Securities and Exchange Commission
PHILIPPINES

BAGONG PILIPINAS

OFFICE OF THE GENERAL COUNSEL

11 September 2024

SEC OGC Opinion No. 24-24
Re: Applicability of the 19-Lender Rule

TOYOTA Financial Services Philippines Corporation
32F GT Tower International, Ayala Ave. cor. HV Dela Costa St.
Salcedo Village, Makati City 1226

ATTENTION : **Mr. Atsushi Murakami**

Dear Mr. Ocampo:

This refers to your company's letter,[1] requesting for an opinion on the interpretation of Rule 9.1.2.4 [now Rule 9.1.2.5] of the Implementing Rules and Regulations (IRR) of the Republic Act (R.A.) No. 8799 or the Securities Regulation Code (SRC) [SRC-IRR].

The letter mentions the company's interpretation of Rule 9.1.2.4 of the SRC-IRR [now Rule 9.1.2.5] also known as the nineteen (19)-lender rule, *viz.:*

> It can be deduced from the above provision that the lender count will apply only to non-institutional lenders. If lenders are considered as primary institutional lenders, the 19 lender (sic) rule will not apply. Such being the case, a financial institution without banking or quasi-banking license can issue evidence of indebtedness to more than 19 primary institutional lenders without violating the rule on lender count.
>
> Additionally, it is our understanding that the mentioned rule will not apply to off-shore borrowings or issuance of evidence of indebtedness to an off-shore entity.

You are now asking for a confirmation of whether or not the foregoing interpretation is correct.

At the outset, we note that there are two queries included in your letter:

a) Whether or not a financial institution without a banking or quasi-banking license can issue evidence of indebtedness to more than 19 primary institutional lenders without violating the 19-lender rule; and
b) Whether or not the 19-lender rule will apply to off-shore borrowings or issuance of evidence of indebtedness to an off-shore entity.

Primary Institutional Lenders

Your letter cites Rule 9.1.2.4 [now Rule 9.1.2.5] of the SRC-IRR, which provides an exemption to the registration requirement under Rule 8.1.1.1 of the SRC-IRR,[2] to wit:

> The registration requirements shall not likewise apply to evidence of indebtedness, e.g., commercial papers, that meet the following conditions:

[1] Letter was dated 07 April 2017.
[2] Rule 8.1.1.1, *Implementing Rules and Regulations of Republic Act (R.A.) No. 8799 or the Securities Regulation Code (SRC)* (SRC-IRR), 04 August 2015.

9.1.2.5.1. ***Issued to not more than nineteen (19) non-institutional lenders***;

9.1.2.5.2. Payable to a specific person;

9.1.2.5.3. Neither negotiable nor assignable and held on to maturity; and

9.1.2.5.4. In an amount not exceeding One Hundred Fifty Million Pesos (PhP150,000,000.00) or such higher amount as the Commission may prescribe.[3] (Emphasis supplied)

However, considering that, under the facts you gave, the identity of the person/s to whom the evidence of indebtedness will be issued is a **primary institutional lender**, the term **"primary institutional lender"** must then be defined. Rule 10.1.4 of the SRC-IRR provides the following rule:

> Sections 8 and 12 shall not likewise apply to issuance of evidence of indebtedness to the following ***primary institutional lenders***: banks, including their trust accounts wherein the bank-trustee is granted discretionary powers in the investment disposition of the trust funds, investment houses including their trust accounts wherein the investment house-trustee is granted discretionary powers in the investment disposition of the trust funds, trust companies, ***financing companies***, investment companies, pre-need companies, non-stock savings and loan associations, building and loan associations, venture capital corporations, insurance companies, government financial institutions, pawnshops, pension and retirement funds approved by the BIR, educational assistance funds established by the national government, and other entities that may be ***classified as primary institutional lenders by the BSP, in consultation with the SEC***; provided all such evidence of indebtedness shall ***only be negotiated or assigned to any of the aforementioned primary institutional lenders or the Development Bank of the Philippines*** with respect to private development banks in relation with their rediscounting privileges; provided further that in case of non-banks without underwriting licenses, such ***negotiation or assignment shall be through banks or non-banks licensed to be an underwriter or a securities dealer***; provided finally, that ***in no case shall said instrument be negotiated or assigned to non-qualified investors***.[4] (Emphasis supplied)

Under Rule 10.1.4 of the SRC-IRR,[5] issuances of evidence of indebtedness to primary institutional lenders, regardless of their number, are exempt from the registration requirement under Section 8 and 12 of the SRC provided that the following conditions are present:

a) All such evidence of indebtedness shall ***only be negotiated or assigned to any of the aforementioned primary institutional lenders or the Development Bank of the Philippines*** with respect to private development banks in relation with their rediscounting privileges;
b) In case of non-banks without underwriting licenses, such ***negotiation or assignment shall be through banks or non-banks licensed to be an underwriter or a securities dealer***; and
c) ***In no case shall said instrument be negotiated or assigned to non-qualified investors***.

It is clear from the foregoing that the issuance of evidence of indebtedness to primary institutional lenders is exempt from the requirement of registration, not under Rule 9.1.2.4, but rather under Section 10.1(l) of the SRC and Rule 10.1.4 of the SRC-IRR. The transactions covered by the aforementioned law and IRR are exempt from registration because the investors involved are considered as highly sophisticated or specialized, and as such, have a greater risk tolerance and/or do not need strict protection from the Commission.

As such, as to the first query, the answer is affirmative. The 19-lender rule pertains to non-institutional lenders and does not apply to primary institutional lenders because the latter is covered by Rule 10.4.1 of the SRC-IRR.

Rule for off-shore borrowings or off-shore issuance

The crux of your second question pertains to whether or not the provisions of the SRC and its IRR, particularly, on the 19-lender rule and the registration requirement, would apply to off-shore borrowings of or issuance of evidence of indebtedness to an off-shore entity.

Rule 8.1.1.1 of the SRC-IRR provides the general rule on registration of securities, to wit:

> No securities shall be sold or offered for sale, or distributed by any person or entity within the Philippines unless such securities are ***duly registered with the Commission*** through Form 12-1, and the registration statement has been declared effective by the Commission ***<u>except of a class exempt under Section 9 of the Code or unless sold in any transaction exempt under Section 10 thereof and these Rules.</u>*** No information relating to an offering of securities

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[3] Rule 9.1.2.4, SRC-IRR, *supra* Note 2.
[4] Rule 10.1.4., *ibid.*
[5] Rule 10.1.4, *ibid.*

> shall be disseminated unless a registration statement has been filed with the Commission and the written communication proposed to be released contains the required information under SRC Rule 83.[6] (Emphasis and underscoring supplied)

One of the exemptions from the registration requirement is the 19-lender rule which contemplates an instance where the evidence of indebtedness is issued to not more than 19 non-institutional lenders. This means that the exemption is anchored on not breaching the threshold number. It follows then that if the evidence of indebtedness is issued to more than 19 non-institutional lenders, then the registration requirement would apply.

However, in ***SEC-OGC Opinion No. 24-04***,[7] it was emphasized that the place where the securities would be sold or offered for sale or distribution is also material, *viz.*:

> Thus, for the registration requirement to bind the issuer, the following elements must be present:
>
> a) the subject matter ***must be securities***;
> b) the securities must either be ***sold or offered for sale or distribution***; and
> c) the sale or offer to sell/distribute securities must be ***within the Philippines.***

As such, as to the second question, if the securities would be sold/issued or offered for sale or distribution outside of the Philippines, then the registration requirement would not apply.

The above discussions notwithstanding, the company may file an application for confirmation of an exemption under Rule 10.3.1 of the SRC-IRR which provides the following:

> Any person applying or seeking for confirmation of an exemption under Section 10 of the Code shall file with the Commission a notice identifying the exemption relied upon on such form and at such time as the Commission by rule may prescribe and with such notice shall pay to the Commission a fee equivalent to one-tenth (1/10) of one percent (1%) of the maximum aggregate price or issued value of the securities.[8]

It shall be understood that the foregoing opinion is rendered based solely on the facts, circumstances and documents disclosed/submitted and relevant solely to the particular issue raised therein. It shall not be 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.[9] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,

ROMUALD C. PADILLA
General Counsel

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[6] Rule 8.1.1.1, SRC-IRR, *supra* Note 2.
[7] SEC-OGC Opinion No. 24-04 addressed to Marriott Ownership Resorts Inc. dated 26 March 2024.
[8] Rule 10.3.1, SRC-IRR, *supra* Note 2.
[9] Section 7, SEC Memorandum Circular No. 15, Series of 2003. 16 December 2003.