Republic of the Philippines
Department of Finance
Securities and Exchange Commission
Pasay City, Philippines

Platinum Group Metals Corporation,
Complainant-Appellants,

versus

Oriental Peninsula Resources Group, Inc.,
Respondent-Appellee.

SEC En Banc Case No. 01-10-190

DECISION

This resolves the Notice and Memorandum of Appeal[1] filed on 4 January 2010 by Platinum Group Metals Corporation, (Appellants) against the Decision dated 15 December 2009 of the Corporation Finance Department (CFD), now Corporate Governance and Finance Department.[2]

The facts, as summarized by the CFD are as follows:

> On August 22, 2007, Oriental filed a Registration Statement with the Commission covering its 1,452,000,005 shares of stock, of which Three Hundred Million (300,000,000) was represented to be offered to the public through an initial public offering (IPO) at an offer price range of P1 .98 to P2.98 per share.
>
> After several amendments to the Registration Statement filed, the Commission, in its meeting on November 20, 2007, favorably considered the application for registration filed by Oriental and caused the issuance of a pre-effective letter, subject to the submission/compliance with the following:
>
> - Final prospectus;
> - A copy of the duly executed Underwriting Agreement;
> - Favorable indorsement of the Registration Statement from the Mines and Geosciences Bureau; and
> - Submission of a second amended Audited Financial Statements containing a discussion on the standards adopted and additional required information on business combination.
>
> Upon Oriental's submission of the required documents stated in the pre-effective letter and the revised Final Prospectus, the Commission, through the Corporation Finance Department (CFD), issued the company's Order of Registration and Permit to Sell Securities to the Public on December 10, 2007.
>
> On December 18, 2007, a complaint was filed by PGMC against Oriental for gross violations of Section 13(a)(iii) and (iv) of the Securities Regulation Code (SRC).
>
> PGMC in its complaint, raised the following issues:
>
> 1. Oriental misrepresented Citinickel's ownership of nickel mining projects as well as Citinickel's interest therein. Oriental also failed to mention the valid and effective Operating Agreement between Platinum and Olympic;
> 2. Oriental and/or Citinickel cannot operate the subject mining area because of an existing Writ of Preliminary Injunction;

1 Dated 29 Dec. 2009.
2 Appeal Memo. at 1.

3. Oriental is misleading the public in their Determination of the Offer Price by using false or inaccurate assumptions;
4. Oriental omitted to mention material cases affecting the rights of Citinickel to the mining areas in the Municipalities of Espanola and Narra in Palawan

Oriental filed its answer on January 22, 2008, disputing the allegations raised by PGMC. Oriental maintains that Citinickel is the undisputed holder of a valid MPSA granted in its favor by the government, through DENR. Neither Olympic nor PGMC are parties to the said MPSA which is a separate and distinct contract from their Operating Agreement. The Operating Agreement is therefore not at all material to Oriental.

Despite this, Oriental disclosed in the section "Risk Relating to Pending Litigation" on page 24 of the Final Prospectus, the company's involvement in certain legal proceedings related to the cancellation of the Operating Agreement between PGMC and Olympic. The same is also disclosed on pages 79 to 83 of the Final Prospectus under the section on "Involvement in Certain Legal Proceedings".

Oriental also disputed PGMC's claim that it cannot operate the mining area because of an existing Writ of Preliminary Injunction. Oriental submitted a copy of the Supreme Court's Resolution dated January 16, 2008 wherein a temporary restraining order was issued against the implementation of the November 20, 2007 Decision of the Court of Appeals in CA-GR SP No. 994221 and the Injunction Orders issued by Branch 95 of the RTC of Puerto Princesa City.[3]

CFD in its Decision[4] dismissed the complaint for lack of merit. CFD found that:

(i) Oriental properly disclosed material legal proceedings in its Registration Statement. The company has complied with the disclosure requirements of Paragraph C of "Annex C" of SRC Rule 12;
(ii) Oriental did not misrepresent facts on the conduct of its business operations. It has informed the investing public of the different risks involved which may affect the conduct of its business operation; and
(iii) Oriental did not make any false representations or assumptions in the valuation of the offer price. The public has been properly warned of the speculative nature of the offer considering that in the determination of its offer price, assumptions and uncertainties or contingencies which are beyond the company's control were used as basis.

Hence, this appeal.

In its Memorandum of Appeal, Platinum alleged the following assignment of errors:

I. The CFD failed to appreciate the relevant and material facts that clearly establish Respondent-Appellants false and misleading representations, as well as the omission of material information in the Registration Statement that it filed with the Commission.

3 CFD Decision at 1–2.
4 Dated 15 Dec. 2009

II. The CFD likewise failed to appreciate the fact that the disclosures made by Respondent-Appellant did not satisfy the requirement for disclosures imposed by the Securities Regulation Code and its Amended Implementing Rules and Regulations.

III. Respondent-Appellant's false or misleading representations, or in the same vein, its lack of a proper disclosure, consequently led investors to believe that it operates and controls a very lucrative mining operation when in truth and fact, it seeks to sell nothing more than promises that are founded on a **mere expectancy.**[5]

This Appeal has no merit.

Going through the Platinum's Memorandum of Appeal, it merely reiterated the facts and arguments that it previously raised in the proceedings before CFD.

Furthermore, the *Decision* of the Supreme Court, promulgated on 8 May 2009, [6] consolidating the cases involving Platinum, Olympic and Citinickel, and its legal ramifications, used by Platinum to support its allegations, obviously could not have been included in the subject disclosures filed on 22 August 2007.

Thus, we see no cogent reason to disturb the findings of CFD in accordance with Rule XI, Sec. 11-8 of the 2006 SEC Rules of Procedure.[7]

WHEREFORE, premises considered, the Decision of the Corporation Finance Department dated 15 December 2009 is **AFFIRMED**, this Appeal is hereby **DENIED** for lack of merit.

SO ORDERED.

Pasay City, Philippines, 17 August 2017.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

EMILIO B. AQUINO
Commissioner

5 Appeal Memo. at 4.
6 *Id.* Anx. D.
7 Sec. 11-8. Review Standard. — Findings of fact by the Operating Department shall not be disturbed by the Commission En Banc unless serious errors of fact have been committed.