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Voting Preferred Shares and Corporate Control: Impact on Minority Stockholders' Rights

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This paper discusses the concerns related to the issuance of voting preferred shares by selected listed Philippine companies. These concerns include the rationale behind the issuance of these voting preferred stocks, limited access to the issue to controlling stockholders, very low offer prices relative to the common shares, non-listing of these securities in the Philippine Stock Exchange (PSE), and the dilution of minority stockholders' voting rights as a consequence of issuing these stocks.

1 Introduction

"Here is one misleading filing that the SEC tolerates. Has anyone noticed the continued posting of public ownership reports (POR) on the website of the Philippine Stock Exchange (PSE) that do not reflect the true ownership profile of a listed company?" (Perez, 2015)

These are quotes from Emeterio Perez, a journalist from The Manila Times. Based on PORs, some of these listed companies' common stocks are owned more than 50% by the public. Yet an examination of the members of the board of directors shows that all the directors, including the independent directors, are nominees of the majority stockholders (Perez, 2015).[1]

There are decisions of a company that require super majority vote of at least two-thirds of its outstanding capital stock such as an amendment of the articles of incorporation[2] and increase or decrease in capital stock, among others.[3] The listed Philippine companies seem to have no problems

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[1] Recommendation 5.2 of the Code of Corporate Governance for Publicly Listed Companies, as revised in 2016, prescribes the qualifications for independent directors. Any stockholder can submit a nomination for a director, normally sent to the corporate secretary. The nominations are screened by the nominations and corporate governance committee, or its equivalent, which finalizes the list of directors to be included for board's and shareholders' approval. The probability of getting admitted to the board of directors is contingent on the number of shares supporting the nomination of a director. In the end, it is the stockholders with more voting shares who will end up determining who will comprise the board, including the independent directors.

[2] An excerpt from Section 15 of the Revised Code of the Philippines (Republic Act No. 11232) states the following: "SEC. 15. Amendment of Articles of Incorporation. – Unless otherwise prescribed by this Code or by special law, and for legitimate purposes, any provision or matter stated in the articles of incorporation may be amended by a majority vote of the board of directors or trustees and the vote or written assent of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, without prejudice to the appraisal right of dissenting stockholders in accordance with the provisions of this Code. The articles of incorporation of a nonstock corporation may be amended by the vote or written assent of majority of the trustees and at least two-thirds (2/3) of the members."

Other transactions and decisions that need approval of at least two-thirds of the outstanding capital stock based on the revised Corporation Code of the Philippines are the following: removal of directors or trustees (Section 27); power to extend or shorten corporate term (Section 36); power to increase or decrease capital stock or incur, create, or increase bonded indebtedness (Section 37); power to deny preemptive right (Section 38); sale or other disposition of assets (Section 39); power to invest corporate funds in another corporation or business or for any other purpose (Section 41); power to declare dividends (Section 42); power to enter into management contract (Section 43); amendment to bylaws (Section 47); and mergers and acquisitions (Section 76).

[3] A preemptive right gives an existing stockholder the right to subscribe to new issuance of shares by a company based on his proportionate interest in that company. This right, if exercised, prevents dilution of an existing stockholder's interest in a company when new shares are issued.

getting all these decisions approved, even if their respective PORs show that the controlling stockholders do not own or represent two-thirds of the common stocks.[4]

SEC tried to increase public ownership by increasing the minimum public float. Through SEC Memorandum Circular No. 13 Series of 2017 dated December 1, 2017, the Securities and Exchange Commission (SEC) increased the minimum public ownership (MPO) for companies having initial public offering (IPO) to at least 20%, from the MPO at that time of 10% (SEC Circular No. 13, 2017). The rule, however, was only applicable to the new IPOs. Among the reasons cited for the increase were the following (SEC Circular No. 13, 2017):

1. To provide liquidity which in turn attracts good-quality and long-term investors.
2. To improve market efficiency and reduce price volatility.
3. To reduce the opportunities for collusive market action or price manipulation and encourage good governance.
4. To enhance the country's relative weight in globally tracked free float-adjusted market capitalization weighted indices to attract more capital.
5. To ensure that the objectives of the Securities Regulation Code (SRC) are met.

The benefits of increasing the public float will be negated if SEC will not consider the implications of the issuance of another class of shares which allows controlling stockholders to have absolute control over the listed companies, such as the issuance of voting preferred stock.

Companies issue preferred stocks to fund expansion, pay maturing obligations, or finance working capital requirements. In 2020, Megawide Construction Corporation (MWIDE) raised PHP4.3 billion from issuing preferred stocks to support its growing infrastructure portfolio (Almazan, 2020). In 2021, MWIDE raised another PHP4 billion through preferred stock issuance to redeem the PHP4 billion worth of preferred stocks issued in 2014 (MWIDE Annual Report, 2021).

Preferred stocks combine in varying degrees the characteristics of both debt and equity securities. Preferred shares may contain any or a combination of the following features: cash dividends, preference over common shares during dissolution, convertibility to common shares, and participating,[5] cumulative,[6] and voting rights. Unlike bonds, however, preferred stocks are classified as equity in the balance sheet but have generally no voting rights (Marquit & Curry, 2022).

Over the years, preferred stocks with different features have been issued by Philippine companies, depending on which target market they are catering to. Some of these issuances are designed for institutional investors. Hence, these issues offer regular cash dividends and sometimes generous dividend yields. There are also preferred stocks issued by Philippine companies with voting rights. This voting rights feature makes the preferred stocks no longer different from the common stocks, considering that they have other attributes like having cumulative dividends which are not available to common stocks.

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[4] The controlling stockholders of some of these companies are able to have the two-thirds vote because of their voting preferred stocks, in addition to their common stocks. The two-thirds vote is based on the outstanding capital stock which includes common stocks and voting preferred stocks. The PORs disclosed in PSE through the "Top 100 Stockholders" report are exclusive to common stocks and do not include the voting preferred stocks.

[5] This participating feature means that preferred stockholders can receive more than the regular cash dividends they are entitled to when the company earns significant earnings, or when common stockholders receive special cash dividends, on top of the regular cash dividends.

[6] Cumulative means that if the dividends in a given year are not declared because of insufficient retained earnings or lack of cash, or for whatever reasons, these unpaid dividends are accumulated through an account "dividends in arrears." No cash dividends will be distributed to the common stockholders unless these dividends in arrears are paid first.

2 Review of Literature

Preferred stockholders are preferred to the extent that the corporation's charter allows them to have advantages over the common shareholders. These advantages include priority over common stockholders during liquidation and the right to receive cash dividends (Mitchell, 1996). These advantages are also provided in Section 6 of the Revised Corporation Code of the Philippines which states that preferred shares may be given preference in the distribution of dividends and in the distribution of assets, in case of liquidation. While preferred stockholders are given preference in the distribution of dividends, Section 42 of the Revised Corporation Code of the Philippines states that the board of directors of a stock corporation may declare dividends out of the unrestricted retained earnings of a company. Accordingly, no dividends can be declared if a company has zero or negative retained earnings.

Between 1960 to 1967, there was an increasing number of mergers and acquisitions in the United States financed by convertible preferred stocks[7] (Pinches, 1970) due to the following possible reasons:

1. Acquiring firms expect higher returns post-acquisition as compared to employing other modes of financing (Pinches, 1970).
2. They enable the acquiring companies to meet the expected level of dividend payments of the acquired companies' stockholders (Soldofsky, 1971).
3. They can provide earnings leverage for the acquiring firms, especially for mergers accounted for using the pooling method (Pinches, 1970).[8]
4. The conversion feature allows the shareholders of the acquired company to benefit from the expected increase in the market price of the acquiring company's stock (Soldofsky, 1971).

Over the years, different classes of preferred stocks have been issued with varying rights and features. These features include the following: voting, participating, redeemable, callable, and convertible. Some issues provide for the establishment of a sinking fund (Grossman, 1931).

A study of 250 industrial preferred issues revealed three types of voting preferred stocks: permanent voting where the shareholders have the right to participate in the stockholders' meeting to the extent stated in the charter, temporary voting when the corporation is unable to abide with certain promises to preferred stockholders, and consent voting which gives preferred stockholders veto power on certain proposed corporate actions (Bradley, 1948).

While there are advantages in issuing preferred stocks, there are also limitations. In the case of preferred stocks which have floating dividend rates, the upside potential may be limited by the changes in the index to which it is tied. Improvements in value are more related to changes in interest rates, rather than other factors. Preferred stockholders, like debt holders, have limited benefits from improved corporate performance (Mitchell, 1996). Preferred shareholders may also be disadvantaged when the motivation of directors is to maximize common shareholders' wealth by expropriating preferred stockholders (Mitchell, 1996).

Another disadvantage of preferred stocks is that dividends, unlike interest expense, are not tax-deductible (Davenport, 1956). In the Philippines, the general rule is that dividend payments are not included in the list of expenses allowed to be deducted in determining taxable income (KPMG, 2018).

Preferred stocks issued in the Philippines are generally cumulative, nonvoting, and nonparticipating[9] (Merkado Barkada, 2021).

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[7] Convertible preferred stocks can be converted into common stocks.

[8] The issuance of convertible preferred stock is allowed for mergers accounted for using the pooling method. This can increase the earnings available to common stockholders as long as the after-tax earnings of the acquired firm are greater than the dividends of the newly issued convertible preferred stocks. This earnings advantage can be temporary or permanent depending on the conversion terms and the potential dilution in earnings arising from future conversion (Pinches, 1970). Under the pooling method, any immediate income tax payment on capital gains can be avoided (Soldofsky, 1971).

[9] Participating preferred stocks may receive additional cash dividends, on top of the fixed rates, during improved corporate performance.

3 Objectives of the Study

This study has the following objectives:

1. To identify the features of voting preferred stocks of selected listed Philippine companies.
2. To determine the effects of voting preferred stocks on the rights of minority stockholders.
3. To come up with recommendations that will improve the plight of the minority stockholders in relation to the issuance of voting preferred stocks.

4 Methodology

In conducting this study, the following procedures were made:

1. The 2019 annual reports of the 30 listed Philippine companies which comprise the Philippine stock index (PSEi) were reviewed to identify which companies have issued voting preferred stocks.
2. To the extent possible, the following pieces of information were gathered: dates the voting preferred stocks were issued, to whom the shares were issued, and the issue prices.
3. If the voting preferred stocks were issued to controlling stockholders, the issue prices were compared with the common stock prices at the time the voting preferred stocks were issued. The differences between the total proceeds raised from the issuance of voting preferred stocks and the amount that would have been raised had common stocks been issued were computed.
4. The amended articles of incorporation of the companies which issued voting preferred stocks were reviewed to identify who determined the issue prices.
5. The estimated percentage shares of the voting preferred stocks of controlling stockholders to the total voting shares were computed based on the information provided in the annual reports to determine the extent of the possible dilution of the minority stockholders, as a result of issuing these voting preferred stocks.
6. Studies and academic articles about voting preferred stocks in other countries were analyzed.
7. Recommendations intended to improve the situation of the minority stockholders with respect to the issuance of voting preferred stocks were provided.

5 Findings

Out of the 30 PSE-indexed stocks, 11 were identified to have issued voting preferred stocks. Table 1 shows the market capitalization of these 11 companies with their respective weights in the PSEi as of December 31, 2019 (see Table 1).

Table 1. Market Cap of 11 PSEi Companies Which Issued Voting Preferred Stocks (As of December 31, 2019)

	Company	Market Cap in PHP	Weight in the Index
1	Ayala Corporation (AC)	492,259,963,873	5.05%
2	Ayala Land Inc. (ALI)	670,440,774,686	6.88%
3	BDO Unibank, Inc. (BDO)	692,256,512,772	7.10%
4	First Gen Corporation (FGEN)	87,179,645,401	0.89%
5	Globe Telecom, Inc. (GLO)	269,080,982,140	2.76%
6	GT Capital Holdings	182,346,045,189	1.87%
7	International Container Terminal Services, Inc. (ICTS)	257,765,660,989	2.64%
8	Megaworld Corporation (MEG)	129,209,654,077	1.33%
9	Metro Pacific Investments Corp (MPI)	109,859,210,857	1.13%
10	Security Bank Corporation (SECB)	146,940,082,965	1.51%
11	PLDT, Inc. (TEL)	213,463,105,700	2.19%
	Total	3,250,801,638,647	33.34%

Source: Philippine Stock Exchange

The 11 companies accounted for more than 33% of the PSEi's market cap as of the end of 2019.

5.1.1 Share of Voting Preferred Stocks to Total Voting Shares

Based on these 11 companies, the percentage share of the voting preferred shares to the total voting shares ranged from 10.52% to 57.03% as of the end of 2019 (see Table 2).

Table 2. Percentage Share of Voting Preferred Stocks to Total Voting Shares (December 31, 2019)

	Company	% Share of Common Stocks to Total Voting Shares	% Share of Pref. Stocks to Total Voting Shares
1	Ayala Corporation (AC)	75.81%	**24.19%**
2	Ayala Land Inc. (ALI)	53.00%	**47.00%**
3	BDO Unibank, Inc. (BDO)	89.48%	**10.52%**
4	First Gen Corporation (FGEN)	71.08%	**28.92%**
5	Globe Telecom, Inc. (GLO)	45.66%	**54.34%**
6	GT Capital Holdings	55.26%	**44.74%**
7	International Container Terminal Services, Inc. (ICTS)	74.12%	**25.88%**
8	Megaworld Corporation (MEG)	84.30%	**15.70%**
9	Metro Pacific Investments Corp (MPI)	77.57%	**22.43%**
10	Security Bank Corporation (SECB)	42.97%	**57.03%**
11	PLDT, Inc. (TEL)	59.02%	**40.98%**

It is interesting to note that for most companies with big market capitalization such as ALI, Globe, and PLDT, the percentage shares of their voting preferred stocks to the total voting shares were at least 40%.

The next table shows the estimated percentage shares of the controlling stockholders on the voting shares of their respective companies (see Table 3).

Table 3. Estimated Percentage Share of the Controlling Stockholders on Common Stocks, Voting Preferred Stocks, and Total Voting Shares (December 31, 2019)

		Estimated Percentage Share of the Controlling Stockholders on:		
	Company	Common Stocks	Voting Pref. Stocks	Total Voting Shares
1	Ayala Corporation (AC)	47.46%	86.94%	57.01%
2	Ayala Land Inc. (ALI)	44.42%	93.09%	67.30%
3	BDO Unibank, Inc. (BDO)	52.92%	100.00%	57.87%
4	First Gen Corporation (FGEN)	67.59%	100.00%	76.96%
5	Globe Telecom, Inc. (GLO)	77.93%[10]	100.00%	89.93%[11]
6	GT Capital Holdings (GTCAP)CAP)	55.93%	97.81%	74.67%
7	International Container Terminal Services, Inc. (ICTS)	49.12%	100.00%	62.29%
8	Megaworld Corporation (MEG)	66.06%	100.00%	71.38%
9	Metro Pacific Investments Corp (MPI)	41.89%	100.00%	54.92%
10	Security Bank Corporation (SECB)	33.46%	66.92%	52.54%
11	PLDT, Inc. (TEL)	22.03%	100.00%	53.98%

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[10] Based on the combined common shares of AC and Singtel.

[11] Based on the combined interest of AC and Singtel.

It must be noted that in six out of the 11 companies, the majority stockholders did not have more than 50% of the common shares. However, when their shares in the voting preferred stocks were combined, the majority stockholders of these 11 companies ended up having at least 50% of the voting shares, with five of them having at least two-thirds of all the voting shares.

It must also be noted that the controlling stockholders held majority of the voting preferred shares, seven of which were 100% owned. For the other four, the lowest estimated percentage share of voting preferred stocks held by the controlling stockholders was 66.92%.

Without the voting preferred stocks, only two companies, First Gen Corporation and Globe Telecom, have at least two-thirds vote of the common stocks.

In the case of Globe Telecom, the 77.93% ownership stake in its common stocks are owned by Ayala Corporation (30.90%) and Singapore Telecom, Int'l. Pte. Ltd. (Singtel) (47.03%). Asiacom Philippines, Inc., owner of all the voting preferred stocks of Globe Telecom, is a joint venture of Ayala Corporation (60%) and Singtel (40%) (Globe, 2020). However, in Note 1.1 of the 2019 Globe's Notes to Financial Statements, the following disclosure was made: "Major stockholders of Globe Telecom include Ayala Corporation (AC), Singapore Telecom International Pte Ltd. (Singtel) and Asiacom Philippines, Inc. None of these companies exercise control over Globe Telecom." (Globe Telecom, Inc. (GLO), 2019, p.10)

The voting preferred stocks represent more than 50% of the total voting shares. AC and Singtel are the biggest common stockholders of Globe Telecom with a combined voting share of more than 77% in the common stocks and 100% in the voting preferred stocks. Their combined total voting shares is 89.93% (see Table 3).

Based on the disclosures found in their respective annual reports and those filed with PSE, Ayala Corporation, Ayala Land Inc., and GT Capital offered their voting preferred stocks to their common stockholders as of a given date. This implies that the preemptive rights of their common stockholders were considered in these offerings. Note, however, that the preemptive right of shareholders may be denied in certain cases. Under Section 38 of the Revised Corporation Code of the Philippines (pp.19-20), "the preemptive right shall not extend to shares issued in compliance with laws requiring stock offerings or minimum stock ownership by the public, or to shares 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." The voting preferred stocks from these three companies were not listed in the Philippine Stock Exchange.

While there were no PSE rules violated in the process, the non-listing of these voting preferred stocks might have made them unattractive to investors because of possible difficulties in liquidating them. This probably explains why the subscription by the minority stockholders was low and the unsubscribed shares by the latter seemed to have been taken up by the majority stockholders. This also possibly explains the much higher percentage share of the controlling stockholders' interest in the voting preferred stocks vis-à-vis their interest in common stocks (see Table 3 for AC, ALI, and GTCAP).

In the case of Security Bank, the 602,831,109 voting preferred stocks issued on July 10, 2014, also considered the preemptive rights of its common stockholders as of June 16, 2014 (Security Bank Corporation, 2014, April 8). The remaining 397,168,891 voting preferred shares were issued on April 1, 2016, to The Bank of Tokyo-Mitsubishi UFJ, Ltd. (BTMU), Frederick Dy, and Daniel Dy through a private placement (Security Bank Corporation, 2016). Like other voting preferred shares, these voting preferred stocks are not listed.

Out of these 11, only Globe's voting preferred stocks were listed in PSE. However, the shares had never been traded because all the shares were held by Asiacom.

5.1.2 Cost of Voting Preferred Stocks

With the significant voting rights assigned to these preferred stocks, it is interesting to know how much the controlling stockholders paid for these shares. Table 4 provides a summary of the amount paid by the controlling stockholders for their preferred stocks and the amount that they would have paid had common shares been subscribed at the prevailing common stock prices at the time these voting preferred shares were floated. Table 4 provides information for the voting preferred stocks which were subscribed entirely by the controlling stockholders.

Table 4. Amount Paid by the Controlling Stockholders for their Voting Preferred Stocks (in PHP)

		Amount Paid for Voting Pref. Stocks	Amount That Would Have Been Paid for Common Stocks	Difference
1	BDO Unibank, Inc. (BDO)	5,150,000,000	16,557,250,000	11,407,250,000
2	Globe Telecom, Inc. (GLO)	792,575,105	88,134,351,676	87,341,776,571
3	International Container Terminal Services, Inc. (ICTS)	7,000,000	31,570,000,000	31,563,000,000
4	Megaworld Corporation (MEG)	60,000,000	24,000,000,000	23,940,000,000
5	Metro Pacific Investments Corp (MPI)	91,281,053	53,227,350,861	53,136,069,808
6	Security Bank Corporation (SECB)	39,716,889	66,263,657,774	66,223,940,885
7	PLDT, Inc. (TEL)	150,000,000	402,750,000,000	402,600,000,000

Table 4 shows the significant discrepancy in the amounts paid for the voting preferred stocks and common stocks assuming the latter were subscribed to earn equivalent voting rights. While the features of common stocks are different from those of the voting preferred stocks, the difference in subscription prices were unusually big considering the control rights that these majority stockholders gain from these issues. An examination of the amended articles of incorporation (AOI) of the 11 companies which issued preferred stocks, their respective board of directors decided on the issue value or issue price, except for the following companies where their respective AOIs were silent about who determined the issue price: FGEN, Globe, and ICTS.[12] Their respective boards, however, decide on the dividend rates. Also, there were no disclosures on the basis of the issue prices of the voting preferred stocks when they were issued.

Take the case of PLDT. On October 16, 2012, PLDT issued 150 million voting preferred shares to BTF Holdings, Inc. (BTFHI), the beneficial trust fund of PLDT, at PHP1 per share, or a total of PHP150 million. These voting preferred shares accounted for 40.98% of the total voting shares. The prevailing price of PLDT common stock at that time was PHP2,578. This means that BTFHI would have paid PHP402.75 billion for the equivalent voting rights had it subscribed to the common stocks. These shares were issued to address the foreign ownership concern raised against the company by Wilson Gamboa on February 28, 2007, and was decided by the Supreme Court on June 28, 2011.[13]

In the case of First Gen, the 1 billion voting preferred stocks were the results of a 200:1 stock split and reclassification of existing nonvoting PHP100 par value 5 million preferred stocks into 1 billion PHP0.50 voting preferred stocks on August 17, 2005, even before the FGEN common shares were listed at PSE on February 10, 2006.[14] Based on the original issue price of these reclassified preferred stocks, the controlling stockholders paid PHP500 million (5 million x PHP100 par value and issue price).

The subsequent issuances of voting preferred stocks by FGEN were the results of stock dividends. On October 5, 2009, the board of directors declared 375 million Series E voting preferred stocks as stock dividends to nonvoting preferred stocks Series B. On March 8, 2010, the board declared 25% stock dividends to Series E or equivalent to 93,553,892 shares. For these voting preferred shares, there were no cash outlays from the controlling stockholders. Had the controlling stockholders subscribed to common shares with the equivalent voting rights, they should have paid more than PHP4.65 billion.

These concerns related to the issuance of these voting preferred stocks could have been an opportunity for the independent directors to protect the rights of the minority stockholders.[15]

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[12] Details regarding the links to the amended articles of incorporation are provided in the references.
[13] https://www.projectjurisprudence.com/2017/05/gamboa-v-teves-gr-no-176579-june-28-2011.html.
The case is about the sale of PTIC shares, a stockholder of PLDT, to First Pacific which resulted in the violation of 40% maximum ownership rule by a foreign entity in a local telecom company.
[14] 2006 FGEN Annual Report.
[15] The author is not aware of the positions the respective independent directors of the relevant companies took on the issuance of voting preferred stocks.

Unfortunately, the minutes related to the board meetings where decisions on the issuance of these shares of stocks or any other concerns affecting the interests of the minority stockholders are not required disclosures. Hence, the investing public is unaware as to how the independent directors voted.

5.1.3 Features of Voting Preferred Stocks

Table 5 provides a summary of the features of the voting preferred stocks of the 11 companies covered in this study.

Table 5. Features of the Voting Preferred Stocks (As of December 31, 2019)

	Name of Company	Par Value	Dividend Rate	Cumulative	Redeemable	Participating	Convertible
1	Ayala Corporation	PHP1.00	5.773% repriced every 3 yrs.	✓	✓	No disclosure	No disclosure
2	Ayala Land, Inc.	PHP0.10	4.75% repriced every 10 years.	X	✓	No disclosure	✓
3	BDO Unibank, Inc.	PHP10	6.50%	X	No disclosure	X	✓
4	First Gen Corporation: Series B	PHP0.50	PHP0.02	✓	✓	X	X
	First Gen Corporation: Series F	PHP0.50	PHP0.01	No disclosure	✓	X	X
5	Globe Telecom	PHP5.00	PHP0.01	✓	✓	X	✓
6	GT Capital Holdings	PHP0.10	PHP0.00377 repriced every 10 years.	X	✓	X	X
7	International Container Terminal Services, Inc.	PHP0.01	No dividend.	N/A	✓	N/A	X
8	Megaworld Corporation	PHP.01	1%	✓	X	X	X
9	Metro Pacific Investments Corp.	PHP0.01	10%	✓	No disclosure	X	No disclosure
10	PLDT, Inc.	PHP1.00	6.50%	✓	✓	No disclosure	X
11	Security Bank Corporation	PHP0.10	3.9% repriced every 10 years.	X	✓	X	X

As shown in Table 5, only ICT voting preferred stock is not paying cash dividends. None of the voting preferred stocks in this study have been disclosed to be participating. Four of the 10 companies which declare cash dividends are noncumulative. ALI, BDO, and Globe voting preferred stocks are convertible to common stocks.

While the features of the common stocks are substantially different from those of the voting preferred stocks, the latter significantly dilute the voting rights of the minority stockholders. If the voting preferred stocks are nonparticipating and nonconvertible, the common stockholders may enjoy more potential financial benefits in the form of higher cash dividends. However, are these inferior cash flow rights sufficient to compensate for the huge discount the controlling stockholders paid for the control rights they earned when they subscribed to the voting preferred stocks? A more interesting question to ask is, "Are the controlling stockholders willing to trade their voting preferred stocks to minority stockholders for the same price they paid?" If their answer is no, then the issuance of these voting preferred stocks is a clear example of expropriating minority stockholders.

6 Concluding Remarks and Recommendations

It is interesting to know when these voting preferred stocks started floating among the listed Philippine companies. A major attribute of a common stock is its voting rights. Some companies pay a premium to have majority of these stocks or sometimes even just enough to have a representation in the board. What happens when a preferred stock is issued with voting rights at a discount? Worse, what if this voting preferred stock is also convertible into common stocks and issued at a discount? The issuance of this kind of voting preferred stock is a clear manifestation of expropriating minority stockholders. This will not be a problem if the price paid by the subscribers is fair. However, as shown in the findings of this study, the controlling stockholders who also subscribed to the shares were responsible for setting the issue price through the members of the board whom they nominated and elected. There were no fairness valuation reports disclosed to accompany these issuances. There were a few occasions where the issuance of these voting preferred stocks was offered to the minority. However, the non-listing of these issues at the PSE seem to have discouraged minority stockholders from subscribing.

In view of the above arguments, the following recommendations are proposed.

1. Except in cases where the preemptive right of shareholders is denied under the law, the issuance of voting preferred stocks must be offered to all common stockholders as of a given date, and in case of waiver by the existing common shareholders of their preemptive right, the SEC should strictly check the validity of such waivers. This may entail submission of additional documents aside from the usual secretary's certificate on denial of preemptive right.[16]
2. To encourage small investors to subscribe, the voting preferred stocks must be listed at the PSE. At present, there are no rules from SEC and PSE that require the mandatory listing of these shares. Given the exploitative nature of these issues as discussed in this study, it is suggested that the regulators consider the mandatory listing of this class of shares.
3. The approval of the minority stockholders must be required in the flotation of the voting preferred stocks to prevent controlling stockholders from having absolute authority regarding this issue. An alternative approach is for PSE to adopt a policy similar to Section 2.a of the amended rules on voluntary delisting (PSE Memorandum CN – No. – 2020 – 0104). Hence, the issuance of voting preferred stocks "must be approved by at least 2/3 of the entire membership of the Board, including majority, but not less than two, of all of its independent directors, and stockholders owning at least 2/3 of the total outstanding and listed shares of the Company. Further, the number of votes against the issuance of voting preferred stocks should not be more than 10% of the total outstanding and listed shares of the listed Company" (PSE, 2020). This rule can be adopted because, like voluntary delisting, the issuance of voting preferred stocks exclusively to the controlling stockholders can adversely affect the interest of the minority stockholders.
4. When there are decisions related to the issuance of new securities that may dilute the interest of the minority stockholders, the votes of each director, especially those of the independent directors, must be disclosed to the public. This public disclosure may compel each director to decide based on what is not just legal but what is ethical and fair. Otherwise, what are the codes on corporate governance submitted to SEC for?
5. In cases where the issuance of voting preferred stocks will not be offered to the public, SEC must require the submission of fairness valuation reports regarding the issue price. These fairness valuation reports must be required disclosures, including all the assumptions used in the valuations. To keep the independence and objectivity of the valuation entities, SEC must accredit valuation companies and must be the one to hire them, the cost of which will be charged against the company planning to issue this kind of security. To limit the biases of the valuation companies and to compel them to be more objective, at least two valuation reports coming from different valuation companies must be prepared. SEC can make the final decision regarding the issue price. However, if the voting preferred shares will be listed and will be offered to the public, the issue price will be dependent on the market or on the book building activity of the underwriters, a process undertaken in the issuance of IPOs or stock rights offerings.
6. SEC and PSE should consider increasing the minimum public float for commons stocks beyond one-third of the issue. This is to create a blocking minority that will prevent controlling stockholders from having absolute control over the listed companies. This rule must apply to new IPOs and existing listed companies. A transition period of three years is recommended

[16] Section 38 of the Corporation Code of the Philippines.

for the existing listed companies which are not yet compliant with the new minimum public ownership.

7. The minimum public ownership for common stocks must be applied to the voting preferred stocks once the rule for making this type of security publicly listed is created and approved.
8. Publicly listed companies which will delist as a result of this new set of rules must not be allowed to relist or have an IPO for any of the companies affiliated with the group or any of their major stockholders for at least 10 years. This is to make their owners and managers realize that they have responsibility to protect their minority stockholders if they want to remain listed and take advantage of having better access to the capital and money markets.

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