

SEC warns against Upsys, Elizabeth Esty and Bitprime

THE Securities and Exchange Commission (SEC) warned the public against putting money in three entities, which are soliciting investments without first securing a license. It identified the entities as Elizabeth Esty Save Lives Binary Option Trading, Inc., Bitprime Computer Software Trading, and Upsys Daily Trading.

In an advisory, the SEC said Elizabeth Esty, which also transacts as ElizabethEstySaveLive, has been enticing the public with a 100% return on investment and 10 times profit.

Investments in Elizabeth Esty start from P1,000 to as high as P17,000 with promised earnings ranging from P10,000 to P125,000 depending on the amount of investment.

According to the SEC, the company's chief executive officer claims that "she is engaged in Bitcoin trading and Binary Options Trade."

The regulator also found out that the corporation has been posting a certificate of incorporation with a company registration number that belongs to another corporation.

In a separate advisory, the SEC said that Bitprime, which also operates under Ariane Estolonio-Bitprime Software One-Person Corp. (OPC), has been representing itself as a cryptocurrency service in cloud mining.

"The said entity allegedly generates income through cloud-mining investments. The

investment from partners will be invested in 'Cointrust-mining company' to gain profits," the regulator said.

Investments in Bitprime start from P500 and can go up to P100,000 with a promised 45% earnings for 15 days.

Meanwhile, Upsys was found to have been offering investment schemes ranging from P500 to P150,000 with a promised 2% up to 4% daily earnings.

Its investors were also told that they can earn a 50% direct referral bonus for first-level referrals and a 1% unilevel bonus for second levels and above.

According to the commission, Elizabeth Esty and Upsys both operate without registration, while Bitprime is a registered OPC.

However, the regulator clarified that all three entities have not secured a permit to sell or offer investment contracts to the public.

In another advisory, the SEC warned the public against impersonation scams amid rising reports about entities that pose as reputable financial institutions.

The commission emphasized that any business entity must secure prior registration and a secondary license to solicit investments.

"The mere fact that an entity has no secondary license granted by the SEC makes their investment-taking activities illegal," the advisory read. — **Justine Irish D. Tabile**

High Court delists Ongpin, Philex share dispute from court records

THE Supreme Court (SC) has granted the appeal of businessman Roberto V. Ongpin to delist an intra-corporate dispute case involving Philex Mining Corp. from the court's records.

The case stemmed from a lawsuit filed by Mario E. Ongkiko, a shareholder of Philex, who alleged that Mr. Ongpin as director and vice-chairman of Philex violated SEC rules when he supposedly used insider information to make short-swing profits.

In a 12-page resolution on Dec. 7 and made public on Jan. 26, the SC First Division said the Court of Appeals (CA) did not have jurisdiction over the case since the respondents, shareholders of Philex, did not pay filing fees worth P8.25 million but only paid P4,325 of the docket fees.

"While we believe in the cause of stockholder activism championed by respondents, we cannot allow what the law does not," the high tribunal said.

Mr. Ongpin had filed a motion to expunge before the CA to erase the lawsuit, which was pending before a Pasig City trial court, from court records.

The appellate court said Mr. Ongpin failed to prove that the Pasig trial court abused its

discretion when it rejected the motion to erase the case.

The Pasig trial court said a motion to expunge, which seeks to strike out a case from court records, does not apply to intra-corporate controversies.

In 2009, Mr. Ongpin fought Philex shares worth P50 million from the Development Bank of the Philippines (DBP) at P12.75 per share, registered in the name Goldenmedia Corp.

In less than six months, a share purchase agreement worth P452.08 million was executed between Mr. Ongpin, Goldenmedia, Boerstal Corp., Elkhound Resources, Inc., Walter Brown, DBP and the share buyer Two Rivers Pacific Holdings Corp. for a 9.24% stake in Philex.

Mr. Ongkiko argued that Mr. Ongpin profited from the deal that stemmed from information not available to the general public.

The High Court said it can dismiss a case when the ground invoked by the petitioners is lack of jurisdiction over a subject matter, which Mr. Ongpin proposed in his appeal.

"Respondents have not settled the deficiency in filing fees until today, nor do they show a willingness to do so," said the Supreme Court. — **John Victor D. Ordoñez**

OUTLIER Cemex shares surge after P2.1-B tender offer plan

INVESTORS loaded up on shares in Cemex Holdings, Philippines, Inc. after its parent company announced an offer to acquire more shares in the local unit to solidify its stake.

Data from the Philippine Stock Exchange (PSE) show trading of the cement manufacturer's shares reached 421.70 million worth P473.93 million from Jan. 23 to 27.

The company's stock price closed at P1.18 on Friday, 42.2% up from the closing price of P0.83 the week before. Its share price has nearly doubled from its 61-centavo finish on Dec. 29, 2022.

Globalinks Securities and Stocks, Inc. Head of Electronic Trading Mark Crismon V. Santarina attributed the stock's steep price increase to news of its parent company's tender offer.

In a disclosure on the stock exchange, Cemex said that its parent company, CEMEX Asian South East Corp. (CASEC), plans to put up a voluntary tender offer of 1.614 billion outstanding common shares at P1.30 apiece. This means CASEC intends to hike its stake in Cemex to 89.86% through a P2.1-billion tender offer of up to 11.97% of the unit's issued and outstanding common shares.

"The tender offer is proposed to be conducted for the purpose of increasing and consolidating the bidder's (CASEC) interests in [Cemex]," the disclosure said. It also emphasized that it does not intend to delist Cemex in the local bourse.

CASEC also plans to continue strengthening Cemex's asset portfolio in the region, which could mean "an evaluation of strategic investments or divestments." Meanwhile, Philstocks Financial, Inc. Research Analyst Claire T. Alviar said traders took advantage of a chance for short-term gains.

"Following the tender offer report disclosure, [Cemex] surged immediately by almost 15% since Cemex's parent is willing to buy shares at a premium. Many traders took this opportunity to have a short-term gain of around 15% to 28%, depending on their

entry price. However, this is only a good opportunity if you bought Cemex below the tender offer price of P1.30," Ms. Alviar said in an e-mail.

The offer of P1.30 per share by CASEC translates to about a 51.2% premium over the Jan. 23 trading price of P0.86 apiece. The disclosure added that the offer is a 68.5% premium over the one-month volume weighted average price (VWAP) of P0.772 and a 64.5% premium over the one-year VWAP of P0.791.

The tender offer is scheduled on Feb. 16 and will run until March 16. Meanwhile, the cross date for tendered shares will be on March 29 and will be settled the following day.

Mr. Santarina foresees Cemex to post a P940-million net income for 2022 and P1,002 billion for 2023.

"The high demand for construction materials, driven by government infrastructure projects and the reopening of the economy, may lead to improved earnings for the company," Mr. Santarina said in a Viber message.

Cemex posted a net loss of P552.07 million in the third quarter last year, a reversal of the P93.55 million net profit in the same quarter in 2021. This brought its nine-month net loss to P818.77 million, reversing the P897.22 million net income in the same period in 2021.

Meanwhile, Ms. Alviar expects Cemex to stay at its current price level until the end of the tender offer period.

"After that, we may expect Cemex to decline or return around P1.00 since investors can no longer sell their shares to Cemex's parent at P1.30 per share. Moreover, we do not expect this transaction to impact Cemex's business operations significantly," she added.

Ms. Alviar placed Cemex's support and immediate resistance levels this week at P1.00 and P1.20, respectively.

For Mr. Santarina, Cemex "will keep moving in the range of P1.10 to P1.25, and we could expect to see some support at P0.90 and resistance at P1.20." — **A.O.A.Tirona**

PART 11 RECORDING OF ASSIGNMENT, REGISTRATION, OR ANY OTHER INSTRUMENT AFFECTING THE TITLE TO ANY REGISTERED MARK, INCLUDING LICENSES; DIVISION OF REGISTRATION

RULE 1101. Form of Assignment or Transfer. - The assignment of the application for registration of a mark, or of its registration, shall be notarized and require the signature of the applicant, registrant, or the assignee of record in case of subsequent assignment. Transfers by mergers or other forms of succession may be evidenced by the deed of merger or by any document supporting such transfer. If executed and notarized abroad, the document must be authenticated or apostilled, as appropriate.

RULE 1102. Record of Assignment or Transfer. - Assignments and transfers shall have no effect against third parties until they are recorded at the Office. Assignments and transfers of registrations and applications for registration shall be recorded upon payment of the required fee.

RULE 1103. Assignment, Other Instruments Affecting the Registration, or License, and Transfer, to be Submitted in Original Copy. - Subject to the requirements under Rule 607 of these Regulations, the original or certified true copy of the document of assignment, other instrument or license and its verified translation under oath, if necessary, is required to be submitted to and shall be retained by the Office. If executed and notarized abroad, the document must be authenticated or apostilled, as appropriate.

A notice of recordal shall accordingly be issued to the party filing the instrument.

RULE 1104. Date of Record of Documents. - The date of recordal of an assignment, license or other document is the date of receipt of the instrument in the proper form and the payment of the prescribed fees.

RULE 1105. A New Certificate of Registration Must be Issued to Assignee. - Upon written request of an assignee of record, and upon payment of the required fee, a new certificate of registration for the unexpired period of the registration shall be issued to the assignee.

RULE 1106. Action may be Taken by Assignee of Record in Any Proceeding in the Office. - Any action in any proceeding in the Office which may or must be taken by a registrant or applicant may be taken by the assignee to the exclusion of the original owner, registrant, applicant, or earlier assignee, provided that the assignee has been recorded. Unless such assignment has been recorded, no assignee will be recognized to act on the application or registration.

RULE 1107. Clearance of Trademark License Agreement Prior to Recordal. - A trademark license agreement shall provide for effective control by the licensor of the quality of the goods or services of the licensee in connection with which the mark is used. If the license contract does not provide for such quality control, or if such quality control is not effectively carried out, the license contract shall not be valid.

A license contract shall be submitted to this Office, the contents of which shall be kept confidential but shall record it and publish a reference thereto.

No trademark license agreement shall be recorded with this Office unless it has complied with the above-mentioned provision. A license contract shall have no effect against third parties until such recording is effected.

RULE 1108. Division or Merger of Registrations. - At any time during the life of a registration, and upon payment of the required fee, the owner of the registered mark may request in writing and under oath that the registration be divided. The request must state the following:

- name and address of the owner of record and the authorized representative or agent of record;
- the mark;
- the number and the date of issuance of the certificate to be divided; and
- the goods and/or services into which the registration is to be divided, specifying the number of the class of said goods and/or services according to the Nice Classification.

The Office may grant the request to divide the registration, provided that the division shall not involve any change in the registration that requires republication of the mark and provided that a single class shall not be subdivided.

Separated registrations resulting from the division of registration under this Rule may be merged upon written request under oath and payment of the required fee.

RULE 1109. Cancellation of Original Certificate and Issuance of Transfer Certificates of Registration. - Upon approval of the request to divide a registration and payment of the required fee, the Director shall order that the original certificate be cancelled and new certificates of registration be issued for the remainder of the term covered by the original certificate.

RULE 1110. Contents of Transfer Certificates of Registration. - The transfer certificates of registration shall include the following:

- a reproduction of the mark;
- the nature of the mark;
- transfer certificate registration numbers;
- the name of the registered owner;
- the address of the registered owner, and if such address is outside the country, the address for service within the country to be recorded. Under oath;
- the name of the registered owner of the original certificate in case the owner of the transfer certificates is a different person;
- the date of request for division of the original registration;
- the date of the issuance of the transfer certificate; and
- the date of filing of the application and registration of the original registration;
- if priority is claimed, an indication of this fact, and the number, date and country/office of the application which is the basis of the priority claim;
- the list of goods or services covered by the transfer certificate of registration with the indication of the corresponding class or classes; and
- such other data included in the original certificate of registration and such other information as the Regulations may prescribe from time to time.

PART 12 RENEWAL OF REGISTRATION

RULE 1200. Request for Renewal. - A registration may be renewed for periods of ten (10) years at its expiration upon filing of a request and payment of the prescribed fee. The request shall contain the following indications and/or supporting documents:

- An indication that renewal is sought;
- The name, address and other contact details of the registrant or successor-in-interest, hereafter referred to as the "right holder";
- The registration number;
- The filing date of the application which resulted in the registration to be renewed;
- Where the right holder has an authorized representative or agent, the name and address of that representative or agent;
- The recorded goods or services for which the renewal is requested, grouped according to the classes of the latest version of the Nice Classification; and
- A signature by the right holder or the right holder's authorized representative or agent.

In case of material variations of the mark, a new application must be filed.

RULE 1201. When to File Request for Renewal. - The request for renewal may be made at any time within six (6) months before the expiration of the period for which the registration was issued or renewed, or within six (6) months after such expiration, subject to the payment of the prescribed additional fee or surcharge.

RULE 1202. Jurisdiction of the Examiner. - The Examiner shall have original jurisdiction over an application for renewal registration, and the decision, when final, is subject to appeal to the Director under the conditions specified in these Regulations. The Examiner shall notify the registrant of the final decision of the renewal and the reasons therefor.

RULE 1203. Renewal Filed by Person Who is Not the Resident Agent of Record. - If the registrant, assignee or other owner of the mark which is the subject of a petition for renewal registration is not domiciled in the Philippines, and if the petition for renewal is filed by a person who is not the authorized representative or agent of record, the power of attorney appointing the person filing the petition as the representative of the registrant must be filed and, upon payment of the required fee, must be recorded before the Office can act upon the petition for renewal.

RULE 1204. Certificate of Registration Issued Under Republic Act No. 166 to be Surrendered. - The certificate of registration granted under Republic Act No. 166 must be surrendered to the Office upon renewal, if the official copy of such certificate of registration is not in the files of the Office.

After the surrender of the Certificate of Registration granted under Republic Act No. 166, the applicant for renewal may, upon request, obtain a certified copy thereof, upon payment of the appropriate fees.

RULE 1205. Refusal of Renewal Registration; Appeal to the Director. - The application for renewal may be refused by the Examiner for any valid reason. The application for renewal may then be completed or amended in response to the refusal, or the case may be appealed to the Director if the refusal has become final.

RULE 1206. Certificate of Renewal of Registration. - The Office shall issue a certificate of renewal upon payment of the required fee for the issuance thereof. The issuance of the certificate of renewal shall be published in the IPOPHE eGazette and shall be entered in the records of this Office.

The certificate of renewal of registration shall contain the following:

- the registration number;
- the nature of the mark;
- the mark subject of the renewal;
- the date of original registration and renewal registration;
- the duration of the renewal registration;
- all the data required to be contained in a certificate of registration provided in these Regulations including any limitation contained in the order of the Director approving the renewal of the registration.

PART 13 PETITIONS AND APPEAL

RULE 1300. Nature of the Function of Examiners. - The function of determining whether an application for registration or renewal thereof should be allowed or denied under the facts disclosed in the application or the relevant document, and in the references consulted by the Examiner and under the applicable law (statutory and decisional) is a quasi-judicial function and involves the exercise of judicial discretion.

Thus, with respect to such function, the Director cannot exercise direct control and supervision over the Examiners but only general supervision, exercised through a review of the recommendation they may make for the grant of registration and of other actions, and through a review of their adverse decisions by petition or appeal.

RULE 1301. Petition to the Director to Question the Correctness of the Action of an Examiner on a Matter not Subject to Appeal. - A petition may be filed with the Director from any action or requirement of the Examiner which is not subject to appeal and in other appropriate circumstances. Such petition, and any other petition which may be filed, must contain a statement of the facts involved and the point or points to be reviewed. Briefs or memoranda, if any, in support thereof should accompany or be embodied in the petition. The Examiner may be directed by the Director to furnish a written statement setting forth the reasons for the decision upon the matter averred in the petition. If the Examiner is required to submit a written statement, a copy thereof shall be provided to the petitioner. The mere filing of a petition will not stay the maximum period of four (4) months counted from the mailing date of the Examiner's action subject of the appeal to reply to an Examiner's action nor will it act as a stay of other proceedings.

RULE 1302. Appeals to the Director. - Every application for the registration of a mark or other mark of ownership may, upon the final refusal of the Examiner to allow registration, appeal to the Director. An appeal may also be made to the Director from any adverse action of the Examiner in any matter over which these Regulations give original jurisdiction to the Examiner. A second adverse decision by the Examiner on the same grounds may be considered as final by the applicant, petitioner, or registrant for purposes of appeal.

RULE 1303. Effect of a Final Decision of an Examiner Which is Not Appealed. - A final decision of an Examiner which is not appealed to the Director within the prescribed period, or, if appealed, the appeal is not granted, shall be considered as final for all intents and purposes, and shall have the effect of *res judicata* in respect of any subsequent action on the same subject matter.

If an application is considered abandoned for failure of the applicant to respond to an action of the Examiner on the merits, such as citation of confusingly similar marks, the order declaring the application as abandoned, which has become final shall likewise have the effect of *res judicata*.

RULE 1304. Time and Manner of Petition or Appeal. - Any petition or appeal must be taken by filing a petition or a notice of appeal, as the case may be, and payment of the required fee within two (2) months from the mailing date of the action appealed from. It must specify the grounds upon which the petition or appeal is taken, and must be signed by the petitioner or appellant or by the attorney of record. The period for filing the petition or the notice of appeal may be extended, upon written request and payment of the prescribed fee, for a period of two (2) months. However, in no case shall the period exceed four (4) months from the mailing date of the action appealed from.

RULE 1305. Appellant's Brief Required. - In case of an appeal, the appellant shall, within two (2) months, without extension, from the date of filing of the Notice of Appeal, file a brief of the authorities and arguments on which the appellant relies upon to maintain the appeal. In case of appellant's failure to file the brief within the time allowed, the appeal shall be dismissed.

The Appellant's Brief may also be filed together with the Notice of Appeal or Petition.

RULE 1306. Examiner's Answer. - If required by the Director, the Examiner shall submit a written statement in answer to the appellant's brief within two (2) months from the order of the Director to submit such answer. The appellant shall be furnished a copy of such answer.

RULE 1307. Appellant's Reply. - In case of an appeal, the appellant may file a reply brief addressing only such new points as may have been raised in the Examiner's answer, within one (1) month from the date of receipt of the copy of such answer.

RULE 1308. Appeal to the Director General. - The decision or order of the Director shall become final and executory thirty (30) days after receipt of a copy thereof by the applicant, unless within

the said period, a motion for reconsideration is filed with the Director, or an appeal to the Director General has been perfected pursuant to the IPOPHE Uniform Rules on Appeal. Only one (1) motion for reconsideration of the decision or order of the Director shall be allowed. A motion for reconsideration, however, is not required for purposes of filing an appeal to the Director General.

PART 14 MISCELLANEOUS PROVISIONS

RULE 1400. Applications Pending on Effective Date of the IP Code. - The following regulations shall apply to applications pending on the effective date of the IP Code on January 1, 1998 hereinafter referred to in this Rule as "pending applications":

- Filing Date of Pending Applications.** - Pending applications shall retain their priority date or original date of filing with the Bureau of Patents, Trademarks and Technology Transfer.
- Reference.** - In all cases where interference could have been declared under Republic Act No. 166, as amended, and its implementing rules and regulations, as amended, but the same could not be declared, such as when one of the applications has been amended and prosecuted under the IP Code while the other application or applications were not, the application which first meets all the requirements for registration shall be allowed and published for opposition in the IPOPHE eGazette in accordance with these Regulations. The other applicant or applicants shall have the right to file a notice of opposition, without need of paying the filing fee, to determine whether or not any of the applicant's and/or opposer's have the right to the registration of the mark, and, all other issues, including the registrability of the mark.

RULE 1401. Duration of Registration. - A registration granted on or before December 31, 1997 and that remained pending on the effective date of the IP Code on January 1, 1998 shall be subject to the same conditions for maintenance as provided in these Regulations and shall have a term of twenty (20) years. The DAU requirement for registrations that have a term of twenty (20) years shall be filed within one (1) year from the 5th, 10th, and 15th anniversaries of the date of registration of the mark.

RULE 1402. Duration of Renewal of Registration Granted Under Republic Act No. 166. - Marks registered under Republic Act No. 166 shall remain in force and effect and shall be renewed within the time and manner provided for renewal of registration by these Regulations. The renewal shall be for a duration of ten (10) years. Trade names and marks registered in the Supplemental Register under Republic Act No. 166 that were subsisting as of January 1, 1998 shall remain in force but shall no longer be subject to renewal.

RULE 1403. Registrations Subsisting on January 1, 1998. - The registration, or extension thereof, in the Supplemental Register under Republic Act No. 166 of a trade name or mark which was subsisting on the effectivity of the IP Code on January 1, 1998 shall remain in force for the entire term for which it was granted. However, such registration shall no longer be subject to renewal.

RULE 1404. Repealing Clause. - All rules and regulations, orders, circulars and memoranda or parts thereof that are inconsistent with these Regulations are hereby repealed or modified accordingly.

RULE 1405. Separability. - If any provision in these Regulations or application of such provision to any circumstance is held invalid, the remainder of these Regulations shall not be affected thereby.

RULE 1406. Effectivity. - These Regulations shall take effect on 14 February 2023, after publication in a newspaper of general circulation. The Office of the National Administrative Registrar at the UP Law Center, University of the Philippines, shall be furnished with three (3) copies hereof within one (1) week after its publication.

Done this 28th day of January, Taguig City, Philippines.


ROWEL S. BARBA
Director General



IPOPHE MEMORANDUM CIRCULAR NO. 2023-002
Series of 2023

Subject: AMENDMENTS TO IPOPHE MEMORANDUM CIRCULAR NO. 16-012 (IPOPHE REVISED FEE STRUCTURE OF 2017) IN RELATION TO TRADEMARK-RELATED FEES

WHEREAS, IPOPHE promulgated IPOPHE Memorandum Circular No. 16-012 (IPOPHE Revised Fee Structure of 2017) which became effective on 01 January 2017.

WHEREAS, IPOPHE also promulgated IPOPHE Memorandum Circular No. 2023-001 which pertains to the Rules and Regulations on Trademarks, Service Marks, Trade Names and Marked or Stamped Containers of 2023 (Trademark Regulations of 2023) which replaces the Revised Trademark Regulations of 2017;

WHEREAS, the Trademark Regulations of 2023 aims to facilitate and expedite payment and the trademark application process, in general;

WHEREAS, there are fee items that need to be paid upfront which are neither an additional or an increase of any fee items in the current IPOPHE Fee Structure;

WHEREAS, these Secretary of Trade and Industry has approved the amendment of the fee items;

NOW, THEREFORE, the IPOPHE Revised Fee Structure is amended, as follows:

SECTION 1. Section 16 on the Schedule of Trademark Related Fees is hereby amended as follows:

Section 16. *Schedule of Trademark-related Fees* – The fees provided in this section shall apply to trademarks, service marks, tradenames, and marked or stamped containers:

Type of Fee	Small Entity		Big Entity
	Basic Fee (per class)	Basic Fee (per class)	
Filing fee	1,200.00	2,592.00	
Allowance / Publication for Opposition	900.00	960.00	
Claim of Convention Priority	860.00	1,800.00	

¹ The Filing Fee includes the Basic Fee and the Publication for Opposition Fee, as provided under Rule 501 of the 2022 Revised Trademark Regulations.

Type of Fee	Small Entity	Big Entity
Claim of color, claim of distinctiveness (per class)	280.00	600.00
Request for Priority Examination	2,990.00	6,240.00
Extension of time to file response ²	340.00	720.00
Divisional application ³	280.00	600.00
Revival of Abandoned Application	570.00	1,200.00
Suspension of examination by examiner		
Amendment Fee ⁴	400.00	840.00
Extension to file an appeal to the Director	1,800.00	1,800.00
Voluntary Surrender/Abandonment	280.00	600.00
Reconstitution of records	860.00/900.00	900.00
Recordal Fee 1 2 400.00/840.00		
Allowance – Publication for Opposition	900.00	960.00
Revival – unpaid 1st Publication	570.00	1,200.00
Revival – unpaid 2nd Publication	570.00	1,200.00
Reconstitution of Records	860.00	900.00
Recordal Fee ⁵	400.00	840.00
Recordal Licensing Agreement and other documents not required by the office (No Publication)	340.00	720.00
Additional Class ⁶	1,200.00	2,592.00
Recordal – Publication Fee (for registered marks)	900.00	960.00
Registration – issuance of Certificate of Registration	570.00	1,200.00
Publication of Registration (2 nd Publication)	900.00	960.00