Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

13 March 2019

SEC-OGC Opinion No. 19-08
Re: Effective Date of Merger

EMMANUEL C. ALCANTARA & ASSOCIATES
Unit 1008, 10th Floor
National Life Insurance Building
6762 Ayala Avenue
Makati City, 1226 Philippines

Attention: Atty. Emmanuel C. Alcantara

Dear Atty. Alcantara:

This refers to your letter dated 17 May 2018 requesting an opinion on whether Multi-Line Structures Corporation ("MSC") and Multi-Line Systems Inc. ("MSI"), the parties to a merger, may agree on the date of effectivity of merger and make the following stipulation in their Plan of Merger:

> "The Merger shall be effective on January 1, 2018 ("Effective Merger Date") subject to the approval by the SEC of the parties' Articles of Merger and its issuance of the Certificate of Filing of the Articles of Merger, wherein MSC and MSI, shall be merged into MSC, which shall be the surviving corporation. Further to the foregoing, the parties shall also request the issuance by the Bureau of Internal Revenue of a ruling that the merger complies with Section 40 (C)(2) of the Tax Code."

Section 79 of the Corporation Code (Code) provides:

> "**Section 79.** Effectivity of merger or consolidation. – xxx If the Commission is satisfied that the merger or consolidation of the corporations concerned is not inconsistent with the provisions of this Code and existing laws, it shall issue a certificate of merger or of consolidation, at which time the merger or consolidation shall be effective."

Simply stated, Section 79 provides that the merger shall only be effective upon the issuance of the Certificate of Merger by the Commission.

In this case, the proposed stipulation in the Plan of Merger states that the effective date of merger shall be on January 1, 2018. It should be noted that this date has already lapsed without any indication of whether the Articles of Merger have already been filed with the Commission. Therefore, should the Commission approve the Articles of Merger, the Certificate of Merger would only be issued after the effective date of merger set by the parties.

In previous opinions[1], the Commission has accepted a similar stipulation in the Plan of Merger of corporations based on public policy considerations. In the exercise of supervisory and regulatory functions over corporations and partnerships registered with the Commission, the Corporation Code should be given a reasonable or liberal construction which will best execute its purpose, even though such construction is not within its strict literal interpretation. A strict construction should not be permitted to defeat the policy and purpose of the Code. Therefore, 'a literal interpretation is to be rejected if it would be unjust or lead to absurd results.'[2]

As pointed out by these opinions, the Supreme Court has ruled that "the spirit, rather than the letter of a law determines its construction; hence, a statute, as in this case, must be read according to its spirit and intent."[3] In this instance, "the Corporation Code should be given a judicious, not stern and discordant interpretation, which will promote and uplift the development of trade relations which will encourage friendly commercial intercourse among corporations provided that its primordial end (protection of public interests) is served."[4]

However, prior to the approval of the proposed stipulation, a confirmation must be made by the applicants that the same would not adversely affect any third party, nor would it cause a decrease in tax dues of the corporations involved. [5]

Thus, notwithstanding the provisions of Section 79 of the Code that the merger shall only be effective upon issuance by the Commission of the Certificate of Merger, we confirm that the parties may stipulate on the effective date of merger.

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[1] SEC Opinion No. 06-04 dated 17 January 2006 addressed to Mr. Romeo H. Duran; SEC Opinion 09-13 dated 01 July 2009 addressed to Punongbayan & Araullo

[2] Soriano v. Offshore Shipping and Manning Corp. 177 SCRA 513, 519 [1989])

[3] Paras vs. COMELEC G.R. No. 123169 dated November 4, 1996

[4] SEC Opinion No. 04-36 dated 15 June 2004

[5] *see Supra note 1*

It shall be understood, however that the foregoing opinion is rendered based solely on the facts and circumstances disclosed 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. [6] 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.

CAMILO S. CORREA
General Counsel

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