondent fails to answer the complaint within the abovestated period, he shall be considered as in default. The Hearing Panel or Officer shall, *motu proprio*, proceed to render judgment granting the complaint such relief as the complaint may warrant, unless the Hearing Panel or Officer determines that the complainant should be required to submit *ex parte* additional evidence.

²⁴ Dated 30 March 2011.

²⁵ Dated 12 April 2011.

I. Selling or Offering to Sell Unregistered Securities

We find that the Respondents, in concerted acts, sold and/or offered to sell to the general public unregistered securities in the form of investment contracts, in violation of the law.

Among the documents given to the complainant-investors by Respondents is a PROPOSAL²⁶ signed by Gaizka Garamendi, the Chairman/President of both FGFMC and ESPI. The Proposal indicates that an investor will remit to ESPI the amount indicated in said proposal for a period of sixty (60) months as a savings plan for the purchase of shares in FGFFI. The Proposal also sets out that the investor appoints ESPI as his nominee for the purpose of the purchase until the investor decides to transfer them to his name or his assignee. ESPI shall, for the investor's account, purchase shares in FGFFI with his monthly remittances. The investor receives free insurance benefits as long as his monthly remittances continue.

Aside from the SSP, respondent FGFFI also launched another program called "CASH PLUS+ PLAN" where the investment will be doubled after five (5) years if the investor opts to invest his contributions or investment in the First Galleon Mutual Funds²⁷.

The complainant-investors could not claim the full amount of money initially deposited since it is subjected to pre-termination charges and penalties. Although these charges were indicted in the proposal, there were not sufficiently explained to the investors²⁸.

The complainant-investors filled out redemption forms for the withdrawal of their investments addressed to ESPI/FGFMC but their investments have not been refunded to them.²⁹ Thus, they came to the Commission to file their complaints.

The Corporation Finance Department (CFD), now Corporate Governance and Finance Department (CGFD), certified that the respondents FGFMC and ESPI are not registered issuers of securities called the "Smart/Super Smart Savings Program" or "Cash Plus+ Plan". FGFFI also has not filed a registration statement or applied for a license to offer and sell to the public the "Smart/Super Smart Savings Program" or "Cash Plus+ Plan". Neither did FGFFI secure exemption from the registration requirements under Section 10.2 of the SRC³⁰. In spite of this, evidence show that the respondents knowingly engaged in the offering and selling of the "Smart/Super Smart Savings Program" to the damage and prejudice of the public.

Based on the definition of securities provided in the SRC, the "Smart/Super Smart Savings Program" and the "Cash Plus+ Plan" are considered securities. Securities are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instruments, whether written or electronic in character. One of the types of securities are investment contracts³¹.

²⁶ Annex "A" of Annex "R" of the Petition.

²⁷ Paragraph 41 and Annexes "T", "U", "V", and "J" of the Petition.

²⁸ Paragraph 42 of the Petition.

²⁹ Petition, p. 15, par. 43; Annex "E" of Annex "J", Annexes "K", "N", "O" of the Petition.

³⁰ Paragraph 58 and Annexes "UU", "VV" and "WW" of the Petition.

³¹ Section 3.1 (b) of the SRC.

In this connection, an "investment contract" has been defined in Rule 3(1)(G) of the *Implementing Rules and Regulations* of the SRC in this wise:

"G. An investment contract means a contract, transaction or scheme (collectively "contract") whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others.

1. An investment contract is presumed to exist whenever a person seeks to use the money or property of others on the promise of profits.
2. A common enterprise is deemed created when two (2) or more investors "pool" their resources, creating a common enterprise, even if the promoter receives nothing more than a broker's commission."

In *Power Homes Unlimited Corporation v. Securities and Exchange Commission*³², the Supreme Court declared that an investment contract in our jurisdiction, to be a security subject to regulation by the Commission, must be proved to be **(1) an investment of money; (2) in a common enterprise; (3) with expectation of profits, (4) primarily from efforts of others.** Under this definition, whenever an investor relinquishes control over his or her funds and submits their control to another for the purpose of deriving profits from them, he or she is in fact investing in a security.³³

Applying the above to the circumstances surrounding the operations of the Respondents FGFFI, FGFMC and ESPI in their offer and sale of the SSP and the Cash Plus+ Plan, it should be noted that, it is undeniable that the investors entered into an agreement wherein the investor enrolls in the SSP and is required to make monthly contributions for a period of five (5) years. The investors are given a PROPOSAL, wherein the benefits of the SSP and becoming investors in the FGFFI is presented depending on the amount the investor is willing to pledge for his monthly contributions such as insurance and health benefits and an 8-10% return on their investment at the end of the five (5) year period³⁴. Then, the investors sign a certification that they understood the above-mentioned PROPOSAL and shall remit certain amounts monthly to ESPI, which is designated as their nominee for the purpose of purchasing shares of stock in FGFFI in the same document³⁵.

The investors receive reminders from FGFMC regarding their remittances and the status of their check payments in relation to the accounting of their fund³⁶. The investors are also issued their statements of account with the letterhead "Equitable/Galleon Statement."³⁷ The relations between the parties from the time of enrollment in the SSP to the month remittances shows that the investors and the Respondents recognize that mutual obligations arose for all the parties concerned after the enrollment of the investors in the SSP, proving the existence of a contract, for the investment of money to satisfy the first element.

³² G.R. No. 164182, 26 February 2008.

³³ *Investment Co. Institute v. Camp*, 274 F. Supp. 624 (D. D.C. 1967).

³⁴ Note 10, *Supra*.

³⁵ *Ibid*.

³⁶ *Ibid*.

³⁷ *Ibid*.

All the deposits made by the investors are pooled together and are placed in the control of ESPI, the nominee of the investors, who shall pool the deposits for future purchase of shares of stock in FGFFI. The stocks shall be in the name of ESPI until such time as the investors decide to transfer the shares to their own names or to their respective assignees. From the time that the investors deposit money under the SSP and the Cash Plus+ Plan, ESPI shall manage and control all the amounts deposited for the said scheme³⁸. This fulfills the element of a common enterprise.

As to expectation of profits, the investors, for their deposits with FGFMC/ESPI/FGFFI were promised eight to ten percent (8-10%) interest on their investment, bonuses and add-on gifts in the form of insurance coverage and free monthly contributions automatically credited to the investors' account.

Lastly, it is clear that the remittances made by the investors shall be controlled and managed by, primarily, ESPI as nominee of the investors, FGFMC and FGFFI. The investors merely have to deposit the amounts indicated in their respective plan proposal and need not do anything else to expect to earn a profit from the investments made. The investors have no participation in the management of their remittances and deposits. In fact, they rely solely on the efforts of the Respondents in order to generate any profit.

In connection with the above, it is evident that the SSP and Cash Plus+ Program proposed by FGFMC, ESPI and FGFFI and agreed to by the investors are investment contracts and, are, therefore, securities required to be registered with SEC.

From the foregoing, there is ample evidence to show that FGFMC, ESPI and FGFFI are engaged in the sale of securities without proper registration.

The SRC is explicit that securities must be registered with the SEC before being offered or sold to the public in order to afford the latter protection from investing in worthless securities as is provided in Section 8 of the said law.³⁹

While it is true that FGFFI is a registered issuer of securities, it has not filed a registration statement or applied for a license to offer and sell to the public the "Smart/Super Smart Savings Program" or the "Cash Plus+ Plan". FGFFI did not file any pleading to lodge its defense despite due notice, and was thus considered as "in default"⁴⁰. The fact that it violated the SRC for selling unregistered securities is clear, and reason enough for this Commission to revoke its registration.

On the other hand, while FGFMC and ESPI are indeed registered with the Commission as an investment adviser and broker-dealer, respectively, what is in question here is whether or not they acted beyond the authority granted them by the Commission in their respective licenses by selling unregistered securities, on top of being not registered issuers of securities called the "Smart/Super Smart Savings Program", the "Cash Plus+ Plan" or any other securities. Thus, they are not authorized by the Commission to offer and sell such investment

³⁸ Note 10, *Supra*.

³⁹ "Sec. 8 - *Requirements of Registration of Securities*. - 8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. x x x" (emphasis ours)

⁴⁰ Order dated 23 March 2011.

contract or any other securities, to the public. In spite of this, evidence show that the respondents knowingly engaged in the offering and selling of investment contracts to the damage and prejudice of the public.

FGFMC and ESPI themselves admitted in the *Answer*⁴¹ that they launched the "Smart/Super Smart Savings Program" for FGFFI.

Assuming that there was no admission in the *Answer*, the voluminous annexes to the *Petition* prove that FGFMC and ESPI has been participating in the offer and sale of the SSP. One such example is an internal Memorandum⁴² from FGFMC signed by AVP of Marketing Roldan R. Jamindang, informing its employees of the effectivity of the SSP stating "*our 2009 Smart Savings Program effective 01 April 2009 available for Direct Marketing*". Also stated is that "*Head Office will exercise its discretion in selecting accredited sales leaders to market above new savings program.*"

Also, an indication of the concerted effort to sell the SSP are the provisional receipts for "deposits" issued by ESPI, serving as installment deposits for the future purchase of FGFFI shares; the redemption forms addressed to "Equitable Securities/The First Galleon Fund Management Corporation"⁴³, statements of account⁴⁴ of the several deposits made by the investors, with the header clearly stating "Equitable/Galleon Statement", which details the amounts deposited and the estimated shares that the amount should be equivalent to, acknowledgement receipts issued by FGFMC⁴⁵, and depository receipts issued by FGFFI⁴⁶.

One document, with the letterhead "The First Galleon Fund Management Corp." also describes THE SUPER SMART ELITE TFP PLAN as "Direct Marketing System of The First Galleon Fund Management Corporation" with the Help of Equitable Securities (Phils.) Inc. Memorial Plan/Hospitalization Assistance".⁴⁷ It is supposed to be signed by the investor/saver with the undertaking that states:

"This is to confirm my intention to remit to Equitable Securities (Phils.) Inc. (ESPI) the amount of P_____ for the next 60 months as my lay-away savings plan to purchase The First Galleon Family Fund, Inc. (TFGFFI) shares under the Super Smart Elite TFP Plan.

That ESPI shall for my account purchase with my monthly remittances the equivalent number of shared in TFGFFI. I hereby appoint ESPI as my nominee for these purchases until I decide to transfer them to my name or my assignee.

That as I continue to make monthly remittances, The First Galleon Fund Management Corporation (TFGMC) shall extend to me and/or to my designated assignees, memorial plan assistance and daily hospitalization assistance as stated and computed overleaf. x x x"

⁴¹ Note 17, *Supra*.

⁴² Dated 27 March 2009.

⁴³ Annex "E" of Annex "J" of the *Petition*. See also Annexes "K", "N", "O" of the *Petition*.

⁴⁴ Annex "C" of Annex "J" of the *Petition*. See also Annexes "K", "N", "O", "P" of the *Petition*.

⁴⁵ Attachments to Annexes "K", "L" and "N" of the *Petition*.

⁴⁶ Attachments to Annex "P" of the *Petition*.

⁴⁷ Attachments to Annex "O" of the *Petition*.

Another example is the application form⁴⁸ where investors are made to sign to get the SSP. It states therein that:

"This is to certify that to my best knowledge, Mr./Mrs. _____ who I have referred as saver/investor of **The Smart Savings Program of The First Galleon Fund Management Corporations**, is in good health and qualified for the free insurance benefits given under this program." (Emphasis ours.)

It appears that even the corporations themselves are getting confused with which corporations should be issuing or selling the securities. This is because the three corporations, Respondents herein, are, by mutual cooperation, concertedly selling these unregistered securities to the public contrary to Section 8 of the SRC.

The mutual cooperation and participation of the three (3) Respondent corporations in the successful implementation of the SSP becomes evidently apparent from a perusal of their respective purposes in their Articles of Incorporation (AOI) as well as the fact that they are affiliated companies.

Based on each Respondent's AOI, the purpose of each company plainly states that FGFFI is in the business of an open-end investment company (mutual fund), while FGFMC acts as the fund manager and adviser of FGFFI and ESPI is a broker dealer in securities.

Pursuant to the records of the Commission, it appears that both FGFMC and ESPI are owners of substantial number of shares of FGFFI. Further, in the 2009 GIS of FGFMC, FGFFI is indicated as an affiliate corporation. On the other hand, FGFMC is reflected as the parent company of FGFFI in the latter's 2009 GIS.⁴⁹

Additionally, FGFMC and ESPI have an almost identical Board of Directors (BOD) both led by Mr. Gaizka Garamendi as President. The participation of FGFMC and ESPI in the offer and sale of SSP, through Mr. Garamendi, can be clearly seen in the numerous documents attached to the Complaint-Affidavits, wherein Mr. Garamendi signed various documents in representation of FGFMC and ESPI.

In this connection, FGFFI's participation in the offer and sale of the SSP, through Mr. Garamendi, although he is not president of the said corporation, in the issuance of FGFFI of depository receipts in favor of the investors and signed by Mr. Garamendi.

Lastly, the three (3) Respondents hold office at the same place - 2nd flr. Of the L&F Building, 107 Aguirre St., Legaspi Village, Makati City 1229.

From the foregoing, it is evident that the three (3) Respondent corporations are affiliated with inter-related interests. Evidence show that the three companies were used as instruments in the commission of the offense.

⁴⁸ Annex "A" of Annex "O" of the Petition.

⁴⁹ Annex "B" and "H" of the Petition.

II. Prescription of the Action

Respondent FGFMC and ESPI argue that the *Petition* should be dismissed because the action has already prescribed. The acts of offering and selling, which gave rise to the violations, were made in 1998 to 2000. They also argued that even assuming arguendo that the prescriptive period should be reckoned from the time of the discovery of the Commission of the violations, the Commission already knew in 2004 of the ESPI/Galleon Smart Savings Program, as mentioned in a letter dated 05 March 2004 from Director Jose P. Aquino of the MRD.

We are not persuaded.

The SRC, in Section 62.2 states that:

"62.2. No action shall be maintained to enforce any liability created under any other provision of this Code unless brought within two (2) years after the discovery of the facts constituting the cause of action and within five (5) years after such cause of action accrued."

In *Citibank vs. Ester H. Tanco-Gabaldon, et al.*⁵⁰, the Supreme Court expounded that the said provision refers only to civil liabilities arising from violations of the SRC, to wit:

"Section 62.2 should not be read in isolation of the other provision included in Section 62, particularly Section 62.1, which provides for the prescriptive period for the enforcement of civil liability in cases of violations of Sections 56, 57, 57.1(a) and 57.1(b).

Moreover, it should be noted that the civil liabilities provided in the SRC are not limited to Sections 56 and 57. Section 58 provides for Civil Liability For Fraud in Connection With Securities Transactions; Section 59 - Civil Liability For Manipulation of Security Prices; Section 60 - Civil Liability With Respect to Commodity Future Contracts and Pre-need Plans; and Section 61 - Civil Liability on Account of Insider Trading. Thus, **bearing in mind that Section 62.1 merely addressed the prescriptive period for the civil liability provided in Sections 56, 57, 57.1(a) and 57.1(b), then it reasonably follows that the other sub-provision, Section 62.2, deals with the other civil liabilities that were not covered by Section 62.1**, namely Sections 59, 60 and 61. This conclusion is further supported by the fact that the subsequent provision, Section 63, explicitly pertains to the amount of damages recoverable under Sections 56, 57, 58, 59, 60 and 61, the trial court having jurisdiction over such actions, the persons liable and the extent of their liability.

Clearly, the intent is to encompass in Section 62 the prescriptive periods only of the civil liability in cases of violations of the SRC.

The CA, therefore, did not commit any error when it ruled that "the phrase 'any liability' in subsection 62.2 can only refer to other liabilities that are also civil in nature. The phrase could not have suddenly intended to mean criminal liability for this would go beyond the context of the other provisions among which it is found."

⁵⁰ Citibank N.A. and The Citigroup Private Bank vs. Ester H. Tanco-Gabaldon, et al., G.R. No. 198444, September 4, 2013.

Given the absence of a prescriptive period for the enforcement of the criminal liability in violations of the SRC, Act No. 3326 now comes into play. *Panaguiton, Jr. v. Department of Justice* expressly ruled that Act No. 3326 is the law applicable to offenses under special laws which do not provide their own prescriptive periods.”

In the same case, the Supreme Court has pointed out that the SRC does not provide for a prescriptive period for filing administrative complaints against violation of the law and that an administrative complaint should only be barred if it is clear that there is laches on the part of the complainant. Thus:

“Section 54 of the SRC provides for the administrative sanctions to be imposed against persons or entities violating the Code, its rules or SEC orders. Just as the SRC did not provide a prescriptive period for the filing of criminal actions, **it likewise omitted to provide for the period until when complaints for administrative liability under the law should be initiated.** On this score, it is a well-settled principle of law that laches is a recourse inequity, which is, applied only in the absence of statutory law. And though laches applies even to imprescriptible actions, its elements must be proved positively. Ultimately, the question of laches is addressed to the sound discretion of the court and, being an equitable doctrine, its application is controlled by equitable considerations.”

The instant case is a petition for revocation which is administrative in nature. Applying the above legal principle, prescription will not apply.

III. Cause of Action

FGFMC and ESPI argue that there is a lack of cause of action. Both claim that while the *Petition* prays for revocation of registration of the Respondent corporations based on the grounds laid out in Section 6(i) of Presidential Decree 902-A, which are:

- “1. Fraud in procuring its certificate of registration;
2. Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public;
3. Refusal to comply or defiance of any lawful order of the Commission restraining commission of acts which would amount to a grave violation of its franchise;
4. Continuous inoperation for a period of at least five (5) years;
5. Failure to file by-laws within the required period;
6. Failure to file required reports in appropriate forms as determined by the Commission within the prescribed period”,

FGFMC and ESPI assert that none of the foregoing circumstances exist in the instant case. EPD, in its *Reply*, emphasized that since the SRC requires registration of securities before being offered or sold to the general public, the intentional offering to sell unregistered securities to the general public amounts to serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public.

EPD established that FGFFI, FGFMC and ESPI offered or solicited investments from the public in spite of not being authorized to sell the SSP and Cash Plus+ Plan, which is considered as an investment contract in violation of Sections 8 and 12 of the SRC.

Being the prosecuting arm of the Commission, EPD rightly acted upon the complaints of the public regarding Respondents' offering and selling of unregistered securities.

Having established that the Respondents committed the acts of selling and/or offering to sell to the public unregistered securities, we find that Respondents committed "serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public". The revocation of the certificate of registration of herein Respondents is hereby warranted.

WHEREFORE, premises considered, the Certificates of Registration of Respondents **THE FIRST GALLEON FAMILY FUND, INC., THE FIRST GALLEON FUND MANAGEMENT CORP. AND EQUITABLE SECURITIES PHILIPPINES, INC.** are hereby **REVOKED**.

This is without prejudice to any further actions that may be taken against the responsible incorporators, directors, and officers of the subject corporations.

Let a copy of this *Decision* be furnished to the Company Registration & Monitoring Department and the Economic Research & Training Department for their information and appropriate action. And, let this Revocation Order be posted at the Commission's website to give adequate notice to the public.

SO ORDERED.

City of Pasay, 19 July 2016.



TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE*
Commissioner



EPHYRO LUIS B. AMATONG
Commissioner

ANTONIETA F. IBÉ**
Commissioner



BLAS JAMES G. VITERBO
Commissioner

* On Official Business

** On Leave