Securities and Exchange Commission
PHILIPPINES

OFFICE OF THE GENERAL COUNSEL

SEC-OGC Opinion No. 22-12
Re: Issuance of Shares of Stocks at a Premium Without Increasing the Authorized Capital Stock

27 September 2022

FLEET MARINE CABLE SOLUTIONS, INC.
c/o MAYO LAW OFFICE
34 Rizal Avenue, Batangas City 4200

Attention: Atty. Vicente Bernardo V. Mayo, Jr.

Dear Atty. Mayo:

This refers to your letter dated 30 March 2022 requesting the Commission's opinion on whether **Fleet Marine Cable Solutions, Inc.** ("FMCSI") can issue shares at a premium to Mr. Iskandar Shah ("Mr. Shah") without increasing its authorized capital stock (ACS).

As stated in the letter, Mr. Shah, an Indonesian national who is a holder of a Special Investor's Resident Visa (SIRV) issued by the Board of Investments (BOI), invested Three Million and Seven Hundred Fifty Thousand Pesos (PHP3,750,000.00) in FMCSI, by subscribing five thousand (5,000) of its common shares, with a par value of One Hundred Pesos (PHP100.00) per share, for a subscription price of Seven Hundred Fifty Pesos (PHP750.00) for each share.

However, upon BOI's validation of Mr. Shah's investment in FMCSI relative to his application for an indefinite SIRV, the BOI found it irregular for FMCSI to have a paid-up capital of Thirteen Million and Two Hundred Fifty Thousand Pesos (PHP13,250,000.00), which is more than its ACS of Ten Million Pesos (PHP10,000,000.00).

Specifically, FMCSI is requesting for an opinion from the Commission on the following matters:

1. "Whether or not a company may be allowed to issue shares of stocks at a premium"; and

2. "Whether or not a company is allowed to have a paid-up capital which is more than its ACS."

First Query

We answer the ***first query*** in the ***affirmative.*** A company may be allowed to issue shares of stock at a premium.

The Supreme Court in *Salido vs. Aramaywan Metals Development Corp.*[1], citing *NTC vs. CA and PLDT*, confirms that the **capital subscribed can be more than the par value of the shares**, to wit:

> "Briefly, capital refers to the value of the property or assets of a corporation. **The capital subscribed is the total amount of the capital that persons (subscribers or shareholders) have agreed to take and pay for, which need not necessarily be, and can be more than, the par value of the shares**. In fine, it is the amount that the corporation receives, inclusive of the premiums if any, in consideration of the original issuance of the shares."

From the foregoing, it is legal for a company to issue shares at a premium or over the par value of the shares as stated in its Articles of Incorporation (AOI), and for the subscribers of a corporation to pay more than the par value of the shares they subscribed as there is no law, rule or regulation that prohibits the same.

Second Query

We answer the ***second query*** in the ***affirmative.***

ACS is defined as the **amount fixed in the AOI to be subscribed and paid by the stockholders of the corporation**,[2] or the "**minimum** amount of capital which the corporation will receive when it issues all its shares,"[3] which "is the product of the par value of each share and the ***total*** number of shares that the corporation is authorized to issue under its charter."[4] **Subscribed capital** is that portion of the ACS that is covered by subscription agreements whether fully paid or not.

The concept of ***paid-up capital*** under Section 13 of the old Corporation Code[5] has a settled technical meaning. Although Section 13 no longer appears in the Revised Corporation Code (RCC), the term "paid-up capital" survives and is still applicable relative to the increase of capital stock, found in Section 37 of the RCC. In *MSCI-Nacusip Local Chapter vs. National Wages and Productivity Commission, et al.*[6], the Supreme Court said:

> "**By express provision of Section 13, paid-up capital is that portion of the authorized capital stock which has been both subscribed and paid**. To illustrate, where the authorized capital stock of a corporation is worth P1 million and the total subscription amounts to P250,000.00, at least 25% of this amount, namely, P62,500.00 must be paid up per Section 13. The latter, P62,500.00, is the paid-up capital or what should more accurately be termed as 'paid-up capital stock.'"
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> Not all funds or assets received by the corporation can be considered paid-up capital, for this term has a technical signification in Corporation Law. **Such must form part of the authorized capital stock of the corporation, subscribed and then actually paid.**" (*Emphasis supplied*)

Consistent with this, the concepts of ***paid-up capital, paid-in capital***, and ***Additional Paid-In Capital (APIC)*** were discussed in a previous opinion.[7] We quote:

> "Meanwhile, paid-in capital is defined under Section 2 of SEC Memorandum Circular No. 11, series of 2008, as follows:
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> "SECTION 2. Definition of Terms.
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[1] G.R. No. 233857, 18 March 2021.
[2] Aquino and Aquino, Commentaries and Jurisprudence on the Revised Corporation Code of the Philippines, 2020 Ed., p.194.
[3] Herbosa and Recalde, The Revised Corporation Code of the Philippines (Its Theories and Applications), 2019 Ed., p.68.
[4] *Ibid.*
[5] Batas Pambansa Blg. 68, The Corporation Code of the Philippines, 01 May 1980.
[6] G.R. No. 125198, March 3, 1997 citing Agbayani, Commentaries and Jurisprudence on the Commercial Laws of the Philippines, Vol. III, 1984 ed., p. 153.
[7] SEC-OGC Opinion No. 19-40 dated 16 September 2019 addressed to Mr. Jose Ma. L. Quiaoit.

> **<u>Paid-In Capital</u>** — the amount of outstanding capital stock and additional paid-in capital or premium over the par value of shares." (Emphasis ours)
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> **<u>Additional Paid-In Capital (APIC)</u>** is any contribution of stockholders over the par value of shares. Incidentally, share premium is also defined as the amount received by a firm over the par value of its share.
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> Thus, paid-up capital differs from paid-in capital such that the former refers to shares actually subscribed and paid while the latter is the sum of the amount paid for shares of stocks issued, plus the APIC, or the excess or premium paid over the par value of such shares." *(Emphasis supplied)*

Based on the foregoing, paid-up capital is the **<u>portion of the ACS actually subscribed and paid</u>** by the stockholders of the corporation. On the other hand, paid-in capital of the corporation is the sum of the amount paid for shares of stocks issued, plus the APIC, or the excess or premium paid over the par value of such shares.

Given the context of your letter, the term "paid-up capital" is loosely used in your queries so as to cover **any amount paid** for the issuance of shares, including the excess or **premium** paid over the par value of such shares. In this case, the "paid-up capital" of the corporation would possibly be more than or exceed the ACS fixed in its AOI, especially if the capital stock is fully subscribed.

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted, and should be considered 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.[8] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Very truly yours,

ROMUALD C. PADILLA
General Counsel

[8] Section 7, SEC Memorandum Circular 2003-15, 16 December 2003.

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