Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

10 November 2014

SEC-OGC Opinion No. 14-31
Transfers under the Special Purpose Vehicle Act

PUYAT JACINTO AND SANTOS
12th Floor, VGP Center
6772 Ayala Avenue
1226 Makati City

Sir:

This refers to your letter dated June 21, 2010 concerning questions of your client, Asian Special Solutions M3P2 (SPV-AMC) Incorporated (hererinafter "ASSI-M3P2"), requesting for our opinion regarding the applicability of SEC Memorandum Circular No. 3, series of 2010 ("SEC-MC No. 03-2010")[1] to certain First Leg Transfers,[2] and the issuances of Certificates of Eligibility ("COEs") for certain Second Leg Transfers.[3]

ASSI-M3P2 is a Special Purpose Vehicle (SPV) incorporated on May 16, 2007. Its primary purpose is to "invest in, or acquire Non-Performing Assets (NPAs) of Financial Institutions (FIs), whether Non-Performing Loans (NPLs) or Real and Other Properties Owned and Acquired (ROPOAs)". [4]

You have requested us to confirm your following positions:

1. SEC-MC No. 03-2010 only applies to non-performing assets the First Leg Transfers of which occurred *on or before* 9 April 2005; and

2. Provided that ASSI-M3P2 complies with all other requirements under the Special Purpose Vehicle Act,[5] the Amended Special Purpose Vehicle Act,[6] the Implementing Rules and Regulations issued in relation

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[1] Issued on 10 June 2010.
[2] Transfer of non-performing assets from a financial institution to a special purpose vehicle.
[3] Transfer of non-performing assets from a special purpose vehicle to a third party.
[4] Second Article, Articles of Incorporation of ASSI-M3P2.
[5] Republic Act No. 9182
[6] Republic Act No. 9343

thereto, and rules and regulations which may be issued by the Commission from time to time, Second Leg Transfers of non-performing assets acquired by ASSI-M3P2 made after 10 April 2010 may still be granted a COE by the Commission.

The applicability of SEC Memorandum Circular No. 3, Series of 2010 to First Leg Transfers occurring after 9 April 2005

Republic Act No. 9182, also known as the Special Purpose Vehicle Act of 2002 ("RA 9182"), fully took effect on 12 April 2003 (not 9 April 2003), with the effectivity of the Implementing Rules and Regulations (IRR). The main objective of the law is to help Philippine banks dispose of their NPAs in order to become more liquid and be able to have more funds available for lending to businesses which would spur economic growth. By providing incentives and benefits,[7] such as tax exemptions, institutions were encouraged to participate in the transactions under RA 9182.

In order to avail of the tax benefits and other incentives under RA 9182, the transactions should occur within the prescribed period under the said law. The First Leg Transfer from a FI to an SPV should be made within two (2) years from the date of effectivity of its IRR. The IRR was published in a newspaper of general circulation on 28 March 2003,[8] hence, it became effective on 12 April 2003, or fifteen (15) days thereafter.[9] Thus, the First Leg Transactions covered are those made **on or before 11 April 2005**.

In relation thereto, the Commission issued SEC-MC No. 03-2010, for the purpose of determining if the benefits or incentives under RA 9182 may be applicable to the transfer. Under item 1(a) thereof, the NPAs that are covered are those which are acquired under RA 9182, or those acquired not later than 11 April 2005.

Hence, SEC-MC No. 03-2010 covers only those First Leg Transfers under RA 9182, or those which made *on or before 11 April 2005*, the last day of the two-year period from the effectivity of the IRR of RA 9182. **Consequently, First Leg Transfers made after 9 April 2005, but not later than 11 April 2005, are still covered by MC 3-2010.**

The Issuance of Certificate of Eligibility to ASSI-M3P2 for Second Leg Transfers occurring after 10 April 2010

RA 9182 was amended in 2006 with the passage of Republic Act No. 9343 ("RA 9343") to provide an extension of the period within which to avail of the incentives and benefits under the Act. RA 9343, which amends RA 9182, was signed into law on 24 April

[7] Sections 15, 16, and 17, RA 9182.
[8] Published in the *Manila Standard*, March 28, 2003.
[9] Section 28, IRR of RA 9182.

2006. RA 9343 was published in newspapers of general circulation on 29 April 2006;[10] hence, **it became effective on 14 May 2006** or fifteen (15) days after its publication, and *not 27 July 2006* as you manifested in your letter.

Under RA 9343, the First Leg Transfers which are covered are those made within two (2) years from the date of effectivity of the said law, that is, **until 14 May 2008**. As to Second Leg Transfers from an SPV to a third party, the benefits and incentives are applicable if the same are made within five (5) years from the date of acquisition of the non-performing asset by the SPV from the FI.

Accordingly, the Commission issued Memorandum Circular No. 8, Series of 2011 (SEC-MC No. 08-2011)[11] to determine if the Second Leg Transfer is covered by the incentives and benefits under RA 9343, and for the issuance of the COE for the transactions covered. Under this Memorandum Circular, in order for the Second Leg Transaction to be qualified for the issuance of a COE, the following conditions must be complied:

1. The NPAs were acquired under RA 9343, meaning, the First Leg Transfer occurred *on or before 14 May 2008*;
2. The Second Leg Transfer must be made within five (5) years from the date of the First Leg Transfer; and
3. Applications for a Certificate of Eligibility (COE) must be filed with the Commission on or before the sixtieth (60th) day from the expiration of the five-year period referred to above.

Although the transactions occurring after 10 April 2010 are not covered by RA 9182, the transactions may be covered by RA 9343. In view thereof, COEs may be issued to ASSI-M3P2 for Second Leg Transfers of NPA's acquired by ASSI-M3P2 made after 10 April 2010, provided that the abovementioned conditions have been complied with, and indeed, thirty-nine (39) COEs were issued based on records with the Commission, covering the period from June 4, 2010 up to September 12, 2012.

We hope that the above discussion made clearer the rules regarding the applicability of the incentives under RA 9182 and RA 9343. To reiterate, MC 3-2010 applies to First Leg Transfers of non-performing assets which occurred on or before 11 April 2005 under RA 9182. Further, with the passage of RA 9343 and the subsequent issuance of SEC MC No. 8-2011, COEs may be granted for Second Leg Transfers occurring after 10 April 2010, provided that the three conditions enumerated above are met.

CAMILO S. CORREA
General Counsel

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[10] Published in *Malaya* and *The Manila Times* on April 29, 2006.
[11] Issued on October 14, 2011.