Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

ABACORE CAPITAL HOLDINGS, INC.,
Appellant,

versus

COMPANY REGISTRATION AND MONITORING DEPARTMENT, represented by Acting Director Ferdinand B. Sales,
Appellee.

SEC En Banc Case No. 12-13-311
For: Review of CRMD's Imposition of Penalty under the SEC Amended Rules Governing Pre-Emptive and Other Subscription Rights and Declaration of Stock and Cash Dividends of Corporations whose Securities are Registered under the Securities Regulation Code or Listed in the Stock Exchange

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DECISION

For consideration of this Commission is the Appeal of Abacore Capital Holdings, Inc. (Abacore),[1] from the Letter dated November 27, 2013 of the Company Registration and Monitoring Department (CRMD)[2] imposing a fine of ₱ 62,000.00 against the Appellant. The CRMD found that the Appellant's changing of the record date from November 18, 2013 to December 12, 2013 (for a total period of 24 days) violates the "Amended Rules Governing Pre-Emptive and Other Subscription Rights and Declaration of Stock and Cash Dividends of Corporations whose Securities are Registered under the Securities Regulation Code or Listed in the Stock Exchange."

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[1] Hereafter referred to as "Appellant," or "Abacore," for brevity.
[2] Hereafter, "Appellee," or "CRMD," for brevity.

FACTS OF THE CASE

Appellant Abacore, (formerly Abacus Consolidated Resources Holdings, Inc.) is a domestic corporation with Securities and Exchange Commission (SEC) Registration No. 98789 and principal office at No. 28 N. Domingo St., New Manila, Quezon City. Abacore's primary purpose is that of a holding company. It is listed with the Philippine Stock Exchange (PSE) on October 28, 1987.

On October 18, 2013, the Commission issued a Certificate of Approval of Increase of Authorized Capital Stock of Abacore from P 3,000,000,000.00 to P 5,000,000,000.00. A part of the increase in capital stock was through a stock dividend declaration in the amount of ₱ 530,989,000.00 in favor of existing stockholders whose respective allotments will be determined after the record date has been set by the SEC.

On November 13, 2013, the CRMD received a letter dated November 12, 2013 from Abacore recommending that pursuant to the company's stock dividend declaration in the amount of ₱ 530,989,000.00, the record date for such dividend declaration be set on November 18, 2013.

On November 15, 2013, the Commission, through the CRMD, issued an Order authorizing Abacore to issue 530,989,000 shares at the par value of P 1.00 to cover the stock dividends and the issuance of shares of stock to stockholders of record as of November 18, 2013 pursuant to the Amended Rules[3].

In a letter dated November 18, 2013, Abacore informed the CRMD that the PSE disapproved the record date of November 18, 2013 on the basis of Section 6 of the PSE's Revised Disclosure Rules which states:

> **SECTION 6.1 DISCLOSURE OF RECORD DATE:** The Issuer must set the record date in accordance with the Rules of the Securities and Exchange Commission and when appropriate, of the Rules of the Bangko Sentral ng Pilipinas. The disclosure of the record date must not be less than ten (10) trading days from the said date

Thus, the corporation recommends that the record date be set to December 12, 2013 and seeks the Commission's approval on the matter.

CRMD elevated the matter to the Commission En Banc in a Memo dated November 22, 2013, recommending that the change of record date

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[3] Amended Rules Governing Pre-emptive and Other Subscription Rights and Declaration of Stock and Cash Dividends of Corporations Whose Securities are Registered under the Securities Regulation Code or Listed in the Stock Exchange or Amended Rule for brevity.

may be granted provided the corresponding penalty shall be imposed in accordance with the Amended Rules.[4]

CRMD presented to the SEC En Banc that granting the change of the record date from November 18, 2013 to December 12, 2013 shall mean that the corporation will be in continuing violation of the said rules for a period of twenty-four (24) days from November 18, 2013. Thus, the fine imposable against the corporation shall be computed as follows:

Basic Penalty	₱ 50,000.00
+ ₱ 500.00 per day of continuing violation (P 500.00 x 24 days)	12,000.00
Total	**₱ 62,000.00**

On November 26, 2013, the Commission En Banc approved the change of the record date to December 12, 2013, subject to the payment of the penalty of ₱ 62,000.00 as presented by CRMD in accordance with the aforementioned Rules. The CRMD informed Abacore of the Commission's approval of its request for change of the record date, with the imposition of penalty.

Aggrieved, Appellant Abacore filed on December 12, 2013 an Appeal of the CRMD's imposition of penalty, praying that this Commission set the penalty aside.

In its Memorandum of Appeal, Abacore argues that SEC-CRMD's November 27, 2013 Letter violates Appellant's:

(a) Right to substantive due process because Apellant's failure to observe the deadline specified in Section 5 of the SEC Amended Rules for the Record Date was due to SEC-OGC's own failure to timely act on Appellant's June 27, 2013 Letter;

(b) Right to procedural due process for imposing a penalty without previously granting appellant an opportunity to be heard; and

(c) Right to procedural due process for imposing a penalty without clearly stating the basis therefore

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4 *Id.*

In its June 27, 2013 letter (filed with the SEC on June 28, 2013) Abacore requested for an exception to the applicability of Sections 2 and 5 of the SEC Amended Rules since Abacore wanted to issue (future) stock dividends for stockholders of record as of August 11, 2012. The PSE denied Abacore's similar request through its letter dated June 27, 2013, citing the SEC Amended Rules. Thus, Abacore requested SEC for an exception to the SEC Amended Rules.

Meanwhile, in its Reply Memorandum, CRMD submits that the only issue is whether or not the imposition of the penalty against Abacore is proper. CRMD submits that Abacore's arguments in relation to the SEC-OGC's[5] failure to act on Abacore's June 27, 2013 letter is not relevant to the issue. In support of its imposition of penalty, CRMD states that it merely complied with the pertinent provisions of the Amended Rules CRMD quoted the pertinent provision of Section 5 (d) as:

> "The record date of such declaration shall not be less than ten (10) days nor more than thirty (30) days after all clearances and approvals by the Commission shall have been secured;"

On this point, Abacore countered that the CRMD misquoted the provision, when the Section 5 (d) should have read:

> "The record date of such declaration shall be fixed by the Commission and shall be indicated in the Order which shall not be less than ten (10) days nor more than thirty (30) days after all clearance and approvals by the Commission shall have been secured."

On this score, the Commission agrees with Abacore's observation. The paragraph above quoted is the correct provision under Section 5 (d) of the Amended Rules.[6] It is the Commission that fixes the record date, indicated in an Order, which shall not be less than ten days nor more than thirty days after all clearance and approvals shall have been secured. Barring any extraordinary circumstances, the date of approval of the increase of capital stock shall be considered as the presumptive date when all clearance and approvals shall have been secured, from which the ten (10) to no more than thirty (30) day period shall be counted.

In view of the parties' submissions, the sole issue to be determined by this Commission is whether the penalty imposed by the CRMD amounting to ₱ 62,000.00 should be set aside.

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[5] Office of the General Counsel ("OGC") of the Securities and Exchange Commission.

[6] Amended Rules Governing Pre-Emptive and Other Subscription Rights and Declaration of Stock or Cash Dividends of Corporations whose Securities are Registered under the Securities and Regulation Code or Listed in the Stock Exchange.

To rule on the issue, we refer to the following relevant dates in this case:

Certificate of Approval of Increase of Authorized Capital Stock	October 18, 2013
Order fixing the Record Date to November 18, 2013	November 15, 2013
Record Date as fixed by the Commission	November 18, 2013
Abacore's Request to change the Record date to December 12, 2017	November 18, 2013
SEC's approval of the change of the Record Date to December 12, 2017	November 26, 2013
New Record Date as approved by the Commission	December 12, 2017

This Commission observed that the Certificate of Approval of Increase of Authorized Capital Stock was issued on October 18, 2013, while the Order fixing the record date was released only on November 15, 2013, a total of 28 days from October 18, 2013. The CRMD states that on November 13, 2013, it received a letter from Abacore (dated November 12, 2013) recommending that the record date for such dividend declaration be set on November 18, 2018. CRMD states that it promptly issued an Order dated November 15, 2013 fixing the record date to November 18, 2013.

This Commission is mindful that a period of 28 days from the certificate of approval of the increase of capital stock to the Order fixing the record date could be considered as unreasonable delay, since the mandated period for the record date should be not less than 10 to no more than the 30 days from the approval of the increase of capital stock on October 18, 2013.

On an *ad hoc* basis based on the sole reason of equity, the Commission hereby sets aside the imposition of penalty. This is in light of the fact that in most instances, the date of the approval of the increase in the authorized capital stock and the date of the Commission's Order fixing the record date are issued within two weeks, or in some instances, both are issued on the very same day. The Commission is also mindful that since the Order fixing the record date on November 18, 2013, was only released on November 15, 2013, Abacore could not have complied with Section 6 of PSE's Revised Disclosure Rules which requires the disclosure of record date not less than ten (10) trading days ahead of the record date, thus:

> SECTION 6. Disclosure of Dividend Declarations - The Issuer must disclose to the Exchange dividend declarations as

approved by its Board of Directors and shareholders in accordance with Section 4.1 above.

SECTION 6.1. Disclosure of Record Date - The Issuer must set the record date in accordance with the Rules of the Commission and when appropriate, of the Rules of the Bangko Sentral ng Pilipinas. The disclosure of the record date must not be less than ten (10) Trading Days from the said date.

Under the Amended Rules, it is not mandatory for the applicant corporation to submit its recommendation for the record date. In fact, the Commission may, *motu propio*, set the record date for stock dividends for as long as the date complies with the periods under Section 5 (d). In this case, however, the Order fixing the record date was issued too late that Abacore was not able to comply with the PSE's Revised Disclosure Rules. Since the primary cause for the changing of the record date is the delayed issuance of the Order, on equitable grounds, this Commission sets aside the penalty imposed in CRMD's November 27, 2013 letter.

WHEREFORE, premises considered, the instant appeal is hereby granted, and the November 27, 2013 Order of the Company Registration Monitoring Department for payment of penalties in the amount of ₱ 62,000.00 is set aside.

SO ORDERED.

Pasay City, Philippines, 30 July 2019.

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner