

Private Placements and Minority Interests: The Philippine Case

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Some of the biggest listed Philippine companies had issued more shares through private placements. In most cases, the private placement offer prices are at a significant discount over the prevailing market price of the stock at the time of the offer. This study attempted to quantify wealth loss effects of private placements on minority stockholders and to assess the adequacy of regulatory safeguards on this practice. The roles of the Philippine Stock Exchange and the independent directors are also examined in protecting the interest of small investors with respect to this issue.

1 Introduction

Among the large listed Philippine companies that have raised additional funds through private placements are Ayala Corporation, Metro Pacific Investments Corporation, SM Investments Corp., JG Summit Holdings, Inc. and GT Capital. Section 1, Article II of the Philippine Stock Exchange (PSE) revised listing rules defines private placement as the sale of securities to less than 20 persons. Investors in private placements can be large banks, mutual funds, and pension funds.¹ This mode of financing expedites fund raising activities and allows controlling stockholders to choose investors and potential business partners.

Private placements can be a direct sale of new shares to a few investors just like what Megaworld did when it sold more than ₱10 billion worth of shares to Alliance Global, Inc., its parent company, in 2013. Another form is a top-up placement and subscription agreement where the vendor or seller of the shares will subscribe to exactly the same number of shares at the same price they sold such shares to private investors. For example, on February 10, 2015, Metro Pacific Holdings, Inc. sold 1.812 billion Metro Pacific Investments Corp. (MPI) shares at ₱4.90 per share or a total of ₱8.88 billion to institutional investors. The offer price of ₱4.90 gave its investors 2.75% discount to MPI's 30-day volume weighted average and 6.5% discount from its closing price of ₱5.24 on February 9, 2015.² Subsequently, Metro Pacific Holdings, Inc. subscribed to exactly the same number of new MPI shares at the same price of ₱4.90 per share. Most of the private placements in the Philippines are of this nature. As the above example suggests, private placements are usually made at a significant discount on the prevailing market price of the stock.

This study attempts to quantify the wealth loss effects of private placements on minority stockholders and to assess the adequacy of regulatory safeguards concerning this practice. The study is focused on the private placements issued at a discount that comprises 76% of the private placements in the sample occurring in the period 2010 to 2015.

2 Review of Literature

The studies that tried to determine the effects of private placements on share prices are mixed. Among the studies that showed positive effects on share prices on private placement announcement dates include those of Wruck (1989) and Hertz and Smith (1993), which used US data.

Wang and Li (2015) studied the effects of private placements using Chinese A-share listed companies that raised funds through this mode of financing in 2010. Their study showed negative returns in the short run and in the long run. Lin and Gannon (2005) studied the effects of private placement on Australian companies in the biotechnology and health care sector. They found significant negative cumulative abnormal returns following private placements in the short run for

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¹ Retrieved from <http://www.investopedia.com/terms/p/privateplacement.asp>

² From Krista A.M. Montealegre, "Metro Pacific Boosts Infrastructure War Chest, Businessworld (February 10, 2015). Retrieved from <http://www.bworldonline.com/content.P?section=Corporate&title=metro-pacific-boosts-infrastructure-war-chest&id=102519>

their main samples and large issues. However, for the same period, positive cumulative abnormal returns were observed for small issues.

Chen, Ho, Lee, and Yeo (2002) studied the wealth effects of private placements in Singapore. The study shows that private placements generally result in negative wealth effect. Barclay, Holderness, and Sheehan's study (2007) provided mixed results on the effects of private placements using US data. Their study showed that the effects in the short run depend on the type of buyer. Positive wealth effects were observed with private placement where buyers signified their intention to be active in the firm. Otherwise, announcement returns were almost zero.

Mikkelson and Partch (1985) studied secondary distributions through block sales. Their study showed that significant price declines were observed at the initial announcement of these block sales. The price declines were larger for sales made by directors and officers, but were significant for all types of sellers and for large and small offerings. There were no significant price declines observed at the offering date when such sales are announced in advance. This study provided evidence on the Scholes' hypothesis that the market infers unfavorable information about the firm from such block sales.

Scholes (1972) made empirical tests on the two hypotheses regarding the operation of the securities markets: (1) substitution hypothesis, which defines the securities markets to compose of different financial instruments that investors can consider in their portfolio and that investors, both individuals and corporations, can alter their security holdings at approximately the prevailing market price, and (2) selling pressure hypothesis, which assumes that a security is assumed to be a unique commodity to an investor with a low cross-elasticity of demand with other securities and that large block sales of securities would lead to price declines and such declines would be a function of the size of the offer. Scholes (1972) showed a permanent average two percent loss on the block sales related to secondary distribution. He concluded that such decline was not attributed to the size of the offering but possibly due to adverse information about a firm. He also concluded that, on the average, there were no excess returns earned by the buyers of the large-block distribution of shares.

Graham and Harvey (2001) conducted a survey to chief financial officers about cost of capital, capital structure, and capital budgeting by asking more than 100 questions. The survey was sent to more than 4,000 companies and generated 392 respondents. Among the findings of this survey is a support to previous studies on "window of opportunity" where companies are more inclined to issue shares of stocks when prices are overvalued.

Baker and Wurgler (2002) studied the effects of equity market timing on the capital structure of a firm using market-to-book ratio to measure timing opportunities. Equity market timing hypothesis suggests that firms are more likely to issue shares of stocks when market values are high in relation to book and past market values, and to repurchase shares when market values are low. The results showed that the propensity of a company to issue shares depends on its leverage position as measured by book debt divided by total assets. Low-leverage firms are inclined to issue shares when valuations are high while high-leverage firms tend to issue shares when their valuations are low. The study also showed that the effects on capital structure are persistent.

In sum, the bulk of the studies cited above indicate that private placement result in negative returns to existing shareholders.

3 Methodology

3.1 Description of Data Set and Model Specification

Private placements from listed Philippine companies from 2010 to 2015 are the subject of this study. Seventeen (17) private placements were identified for this period based on disclosures at the Philippine Stock Exchange and news articles. These private placements were undertaken by 10 PSE-indexed stocks and three non-PSE indexed stocks. The cumulative amount of funds generated from these private placements was ₱139.7 billion. Table 1 shows the list of the companies included in the study. The table also shows the sector where these companies come from, the size of the offer, and the weight in the index of indexed stocks as of January 8, 2016.

Table 1. List of Companies Included in the Study, (2010-2015)

	No. of Private Placements	Sector Index	Size of the Offer in Millions of ₱	Weight in PSEI as of January 8, 2016
PSEi-Indexed Stocks				
Ayala Corporation	1	Holding Firm	12,400	5.85%
Ayala Land, Inc.	1	Property	16,000	8.18%
First Gen	1	Industrial	7,500	0.86%
GT Capital	1	Holding Firm	9,848	3.54%
JG Summit Holdings, Inc.	2	Holding Firm	14,275	5.83%
Megaworld	1	Property	10,725	1.43%
Metro Pacific Investments Corp.	3	Holding Firm	23,629	2.34%
Petron Corporation	1	Industrial	5,405	0.49%
SM Investments Corp.	1	Holding Firm	6,525	10.06%
Universal Robina Corp.	2	Industrial	<u>19,440</u>	<u>5.84%</u>
			<u>125,747</u>	<u>44.75%</u>
Non-PSE Indexed Stocks				
Global Estate Resorts, Inc.	1	Property	5,650	
Nihao	1	Mining and Oil	388	
RCBC Bank	1	Financial	<u>7,950</u>	
			<u>13,988</u>	
Grand Total	17		<u>139,735</u>	

The five PSEi-indexed holding companies included in the study are engaged in different types of unrelated businesses such as power generation and distribution, gaming, food and beverage, telecommunication, financial services and property development. Collectively, the firms in the study represent diverse business sectors in the Philippines.

Some of these subsidiaries are listed and are also part of the 30 stocks in the PSEi. As a group, these subsidiaries have a weight of 28.73% in the index as of January 8, 2016 (see Table 2).

Table 2. Weights in the Index of PSEi- Indexed Listed Subsidiaries of Five Holding Companies that did not have Private Placements from 2010-2015 (as of January 8, 2016)

PSEi-indexed Subsidiaries	Parent Company	Sector Index	Weight in PSEI as of January 8, 2016
Banco De Oro (BDO)	SM Investments Corp.	Financial	5.38%
Bank of the Phil. Islands (BPI)	Ayala Corporation	Financial	5.21%
Energy Development Corp. (EDC)	First Gen	Industrial	1.77%
Emperador (EMP)	Alliance Global, Inc.	Industrial	0.92%
Globe Telecom (GLO)	Ayala Corporation	Services	1.73%
Metrobank (MBTC)	Financial	Financial	3.91%
MERALCO (MER)	Metro Pacific Investments Corp.	Industrial	2.24%
Robinsons Land Corp. (RLC)	JG Summit Holdings, Inc.	Property	1.35%
SM Prime Holdings, Inc.	SM Investments Corp.	Property	<u>6.22%</u>
Total			<u>28.73%</u>

The PSEi-indexed stocks included in the study and their listed PSEi-indexed subsidiaries which did not have private placements in the 2010-2015 period have a total weight of 73.48% in the index as of January 8, 2016.

To determine the effects of private placements on share prices, daily stock returns were used. Data for daily stock prices and the Philippine Stock Index (PSEi) were taken from Thomson Reuters Eikon.

The market-adjusted returns model used by Brown and Warner was applied in measuring excess returns. Brown and Warner (1980) defined abnormal returns as “the extent to which security returns are different from those which have been appropriate given the model determining expected equilibrium returns” (p. 205).

The market-adjusted returns model is a restricted market model with α_i and β_i constrained to be 0 and 1, respectively. This model relates the returns of a security to the returns of the market. The use of this model requires a diversified set of samples to approximate the market.

The following variables are defined based on this model:

$$A_{i,t} = R_{i,t} - R_{m,t} ; i = 1, \dots, n \quad (1)$$

where

$A_{i,t}$ = excess return of security i on day t

$R_{i,t} = [(P_{i,t} - P_{i,t-1}) / (P_{i,t-1})]$
= unadjusted return of security i on day t

$P_{i,t}$ = closing price of security i on day t

$R_{m,t} = [(I_{m,t} - I_{m,t-1}) / (I_{m,t-1})]$
= return on the PSEi on day t.

$I_{m,t}$ = closing PSEi level on day t

$\bar{A}_t = \frac{1}{n} \sum_{i=1}^n A_{it}$
= Average excess return on a portfolio of n stocks at day t.

The test statistic for the daily excess returns is:

$$t\text{-statistic} = \bar{A}_t / \hat{S}(\bar{A}_t) \quad (2)$$

where

$$\hat{S}(\bar{A}_t) = \sqrt{\frac{\sum_{i=1}^n (A_{it} - \bar{A}_t)^2}{(n-1)}}$$

The formula for cumulative excess returns (CA) for a portfolio of n stocks is shown below (Ritter, 1991):

$$C\bar{A}_{t,k} = \sum_{t=1}^k \bar{A}_t, \dots, k = 1, 2, \dots, k \quad (3)$$

The test statistic for the cumulative market adjusted returns is:

$$t\text{-stat} = [(C\bar{A}_t) (\sqrt{n_t}) / csdt] \quad (4)$$

where:

$$csdt = [(t \times var + 2(t-1) \times cov)]^{1/2}$$

t = refers to the day in the event window

Var = is the average cross-sectional variance over the window

Cov = first order autocovariance of the market adjusted return series

3.2 Peso Value of the Loss to Minority Stockholders

To estimate the peso value of the loss to minority stockholders, the negative excess returns were multiplied by the minority stockholders' percentage share in the market capitalization of the subject companies as of December 31, 2015. The share of the minority interest was measured based on the free float of these companies.

3.3 Rules and Regulations on Private Placements

The following Philippine corporation law provisions, Philippine Stock Exchange rules, guidelines and rule interpretations and Securities and Exchange Commission codes related to private placements were analyzed:

1. Section 39 of the Corporation Code of the Philippines (Batas Pambansa Bilang 68)
2. Article V – Additional Listing of Securities
3. Interpretation of the Rule on Additional Listing of Shares for Placing and Subscription Transaction
4. Section 6 of “The Corporate Governance Guidelines for Companies Listed on the Philippine Stock Exchange” which enumerates the recommended measures on protecting minority interests
5. Revised Code of Corporate Governance which applies to corporations that sell equity or debt securities to the public

4 Findings

Of the 17 samples, four were offered at a premium compared to closing prices a day prior to announcement. These are Megaworld (MEG), Global Estates Resorts, Inc. (GERI), Universal Robina Corporation (URC) for its 2012 private placement, and Rizal Commercial Banking Corporation (RCBC), while the others in the sample were offered at a discount.

The total sample has an average discount of 5.34% based on the closing prices a day prior to announcement date and private placement offer price (see Table 3). If we take out those offered at a premium, the average discount is 10.72%. Note however that some private placements (e.g., Nihao) were offered at as high as 55% discount compared to the closing price a day prior to the announcement date. Petron Corporation was offered at more than 14% discount, while one of the private placements of JG Summit Holdings was offered at a discount of approximately 13%. Taking out Nihao, which was offered at a discount of 55%, and taking out all the other four issues offered at a premium, the average discount was 7.06%. In the US, private placements made from 1995 to 2007 were offered at an average discount of 13% (Chakraborty & Gantchev, 2012).

Table 3. Private Placement (PP) Discount As Compared to Closing Prices Prior to Announcement Date

	PP Announcement Date	PP Offer Price	Stock Price a Day Prior to Announcement	PP Discount
Ayala Corporation	November 20, 2014	660.00	717.00	-7.95%
Ayala Land, Inc.	January 12, 2015	33.00	35.00	-5.71%
First Gen	January 21, 2015	25.25	26.00	-2.88%
GT Capital	February 3, 2015	1,130.00	1,180.00	-4.24%
JG Summit Holdings, Inc. -1	January 21, 2015	61.00	70.05	-12.92%
JG Summit Holdings, Inc. -2	February 2, 2012	25.00	28.35	-11.82%
Megaworld	May 24, 2013	4.29	3.93	9.11%
Metro Pacific - 1	February 10, 2015	4.90	5.24	-6.49%
Metro Pacific -2	January 23, 2013	4.60	4.91	-6.31%
Metro Pacific -3	July 9, 2011	3.60	3.79	-5.01%
Petron Corp.	March 28, 2014	11.50	13.40	-14.18%
SM Investments Corp.	August 2, 2013	900.00	961.50	-6.40%
Universal Robina Corp. -1	October 4, 2013	115.00	116.00	-0.86%
Universal Robina Corp. - 2	June 4, 2012	62.00	61.00	1.64%
Non-PSE Indexed Stocks				
Global Estate Resorts, Inc.	June 21, 2013	2.26	1.91	18.32%
Nihao	December 30, 2010	1.35	2.97	-54.55%
RCBC Bank	September 30, 2014	64.00	53.60	19.40%
Average discount for all				-5.34%
Average discount without those offered at premium				-10.72%
Average discount without Nihao and those offered at premium				-7.06%

Using the market-adjusted returns model to compute abnormal or excess returns, the average excess returns for those offered at a discount on the announcement date was -2.35%. Cumulative

excess returns at announcement dates plus five trading days and 10 trading days from the announcement dates were -2.54% and -3.01%, respectively (see table 4).

Table 4. Excess Returns for PP Offered at a Discount

	Excess Returns at Announcement Date	Cumulative Excess Returns (5 Days After)	Cumulative Excess Return (10 Days After)
PSE Index Stocks			
Ayala Corporation	-4.87%	-4.09%	-4.68%
Ayala Land, Inc.	-2.73%	-2.35%	-4.12%
First Gen	0.29%	16.02%	12.90%
GT Capital	1.93%	0.52%	-0.80%
JG Summit Holdings, Inc.	-0.50%	-11.10%	-10.87%
	-1.73%	-7.83%	-10.06%
Metro Pacific Investments Corp.	-4.39%	-3.61%	-2.45%
	-2.04%	3.58%	1.08%
	-5.37%	-7.17%	-5.93%
Petron Corporation	-12.17%	-11.19%	-7.47%
SM Investments Corp.	-6.67%	-12.04%	-18.98%
Universal Robina Corp.	1.67%	1.53%	4.24%
Non-PSE Index Stocks			
Nihao	6.02%	4.69%	8.00%
Average excess returns without those offered at premium	-2.35%	-2.54%	-3.01%
Average excess returns without Nihao, FGEN and those offered at premium	-3.35%	-4.89%	-5.46%

While the average negative excess returns appeared to be small, such negative excess returns went to as high as 12.17% on the announcement date in the case of Petron Corporation. Cumulative negative excess returns for five days and 10 days went to as high as 12.04% and 18.98%, respectively, in the case of SM Investments Corp.

As shown in Table 4, there were two stocks where, despite being offered at a discount compared to closing prices a day before the announcement, positive excess returns were observed. This was true for FGEN which registered cumulative excess returns of 16.02% and 12.90% for five days and 10 days, respectively, and for Nihao, which was offered at 55% discount compared to its closing price a day prior to the announcement date. In the latter, the stock registered positive cumulative excess returns of 4.69% and 8% for five days and 10 days, respectively. The computations considered taking out the effects of these two outliers.

As shown in Table 4, the average negative excess returns at the announcement date and the negative cumulative excess returns for five days and 10 days increased to 3.35%, 4.89% and 5.46%, respectively, when the two outliers were excluded in the computations

An estimate of the loss of value to minority stockholders was made based on the market cap of the companies and their free float as of December 31, 2015 (see Table 5).

Table 5. Summary of Losses to Minority Stockholders based on Market Cap as of December 31, 2015

	Announcement Date	Cum. Excess Returns (5 days after)	Cum. Excess Returns (10 days after)
Average excess returns without those offered at premium in %	-2.35%	-2.54%	-3.01%
Estimated Loss to Minority Stockholders in ₱	28,632,671,494	30,947,653,444	36,674,187,743
Average excess returns without those offered at premium, Ni and FGEN	-3.35%	-4.89%	-5.46%
Estimated Loss to Minority Stockholders in ₱	39,870,797,764	58,199,463,005	64,983,449,490

As shown in Table 5, a 2.35% loss is equivalent to more than ₱28 billion loss to minority stockholders. For negative cumulative excess returns after 10 days, loss to minority stockholders could be as high as ₱65 billion.

Table 6 shows that for the daily returns, there are no statistically significant daily excess returns at 5% critical level. However, for the cumulative negative excess returns, it was statistically significant at 5% critical level at the announcement date represented by Day 1 and for the next three days after the announcement date represented by Days 2 to 4.

The negative excess returns shown above supports the study of Graham and Harvey (2001), where two-thirds of the 392 CFOs who responded to their survey revealed that their decisions to use equity financing was contingent on the degree by which their shares were overvalued or undervalued).

Table 6. Summary of Results

Day	Mean	t-stat	CA	t-stat
1	-3.35%	(0.83)	-3.35%	(2.76)
2	-1.63%	(0.37)	-4.98%	(2.93)
3	-0.10%	(0.08)	-5.08%	(2.45)
4	-0.69%	(0.94)	-5.78%	(2.41)
5	0.58%	0.32	-5.20%	(1.94)
6	0.31%	0.17	-4.89%	(1.67)
7	0.32%	0.26	-4.57%	(1.45)
8	0.13%	0.10	-4.44%	(1.31)
9	-0.65%	(0.25)	-5.09%	(1.42)
10	-0.07%	(0.07)	-5.15%	(1.37)
11	-0.30%	(0.24)	-5.46%	(1.38)

The results of this study also seem consistent with the private placement studies of Wang and Li (2015) for Chinese companies and Chen et al. (2002) for Singaporean companies where negative abnormal returns were observed after the announcements of private placements. Financial theorists such as Ross (1977) and Myers and Majluf (1984) tried to explain the observed bias of companies against equity financing. The downward pressure on the announcement of stock issuances was confirmed by studies including that of Asquith and Mullins (1986) where 531 primary and secondary offerings from 1963 to 1981 were studied. Their study showed a two-day -2.7% returns for primary issues and -2% for secondary issues.

Since our data also show that the prices post placement lead to excess negative returns and substantial losses to existing shareholders as shown in Table 5, this brings up the issue of providing adequate safeguards to minority stockholders when publicly listed companies resort to private placements. The safeguards we will consider in this paper are the information and disclosure requirements governing private placements in listed companies in the Philippines. It is worth noting in this regard that of the seventeen (17) cases of private placements in this study, only three cases were disclosed to the public in advance. All the rest made a public disclosure of the private placement after the transaction had been consummated.

4.1 Regulations Pertaining to Private Placements

In the following section, we shall examine existing policies and rules on private placements and the need for disclosures in the Philippines. The relevant materials in this regard include following:

1. Section 39 of the Corporation Code of the Philippines (Batas Pambansa Bilang 68)
2. Article V – Additional Listing of Securities
3. Interpretation of the Rule on Additional Listing of Shares for Placing and Subscription Transaction

4. Section 6 of “The Corporate Governance Guidelines for Companies Listed on the Philippine Stock Exchange” which enumerates the recommended measures on protecting minority interests
5. Revised Code of Corporate Governance which applies to corporations that sell equity or debt securities to the public

At the outset, it is worth noting that private placements, if offered at a discount over the market price, constitute a dilution of existing stockholders of the corporation concerned. In the case where new stocks are issued, Philippine Corporation Law protects existing stockholders from such dilution thru their preemptive right. This right however can be waived in a number of cases, as specified in Section 39, of *Batas Pambansa Bilang 68* as shown below:

Section 39. Power to deny pre-emptive right. All stockholders of a stock corporation shall enjoy pre-emptive right to subscribe to all issues or disposition of shares of any class, in proportion to their respective shareholdings, **unless such right is denied** by the articles of incorporation or an amendment thereto: Provided, that such pre-emptive right shall not extend to shares to be issued in compliance with laws requiring stock offerings or minimum stock ownership by the public; or to shares to be issued in good faith with the approval of the stockholders representing two-thirds (2/3) of the outstanding capital stock, in exchange for property needed for corporate purposes or in payment of a previously contracted debt.

Presumably, all the companies in this study met the requirements for the denial of preemptive rights in making the private placements of their stocks but are these companies required to disclose these transactions to the public in advance?

Two sections of Article V of the rules on Additional Listing of Shares for Placing and Subscription Transaction, issued by the Philippine Securities and Exchange Commission (SEC), specify disclosure requirements governing such transactions, i.e., Section 3 and Section 4. In Section 3, the rules call for a one-hour trading halt in the security “upon announcement or disclosure of any information leading to the transaction(s)”. Moreover, another trading suspension is called for upon the dissemination of a “Comprehensive Corporate Disclosure” on the transaction that, in Section 4, is mandated to occur within “five (5) trading days from the initial disclosure.”

The details required to be disclosed in this “Comprehensive Corporate Disclosure”, under Section 4, include the following:

1. Copies of all agreements duly executed that are relevant to the transaction
2. Description of the proposed transaction including the timetable for implementation, and related regulatory requirements
3. Rationale for the transaction including the benefits which are expected to be accrued to the listed issuer as a result of the transaction
4. The aggregate value of the consideration, explaining how this is to be satisfied, including the terms of any arrangements for payment on a deferred basis
5. The basis upon which the consideration or the issue value was determined

Note that Subsection 2 above speaks of a “Description of the proposed transaction, including the timetable for implementation...” which clearly implies that the required disclosure must come **before** the transaction is consummated.

If the Comprehensive Corporate Disclosure, which under Section 4, must come after 5 trading days from the “initial disclosure” on the transaction, why then is it the case that, as noted previously, all but three of the companies in the study made the initial public disclosure of their private placements only **after** the transactions had already been consummated?

Nowhere in the Rules on Additional Listing could we find any specified time or condition when the “initial disclosure” of the transaction mentioned in Section 3, is supposed to be made. This ambiguity in the rules may account for why nearly all of the companies in this study disclosed their private placements after the fact.

4.2 Internal Rules of Corporate Governance

The protection of the rights of the various stakeholders of a corporation, including its minority shareholders, are among the subjects of the Codes of Corporate Governance which most modern corporations endeavor to adhere to. In the case of Philippine corporations, particularly the listed ones, are there explicit provisions for the protection of minority stockholders in their Governance Rules? We find that the answer is yes.

Protection for the rights of minority stockholders are found in Section 6 of the guidelines on Corporate Governance issued by the PSE to listed companies. The first paragraph of this section goes as follows:

Companies should recognize and protect the rights of its shareholders particularly those that hold a minority or non-controlling stake in the company. A company should ensure that the exercise of shareholders' basic political, economic and governance rights are facilitated in an equitable, timely and transparent manner.

While nowhere in these guidelines is the protection of minority stockholders from private placements specifically mentioned, this paper has tried to show that private placements can and do impose significant economic costs to such stockholders, which costs should be protected against or mitigated. One means of doing so is through advance disclosures. And since it is among the principal responsibilities of independent directors to look after the interest of minority stockholders, such independent directors can be the investing public's internal corporate watchdogs for ensuring that adequate and timely disclosures on private placements as required under SEC rules, among others, are complied with.

5 Summary and Conclusions

The statistical tests showed that the cumulative negative excess returns at the announcement date and the next three days were statistically significant at 5% critical level. The absolute amounts of losses in pesos were also found to be substantial.

PSE has the most information about a listed company's plan for private placements. Article V (PSE Requirements for Additional Listing of Securities) and Interpretation of Additional Listing of Shares for Placing and Subscription Transaction require the disclosure of these private placement transactions before they happen, but majority of the listed companies which raised funds through private placements in our study only provided disclosures after the transactions had already happened. PSE needs to be stricter in ensuring full and timely compliance with the disclosure requirements of Article V on Additional Listing of Securities. It can do this by removing any ambiguities in the existing rules, particularly as to when advanced initial public disclosures on private placements must be made by its member companies.

The independent directors can also be an important force within the PSE listed companies for assisting external regulators in ensuring faithful and timely compliance with disclosure and other rules for the protection of minority stockholders, including disclosures concerning private placements.

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Appendix 1

Article V Additional Listing of Securities

Part A General

**(Approved by the SEC on August 3, 2003 and made effective on
September 12, 2003, Memo for Brokers no. 225-2003 dated August 28, 2003)**

Section 1. Section 1. Rule on Additional Listing of Shares – The Rule shall apply to transactions resulting into issuance by a listed company (“Issuer”) of new voting shares to any party or to any person acting in concert (“Subscriber/s”) amounting to **at least ten percent (10%) but not more than thirty-five percent (35%)** of the total issued and outstanding capital stock of the issuer through a single or creeping transaction within a period of twelve (12) months from the initial disclosure. Such transaction may include private placements, share swaps, property-for-share swaps, or conversion of securities into equity.

As a general rule, the Exchange shall not permit the listing of shares subscribed by related parties unless a rights or public offering is first undertaken.

For purposes of this Rule, RELATED PARTIES shall mean affiliates of the listed issuer accounted for by the equity method of accounting; trusts for the benefit of employees such as pension and profit sharing plans that are managed by or under the trusteeship of the management; directors, major shareholders or principal owners of the listed issuer; and its management; members of the immediate families of major shareholders, principal owners and management of the listed issuer.

Section 2. Pre-filing Conference –Issuers may request for a pre-filing conference with the Exchange to ascertain whether such Rule is applicable to its transaction(s). The Exchange shall thereafter issue a written confirmation as to the applicability or non-applicability of the Rule.

Section 3. Trading Halt –The trading of the shares of the Issuer shall be halted for one (1) hour upon announcement or disclosure of any information leading to the transaction(s). Another one (1) hour trading halt shall be implemented upon dissemination of the Comprehensive Corporate Disclosure required herewith.

Section 4. Comprehensive Corporate Disclosure – The Issuer shall submit within five (5) trading days from initial disclosure the details of the transaction but not limited to the following:

- a) Copies of all agreements duly executed that are relevant to the transaction;
- b) Description of the proposed transaction including the timetable for implementation, and related regulatory requirements;
- c) Rationale for the transaction including the benefits which are expected to be accrued to the listed issuer as a result of the transaction;
- d) The aggregate value of the consideration, explaining how this is to be satisfied, including the terms of any arrangements for payment on a deferred basis;
- e) The basis upon which the consideration or the issue value was determined.
- f) Detailed work program of the application of the proceeds, the corresponding timetable of disbursements and status of each project included in the work program. For debt retirement application, state which projects were financed by debt being retired, the project cost, amount of project financed by debt and financing sources for the remaining cost of the project;
- g) Identity of the beneficial owner(s) of the shares subscribed. (for Corporations: date of incorporation and nature of business, major projects and investments, capital structure, audited financial statements for the last three (30) fiscal years, list of subsidiaries and affiliates, board of directors and principal officers; for individuals: list of shareholdings in other companies with the issuer, list of companies where the individual is an officer or a director, and relationships with the existing directors and stockholders of all parties to the transaction);
- h) For Subscribers with no track record or with no operating history: the Subscriber must present a statement of active business pursuits and objectives which details the steps undertaken and proposed to be undertaken by the issuer in order to advance its business. Projected financial statements shall only be required should there be references made in the Statement to forecasts or targets.
- i) Identities of controlling and substantial stockholders of the parties to the transaction, accompanied by a structural chart depicting the structure of the Subscriber and the issuer and the interests of such stockholders, both before and after the implementation of the proposed transaction;
- j) The interest which directors of the parties to the transaction have in the proposed transaction; and

- k) Statement as to the steps to be taken, if any, to safeguard the interests of any independent shareholders.

Section 5. Stockholders' Approval –The Issuer must submit a sworn Corporate Secretary's certification confirming the following:

- a) That the stockholders in a regular or special meeting approved the transaction.
- b) For related party transactions, in addition to the stockholders approval of the transaction, the Issuer must submit a sworn Corporate Secretary's Certification confirming that a waiver of the requirement to conduct a rights or public offering of the shares subscribed has been granted by a majority vote representing the outstanding shares held by the minority stockholders present or represented in the meeting.

The foregoing sworn Corporate Secretary's Certifications required must be supported by a report on the tabulations of the votes of the stockholders indicating the number of shares and percentage to the total outstanding shares represented by the majority and minority stockholders in the meeting either in person or by proxy.

In addition to items required under the disclosure on Stockholders' Meeting, Section 4.4(u) of the Revised Disclosure Rules, the notice of the meeting shall include:

- 1) The number of voting shares to be issued to the Subscriber(s);
- 2) A copy of the Comprehensive Corporate Disclosure on the details of the transaction; and

The said notice must be published in the business sections of any two (2) newspapers of general education.

Section 6. Rights or Public Offering Requirement – Issuers who failed to obtain an approval from the stockholders as required under Section 5(b) hereof, must first file within sixty (60) calendar days, unless extended by the Issuer, an application for a rights or public offering, to be offered to all minority stockholders at an offer price equal to the agreed transaction price and at an offer ratio that would maintain the latter's ownership in the issuer prior to the implementation of the transaction. All major stockholders and directors shall abstain from exercising their rights to the offer.

The Subscriber in the transaction must take-up all the shares left unsubscribed during the offer, provided that such shares to be taken-up shall only amount to the number of shares subscribed in the transaction and such subscriptions must be fully paid.

Upon completion of the rights or public offering, the Exchange shall proceed with the listing of the shares issued to the Subscriber.

Section 7. Lock-up of Subscribed Shares by Related Parties –For related party transactions whereby the rights or public offering requirement has been waived by a majority vote of the minority stockholders, the Subscriber must enter into an agreement with the Exchange not to sell, assign, or in any manner dispose of their shares for a minimum period of one hundred eighty (180) days after the listing of the shares subscribed in the transaction.

Section 8. Compliance with the Suitability Criteria and Continuing Listing Requirements –Prior to the approval of listing application, the issuer must comply with the Suitability Criteria and Continuing Listing Requirements under section 3, Article III and XVIII, respectively, of the Listings and Disclosure Rules.

Section 9. Exceptions to the Rule – The Exchange shall grant an exception to the rights or public offering requirements in the following cases:

- a) The transaction price for the shares subscribed is set at a premium over the prevailing market price. Market price shall mean the weighted average of the closing prices for a period of 30 trading days prior to the transaction;
- b) The requirement for a rights or public offer is waived by a majority vote, representing the outstanding shares held by the minority stockholders present or represented in a special meeting of the transaction.
- c) Issuers undergoing rehabilitation and bankruptcy shall be exempted from the application of the Rule without prejudice to the provisions of the Delisting Rules.

Section 10. Applicability – In addition to the foregoing, all applications for additional listing of securities shall also be considered under prevailing circumstances at the time of the filing of the application.

Appendix 2

Interpretation of the Rule on Additional Listing of Shares for Placing and Subscription Transaction

This Interpretation of the Rule on Additional Listing of Shares for a Placing and subscription Transaction (the “Interpretation”) supplement and must be read in conjunction with the Rule on Additional Listing of Shares provided under Article V, Part A of the Revised Listing Rules of the Exchange (the “Rules”).

1. This Interpretation is applicable to a transaction where an existing shareholder or related party, as defined in the Rules, sells its listed shares to a third party thereby reducing the former’s holdings in the listed company (the “placing tranche”). As part of the same transaction, the listed company subsequently issues to the related party at most the same number of shares as the shares sold (the “subscription tranche”). In this regard, the transaction covered by this Interpretation involves placing and subscription tranches.
2. The Exchange may allow the additional listing of shares of a listed company pursuant to a placing and subscription transaction provided that:
 - a. No related party, as defined in the Rules, will subscribe to the listed company’s shares under the placing tranche;
 - b. No person or persons acting in concert will subscribe to the listed company’s shares under the placing tranche amounting to 10% or more of the listed company’s issued and outstanding capital stock;
 - c. The subscription price of the new shares to be issued to the related party under the subscription tranche must be equivalent to the placing price. The placing price may be adjusted to account for the expense of the placing;
 - d. The number of new shares to be issued to the related party must not exceed the number of shares sold in the placing;
 - e. The listed company’s shareholders must approve the placing and subscription transaction. The listed company’s shareholders may grant an authority to the listed company’s board of directors, subject to such terms and conditions as may be specified in the resolution, to implement the placing and subscription transaction; provided that, the basis for setting the number of placing/subscription shares, as well as the determination of the placing/subscription price are approved by the listed company’s shareholders; and
 - f. The listed company must comply with the disclosures required herein, notwithstanding the applicability of any of the provisions under the Revised Disclosure Rules of the Exchange.
3. Notwithstanding the applicability of any of the provisions under the Revised Disclosure Rules of the Exchange, the listed company is required to disclose through a Comprehensive Corporate Disclosure (CCD) the following information through the Online Disclosure system (ODISy) of the Exchange:
 - a. Name of the listed company;
 - b. Description of the transaction
 - c. Name of the related party who will place its existing listed shares to a third party(ies);
 - d. Number and class of shares in the placing tranche;
 - e. Number and class of shares in the subscription tranche;
 - f. Placing price of the shares and the basis for settling such price;
 - g. Subscription price of the shares under the subscription tranche and terms of payment;
 - h. Total transaction value;
 - i. Rationale of the transaction;
 - j. Total funds to be raised and the proposed use of the proceeds, including a detailed work program;
 - k. Timetable of the placing and subscription transaction;
 - l. Applicable regulatory approvals;
 - m. Table showing the ownership structure of the listed company before and after the placing and subscription transaction indicating the number of shares held and respective percentage ownership of the listed company’s shareholders. Such table must indicate the listed company’s majority and minority shareholders, with the identities of controlling shareholders.
 - n. Complete list of the subscribers/investors under the placing tranche, with a background of the respective investors, one (1) trading day from the execution of such placing. Such background information must indicate the following:
 - i. For corporate investors: nature of business, capital structure, ownership structure, key officers, and members of the board of directors, financial statements; and

- ii. For individual investors: business affiliation/s, brief background on the business/es, position/s held;
- o. An external legal counsel's opinion, one (1) trading day after the actual execution of the placing tranche, that, under the placing tranche:
 - i. The listed company's shares have been validly issued and transferred to the investors, in accordance with the terms of the placing tranche;
 - ii. No investor or investors acting in concert have acquired the listed company's shares amounting to 10% or more of the listed company's issued and outstanding capital stock; and
 - iii. No related party, as defined in the Rules, have acquired any of the listed company's shares.

Unless otherwise specified herein and in the Revised Disclosure Rules of the Exchange, the listed company must promptly disclose any of the foregoing information in the CCD, except items (n) and (o) above, via the ODISy in accordance with the Revised disclosure Rules.

- 4. Upon proof of compliance with all the conditions and requirements under the Interpretation, the rights or public offering requirement provided under the Rule on Additional Listing of Shares will not apply to a placing and subscription transaction.
- 5. The new shares to be issued to the related party under the subscription tranche should be placed in escrow through an agreement with an escrow agent not to sell, assign, or in any manner dispose of the new shares for a minimum period of one hundred eighty (180) days from the listing of the subscription shares in the Exchange.