Republic of the Philippines
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

10 January 2011

SEC-OGC Opinion No. 11-03
Decrease of authorized capital stock;
Foreign Investments Act

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Sir:

This refers to your letter dated 13 December 2010 requesting this Commission for confirmation that your client Clariant (Philippines) Corporation, hereinafter referred to as *"Clariant"*, may decrease its capital stock if it will undertake not to do any business included in the foreign investment negative list and that within 30 days from approval of the decrease, sixty percent (60%) of the shares of Clariant will be sold to Filipino nationals.

Your request is based on the following facts as stated in your letter:

Clariant is a corporation duly organized and existing under the laws of the Philippines. It is a wholly-owned subsidiary of Clariant International, Ltd., a corporation duly organized and existing under the laws of Switzerland.

Clariant is registered under the Foreign Investments Act. Its present authorized capital stock is thirty-eight million pesos (Php 38,000,000.00), with outstanding capital stock of nine million five hundred thousand pesos (Php 9,500,000.00). The large capitalization was necessary for trading three major types of chemical products. However, Clariant is now trading in only one type of chemical product, thus, its paid-in capital is in excess of what it needs to pursue the business.

Clariant now intends to decrease its capital stock to one million pesos (Php 1,000,000.00). Because this will result in Clariant's disqualification to do business under the Foreign Investments Act[1] (*"FIA,"* for brevity), Clariant will amend its primary purpose to state that it will not undertake business included in the foreign investments negative list, simultaneous with the capital reduction. In addition, Clariant will execute an undertaking that sixty percent (60%) of Clariant shares will be sold to Filipino nationals within 30 days from approval of the decrease of authorized capital stock.

[1] Republic Act No. 7042 (As amended by Republic Act 8179).

We opine as follows:

The approval for the decrease cannot come before the sale of shares to Filipinos. Otherwise, there would be a point in time where Clariant will be in violation of the FIA: that time after approval of the decrease of capital stock and before the sale of shares to Filipinos.

The decrease of Clariant's capital stock to one million pesos (P1,000,000) will disqualify it from doing business under the FIA. Under Section 8 of said law, "small and medium-sized domestic market enterprises, with paid-in equity capital less than the equivalent two hundred thousand US dollars ($200,000) are reserved to Philippine nationals." Also on the Foreign Investment Negative List[1] (*"FINL"*, for brevity), domestic market enterprises with paid-in equity capital of less than the equivalent of US$200,000 are included in List B that limits foreign equity to forty percent (40%)[2]. Clariant falls under this prohibition with the intended decrease in capital stock to one million pesos, that amounts to only US$22,846.70. The violation of the law that will occur if Clariant proceeds to decrease its capital stock cannot be cured by a written undertaking that the corporation will not do business that falls under the FINL, or amending its articles of incorporation to reflect so, because of the amount threshold set by the aforementioned item on the FINL.

What Clariant may do, however is **first** sell at least sixty percent (60%) of its shares to Filipino nationals, **then** decrease its capital stock to one million pesos, so that at no point in time will Clariant be in violation of the law.

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

Please be guided accordingly.

VERNETTE G. UMALI-PACO
General Counsel

[1] Executive Order No. 584 Promulgating the Seventh Regular Foreign Investment Negative List
[2] LIST B: FOREIGN OWNERSHIP IS LIMITED FOR REASONS OF SECURITY, DEFENSE, RISK TO HEALTH AND MORALS AND PROTECTION OF SMALL-AND MEDIUM-SCALE ENTERPRISES

Up to Forty Percent (40%) Foreign Equity

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6. Domestic market enterprises with paid-in equity capital of less than the equivalent of US$200,000

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