

## Market regulators probing trades of unlisted Abra Mining shares

The Securities and Exchange Commission (SEC), The Philippine Stock Exchange, Inc. (PSE) and Philippine Depository & Trust Corp. (PDTC) are working closely together to investigate the trading of unissued and unlisted shares of Abra Mining and Industrial Corporation (AR), and to pursue the necessary actions to protect investors.

In the meantime, the PSE suspended trading in AR shares effective March 4 and until further notice, upon determining the following based on disclosures and reportorial submissions by the company, and reports by PDTC:

1. The number of fully paid issued and outstanding AR shares exceeds the number of the company's listed shares, in contravention of the PSE's rule that all fully paid issued and outstanding shares should be applied for listing;
2. The number of AR shares lodged with PDTC exceeds the number of the company's listed shares, in contravention of the PSE's rule that only securities approved for listing should be lodged with PDTC for trading; and
3. The number of AR shares lodged with PDTC exceeds the number of the company's issued and outstanding shares, meaning shares which are not yet reflected in the company's books have been lodged with PDTC and are being traded, in contravention of the provisions of Republic Act No. 11232, or the Revised Corporation Code of the Philippines (RCC).

In a parallel preliminary fact-finding investigation, the SEC found that AR had 258,957,666,755 shares lodged with PDTC as of February 16, 2021. The number exceeds by 186,010,784,181 shares the 72,946,882,574 shares the company has listed with PSE.

In its 2019 audited financial statements, AR only reported an issued and outstanding capital stock comprising 99,294,584,200 shares.

Section 173 of the RCC defines outstanding capital stock as "the total shares of stock issued under binding subscription contracts to subscribers or stockholders, whether fully or partially paid, except treasury shares." Accordingly, even shares, which have not been fully paid, are considered issued and must be reflected on the company's books.

Section 63 of the RCC, however, provides that "no certificate of stock shall be issued to a subscriber until the full amount of the subscription together with interest and expenses (in case of delinquent shares), if any is due, has been paid."

Section 62 of the RCC further provides that the certificate should be signed by the president or vice president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation.

In order to lodge securities with PDTC, the certificates covering the securities must be delivered to the transfer agent. Once lodged in the central depository, the securities are deemed fungible and may be used for settlement of exchange trades.

The transfer agent, as an extension of the corporate secretary of the corporation, has the pertinent information, and thereby has the sole authority and duty to certify that each share meets PDTC's and the PSE's respective requirements for lodgment.

Among the requirements is that the transfer agent must issue or register only those securities of the corporation that are authorized for issuance and listing by the PSE, and must timely notify PDTC if the shares delivered are found not valid or defective.

Defective securities are those, whether or not evidenced by a certificate, which are counterfeit, invalid, forged, improperly altered, non-negotiable, subject to an adverse claim, not free from any liens, encumbrances, assessments or charges of any kind, subject to any restriction or prohibition on transfer through the PDTC system, or otherwise defective.

Records showed that each and every AR share that had entered the system was confirmed and cleared by the transfer agent for lodgment.

The SEC, in coordination with the PSE and PDTC, will continue investigating the issue not only to resolve the current incident but also to find system-wide measures to prevent its recurrence. In the meantime, AR was ordered to submit its proposed actions to address the discrepancies in its issued, outstanding, listed and lodged shares.

The SEC, PSE and PDTC will apprise the public of any developments on the matter.