



Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

28 September 2017

SEC-OGC Opinion No. 17-11
RE: Clarification on SEC-OGC Opinion
No. 11-41

THE PHILIPPINE STOCK EXCHANGE, INC.

Office of the General Counsel
PSE Plaza, Ayala Triangle
Ayala Avenue, Makati City 1226

Gentlemen:

This is in reply to your letter dated 8 March 2012, requesting clarification on matters relevant to SEC-OGC Opinion No. 11-41 ("Subject Opinion"), dated 5 October 2011, in connection with shareholders of the Philippine Stock Exchange, Inc. ("PSE").

In the Subject Opinion, the Commission held that "the pre-emptive right may not be exercised by PSE shareholders who have already exceeded the ownership threshold laid down by the SRC."

Your understanding thereof is that the broker-shareholders of the PSE, who, at the time of the request, own approximately 32% of the outstanding capital stock of the PSE, which is in excess of the 20% industry limit under Section 33.2(c) of the Securities Regulation Code ("SRC"),¹ are no longer entitled to exercise their pre-emptive rights. Likewise, you interpret it to mean that the existing strategic investors of the PSE, namely the Government Service Insurance System (GSIS), San Miguel Corporation Retirement Plan (SMCRP), PLDT Beneficial Trust ("PLDT-BT") and Premiere Capital Venture Corp. ("PCVC") are likewise no longer allowed to exercise their pre-emptive rights, considering that they presently own 9.1%, 10.3%, 9.1% and 9.7%, respectively, of the outstanding capital stock of the PSE, which are also in excess of the 5% cap imposed on each person or entity under Section 33.2(c) of the SRC.

You however, mentioned that the Commission granted GSIS, SMCRP, PLDT-BT, and PCVC exemptive relief from the ownership limits pursuant to the powers granted to the Commission by Section 33.2(c) of the SRC.

From the foregoing, you now seek confirmation of your position that GSIS, SMCRP, PLDT-BT, and PCVC are already prohibited from exercising pre-emptive

¹ Republic Act No. 8799 (2000)

rights despite the grant to them of exemptive reliefs from the ownership limits since they already exceeded the ownership limits under Section 33.2(c) of the SRC.

As stated in the Subject Opinion, pre-emptive right is available to existing shareholders in the PSE as the right is not denied in its Articles of Incorporation. Of course, the issuance or disposition of shares should not fall among the exceptions enumerated under Section 39 of the Corporation Code.² This notwithstanding, the pre-emptive right of shareholders under the Corporation Code must yield to the rules set in the SRC. Under Section 40.2 of the SRC, it is provided:

"40.2. Every self-regulatory organization shall comply with the provisions of this Code, the rules and regulations thereunder, and its own rules, and enforce compliance therewith, **notwithstanding any provision of the Corporation Code to the contrary**, by its members, persons associated with its members and its participant." (Emphasis and underscoring supplied).

Section 33.2(c) provides for a maximum shareholding a person may have in the exchange, to wit:

"33.2. Registration of an exchange shall be granted upon compliance with the following provisions:

xxx

c) Where the exchange is organized as a stock corporation, that no person may beneficially own or control, directly or indirectly, more than (5%) of the voting rights of the Exchange and no industry or business group may beneficially own or control, directly or indirectly, more than 20% of the voting rights of the Exchange: provided, however, that the Commission may adopt rules, regulations or issue an order, upon application, exempting an applicant from this prohibition where it finds that such ownership or control **will not negatively** impact on the exchange's ability to effectively operate in the **public interest**;" (Emphasis and underscoring supplied).

The general rule, according to this provision, is that shareholders may not own PSE shares above the percentage limits laid down therein in consonance with the legislative intent of enabling wide ownership and avoiding the emergence of influential or controlling blocks in the PSE, for it to develop and effectively operate in the public interest, as well as to achieve better corporate governance. It is the specific public policy of ensuring the wide dispersal of ownership of the PSE which will prevail over the pre-emptive right granted to shareholders.³ On the other hand, the Commission was given the power in the same provision to grant exemptive relief and allow shareholders to acquire and own shares above the maximum limit, if it "will not negatively impact on the exchange's ability to effectively operate in the public interest."

² Batas Pambansa Blg. 68 (1980).

³ History/Background of the Securities Regulation Code 55 (15 September 2005), cited in R.A. Morales, The Philippine Securities Regulation Code (Annotated) 242 (2005).

While in general, PSE shareholders may have pre-emptive rights to subscribe to all issues or disposition of shares, this right is subject to the limitations set forth in Section 33.2(c) of the SRC.

In the case of GSIS, SMCRP, PLDT-BT and PCVC, they own PSE shares above the maximum limits by virtue of the exemptive relief granted to them by the Commission for coming in as strategic investors, and their ownership "will not negatively impact on the exchange's ability to effectively operate in the public interest."

It should be borne in mind however that the grant of exemptive relief was based on the **particular circumstances** prevailing at that time. **Exemptive reliefs are granted on a case-to-case basis, and in this particular case, should not be construed as continuing authority to exceed the limitations imposed on single block or industry ownership of the PSE.** As a result, they cannot exercise pre-emptive rights.

We thus confirm your position that the PSE's strategic investors are prohibited from exercising pre-emptive rights notwithstanding the previous grant to them of exemptive relief.

It shall be understood that the foregoing opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the courts, or upon the Commission in other cases of similar or dissimilar circumstances.⁴ If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.

By authority of the Commission En Banc,⁵


CAMILO S. CORREA
General Counsel

⁴ SEC Memorandum Circular 2003-15, No. 7.

⁵ In the meeting held on 04 October 2017 and conferred in SEC En Banc Resolution No. 744.