Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

18 February 2021

SEC-OGC Opinion No.21-03
Re: Deed of Trust and Assignment over Share of Stock

FARAN B. AMAN
Director and Treasurer
Sysmex Philippines, Inc.
30th Floor, MDC 100, E. Rodriguez Jr. Avenue
Cor. Eastwood Ave., Bagumbayan
Quezon City

Dear Ms. Aman:

This refers to your letter that we received on 06 December 2018 requesting for the Commission's opinion on (1) whether or not a company with nominee shareholders can register in its Stock and Transfer Book (STB) and General Information Sheet (GIS) the changes in nominee shareholders pursuant to an existing Deed of Trust and Assignment without the need of an actual sale; and (2) whether there is a need to declare/report to the Commission, through the company's GIS, the said new nominee director.

In your letter, you stated that Sysmex Philippines, Inc. (Sysmex) is a wholly owned subsidiary of Sysmex Asia Pacific Pte. Ltd. (SAP) of Singapore. Sysmex has five (5) nominee shareholders who also constitute the Board of Directors (the "Board"). You further stated that one (1) nominee shareholder/director is no longer connected with Sysmex, thus, the latter intends to appoint a new shareholder/director. However, Sysmex is in quandary on whether to execute a Deed of Trust and Assignment or Deed of Absolute Sale to effect such change. Hence, your queries.

1. ***Whether or not Sysmex, a company with nominee shareholders, can report in its GIS to the Commission changes in nominee shareholders as long as a Deed of Trust and Assignment***

is executed instead of a Deed of Absolute Sale

A perusal of the facts presented in your letter, indicates that the contemplated transfer of share/s to the new nominee shareholder is for purposes of qualifying the said nominee shareholder to be a member of the Board, and to complete the number of directors composing the same.

In this regard, the Commission has held in previous opinions that:

> "**For purposes of complying with the statutory minimum number of stockholders/directors, the owner may transfer one (1) qualifying share to each nominee stockholders for purposes of qualifying them to become members of the Board, without giving them the beneficial ownership of the shares**. Said transfer would be more of a "trust" and not a transfer of "ownership", hence, the beneficial interest in such shares will remain with the assignor while the assignee will hold only the legal title to the stock.
>
> In such case, **the transferee should be described in the Deed of Assignment, corporate books and certificate of stock merely as a qualifying shareholder or nominee of the transferor**. The fact that the stock standing on the corporate books is in the name of the person only as a qualifying shareholder or that the holder of the stock certificate is described merely as a nominee serves as a notice to the corporation and third parties that the holder thereof does not hold the share in his own right, but holds it only as a nominee for the benefit of the real owner."[1] [emphasis supplied]

On the basis of the foregoing, Sysmex can validly report in its GIS to the Commission changes in nominee shareholders pursuant to a validly executed Deed of Trust and Assignment.

2. Whether or not there is a need to declare with the Commission through Sysmex's GIS the said new nominee director

---

[1] See Letter to Atty. Elma Christine R. Leogardo and Cynthia D. Nuval-Ambrosio dated 04 August 1995 and; SEC Opinion addressed to Mr. Carlos S. Noon dated 23 November 1992.

Anent your second query, Section 25 of the Revised Corporation Code states that:

> "Section 25. **Within thirty (30) days after the election of the directors**, trustees and officers of the corporation, **the secretary**, or any other officer of the corporation, **shall submit to the Commission, the names, nationalities, shareholdings, and residence addresses of the directors, trustees, and officers elected**. xxx" [Emphasis supplied]

The afore-quoted provision which categorically mandates the submission of information relating to the election of directors, trustees and officers is intended to timely apprise the Commission of any relevant changes in the submitted information on file with the latter as they arise.[2]

The election or appointment of a new director is a circumstance of Sysmex's governance structure that needs to be reported to the Commission through its GIS as it involves a material change in the Board's composition.

It shall be understood, however, that the above-stated opinion is rendered solely on the basis of the facts and circumstances disclosed to the Commission, and should be considered relevant only to the particular issue raised therein. This opinion shall not be considered and used in the nature of a standing rule binding upon the Commission in other cases, or upon the courts whether of similar or dissimilar circumstances. If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.[3]

Very truly yours,

ROMUALD C. PADILLA
General Counsel

---

[2] Item 4 of the General Instructions for submission of the GIS.
[3] SEC Memorandum Circular No. 15, Series of 2003.