Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

23 November 2016

SEC-OGC Opinion No.16-26
RE: Arrangement between bank and depositor-investors for investment and payment of securities

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Attention: Atty. Joselito M. Bautista, Atty. Benedict C. Velasco
and Atty. Gino Angelo P. Batallones

Gentlemen:

This is in reply to your letter dated 9 May 2013 requesting, on behalf of your client, Metropolitan Bank and Trust Company ("MBTC"), for our opinion as to the legality of the proposed arrangements between MBTC and the depositor-investors for purposes of investment and purchase of securities.

As a background, MBTC is a domestic corporation granted authority by the Bangko Sentral ng Pilipinas ("BSP") to operate as a universal bank under Republic Act No. 8791 or the General Banking Law of 2000 ("GBL") and the rules and regulations of the BSP. MBTC is also a listed company in the Philippine Stock Exchange.

Under the arrangements concerned as presented in your letter, the depositor-investor will be allowed to:

1. Open a bank account with MBTC which will function, among others, as the settlement account;
2. Direct MBTC to remit a portion of the funds maintained in such bank account to a payee from whom the securities and investments, such as fixed income instruments and/or equity investments, are purchased upon confirmation of the delivery of the securities to the depositor;
3. Designate a deposit account maintained with MBTC as the settlement account for the purpose of receiving the interest earned by the depositor-investor from the offshore securities; and
4. Upon the sale of such offshore securities and investments in the future, designate a deposit account maintained with MBTC as the settlement account for the

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purpose of receiving funds, whether from here or from abroad, constituting the proceeds of the sale of such securities and investors due to the depositor-investor.

On the other hand, MBTC, acting as settlement bank of depositor-investors engaged in the purchase and sale of securities, intends to accept:

1. Application of such depositors-investors to open bank account with MBTC;
2. Instructions of such depositors-investors to remit the funds maintained in their bank accounts to the accounts of individuals/entities selling such securities to the depositors-investors; and
3. Any and all funds remitted to the bank account of its depositors-investors representing the interests accruing to, and proceeds from the sale of such securities.

In said letter, you also made an assurance that MBTC is not acting on behalf of any broker or seller of any security outside of the Philippines which intends to sell any securities, whether registered, unregistered or exempt from registration, to investors in the Philippines.

You now seek confirmation that the proposed arrangement between MBTC and the depositor-investors is in accordance with law.

As aforementioned, MBTC is operating as a duly licensed universal bank. Under the GBL,[1] the government agency exercising supervision over the operations and activities of banks is the BSP. In a previous Opinion, the Commission stated that in cases where a government agency regulates the operation of certain type of corporation by virtue of a special law, that agency has the primary jurisdiction over the same.[2] Further, since MBTC is governed by relevant BSP issuances, it is worthy to mention that, under SEC Memorandum Circular No. 15, Series of 2003, the Commission refrains from rendering opinions on questions involving interpretation of administrative rules and issuances of other government agencies.[3]

In this regard, it is important to clarify that the Commission's opinion will be limited to the securities regulation aspect of the query and should not be interpreted as a ruling on the permissibility of the proposed arrangements under banking laws and other laws that may be applicable to the proposed arrangements administered by the BSP and other government agencies.

Under the Securities Regulation Code (SRC), the Commission has the power to *[r]egulate, investigate or supervise the activities of persons to ensure compliance.*[4] Specifically, it is charged with the regulation of Securities Market Professionals such as Brokers, Dealers and

[1]Section 4, Chapter II, GBL.
[2]SEC Opinion dated 8 January 1996 addressed to Mr. Dialoson A. Amil.
[3]Paragraph No. 5.7.
[4]Sec. 5 (d), Chapter II, Republic Act No. 8799 (SRC).

Associated persons,[5] and their transactions or dealings in securities.[6] Furthermore, it registers and regulates activities of other entities involved in securities transactions such as clearing agencies and exchanges.[7]

In the proposed arrangements stated in your letter, (a) MBTC will accept applications from depositors to open a bank account, (b) MBTC, upon the instruction of depositors, will remit the same to any third party bank account for any legitimate purpose, such as to pay for any investment or purchase of securities effected by the depositor, and, (c) the depositor may use such bank account to receive interest accruing to, and proceeds of the sale of such investments or securities.

Upon examination of the proposed arrangements, it is apparent that MBTC will not be directly involved in the purchase and sale of the securities of its client but will only pay for securities purchased and receive proceeds of securities sold upon order or action by the latter. Particularly, MBTC would not be acting as a clearing agency which is defined as *any person who acts as intermediary in making deliveries upon payment to effect settlement in securities transactions.*[8] This is because MBTC does not, at any point of the transactions, hold securities purchased or sold, nor act in behalf of any broker or dealer. To reiterate, it merely pays for the securities upon order of the clients. Since MBTC would not be directly involved in the sale of securities, it would not be acting as Securities Market Professional or performing activities that are governed by SEC-administered laws, rules and regulations which require SEC licenses or registration.

It must be pointed out, however, that MBTC must comply with specific rules of the Securities Clearing Corporation of the Philippines[9] and Philippine Dealing Exchange

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[5]Sec. 28 to 31, Chapter VIII, *Id.*; Sec. 3, Chapter I, *Id.* defines SEC regulated persons such as Brokers, Dealers and Associated persons, viz:

3.3. "Broker" is a person engaged in the business of buying and selling securities for the account of others.

3.4 "Dealer" means many person who buys sells securities for his/her own account in the ordinary course of business.

3.5. "Associated person of a broker or dealer" is an employee thereof whom, directly exercises control of supervisory authority, but does not include a salesman, or an agent or a person whose functions are solely clerical or ministerial.

[6] Sec. 30 Transactions and Responsibility of Brokers and Dealers; Section 32. Prohibition on Use of Unregistered Exchange; and Regulation of Over-the-Counter Markets. (*Id.*)

[7] Sec 33, Chapter IX and Sec. 42, Chapter XI, *Id.* Sec. 3, Chapter I defines said entities, viz:

3.6. "Clearing Agency" is any person who acts as intermediary in making deliveries upon payment to effect settlement in securities transactions. (Sec. 3, *Id.*)

3.7. "Exchange" is an organized marketplace or facility that brings together buyers and sellers and executes trades of securities and/or commodities.

[8] Sec. 3.6, Chapter I, Id.

[9] *Cash Settlement Account means the cash account opened and maintained by the Clearing Member with the Settlement Bank for the deposit of cash for payment of Due Clearing obligations and for the credit of Due Broker entitlements. The bank account maintained with the Settlement Bank for the purpose of settling the Cash Element of SCCP-Eligible Trades.* In relation to said definition, *Settlement Bank means a duly licensed commercial banking institution accredited by SCCP for the Clearing and Settlement of the Cash Element of SCCP-Eligible Trades.* (Rule 1.1., rules of the Securities Clearing Corporation of the Philippines.)

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Platform,[10] if the accounts opened by the clients of MBTC are to be used as *settlement accounts* as defined by the rules of the aforementioned entities.

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.[11] 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.

CAMILO S. CORREA
General Counsel

[10] *4. Cash Settlement Account shall refer to an account with a Cash Settlement Bank which may be debited or credited in accordance with these Rules.* In relation to said definition, *Cash Settlement Bank shall refer to the BSP or any bank registered by [Philippine Dealing Exchange Platform]PDEx as a Cash Settlement Bank that maintains a Cash Settlement Account for Settlement Participants and which undertakes to perform the necessary actions specified in these Rules to effect the Settlement of Trades.*([5] in relation to [4] of Rule 8.3, PDEx Rules for the Fixed Income Securities Market, as amended*).*

[11] SEC Memorandum Circular 2003-15, No. 7.

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