THE PROPOSED STOCK MARKET UNIFICATION

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INTRODUCTION

There is a current controversy, involving the Securities and Exchange Commission on one hand, and some elements of the stock brokerage industry on the other, about a proposal to unify the Manila Stock Exchange and the Makati Stock Exchange. The Securities and Exchange Commission, which is the proponent of this unification plan, is determined to implement this directive notwithstanding serious opposition from the private sector.

This paper shall attempt to justify, from a purely legal point of view, a move by the Securities and Exchange Commission to compel or forcibly implement the unification of the Manila Stock Exchange and the Makati Stock Exchange.

The arguments principally relied upon by the supporters as well as the opponents of the unification plan shall be set forth in this paper. However, since this is not a feasibility study, we shall not go farther than perusing over the economic or financial considerations relative to stock market unification. Rather, we shall focus on and resolve the legal and constitutional questions involved. Does the Securities and Exchange Commission have the power to compel the stock exchanges to unify? Is the grant of that power by the legislature clear and unequivocal? Is it valid? Can the exercise of that power in all cases withstand constitutional scrutiny?

While this work is intended primarily to address a current issue, it may also serve as a useful reference for students and professionals, whether in law or in business, who find in stock markets and securities an interesting and worthwhile field of study or practice.

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BACKGROUND INFORMATION

The Manila Stock Exchange was organized on August 8, 1927. It suspended its operations during the war years and resumed its activities in January of 1946. On the other hand, the Makati Stock Exchange was organized on May 27, 1963, and started actual operations in mid-October of 1965. There were two other stock exchanges whose transactions, however, did not reach significant levels. This led to their downfall and eventual closure. They were the Metropolitan Stock Exchange, which was organized in 1968 and opened in 1972, and the Cebu Stock Exchange, which ceased its operations in 1972.

In general, there are at least two ways by which the two existing stock exchanges may be consolidated into one single entity: merger and unification. Merger entails the absorption of one bourse by the other. On the other hand, in unification, the existing stock exchanges are extinguished in favor of the establishment of a new single stock exchange.

The officials of the two existing stock exchanges want to have a clear-cut mandate first from their members before they decide on the issue of unification. They agreed, however, that a merger is out of the question because it will require valuation of assets.

THE IDEA OF UNIFICATION[1]

To help us understand why stock market unification is an issue, this section gives a brief description of the origin and evolution of the Securities and Exchange Commission's proposal for unification. To the same end, this section likewise gives a brief outline of the main arguments proffered by the parties for and against such proposal.

The Manila Stock Exchange and the Makati Stock Exchange hold a mutual distrust of the other dating back to 1963. It was at this time when a group of brokers bolted the Manila Stock Exchange and organized the Makati Stock Exchange.

[1] A great deal of the information in this section has been gathered from a number of articles and news reports in the Manila Chronicle and the Manila Bulletin in the period between January and April 1990. Particular mention is made of Joel Gaborni's article entitled "Exchanges Inching Closer to Unification" appearing in the Business Section of the Manila Chronicle, dated March 19, 1990. The author also interviewed the following: Mr. Irving Ackerman, member of the Makati Stock Exchange, and Atty. Eugenio Reyes, Director of the Brokers and Exchanges Department of the Securities and Exchange Commission.

The Securities and Exchange Commission found itself dragged into the dispute when it set as a condition for approving the operations of the Makati bourse that the new exchange would trade only in stocks not listed in Manila. This prompted the Makati Stock Exchange to file a suit before the Supreme Court seeking to compel the Commission to license it without the precondition.

In its celebrated decision of 1965, the Supreme Court ruled in favor of the Makati Stock Exchange. It chided the Securities and Exchange Commission for "[r]estricting free competition," and for permitting "[w]hat the law punishes as monopolies, as crimes against public interest."[2]

The Securities and Exchange Commission first considered unifying the two stock exchanges after receiving numerous complaints from foreign investors of discrepancies in the prices of some stocks listed in the two stock exchanges. Such discrepancies, it was noted, dampened the interest of foreign investors in the local market and resulted in losses for the buyer who buys his shares in the exchange with the higher price, and for the seller who sells in the bourse with the lower price. In addition, stock market prices are confusing, as often times the exchanges close at slightly different prices on the same issues. The experience of the losers does not speak well of a fair market.

Opponents of the move for unification believe otherwise. They say that there are winners as well from a discrepancy in prices -- the buyer who buys in the exchange with the lower price, and the seller who sells in the bourse with the higher price. In this connection, there is no evidence that foreign investors have ever stopped trading stocks because of these differences in price listings.

In recent months, the Securities and Exchange Commission openly stepped into the unification picture when its "behind-the- scenes" coaxing failed to bring the two bourses closer to accepting the proposal to unite into what will be called the Philippine Stock Exchange.

One of the reasons for unification is to eliminate "arbitrage," which happens when a speculator takes advantage of temporary price differences by buying cheaper at one bourse and selling higher in the other. Mr. Irving Ackerman, pioneering member of the Makati Stock Exchange and vocal opponent of the unification plan, argues that the arbitrage issue is an old argument that the Supreme Court decision of 1965 rendered invalid. In that decision, the tribunal threw out the contention of the Securities and Exchange Commission that limiting the number of exchanges to one would ensure that the buyer would get the lowest price possible for a stock. The Court pointed

[2] Makati Stock Exchange, Inc. v. Securities and Exchange Commission, 14 SCRA 620 (1965).

out that the price in one sale will tend to fix the price in subsequent sales, giving the buyer no chance to get a lower price, except if he went to another exchange.

It is widely held, however, that the Supreme Court may have made the landmark decision because the Securities and Exchange Commission did not then have the clear mandate to regulate the number of exchanges which was later given it by Presidential Decree No. 902-A,[3] to wit :

> Section 6. In order to effectively exercise such jurisdiction, the Commission shall have the following powers:
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> (j) To authorize the establishment and operation of stock exchanges, and such other similar organizations and to supervise and regulate the same; *including the authority to determine their number*, size, and location, in light of national or regional requirements for such activities with the view to promote, conserve, or rationalize investment; xxx. (italics supplied.)

Likewise, the Revised Securities Act of 1982[4] provides:

> Section 38. Powers with respect to exchanges and securities.-
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> xxx
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> (d) The Commission shall have *the authority to determine the number*, size,and location of stock exchanges and commodity exchanges and other similar organizations in the light of national or regional requirements for such activities with the view to promote, enhance, protect, conserve, or rationalize investment. xxx (italics supplied.)

The Securities and Exchange Commission has warned that it may be

[3] Reorganization of the Securities and Exchange Commission with Additional Powers and Placing the Said Agency Under the Administration Supervision of the Office of the President, PD 902-A (1976).

[4] Revised Securities Act, BP 178 (1982).

forced to take drastic action to force the unification. Such action may involve asking Congress to abolish Presidential Decree No. 167,[5] which provides for the automatic listing in one exchange of an issue listed in the other. The abolition of this automatic listing law is likely to open up fierce competition between the two exchanges for the right to list every new issue.

Armed with such legal weapons, the Securities and Exchange Commission has set a timetable of two years to complete the unification. This timetable will be easy to wreck, however, because all it takes is for one defiant broker to file a petition in Court questioning the validity of the order, thereby derailing the unification program and delaying it, perhaps, for ten years.

The continued refusal of the two bourses to operate a single exchange is causing the Securities and Exchange Commission to miss numerous opportunities to advance its grand program to restructure and modernize the local capital market. Unification is a vital part of that program.

Under that plan, which Chairman Rosario Lopez of the Securities and Exchange Commission said is patterned after the "Korean model," a united exchange, a central depository, a central clearing house, a Capital Market Institute, and the Securities and Exchange Commission itself will be housed under one roof to ease the Commission's task of monitoring the industry. With trading under only one roof, turnover of shares would be more efficient, and updating would be more accurate. Since the creation of one exchange would entail full computerization of all transactions conducted, this automation would speed up turnover, and consequently increase volume of trading.

However, a number of other issues have also been raised against the merger proposal. For one, proponents and supporters themselves are not completely agreed on the details of the plan, including the location and name of the unified exchange.

Small brokerage outfits also fear that they cannot survive in a large stock exchange, while others are convinced that the unified exchange itself will not be viable at this time. The officials of the Securities and Exchange Commission and supporters of the plan brush aside fears of running out of business as unfounded.

Makati Stock Exchange President Myron Papa believes that under one exchange, "everybody will still have the same opportunities" they have now, although percentage-wise the share of each brokerage firm, big or small, will shrink.

Mr. Papa and Chairman Lopez cite the example of Hong Kong which

[5] Providing for the Automatic Listing of Securities in All Stock Exchanges, PD 167 (1973).

experienced a one hundred percent increase in turnover a year after its four exchanges were merged. Mr. Ackerman, on the other hand, argues that there is no basis for comparing the local market to that of Hong Kong. He maintains that Hong Kong's stock market volume would have gone up without the merger as the market operates in a thriving economy. Mr. Ackerman's worry is on the ability of a unified exchange to raise funds for new facilities. He points out that acquiring top-of-the-line computers alone will cost about twenty million dollars, or more than twice the combined net worth of the Makati and Manila stock exchanges. The computation is based on the cost of new computers acquired by the Singaporean Stock Exchange.

On the assumption that funds to finance the new exchange will be borrowed, a future slump in the market may mean an unbearable financial burden on the exchange. It will be difficult to tell if the boom of the past four years will be reversed.

However, Chairman Lopez points out that the Makati Stock Exchange and the Manila Stock Exchange may not need to raise the funds outright. She explains that the Philippine Stock Exchange facilities, particularly its building, will be constructed under the BUILD, OPERATE, AND TRANSFER scheme. Under this scheme, the Philippine Stock Exchange will be a corporate entity using the assigned properties of the existing exchanges as initial capital. To ensure the continuous operation of the stock market, the Makati Stock Exchange and the Manila Stock Exchange will be dissolved only after the Philippine Stock Exchange becomes operational.

Mr. Ackerman debauches this scheme. According to him, the bourses have no such assignable properties (their assets consisting solely of their respective buildings and cash reserves) to be used as initial capital of the Philippine Stock Exchange, and their reserves are needed to augment, on a daily basis, investors defaults in the market to ensure and maintain the clearing house at a zero balance.

Protagonists on both sides of the issue appear set in their positions. Stock brokers maintain their loyalties to their respective exchanges. But all this bickering is useless as the Securities and Exchange Commission has already made up its mind - and that is unification at all costs.

The issue may indeed have already been decided and the only question that remains is how long it will take to unify the two stock exchanges. If the timetable of the Securities and Exchange Commission were to be followed, it may take fewer than the seven years it took Hong Kong bourses to merge. Then again, the dispute may deteriorate into a legal battle and may take ten years to settle.

THE LEGAL QUESTION

This section will tell us why, irrespective of the consequential costs and benefits to the market and the economy in general, the Securities and Exchange Commission has the legal power and the constitutional *imprimatur* to force or compel the unification of the two stock exchanges.

In a predominantly free market society such as ours, there is understandably much furor over every act of governmental regulation of those affairs which are traditionally left to private enterprise. This is because state regulation of commercial matters inevitably involves the curtailment of some freedom of right that is essentially associated with the idea of a free market.

The need for statutory regulation of securities exchanges is properly understood in the context of a consideration of the economic role played by them. Stock exchanges perform an important function in the life of a country. They serve, first of all, as an indispensable mechanism through which corporate securities can be bought and sold. To corporate enterprise such a market mechanism is a fundamental element in facilitating the successful marshalling of large aggregations of funds that would otherwise be extremely difficult of access. To the public the exchanges are an investment channel which promises ready convertibility of stock holdings into cash.[6]

Securities markets are, in contemplation of law and in fact, public markets. They are public both in the sense that large numbers of people are directly or indirectly involved in owning and trading securities, and in the broader sense that the performance of securities markets affects the general economy and well-being.[7]

In the United States, from whose securities laws our own have been patterned with modification,[8] the pattern of governmental entry, however, was by no means one of total displacement of the exchanges' traditional process of self- regulation. The intention was rather one of "letting the exchanges take the leadership with government playing a residual role. Government would keep the shotgun, so to speak, behind the door, loaded, well-oiled, cleaned, ready for use, but with the hope it would never have to be used."[9] Thus, the initiative and responsibility for regulations pertaining to the administration of their ordinary affairs remain with the exchanges themselves, presumably including the prerogative for self-determination. It is only where they fail to provide adequate protection to investors that the Securities and Exchange Commission is authorized to step in and compel them to do so.

Legal writers in the United States have been critical of the Securities and Exchange Commission's passive supervision of the exchanges. It has been described as a "tame watchdog," as a result of which "self-regulation has come to mean, at least to the industry, that the Securities and Exchange Commission will observe a rather passive role, leaving the industry to govern itself in its own wisdom."[10] Parenthetically, the history of regulatory agencies in the United States in general seems to demonstrate that shortly following the establishment of administrative procedures the regulatory agency usually becomes dominated by the industry which it was created to regulate.[11]

Whether our own Philippine counterpart Securities and Exchange Commission is more powerful in its own jurisdiction is not a question to be resolved here. However, it is worth mentioning that, by subsequent legislation,

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[6] R. JENNINGS AND H. MARSH, JR. SECURITIES REGULATION: CASES AND MATERIALS, 730 and 741 (3d ed. 1972).

[7] *Id.* at 2.

[8] The United States Securities and Exchange Commission was created by an act of Congress, entitled the Securities Act of 1934. It is an independent, bi-partisan, quasi-judicial agency of the United States Government. The laws administered by the Commission relate in general to the field of securities and finance, and seek to provide protection for investors and the public in their securities transactions. They include, in addition to the Securities Exchange Act of 1934, the Securities Act of 1933, and the Public Utility Holding Company Act of 1935. The Commission also serves as advisor to federal courts in corporate reorganization proceedings under the National Bankruptcy Act.

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In the Philippines, because of the prevalence of frauds relating to securities transactions, Commonwealth Act No. 83, otherwise known as the Securities Act, was enacted on October 26, 1936. This law, which was basically patterned after the United States Securities Acts of 1933 and 1934, created the Philippine Securities and Exchange Commission.

The main role of the Securities and Exchange Commission was to do a thorough analysis of every registered security, a scrutiny of the financial condition and operation of every applicant for a security issue, strict screening of every application for a broker's or a dealer's license, and close supervision of stock and bond brokers and stock exchanges.

[9] JENNINGS, *supra* note 6, at 82 *citing* DOUGLAS, DEMOCRACY AND FINANCE (Allen ed. 1940).

[10] *Id.* at 756 *citing* JENNINGS, SELF-REGULATION IN THE SECURITIES INDUSTRY: THE ROLE OF THE SECURITIES AND EXCHANGE COMMISSION, 29 Law and Contemporary Problems 663, 664-665 (1964).

[11] *Id.*

it is clear that the legislature did intend to broaden its powers. The committee recommending the passage of the then Parliamentary Bill No. 1674, otherwise known as the Revised Securities Act,[12] declared on second reading that the bill would "promote the growth of a healthy and viable securities mechanism, and thus offer more protection to the investing public."[13] The bill incorporated, *inter alia*, major changes in the old Securities Act, which was Commonwealth Act No. 83 of 1936.[14] It broadened the rule-making authority of the Securities and Exchange Commission. It granted that body powers with respect to (a) securities-related organizations; (b) associations of securities brokers, dealers, underwriters, transfer agents and salesmen; and (c) securities investors protection funds, and empowered the Securities and Exchange Commission to impose administrative sanctions.[15] It will also be noted that previous to the passage of this bill, Presidential Decree No. 902-A[16] was promulgated with the same end in view - that is, to broaden the Commission's powers. It provided for the reorganization of the Securities and Exchange Commission, granted it additional powers, and placed it under the administrative supervision of the Office of the President.[17]

Does the Securities and Exchange Commission then have the power to compel unification of the stock exchanges? How is this power properly invoked?

The resolution of these questions relies heavily upon an understanding of the nature of securities legislation.

In the early days many states in the United States enacted laws

[12] BP 178 (1982).

[13] 4 RECORDS OF THE BATASAN 1981-1982, 1587.

[14] The Securities Act, CA 83 (1936).

[15] RECORDS, *supra* note 13.

[16] PD 902-A (1976).

[17] On March 11, 1976, Presidential Decree No. 902-A was passed expanding the powers of the Securities and Exchange Commission to include quasi-judicial functions. The orders or decisions of the Commission sitting *en banc* were made appealable to the Supreme Court for review. On January 2, 1981, two additional departments were created, namely the Prosecution and Enforcement Department and the Supervision and Monitoring Department.

The Commission, which was initially entrusted to administer and enforce the provisions of the Revised Securities Act, today likewise administers and enforces at least fifty laws and presidential decrees. Among these are the Corporation Code, the Partnership Law, the Investment Company Act, and the Financing Company Act. Likewise, the Securities and Exchange Commission is charged with the supervision and control of a least 170,000 corporations and 45,000 partnerships.

regulating issues of securities. The popular term for such a state law was "Blue Sky Law."

The first Philippine Blue Sky Law, Act No. 2581,[18] was enacted to protect the public and honest investors against "speculative schemes which have no more basis than so many feet of blue sky" and "the sale of stock in fly-by-night concerns, visionary oil wells, distant gold mines, and other like fraudulent exploitations."[19] Blue Sky Laws have been held as not to constitute an undue delegation of legislative power.[20] The Securities Act of 1936,[21] creating the Securities and Exchange Commission and giving it the power to administer and enforce the provisions of the Act, being essentially Blue Sky Law, its constitutionality was sustained on the same grounds that Blue Sky Laws have been upheld.[22]

The question as to whether stock market unification, like the enactment of Blue Sky Laws, is in fact necessary for public interest considerations cannot propitiously be answered here. The difficulty lies in the fact that the needed statistical information can only be gathered through a collaboration of all the parties concerned, particularly the Securities and

[18] An Act to Regulate the Sale of Certain Corporation Shares, Stocks, Bonds and Other Securities, Act 2581 (1916).

[19] People v. Rosenthal, 68 Phil 328 (1939), It was argued in this case that while Act No. 2581 empowers the Insular Treasurer to issue and cancel certificates or permits for the sale of speculative securities, no standard or rule is fixed in the Act which can guide said official in determining the cases in which a certificate or permit ought to be issued. This makes his opinion the sole criterion in the matter of its issuance,, with the result that, legislative powers being unduly delegated to the Insular Treasurer, Act No. 2581 is unconstitutional. The Supreme Court ruled that the authority of the Insular Treasurer to cancel a certificate or permit is expressly conditioned upon a finding that such cancellation "is in the public interest." In view of the intention and purpose of Act No. 2581 - to protect the public against "speculative schemes which have no more basis than so many feet of blue sky" and against the "sale of stock in fly-by- night concerns, visionary oil wells, distant gold mines, and other like fraudulent exploitations," - the Tribunal held that "public interest" in this case is a sufficient standard to guide the Insular Treasurer in reaching a decision on a matter pertaining to the issuance or cancellation of certificates or permits., *See also* People v. Fernandez, 65 Phil 675 (1938), Hall v. Gerger-Jones 242 US 539, 37 S. Ct. 217 (1917), Caldwell v. Sioux Falls Stock Yards Co., 242 US 559, 37 S. Ct. 224 (1917).

[20] *Id.*

[21] CA 83 (1936).

[22] *Rosenthal*, 68 Phil 328; *Fernandez*, 65 Phil 675.

Exchange Commission and the leaderships of the stock exchanges. They are not in agreement on anything at this point in time. In any case, we are not here concerned with the economic but rather the legal ramifications of a stock exchange unification. Nonetheless, we shall proceed on the assumption that because of its nature, the Securities and Exchange Commission must always act with the view that public interest and the welfare of the economy must be subserved.

It is thus pertinent to inquire whether the Securities and Exchange Commission may in the public interest prohibit or make impossible the co-existence of more than one stock exchange, particularly on the ground that the operation of two or more exchanges adversely affects the public interest. At first glance, the answer should be in the negative. Paragraph (c) of Section 38 of the Revised Securities Act,[23] substantially reproduces Section 28b-13 of the Securities Act of 1936,[24] to wit:

> Section 38. Powers with respect to exchanges and securities.-
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> (c) *Whenever two or more exchanges exist*, the Commission may require and enforce uniformity in trading regulations in and/or between and among said exchanges. (italics supplied).

This provision envisions and therefore tacitly permits or tolerates at least, the operation of two or more exchanges. So, if the existence of more than one exchange were contrary to public interest, it is strange that the legislature having from time to time enacted legislation amending the Securities Act, has not barred multiplicity of exchanges.

It is submitted, however, that when Congress reproduced the said provision, it did so precisely because it reserved to the Securities and Exchange Commission the power to determine the number of exchanges as public interest may require. Nothing more can be inferred about this provision than that it merely suggests that the operation of two or more exchanges is not precluded or barred in all situations. In other words, if in order "to promote, enhance, protect, conserve, or rationalize investment,"[25] the Securities and Exchange Commission determines that prevailing market

[23] BP 178 (1982).

[24] CA 83 (1936).

[25] Sec. 38 (d), Revised Securities Act, B.P. 178 (1982).

conditions allow the operation of two or more exchanges, it may so allow it. This is the situation contemplated and sought to be governed by the provision in question. Necessarily, then, if on the other hand the Securities and Exchange Commission decides that there should be only one exchange, then it also has the power to carry that decision into effect.

Is that not legislative power unduly delegated to it by the legislature?

The answer is in the negative. As a matter of practice, administrative agencies may be allowed either "to fill up the details" of an already complete statute, or to ascertain the facts necessary to bring a "contingent" law into actual operation.[26] In the present case, the power to determine whether circumstances warrant the application of securities laws is better left to no agency of the government other than the Securities and Exchange Commission. It is in the field of securities that it possesses expertise. In this respect, it is submitted that there is no undue delegation.

Without passing upon the question of the actual necessity, for public interest, of stock exchange unification, we now proceed to an examination of the provisions of law from which the Securities and Exchange Commission derives its disputed authority.

Opponents of the move for unification maintain that the authority of the Securities and Exchange Commission to determine the number of stock exchanges[27] (1) refers only to its power to regulate or prohibit the entry of any new stock exchange not yet in existence, and (2) could not affect the rights already vested in the existing exchanges. In the latter case, it is argued

[26] Pelaez v. Aud. Gen., 15 SCRA 569 (1965), The Supreme Court upheld the principle that grants to administrative officers of powers related to the exercise of their administrative functions, calling for the determination of questions of fact, are valid. This rule, however, carried the admonition that although Congress may delegate to another branch of the government the power to fill in the details in the execution, enforcement, or administration of a law, it is essential that said law: (a) be complete in itself, setting forth therein the policy to be executed, carried out, or implemented by the delegate, and (b) fix a standard - the limits of which are sufficiently determinate - to which the delegate must conform in the performance of his functions, Gonzalo v. Central Bank, 70 SCRA 59 (1976) , The authority of the Central Bank to regulate "no-dollar" imports, owing to the influence and effect that the same may exert upon the stability of our peso and its international value, cannot be seriously contested. Such authority clearly emanates from its broad powers to maintain our monetary stability to preserve the international value of our currency, as well as its corollary power to issue such rules and regulations for the effective discharge of its responsibilities and exercise of powers., Araneta v. Gatmaitan, 101 Phil 328 (1957).

[27] Sec. 38(d), BP 178 (1982).

that any interpretation to the contrary would infringe upon the protections guaranteed under the Constitution. In particular, the applicability of the law to the stock exchanges already existing is said to be violative of the constitutional proscription against the impairment of the obligation of contracts.

Before these issues can be addressed, it is best to examine some fundamental rules in the interpretation of statutes.

The cardinal rule in the interpretation of all laws is to ascertain and give effect to the intent of the law.[28] Hence, all rules of construction or interpretation have for their sole object the ascertainment of the true intent of the legislature.[29]

As a general rule, the intent of the legislature to be ascertained and given effect is the intent expressed in the language of the statute.[30] If a statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as plain meaning rule or *verba legis*.[31] The fundamental rule that the legislative intent must be determined from the language of the statute itself must be adhered to even though extraneous circumstances tend to show that the legislature intended to enact something different from that which it did enact. Hidden meanings at variance with the language used cannot be sought out.[32]

Moreover, the principle that what is within the spirit of a statute is within the statute itself although it is not within its letter applies only where there is ambiguity in the language employed in the law. Where the law is clear and free from ambiguity, the letter of the law is not to be disregarded on the pretext of pursuing its spirit.[33]

We can now address the issue of the extent to which the power of the Securities and Exchange Commission to determine the number of stock exchanges applies.

There is no showing that the Legislature intended to limit the

[28] Macondray & Co. v. Eustaquio, 64 Phil 446 (1937); Manila Lodge No. 761 v. Court of Appeals, 73 SCRA 162 (1976).

[29] Tanada v. Cuenco, 103 Phil 1051 (1957).

[30] Regalado v. Yulo, 61 Phil 173 (1935).

[31] R. AGPALO, STATUTORY CONSTRUCTION, 93 (3d ed. 1986).

[32] *Id.*

[33] *Tanada*, 103 Phil.

operation of Section 38 (d) of the Revised Securities Act[34] to only new stock exchanges applying for entry into the regulated market. The law is clear and unambiguous. It provides that "the Commission shall have the authority to determine the number, size, and location of stock exchanges and other similar organizations." The legislature set no limit to that power other than that is should be exercised "in the light of national or regional requirements for such activities with the view to promote, enhance, protect, conserve, or rationalize investment."[35] We should not make a distinction where the legislature has intended none. Also, the disputed provision giving such power is a new one not found in the old Securities Act of 1936.[36] Thus, there is nothing inadvertent about its passage. The legislature should be credited with the knowledge and understanding of the consequences, imports, and extraneous circumstances surrounding the creation of a law. Such is the respect due it. If it gave the Securities and Exchange Commission such power, then absent any showing of unconstitutionality, the latter should possess it.

Statutes should also be construed in the light of the object to be achieved.[37] A construction should be rejected that gives to the language used in a statute a meaning that does not accomplish the purpose for which the statute was enacted, and that tends to defeat the ends sought to be accomplished. If indeed the Securities and Exchange Commission has determined that it is necessary in the public interest to have only one stock exchange, and if the construction is to be adopted that it cannot do so because the law applies only to prohibit the entry of any new stock exchange, not yet in existence, then the law, as thus construed, is rendered nugatory.

With respect to the non-impairment argument, it is one of the first principles of administrative law that a license or permit is not a contract between the sovereign and the licensee or permittee, and is not a property in any constitutional sense, as to which the constitutional proscription against

[34] BP 178 (1982).

[35] *Id.* at Sec. 38(d).

[36] In the original text of Bill No. 1674, or the Revised Securities Act, particularly page 70, lines 7 to 11, the power of the Securities and Exchange Commission relative to the physical attributes of stock exchanges was limited to the determination of their "number." The phrase "size and location" was merely added as an amendment by Assemblyman Davide, re-enacting the text of Presidential Decree No. 902-A, section 6, paragraph (j), which contained it. It follows as a logical inference that the legislature did intend that such a power of the Securities and Exchange Commission to determine the number of exchanges should exist.

[37] Munoz & Co. v. Hord, 12 Phil 624 (1909); Republic Flour Mills, Inc. v. Comm. of Customs, 39 SCRA 269 (1971).

impairment of the obligation of contracts may extend.[38] A license is rather in the nature of a special privilege, or a permission or authority to do what is within its terms. It is not in any way vested, permanent, or absolute.[39] A license granted by the State is therefore always revocable. As a necessary consequence of its main power to grant license or permit, the State or its instrumentalities have the correlative power to revoke or recall the same. And this power to revoke can only be restricted by an explicit contract upon good consideration to that effect.[40]

It is submitted that the Securities and Exchange Commission, in permitting the stock exchanges to operate, merely granted them a license, and did not, in contemplation of the law, execute a contract with them.[41] State regulation of the securities and stock markets sector of the economy is, as earlier discussed, deemed necessary to promote the public interest. Such power to regulate is vested in government, and in no other. Government did not contract out its power of regulation over the stock market when it permitted the stock exchanges to operate. Therefore, there is no impairment of the obligation of contracts where the Securities and Exchange Commission decides to dissolve the two exchanges to create a new entity.

Besides, even if we assume *arguendo* that there is a contract between the Securities and Exchange Commission and its licensee, not every impairment of the substance of a contract violates the Constitution. Jurisprudence has established the rule that a valid exercise of police power is superior to the obligation of contracts.[42] For the protection of the investors, as it is the avowed duty of the Securities and Exchange Commission to uphold the public interest, unification may be instituted as a valid police measure. The Commission has the power to determine the facts upon which it may wield its regulatory authority. This, as we have seen, cannot be successfully challenged.

[38] *Gonzalo*, 70 SCRA.

[39] *Id.*

[40] *Id.*

[41] This may be inferred from a reading of the case of Makati Stock Exchange v. SEC, 14 SCRA 620 (1965).

[42] Rutter v. Esteban, 93 Phil 68 (1953), The protective power of the State, the police power, may be invoked and justified by an emergency, and may be exercised upon reasonable conditions; Ongsiako v. Gamboa, 86 Phil 50 (1950).

CONCLUSION

A weakness in the existing regulatory and institutional framework for capital market development is the government's apparently greater concern for the regulation, rather than the promotion, of the capital markets. It seems that the stock market has operated principally under a regulatory, instead of a developmental, framework, and that the Securities and Exchange Commission has come to interpret securities legislation largely from a legal rather than economic and financial perspective. The Securities and Exchange Commission does not agree. It remains firm in its position that, as in the case before us, its directive to establish a unified exchange has a sound economic and financial basis. The Securities and Exchange Commission believes that there is little justification for maintaining two stock exchanges trading the same shares of stock, and that it is more practical to consolidate them.

Whether that is accurate is not for us to ascertain here. But one thing is certain. Because of the dispersed nature of the stock brokerage industry in general, it is difficult for the private sector to police and institute reforms within its ranks. Government should step in and take an active role in perpetuating the common weal.

The law upholds the authority of the government, particularly the Securities and Exchange Commission, which is the agency of the government most technically and administratively equipped to deal with securities and stock exchanges, to regulate the stock brokerage industry. There is now no question about that. Neither is there a question about whether the Securities and Exchange Commission may force unification upon the stock exchanges, without going beyond the limits of its authority. In other words, the move is perfectly legal.

But not all that is legal is necessarily good. As things are, no conclusion supported by clear, empirical facts and figures can be derived about the timeliness, propriety, or feasibility of a stock exchange unification. As pointed out earlier, the coordinated efforts of the Securities and Exchange Commission on one hand, and the stock exchanges on the other, are necessary for that purpose. Since the stock exchanges are not responding adequately to the call for unification, the Securities and Exchange Commission is bound to use the force of the law upon them. We can only speculate on the consequences.