



ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT

SEC ADVISORY

The Commission has detected that certain individuals or groups of persons are enticing the public, through a popular social media platform or in their own independent websites, to invest in so-called **cloud mining contracts**.

Based on an initial investigation conducted by the Department, entities and persons offering cloud mining contracts advertise, promote and define **cloud mining** as a process of acquiring cryptocurrency through the utilization of shared mining equipment located in an off-site or a remote datacenter, with the purchase of equipment being funded by investors who avail of cloud mining contracts.

Further, the investigation shows that there are numerous local and foreign cloud-mining companies who solicit these cloud-mining contracts in the Philippines and are usually characterized by the following:

1. They require registration of an online account in a website or a mobile platform;
2. They require the payment of an initial fee or investment either in fiat currency or cryptocurrency to avail of their offered mining contracts;
3. They promise to pay the investor daily or weekly mining proceeds, usually equivalent to a percentage of the initial fee or investment, directly to the latter's cryptocurrency wallet or fund account; and
4. They offer affiliate commissions for every recruit that registers and invests using the referring investor's link.

Under Rule 26.3.5 par. 4 of the 2015 Implementing Rules and Regulations of the Securities Regulation Code (Republic Act 8799), an **investment contract** has been defined as a contract, transaction or scheme (collectively "contract"), whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others.

Applying the *Howey Test* as discussed by the Honorable Supreme Court in *Power Homes Unlimited vs. SEC* (G.R. No. 164182, February 26, 2008), a **cloud mining contract is an investment contract falling within the purview of the term "securities" as defined by law**. First, there is **investment of money** because an investor is expected to part with his hard-earned money in order to enter into these contracts. Second, there is an investment in a **common enterprise** because the party soliciting investments pool the funds collected to purchase mining equipment for use in the profit-making activity. Third, there is **expectation of profits** because the investor is given the promise of a return in the form of fiat currency or cryptocurrency. Lastly, the profits are **generated from the efforts of others** because the cloud mining company undertakes to perform all the profit-generating activities and distributes all the profits to all investors after deducting mining costs.

Since this scheme involves the sale of securities to the public, the SRC requires that the said securities offered are duly registered and that the appropriate license and/or permit to sell securities to

the public are issued to the corporation and/or its agents, pursuant to the provisions of Section 8 of the SRC.

Likewise, those who act as salesmen, brokers, dealers or agents of these companies in selling or convincing people to invest in the investment scheme being offered by these cryptocurrency mining companies including solicitations and recruitment through the internet without the necessary license or authority from the Commission may likewise be prosecuted and held criminally liable under Section 28 of the Securities Regulation Code and penalized with a maximum penalty of twenty-one (21) years of imprisonment or both pursuant to Section 73 of the SRC.

Accordingly, those who invite or recruit other people to join or invest in this venture or offer investment contracts or securities to the public may be held criminally liable or accordingly sanctioned or penalized in accordance with the Supreme Court decision in the case of SEC vs. Oudine Santos (G.R. No. 195542, March 19, 2014).

In view thereof, the public is hereby advised to **STOP INVESTING** in these kinds of unregistered investment activity and to take the necessary precautions in dealing with these cloud mining companies.

Should you have any information regarding the operations of these persons and entities, please call the Enforcement and Investor Protection Department (EIPD) at telephone number (02) 818-6047.

For the guidance of the public.