

Regulatory Issues on Tender Offers Leading to Delisting in the Philippine Stock Market

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This paper discusses three cases of tender offers in the Philippines that led to delisting. These are Liberty Telecoms Holdings, Incorporated (LIB), Melco Resorts and Entertainment (Philippines) Corporation (MRP), and Travellers International Hotel Group, Incorporated (RWM), operator of Resorts World Manila. This paper examines the regulatory issues on tender offers, and how they affect minority stockholders.

1 Introduction

Section 19.1.8 of the Implementing Rules and Regulations (IRR) of the Securities Regulation Code (SRC) (SEC, 2015, p. 45) defines “tender offer” as a “publicly announced intention by a person acting alone or in concert with other persons (hereinafter referred to as “person”) to acquire outstanding equity securities of a public company as defined in SRC Rule 3, or outstanding equity securities of an associate or related company of such public company which controls the said public company.”

Section 19.2 of IRR of SRC describes the cases for mandatory tender offers such as when a person or group of persons acting in concert, intends to acquire 35% of a public company in one or more transactions within a period of 12 months (SEC, 2015, p. 45). However, for this study, tender offers are discussed in the context of voluntary delisting which requires tender offers. From 2015 to 2019, five companies were delisted, four of which were cases of voluntary delisting (LIB, MRP, RWM, and Energy Development Corporation), while one was a case of involuntary delisting (Calata Corporation).

2 Review of Literature

In the United States of America (US), among the reasons cited for voluntary delisting were increasing financial disclosures and corporate governance costs which was aggravated by the Sarbanes-Oxley Act of 2002 (Morgenstern & Nealis, 2004). The legal and accounting fees incurred by a publicly listed company increased because of the stringent provisions of Sarbanes-Oxley Act (Bortolon & Silva, 2015). A publicly listed company had to weight these costs vis-à-vis the benefits of having better access to capital and the availability of incentives to managers and employees, among others (Bortolon & Silva, 2015). Another notable reason cited for delisting of companies was the inability to raise capital because of low stock prices relative to the real net asset value of the firm (Muyeche, 2014).

Marosi and Massoud (2007) summarized the reasons for delisting as follows: limited growth opportunities, concentrated or high insider ownership, low institutional ownership, high leverage, low trading volume, and high cost of regulatory compliance.

One of the schemes used in delisting or going private was through tender offer. Delisting of companies in the US triggered litigations, and among the issues raised were related to adequacy of price, the validity of the process, and the presence of dominant stockholders who are also actively involved in management (Morgenstern & Nealis, 2004).

Pour and Lasfer (2013) made a study of companies which voluntarily delisted from the Alternative Investment Market, a sub-market of the London Stock Exchange (LSE) for the smaller companies. They analyzed the characteristics and the motives of these companies for delisting. Their study showed that these companies were highly leveraged, had high insider ownership, and their profitability, growth opportunities, and trading volumes had significantly declined. Among the reasons cited for their voluntary delisting were inability to raise equity financing and failure to create shareholder value while they were listed. These companies had actually destroyed shareholder value (Pour & Lasfer, 2013).

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To delist from the LSE, companies have to notify the exchange at least 20 days prior to delisting, and the decision has to be approved by at least 75% of the stockholders in a general meeting (Pour & Lasfer, 2013). For a US company to delist in the US stock exchanges, approval from the audit committee and approval from the majority of the company's full Board of Directors¹ have to be secured (US SEC, 1997, para. 7).

3 Objectives of the Study

This paper has the following objectives:

1. To identify the issues affecting minority stockholders on tender offers leading to delisting, which include among others, fairness valuation. To illustrate the issues, three cases are discussed: LIB, MRP, and RWM.
2. To assess if the Philippine Stock Exchange (PSE) rules on voluntary and involuntary delisting protect the minority stockholders.
3. To come up with recommendations that will improve the protection of minority stockholders on delisting that require tender offers.

4 Methodology

In doing this research paper, the following activities were done:

1. Reviewed delisting and tender offer rules in the Philippines and other selected Asian countries, such as Indonesia and Thailand. For the local rules, the PSE's (2006) Supplemental Rule "8," which provides rules on delisting, both voluntary and involuntary delisting, and Rule 19 of the IRR of the SRC, which discusses tender offers in the Philippines (SEC, 2015), were reviewed. The proposed PSE amendments on the rules on voluntary delisting issued on December 3, 2019 were also reviewed (PSE, 2019).
2. Read studies from academic journals related to delisting and tender offers. Published newspaper articles related to tender offers and delisting, especially those related to the three companies covered in this study, were analyzed from the perspective of the controlling and non-controlling stockholders.
3. Reviewed the annual reports of the companies covered in this study.

5 Findings

This section is organized into three parts: the delisting rules of the PSE and salient features of delisting rules of stock exchanges from selected Asian countries, a brief history and the tender offer issues leading to delisting of each of the three companies covered in this study, and an analysis of the issues.

5.1 Delisting Rules of the PSE and Exchanges from Selected Asian Countries

5.1.1 The PSE Delisting Rules

The PSE's (2006) delisting rules are discussed in Supplemental Rule "8" (see Appendix A for the details). There are two types of delisting: the voluntary and the involuntary delisting. The involuntary delisting is initiated by the PSE and may be considered if a company experiences any of the 12 conditions cited in Supplemental Rule "8." These conditions include having a public float which goes below the minimum required by the PSE, non-disclosure of financial reports on time, trading volume falling below the minimum required by the Exchange, having negative equity, and failure to commence commercial operations two years after listing (PSE, 2019).

¹ Full Board of Directors means all the members of the Board.

For the public float, the minimum requirement is 10%, while for the newly listed companies, the minimum public ownership (MPO) or public float has been increased to 20% (Gatpolintan, 2017).²

For disclosures, there are structured and unstructured reportorial requirements. Structured reports include quarterly and annual financial reports. Unstructured disclosures include material events that can affect investors' decisions, such as dividend declarations, stockholders' meetings, acquisition and disposal of treasury shares, and amendments to the by-laws and articles of incorporation, among others. Penalties are imposed for delays in the disclosure of these reportorial requirements (PSE, 2017).

For structured reports, aside from penalties, the PSE can initiate delisting if these reports are not submitted beyond a certain period. Article VII, Section 17.8 of PSE Consolidated Listing and Disclosure Rules (2017), provides the guidelines where the PSE can initiate delisting procedures if a listed company fails to disclose structured reports on time. For annual and quarterly financial reports, the following rules apply:

1. Annual reports must be submitted to the PSE within 105 calendar days after the end of the fiscal year. The PSE initiates delisting if after three months and 15 calendar days from the deadline, the company still has not submitted the report.
2. Quarterly reports must be submitted to the PSE within 45 calendar days after the end of the quarter. The PSE initiates delisting procedures if after two months and 10 calendar days from the deadline, the company still has not submitted the report.

A delisted company through involuntary delisting cannot apply for relisting within a period of five years from the time it was delisted. Its directors and executive officers are disqualified from becoming directors or executive officers of any company applying for listing within the same period, counted from the time the application for delisting was approved (PSE, 2006).

For voluntary delisting, the PSE (2006) has prescribed six conditions that must be complied with before voluntary delisting starts. These conditions include an approval from majority of the members of the Board, a tender offer to all stockholders of record with the tender offer price being supported by a fairness opinion or valuation report, and absence of any unpaid fines or penalties, among others (see Appendix A for the details).

There is no prescription period provided for the relisting of an issuer which is delisted through voluntary delisting, except that it shall be treated as a new listing.

On December 3, 2019, the PSE issued Memorandum Circular Number 2019-0054, which provides the proposed amendments on the rules on voluntary delisting, after complaints from the market that minority stockholders were essentially forced to accept the delisting of a company. The proposed amendments are related to the approval of delisting and tender offer price. Table 1 summarizes the existing PSE rules on the approval and the tender offer price for voluntary delisting.

Table 1. Comparison of Certain PSE Rules on the Existing and Proposed Amendments on Voluntary Delisting

Parameters	Existing Rules	Proposed Amendments
Approval	Majority of the Board of Directors	<ul style="list-style-type: none"> - All independent directors - At least 75% of the total outstanding and listed shares of the company - Votes against the delisting proposal is not more than 10% of the total outstanding and listed shares.
Tender offer price	Tender offer price must be supported by a fairness opinion or valuation report.	<p>There will be a floor price and the tender offer price will not be lower than the highest of the following:</p> <ul style="list-style-type: none"> - The highest value based on the fairness opinion or valuation report prepared by an independent valuation provider; - The highest closing price in the six-months immediately preceding the date of the notice to stockholders of the proposed delisting; - Volume weighted average price for one year immediately preceding the date of the notice to stockholders of the proposed delisting.

Source: PSE, 2019

² The Securities and Exchange Commission (SEC) increased the minimum public float for new initial public offerings to 20% in November 2017 through an SEC circular (Gatpolintan, 2017).

For fairness valuation providers, the Securities and Exchange Commission (SEC) (SEC, 2013) issued SEC Memorandum Circular Number 13 on August 8, 2013 which provides guidelines on the conduct of valuation and issuance of a fairness opinion. The PSE accredits valuation providers (see Appendix B for PSE criteria for accrediting valuation providers).

5.1.2 Salient Features of Delisting Rules of Exchanges from Selected Asian Countries

For the comparison of approval and tender offer price, the rules from the Indonesia Stock Exchange (IDX) and the Stock Exchange of Thailand (SET) are used. Table 2 summarizes the rules on approval for delisting and tender offer price from the two exchanges.

Table 2. Rules on Approval and Tender Offer Price for Voluntary Delisting in IDX and SET

Parameters	IDX	SET
Approval	General meeting of shareholders	<ul style="list-style-type: none"> - At least 75% of the issued shares; and - Objection from not more than 10% of the total issued shares.
Tender offer price	The highest of the following: <ul style="list-style-type: none"> - Nominal price; - Highest price in the regular market over a two-year period, plus a return on investment in the form of interest, calculated at the initial public offer (IPO) price multiplied by the three-month average of interest rates given to holders of Bank Indonesia Certificate or the equivalent interest rate of government bonds over a period of time prior to the delisting; or - Fair value based on the appraisal of an independent party. 	The highest of: <ul style="list-style-type: none"> - Highest price that the purchaser has paid for the shares in 90 days prior to the tender offer; - Five-day weighted average market price prior to the Board's resolution or prior to the shareholders' resolution to delist the securities whichever comes first; - Net asset value of the company calculated from its adjusted book value; or - Fair value of the company's shares assessed by the financial advisor.

Source: IDX, 2004; Lim, 2019; PSE, 2019; SET, n.d.

Stock exchanges of Hong Kong (HKEx), Australia (ASX), and Singapore (SGX) do not allow stockholders' offering to buy back shares, and the parties acting in concert with them to vote on voluntary delisting issue (Lim, 2019).

5.2 Brief History and Tender Offers of the Companies in this Study

5.2.1 Liberty Telecoms Holdings, Incorporated (LIB)

Brief History

LIB was incorporated on January 14, 1994 primarily to serve as the holding company of its wholly-owned subsidiaries, Tori Spectrum Telecom Incorporated (TORI) and Skyphone Logistics, Incorporated (SLI). LIB had its IPO in the PSE on October 17, 1994 (LIB Annual Report, 2015).

TORI was formerly known as Wi-Tribe Telecoms, Incorporated, which in turn, was formerly known as Liberty Broadcasting Network. It has a franchise which is valid until 2037.³A very important frequency that TORI had was the 700 MHz spectrum which allows faster communication and faster internet (LIB Annual Report, 2015).

Skyphone was incorporated on July 9, 2001. It provided marketing, distribution, and logistics support services to TORI (LIB Annual Report, 2011). Insufficient capital forced management to suspend the operations of LIB, TORI, and SLI in 2005.

³ Republic Act Number 10183 extended the franchise of Wi-Tribe (formerly Liberty Broadcasting Network, Incorporated) by 25 years on September 21, 2012. The franchise was granted under Republic Act Number 1553, as amended by Republic Act Number 4154. Wi-Tribe is now TORI.

In 2009, San Miguel Corporation (SMC) and Qatar Telecoms acquired significant stakes in LIB. SMC acquired its initial 32.7% interest in LIB for PHP1.88 billion in July 2009 through Vega Telecom Incorporated (VTI), SMC's wholly owned subsidiary. In August 2009, Qatar Telecoms, a strategic partner of SMC, acquired 32.99% interest in LIB ("Qtel buys 33%," 2009).

In 2010, LIB launched Wi-Tribe Philippines and had 11,000 subscribers by the end of the year ("The PH telco cartel," 2016, para. 17). The services were initially available in Metro Manila. In 2011, LIB tried to offer its services in Subic by offering 4G WIMAX and LTE services using the 2.5 GHz frequency ("The PH telco cartel," 2016, para. 18). There were other plans to use the 2.5 GHz, but these plans were thwarted because PLDT tried to block the entry of Wi-Tribe in Subic ("The PH telco cartel," 2016, para. 19).

Tender Offer

In August 2015, LIB announced its plans to conduct a tender offer leading to delisting (see Table 3 for the details).

Table 3. Details of LIB Tender Offer

Bidder	Vega Telecom, Incorporated (VTI)
Tender Offer Shares	165,883,221 Common Shares
Tender Offer Price/ Consideration	PHP2.20 per share
Start of Tender Offer Period	August 24, 2016
End of Tender Offer Period	October 20, 2016
Cross Date at the PSE	November 10, 2016

Source: PSE Edge Liberty Holdings, 2016

There were no specific reasons cited by the company for the voluntary delisting. In a regulatory filing, the following was disclosed:

"After due evaluation and study of the options available to the company, the Board of Directors approved and authorized the voluntary delisting of the company's shares from the PSE" (Delavin & Mariano, 2016, para. 3).

The non-controlling stockholders were unhappy with the tender offer price of PHP2.20, and sent letters to the SEC, the Shareholders' Association of the Philippines (Sharephil)⁴, and to President Rodrigo Duterte. The main argument in their letter of complaint was that LIB used to be the holder of the license over the 700 MHz frequency, but this was transferred in March 2015 from TORI, LIB's wholly-owned subsidiary, to Bell Telecommunications Philippines, Incorporated, an affiliated company and a wholly-owned subsidiary of VTI without proper disclosure (Lazo, 2016). The transfer was disclosed only a week before the tender offer in 2016 or more than a year after the transaction was consummated (Camus, 2016). For this improper disclosure, LIB was penalized by the SEC for PHP346,000 (Camus, 2016).

VTI commissioned Punongbayan & Araullo (P&A), a public accounting firm, to do a "fairness" valuation. P&A found that the offer price was "above and a premium on the prospective fair value range of PHP0.08 to PHP0.33 per common share of Liberty" (Somera, 2016, para. 7). The accounting firm further described VTI's offer as "more than fair and reasonable" (Somera, 2016, para. 7).

In a September 8, 2016 SMC letter sent to the SEC, SMC explained that in the Philippines, frequencies are not owned by the telecom companies. These are merely assigned to them and therefore, are not reported in the balance sheet. Value is created when the telecom companies put up the facilities that will make use of these assigned frequencies (SMC, 2016).

Papa Securities, a local stock brokerage firm, had independently valued each LIB share at PHP5.02 on the assumption that the license over 700 MHz frequency was still under the control of LIB (Mariano, 2016).

⁴ Sharephil is a non-stock non-profit advocacy group dedicated to educating the Filipino investing public on the art of investing in the capital market.

Francis Ed Lim, president of Sharephil, questioned the impartiality of the “*fairness opinion*” rendered by the appraisal company in this case (Mariano, 2016):

“The appraisal company or the valuation company is hired by the issuer or the tender offeror and, in fact, their fees are paid by the tender offeror or issuer. Because of that, some shareholders are asking how they could be impartial” (Mariano, 2016).

Lim proposed that the PSE should choose independent appraisers on tender offers for listed stocks, but the company conducting the tender offer must reimburse the PSE (Mariano, 2016).

LIB was eventually delisted. The only consolation the retail investors had was that the tender offer period was extended by the SEC (“Liberty telecom tender,” 2016).

Financial Data

LIB incurred substantial amounts of operating losses, and negative operating cash flows the following years as shown in Table 4. From 2012, revenues also started going down.

Table 4. Financial Results of LIB (in PHP)

	2015	2014	2013	2012	2011
Revenues	291,935,795	427,146,241	447,353,320	575,150,091	526,928,168
Operating loss	1,567,759,218	769,081,302	1,121,551,331	1,373,075,893	1,558,485,853
Net loss	1,549,480,366	883,055,564	1,416,343,869	1,524,681,113	1,681,101,435
Operating cash flows	(93,531,091)	(408,858,734)	(441,229,407)	(794,500,795)	(1,118,912,342)

Source: LIB Annual Reports, 2011, 2014, and 2015

Despite its operating losses, SMC continued to acquire more shares in LIB. By the end of 2015, SMC, through VTI, already owned more than 87% of LIB’s common shares (Cayanan & Rodriguez, 2020). In September 2015, Telstra, the number one telecom company in Australia, confirmed that there were negotiations with SMC for a possible wireless joint venture (Gonzales, 2015). The negotiations, however, were unsuccessful (Cayanan & Rodriguez, 2020). On May 30, 2016, SMC sold all its telecom interest to Globe Telecom and PLDT for PHP70 billion (see Table 5).

Table 5. Breakdown of the PHP70 Billion Acquisition Cost (in PHP)

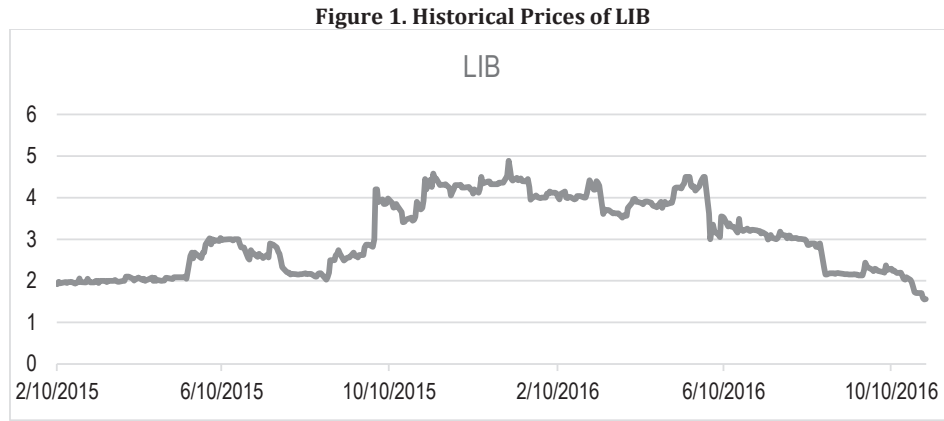
	Vega (VTI)	Bow Arken	Brightshare	Total	PLDT’s 50% share
Equity interest	52.08	0.58	0.19	52.85	26.42
Assumed Liabilities	17.02	0.12	0.02	17.15	8.58
Total	69.10	0.69	0.21	70.00	35.00

Source: PSE Edge PLDT, 2016

The main reason behind the acquisitions of these SMC telecom companies by Globe Telecom and PLDT was the radio frequencies in the 700 MHz, which are supposed to improve internet speed, improve indoor coverage, and facilitate rollout in regional and rural areas, among their other benefits (Cayanan & Rodriguez, 2020).

Historical Share Prices

Figure 1 shows the historical share price of LIB.



5.2.2 Melco Resorts and Entertainment (Philippines) Corporation (MRP)

Brief History

MRP, formerly Melco Crown (Philippines) Resorts Corporation, was incorporated and registered as Interphil Laboratories, Incorporated with the SEC on November 6, 1974. The original line of business was related to manufacturing, processing, and packaging drugs, chemicals, pharmaceuticals, and veterinary products.

Over the years, the company went through a lot of transformation and changes, both in lines of business and corporate name. On December 7, 2012, Melco Crown Entertainment Limited (MCO), through its wholly-owned indirect subsidiaries, entered into an acquisition agreement with the then major shareholders of MRP, Interpharma Holdings and Management Corporation and Pharma Industries Holdings Limited to acquire 93.06% of the issued and outstanding shares of MRP (MCO, 2012, p. F-63). The acquisition was consummated on December 19, 2012 (MCO, 2012, p. F-63). Amendments in articles of incorporation and increase in authorized capital followed. MRP is now the operator of City of Dreams casino (MCO, 2012, p. F-10).

On March 20, 2013, MRP (2013, p. 5) offered 2,846,595,000 common shares with par value of PHP1.00 to MCO, its parent company, for a total consideration of PHP2,846,595,000. The transaction was completed on April 8, 2013 (MRP, 2013, p. 4). A month later, on April 24, 2013, MRP completed a private placement where 981,183,700 new common shares were issued to different institutional investors at a price of PHP14.00 per share. Over-allotment option of up to 117,075,000 common shares at PHP14.00 per share was granted to a stabilizing agent, 36,024,600 of which were exercised on May 23, 2013 (MRP, 2013, p. 5). Based on its statement of cash flows and notes to financial statements, MRP raised more than PHP16.68 billion from issuing new shares of stocks in 2013 and more than PHP2.13 billion from the sale of treasury shares priced at PHP14.20 per share (MRP, 2013, p. 5).⁵

In 2014, MRP issued 485,177,000 new shares at PHP11.30 each through private placements where the company raised more than PHP5.37 billion (MRP, 2014). In 2015, MRP issued 693,500,000 new shares to MCO at PHP3.90 per share or a total consideration of more than PHP2.7 billion (MRP, 2015).

Excluding the shares issued to its parent company, MRP was able to raise about PHP21.8 billion from equity financing through private placements and sale of treasury shares at prices ranging from PHP11.20 to PHP14.20 per share in 2013 and 2014.

⁵ In 2013, 150,435,404 treasury shares were issued at PHP14.20 per share.

Tender Offer

On September 10, 2018, MRP announced that it would be delisting its shares from the PSE (How, 2018a, para. 1). A tender offer for more than 1.5 billion shares representing more than 27% of MRP's outstanding common shares would be conducted by MCO (Philippines) Investments Limited (MCO), the biggest stockholder of MRP, at a price of PHP7.25 per share (How, 2018a, para. 2). The tender offer, which was expected to cost MCO more than PHP11 billion, was supposed to start on October 3, 2018 (How, 2018a). Because of complaints from some traders, the tender offer started on October 31 (How, 2018b). Table 6 provides the details of the tender offer.

Table 6. Details of MRP Tender Offer

Bidder	MCO (Philippines) Investments, Limited (MCO)
Tender Offer Shares	1,569,786,768
Tender Offer Price/ Consideration	PHP7.25 per share
Start of Tender Offer	October 31, 2018
End of Tender Offer Period	November 29, 2018
Cross Date at the PSE	December 10, 2018

Source: MRP Annual Report, 2018

In a disclosure filed with the Hong Kong Stock Exchange, Melco International Development Limited, the ultimate parent company of MRP and MCO, explained that MCO considered the "listed status" of MRP as a mechanism to have better access to capital in the Philippines (How, 2018a, para. 3). Unfortunately, in recent years, MRP's status as a listed company had not helped the company raise funds despite the efforts and expenses it incurred to maintain its listed status (How, 2018a, para. 3).

Complaints on the tender offer price were raised by disgruntled players who believed that the tender offer price of PHP7.25 was unfair, especially when compared to its private placement price way back in 2013, which was at PHP14.00 per share ("Melco resorts defers," 2018). Stock market analysts thought that the offer price was below the comparable gaming companies in the Philippines and Macau (Loyola, 2018, para. 4). They also believed that the tender offer price was discounted when compared to the consensus fair value estimate of MRP given its expected turnaround both in revenues and profits (Loyola, 2018, para. 5).

MRP reported a net income of PHP1.89 billion in the first six months of 2018, more than 430% higher over the same period in 2017 (Francia, 2018, para. 10). "They did their [FOO⁶] at PHP14.00, and now that they are earning, they would price it at almost 50 percent lower," Jervin De Celis, an equities trader from Timson Securities, said (Ballesteros, 2018).

MCO and MRP provided the following explanations regarding the MRP's tender offer (TO) price:

1. "MCO believes that an analysis of comparable publicly listed companies is highly supportive of the TO Price. Evaluating other publicly listed companies is not simply an arithmetic exercise... There are reasons why companies trade differently from each other (Loyola, 2018, para. 6)." MRP's valuation cannot be compared with gaming companies from Macau because the environments are different which include differences in base currency, regulation, licensing, and tax structure (Loyola, 2018, para. 7).

With respect to Travellers International Hotel Group, Incorporated (RWM), it "trades at an artificially high multiple today as its current value is primarily driven by its soon to be open next phase and significant and very valuable land bank. As such, its multiple has limited comparative value" (Loyola, 2018, para. 8). For Bloomberry Resorts Corporation, the company benefits from a premium beach front location, has land to build a second phase, and will establish a new casino in another location (Loyola, 2018, para. 9).

2. MCO Investments independently determined the tender offer price by hiring the services of FTI Consulting Philippines, Incorporated (Francia, 2018). Historical and projected earnings and market-standard methods recognized by regulators were used in estimating fair values

⁶ Follow-on-offer

(Francia, 2018, para. 6). Taking into account MRP's historical and projected earnings while using market-standard methods recognized by regulators, FTI Consulting arrived at a fair value price range of PHP6.11 to PHP7.49, with the final tender offer price at the higher end of the range (Francia, 2018, para. 6).

- The tender offer price of PHP7.25 provided a 16.7% premium over MRP's closing price of PHP6.21 on September 7, 2018, the last trading session before the announcement to delist, 11.2% higher than the six-month volume weighted average price (VWAP), and 14.2% higher than the three-month VWAP of MRP's shares (Francia, 2018, para. 9).

Financial Data

Table 7 presents summarized financial data for MRP. Note that the company started reporting positive operating income in 2016, and reported positive net income in 2017. In terms of cash flows, MRP started reporting positive operating cash flows (OCF) of PHP1.1 billion in 2015. MRP's OCF went up to more than PHP12 billion in 2018.

Table 7. Financial Results of MRP (in PHP '000)

	2018	2017	2016	2015	2014	2013
Operating income (loss)	4,929,896	3,194,107	1,252,789	(6,273,301)	(4,231,047)	(1,104,394)
Net income (loss)	2,662,000	353,923	(1,581,299)	(2,847,101)	(6,303,281)	(2,463,417)
Cash flows from operating activities	12,015,523	7,210,381	6,451,799	1,142,886	(4,154,244)	(771,474)
Cash flows from investing activities	(2,012,491)	(998,344)	(1,233,785)	(1,306,530)	(15,476,149)	(13,471,049)
Cash flows from financing activities	(9,756,752)	(10,326,776)	(2,621,257)	(167,819)	18,811,633	21,689,092

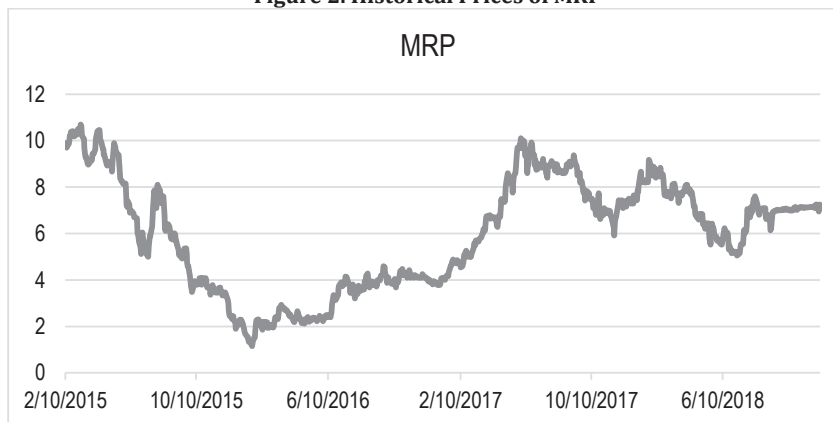
Source: MRP Annual Reports, 2013 to 2018

In 2014, MCP Leisure, a subsidiary of MRP, issued PHP15 billion worth of senior notes with an annual interest rate of 5%. This note is due in 2019. As of December 31, 2018, MRP did not report any interest-bearing long-term debt in the non-current liability section of its balance sheet.

Historical Share Prices

Figure 2 shows the historical share price of MRP.

Figure 2. Historical Prices of MRP



Source: Thomson Reuters Eikon

5.2.3 Travellers International Hotel Group, Incorporated (RWM)

Brief History

Established in the Philippines on December 17, 2003, RWM is a joint venture between Alliance Global Incorporated and Genting Hong Kong, Limited (Gonzales, 2019b). It is engaged in the business of hotels, restaurants, leisure parks, entertainment centers, and other related businesses. Investing in and operating casinos and other gaming activities are among its main businesses (PSE Edge, n.d., para. 1). Its casinos and restaurants in Resorts World Manila started commercial operations on August 28, 2009 (PSE Edge, n.d., para. 2). Its casino operations are under the Provisional License Agreement with the Philippine Amusement and Gaming Corporation (PAGCOR) (RWM Annual Report, 2018, p. 27). RWM's hotel and restaurant operations include Maxims Manila Hotel, Marriott Hotel Manila, and Holiday Inn Express Manila Newport City ((PSE Edge, n.d., para. 2).

RWM had its IPO in 2013, with more than 1.5 billion common shares issued at an offer price of PHP11.28 per share (MRP, 2013). The company raised more than PHP16.78 billion from this IPO (MRP, 2013).

Tender Offer

In August 2019, RWM disclosed the company's plans to go private. The company cited two reasons for delisting:

1. To give the company flexibility and react faster to changing gambling industry in the country (Campbell, 2019, para. 4). The management believes that the disclosure requirements for publicly listed firms hamper the introduction of market innovations (Gonzales, 2019b).
2. To eliminate the burden of maintaining a minimum public float of 10% which should be owned by the public (Campbell, 2019).

Table 8 provides the details of the tender offer of RWM.

Table 8. Details of RWM Tender Offer

Bidder	Travellers International Hotel Group, Incorporated (TIHGI)
Tender Offer Shares	1,582,867,900 Common Shares
Tender Offer Price/ Consideration	PHP5.50 per share
Start of Tender Offer	August 19, 2019
End of Tender Offer Period	September 23, 2019
Cross Date at the PSE	September 30, 2019

Source: Bajo, 2019

As of December 31, 2018, the company had 9,244,125,150 treasury shares, equivalent to almost 37% of its 25 billion issued common shares (RWM Annual Report, 2018, p. 81). The tender offer price was set at PHP5.50 per share. RWM commissioned the services of PricewaterhouseCooper (PwC)/Isla Lipana to estimate fair value of each share, which based on its computations ranged from PHP5.00 to PHP5.80 (Gonzales, 2019b). PwC/Isla Lipana used three valuation methods: discounted cash flow (DCF), market approach, and income approach. For the DCF model, a weighted average cost of capital (WACC) of 12% was used (Gonzales, 2019b). The tender offer price of PHP5.50 was higher than the volume weighted average of PHP5.46 in the past three months and PHP5.49 in the last six months (Gonzales, 2019b).

Some investors were disappointed about the low tender offer price and the delisting. During an interview in ANC Business Nightly (2019), a stock agent, who requested anonymity and represented his retail investor clients, said that in this case "*small investors are in the losing end. This is not just about the investing public, it's also about PSE. Because if a company wants to do an initial public offering, then you can just delist anytime you want, that would hurt small investors.*"

PSE director Vivian Yuchengco made the following statements during her interviews in ANC:

“There is no premium in the tender offer price in the delisting of Resorts World operator Travellers International. Tender offer price for the delisting is currently at P5.50 compared to its original initial public offering price (IPO) of P11.28 in 2013” (“PSE eyes review,” 2019, para. 2-3).

“That is prompting the stock exchange to review our delisting rules because you know the ones who suffer are the small investors like now there’s about 10 percent left in the Resorts World” (“PSE eyes review,” 2019, para. 4).

“We weren’t aware of the delisting until it was announced, and there were a lot of media saying they’ve lost 51%, they’ve lost so much money and then all of a sudden they’re delisting. So I really don’t know how to tighten the delisting rules on that but we’re looking at other countries to see how do they handle this type of delisting” (“PSE eyes review,” 2019, para. 5).

Financial Data

Table 9 shows the comparative operating performance of RWM in the first semester of 2019 and 2018.

Table 9. Financial Results of RWM for the Six-Month Ending June 30 (in PHP '000)

	1H2019	1H2018	% Change
Revenues	13,626,008	9,395,326	45%
Operating profit as reported	1,378,468	2,038,023	-32%
Operating profit, as adjusted for PHP1.47 billion other income in 2018	1,378,468	567,565	143%
Net income as reported	842,576	1,687,847	-50%
Net income as adjusted for the other income in 2018, net of 30% tax rate	842,576	658,526	28%

Source: RWM 2019 Second Quarter Report

Based on the first semester of 2019, revenues and recurring operating profits were improving as shown in Table 9.

Table 10 presents summarized annual financial data for RWM. Note that the 2017 poor operating performance of the company could be attributed to the temporary closure of the company’s operations for some time due to the untoward incident in June 2017 where a gunman attacked the casino resort and more than 30 persons died (Bondoc, 2017).

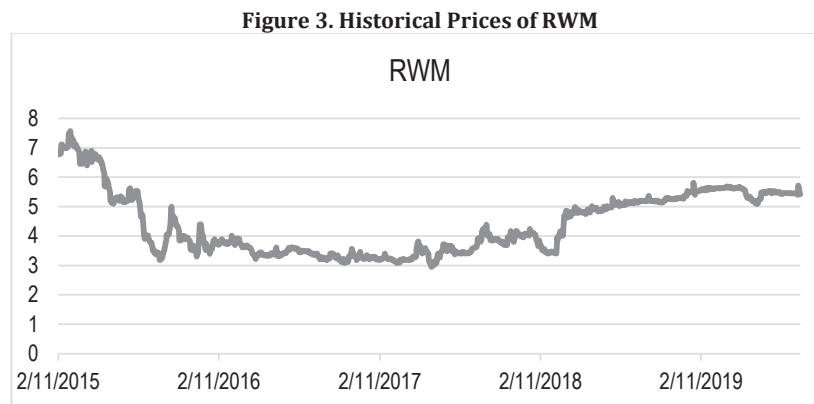
Table 10. Financial Results of RWM (in PHP '000)

	2018	2017	2016	2015	2014	2013
Revenues	20,566,139	8,592,919	23,183,549	24,602,122	29,060,300	30,848,029
Operating profit	1,637,789	1,117,662	4,793,554	4,758,992	6,397,371	4,617,161
Net profit	1,439,404	279,821	3,438,885	4,017,609	5,445,073	3,739,516
Operating cash flows	5,703,159	3,357,694	6,735,255	6,674,017	9,101,516	7,470,544

Source: RWM Annual Report, 2013 to 2018

Historical Share Prices

Figure 3 shows the historical share price of RWM.



Source: Thomson Reuters Eikon

5.3 Analysis of the Issues

The main issues on voluntary delisting revolve around approval, motivations for delisting, the tender offer price, and the roles played by the PSE and SEC in protecting the interest of retail investors or minority stockholders.

Approval for Delisting

As stated in the rules for delisting, voluntary delisting has to be approved by the majority of the Board of Directors. Given the ownership structure of most listed Philippine companies, the Board is normally controlled by a family or a group of controlling stockholders. As of December 31, 2017, the controlling stockholders behind the 30 PSE-indexed stocks ranged from 32.87% to 81.49% (Cayanan, 2020). This means, voluntary delisting is so easy for a company planning to delist.

Motivations for Delisting

In the case of LIB, there were no specific reasons cited for voluntary delisting, but this was initiated after Globe Telecom and PLDT acquired the telecom interest of SMC in May 2016 where LIB was a part of. In a regulatory filing, the management stated that after due evaluation and study of the options available to the company, the Board approved and authorized the voluntary delisting of LIB's shares from the PSE. These reasons were accepted by the PSE.

In the case of MRP, the following reason was cited by management for voluntary delisting – that MCO considered the “*listed status*” of MRP as a mechanism to have better access to capital in the Philippines. Unfortunately, in recent years, MRP's status as a listed company had not helped the company raise funds despite the efforts and expenses it incurred to maintain its listed status. An analysis of MRP's financial statements from 2015 to 2018 (see Table 7) showed that the company's operating cashflows far exceeded its investing cash flows. This is the reason why the company could afford to pay its maturing obligations, including the PHP15 billion worth of senior note that the company issued in 2014.

Outside of the group, MRP raised more than PHP20 billion from equity private placements and sale of treasury shares from 2013 to 2014. MRP would not probably have raised this much amount of funds, including the PHP15 billion worth of senior note, had it not been listed. The management argued that the environment and the assumptions were different when the company offered its shares at PHP14.00 per share through private placement and the sale of treasury shares at PHP14.20 in 2013, and tried to justify the PHP7.25 tender offer price leading to delisting. The management was right. MRP was not profitable in 2013. It was very profitable in 2018, the year it delisted. The operating cash flows which

hit more than PHP12 billion in 2018, and the company's reduction in debt ratio spoke of the company's improving financial health. The controlling stockholders may not have wanted to share these improving financial benefits of MRP to the minority stockholders.

Another issue is the ability of the company to apply for relisting anytime it wants to raise funds from the public, because voluntary delisting is not covered by the five-year suspension period that applies to cases of involuntary delisting.

RWM cited the following reasons for voluntary delisting:

1. To give the company flexibility and react faster to changing gambling industry in the country (Campbell, 2019). The management believes that the disclosure requirements for publicly listed firms hamper the introduction of market innovations (Gonzales, 2019b).
2. To eliminate the burden of maintaining a minimum public float of 10% which should be owned by the public (Campbell, 2019).

Being a publicly listed company provides a lot of benefits, which include better access to capital. But it comes with a price. Disclosures, both structured and unstructured, are required because there is public interest at stake.

As regards the second argument, RWM had more than nine billion treasury shares out of the 25 billion shares issued as of December 31, 2018. It was not surprising that the public float was close to going below the minimum public float required by the PSE. But who made the decision to buy back all these shares?

Just like MRP, RWM can relist again anytime the company needs public funds because it is not covered by the five-year suspension period.

Tender Offer Price

The problem with the present practice is that the tender offeror hires the company which renders fairness opinion on the valuation of the tender offer price. There is an inherent conflict of interest in the set-up. Who pays the valuation company?

With these cases of delisting, both voluntary and involuntary, the real victims were the retail investors. It is unfortunate that they did not have anything to do with the decisions made by the managers of the companies they invested in. Yet, they suffered the most during delisting. Should the members of the Board of Directors and the top executives of these companies be penalized more for delisting, whether it is a case of voluntary or involuntary delisting?

The Role of the PSE and SEC

Amidst all these delisting issues, what has the PSE and SEC done? Every time a new case of delisting and complaints from retail investors arise, there are attempts to review the rules. Yet, what improvements have been made? The minority stockholders are still at the losing end. The problems faced by the small investors every time a voluntary delisting is announced are indications of lack of appropriate laws and rules to protect minority stockholders.

The regulators, both the SEC and PSE, should review the delisting rules and the sanctions imposed on erring members of the Board and top management.

6 Recommendations

The issues related to delisting are complex, and some of these issues actually go beyond the topics covered in this paper. However, the following recommendations are suggested:

1. Having majority of the members of the Board of Directors decide on the issue is a very easy requirement for an issue that can have adverse effects on retail investors (PSE, 2019). Therefore, the proposed PSE amendment on voluntary delisting which requires at least 75% vote from the shareholders and not more than 10% objection from shareholders is a welcome proposition (PSE, 2019). This is consistent with the practice in Thailand and Hong Kong (PSE, 2019). However, to make this amendment effective, voting preferred shares should be excluded in voting for this decision, especially when these voting preferred stocks are not

publicly listed. Ten of the 30 PSE-indexed stocks have voting preferred stocks which account for 16% to 57% of the total voting rights. This is the reason why these voting preferred stocks should not be allowed to vote on issues related to the delisting of common stocks.

To prevent controlling stockholders from easily securing even this 75% vote, the SEC can increase the public float or MPO to at least 33.33%. If a company has voting preferred stocks, and these were not made available to the public through stock rights offering, then the SEC should also require that these voting preferred stocks are not allowed to vote on issues related to the delisting of common stocks.

2. The valuation company must be commissioned by the PSE. The professional fees will be paid by the tender offeror. This is to provide more objectivity in the determination of the fair tender offer price. The PSE has to accredit the valuation companies (Gonzales, 2019a).
3. For the tender offer price, the proposed amendment of the PSE should be adopted. There will be a floor price, and the tender offer price will not be lower than the highest of the following (Galang, 2019, para. 6-9):
 - a. The highest value based on the fairness opinion or valuation report prepared by an independent valuation provider;
 - b. The highest closing price in the six months immediately preceding the date of the notice to stockholders of the proposed delisting; and
 - c. Volume weighted average price for one year immediately preceding the date of the notice to stockholders of the proposed delisting.
4. A suspension period has to be provided on companies which voluntarily delisted. The suspension period must be long enough to make the Board members and the managers of these companies think twice before they delist. A 20-year suspension period is recommended. This means that the suspension period for cases of involuntary delisting should be reviewed, and it has to be longer than 20 years. The suspension period must cover all the companies affiliated with the tender offeror, even if such companies are in different lines of business.
5. Fines and penalties related to non-compliance of requirements by the PSE, which may lead to voluntary or involuntary delisting, must be borne by the members of the Board of Directors and top management who are responsible for the violations, and not by the company itself. Having them shouldered by the company penalizes more the minority stockholders who have nothing to do with the management. This is to make the Board and the managers more accountable for their decisions.

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Appendix A

Supplemental Rule “8” of PSE Rules on Delisting (PSE, 2006)

INVOLUNTARY DELISTING

Policy on delisting of listed securities

To ensure quality of companies listed in the Exchange and to afford additional protection to the investors, securities listed in the Exchange may be suspended from being traded or removed from the list at any time should, after due notice, the Exchange determines the issuer falls under any of the criteria listed below.

Criteria for delisting

A listed company that is experiencing one of the following conditions shall be considered for delisting:

- a. The listed company has failed to comply with the Listing Agreement or the Listing and Disclosure Rules of the Exchange, now or hereinafter in effect, despite notice and after the lapse of the period specified;
- b. A false market exists in any securities of the issuer concerned and such false market can be attributed, whether directly or indirectly, solely to the issuer (e.g., information spread by the issuer which triggered or resulted in the active trading of the security(ies) of the issuer and the same was later found or proven to be untrue or concocted to create false market; trading of the security(ies) without actual buyer or seller);
- c. In case the trading volume of the listed company falls below the trading volume requirement of the Exchange that will be published;
- d. Should the listed company be rendered incapable of continuing the business or accomplishing the purpose for which it was incorporated by reason of the abandonment, destruction, condemnation, seizure or expropriation of its operating assets;
- e. Whenever liquidation of the listed company's assets has been authorized, or dissolution of the listed company has been ordered by any competent authority. An announcement by the listed company of an intent to file, or the actual filing of, proceedings for suspension of payments or under the Insolvency law, or the listed company otherwise becomes the subject of legal proceedings under the Insolvency Law shall merit an immediate suspension of the trading of security(ies) of the listed company;
- f. The stockholders' equity becomes negative;
- g. When the listed company's security registration or exemption from registration pursuant to the Securities Regulation Code is no longer effective for any reason, or its registration with the Securities and Exchange Commission has been revoked or canceled;
- h. Whenever the listed company's entire outstanding amount of a listed class, or series is to be retired through payment at maturity, or through redemption, reclassification or otherwise;
- i. The listed company repeatedly fails to make timely, adequate, and accurate disclosures of information, or fails to submit any reportorial requirement to the Exchange, its shareholders and the investing public in accordance with the Disclosure Rules of the Exchange, or willfully makes a false statement in the financial statements;
- j. Whenever it is shown that the listed company has made a purchase of its securities in violation of the requirements specified in Section 41 of the Corporation Code and other related laws;
- k. If the listed company has failed to be in actual commercial operations within two (2) years from date of listing. A listed company shall be considered in actual commercial operation if it can show that it has valid projects with realistic timetable or executed contracts relative to its principal business; and
- l. If the listed company or its management shall engage in operations which, under the law, are contrary to the public interest, and the continuation of listing is likely to give rise to an unacceptable risk of damage to the reputation of the Exchange.

Procedures for delisting

Should the Listing Committee ascertain, upon recommendation of the Listings & Disclosure Group, that a listed security of a company must be removed from the list, the Exchange shall notify the company in writing, describing the basis for such recommendation and the specific criterion under which such action is based. The notice shall likewise inform the company that it is entitled to a hearing before the Listing Committee, provided, a written request is filed with the Exchange within fifteen (15) working days from receipt of said notice.

Should the company decide not to or fail to request for a hearing within the specified period above, the Exchange shall order the delisting of the securities of the concerned company. A copy of the said Order shall be furnished to the company. One (1) Motion for Reconsideration may be filed within five (5) working days from receipt of copy of said letter. Should the period for filing said Motion lapsed or the same be denied, the Exchange shall make an announcement to all member-brokers/investing public of the order of delisting.

If a hearing is requested by the company, the same shall be held before the Listing Committee composed of at least five (5) incumbent members. Any appointed member of the said Committee who has either direct or indirect interest in common with the company the security of which is being considered for delisting is refrained or shall inhibit himself/herself from participating in deciding the case. Together with the said request, the company must likewise submit its memorandum or position paper and any other documents or evidence it deems necessary for the proper appreciation of the matter. Notices for the hearing shall be furnished to the company and the Listings & Disclosure Group at least fifteen (15) working days prior to the date of hearing.

The company and the Listings & Disclosure Group shall submit to the Office of the General Counsel of the Exchange additional documents or evidence which they deem necessary for the proper appreciation or consideration of the matter, at least ten (10) working days prior to the date of hearing to ensure the dissemination of such papers/materials to the members of the Committee and the other parties.

During the hearing, the company and the Listings & Disclosure Group of the Exchange must prove their respective cases through the presentation of testimonial evidence, and arguments before the Committee. Parties may present any witnesses they wish who shall be subject to cross-examination by the opposing side and questioning from the members of the Committee. The form and manner in which the actual hearing shall be conducted will be established by the Committee so as to ensure the orderly conduct of the proceedings. The proceedings shall be held within seven (7) working days, unless the same is extended upon mutual agreement of the parties.

After conclusion of the proceedings and deliberation on all the evidence and arguments presented, the Committee shall render a decision. The decision shall be rendered not later than fifteen (15) working days from conclusion of hearing. Only one (1) Motion for Reconsideration shall be allowed and the same must be filed within five (5) days from receipt of the copy of the decision. The decision shall become final should the period for filing of said Motion for Reconsideration lapse, or the said motion has been denied.

The decision of the Exchange may contain any of the following recommendation:

- a. to maintain the listing of said security;
- b. temporarily suspend the trading of said security; or
- c. remove said security from the registry of the Exchange.

Should the decision for the delisting of the security become final, the Exchange shall order the delisting of the security(ies) of the listed company. The Exchange shall likewise make an announcement relative thereto to all member brokers/investing public.

Relisting prohibition

A company that has once been delisted cannot apply for relisting within a period of five (5) years from the time it was delisted. Directors and executive officers of a company that has been delisted are disqualified from becoming directors or executive officers of any company applying for listing within the same period counted from the time the application for delisting was approved.

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The Exchange will allow the delisting of the security upon request or application of the company if the following are complied with:

- a. The delisting must be approved by a majority of the Company's incumbent directors.
- b. All security holders must be notified, in a form satisfactory to the Exchange, of the proposed delisting prior to the filing of the petition.
- c. A petition for delisting must be filed with the Exchange together with proposed tender offer terms and conditions at least sixty (60) days in advance of the date when delisting shall become effective.
- d. A tender offer to all stockholders of record must be made. The Company must submit a fairness opinion or valuation report, stating that from a financial point of view of the person making such opinion/report, based upon certain procedures followed and assumptions made, the terms and conditions of the tender offer are fair.
- e. The person(s) proposing the delisting must show to the Exchange that following the acquisition of the tendered shares, said person(s) have obtained a total of at least ninety-five percent (95%) of the issued and outstanding shares of the Company. However, if at the time the petition for delisting is filed, the person(s) proposing the delisting are already the beneficial owners of ninety-five percent (95%) of the issued and outstanding shares of the Company, said person(s) shall still be required to make a tender offer to all other stockholders of record.
- f. The listed company applying for delisting must not have any unpaid fees or penalties.

The Order of delisting shall be prepared if after evaluation of the petition and required documents, the Exchange finds that the delisting will not prejudice the interests of the investors.

In the event that an issuer seeks the listing of a security that was once delisted, the same shall be treated as a new listing.

Voluntary delisting fee

A listed company applying for voluntary delisting must, upon approval of its delisting, pay the Exchange the amount equivalent to its annual listing maintenance fee for the year when the application for delisting was filed.

Appendix B

Criteria for Accrediting Valuation Providers (PSE, 2011)

1. The firm must be duly registered or licensed by the SEC. For accounting firms, its accreditation with the SEC should be under the Group 'A' Category.
2. The firm, or its local or international affiliate, must have at least five (5) years of business operations.
3. A majority of the members of the firm's top management and/or division heads must each have a minimum of ten (10) years' experience in the firm's business, including underwriting, investment and financial advisory services.
4. The firm must demonstrate that its key personnel are qualified to prepare valuation reports and issue fairness opinions. They must identify relevant industry experience in their list of individual qualifications.
5. The firm must submit a description or summary of its General Engagement Operating Guidelines or Risk Management Procedures. The firm must demonstrate that it has effective quality controls and procedures to ensure the integrity of fairness opinions and valuation reports. The valuation report and/or fairness opinion issued by the firm shall indicate that, in the preparation of such report/opinion, the firm relied on available information and records, including but not limited to the representation of the applicant company, audited financial statements, competent person's reports, regulatory agency's reports and such other relevant supporting documents.
6. The firm must have a proven track record of valuing securities. The firm must show proof of a steady client base and at least five (5) engagements to render financial valuation services to listed companies in the Exchange and other reputable stock exchanges, commercial banks and insurance companies for the past five (5) years.
7. The firm or its directors or its executive officers must not be subject to any act or case that will pose a serious question on the firm's, directors', or executive officers' integrity or capability to provide services to listed companies. A serious question exists relative to the above parties if, during the past (5) years any of the following events occurred.
 - i. Any petition for insolvency was filed by or against the firm or its directors or its executive officers.
 - ii. Any conviction by final judgment in a criminal proceeding for an offense involving moral turpitude, domestic or foreign, including a nullo contendere case, or being subject to a pending criminal proceeding for an offense involving moral turpitude, domestic or foreign, excluding traffic violations and other minor offenses.