Republic of the Philippines
Department of Finance
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills
Mandaluyong City Metro Manila
Philippines

20 February 2006

SEC Opinion No. 06-14
Public Companies under SEC
Memorandum Circular No. 13,
Series of 2003, as amended

MR. FEDERICO I. PARAGAS
Certified Public Accountant
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Baguio City, 2600 Philippines

Dear Mr. Paragas:

This refers to your letter dated 8 February 2006 requesting opinion on whether the companies you are auditing are covered by SEC Memorandum Circular No. 13, Series of 2003 ("SEC Circular", for brevity), as amended by SEC Memorandum Circular No. 15, Series of 2004.

The SEC Circular is enforceable upon all public companies and secondary licensees of the Commission. It provides that only an external auditor, and his auditing firm if applicable, who is accredited by the Commission, shall be engaged by these covered entities for statutory audits.[1] Section 9 thereof mandates the filing by the companies or, in case of their failure to do so, by their respective external auditors, of certain reportorial requirements.

You disclosed in your letter that your clients may not exactly fit into the definition of public companies; hence, they cannot be required to submit financial statements audited by SEC-accredited external auditors.

[1] Section 4.1, SEC Memorandum Circular No. 13, Series of 2003

However, the banks with which your clients have banking relations began imposing such requirement, pursuant to BSP Circular No. 439, dated July 8, 2004 ("BSP Circular"), particularly Section 4.6 thereof, which provides that "[i]n rating corporate borrowers with total assets of more than P15 million, only financial statements audited by SEC-accredited external auditors shall be used starting with the 2005 financial statements."

To avoid further confusion, you thus posed subject query.

Stress, however, must be laid upon the fact that the SEC Circular does not only apply to public companies but to secondary licensees of the Commission[2] as well. Hence, even if your clients are not public companies, they may still be covered thereby if they are secondary licensees of the Commission. **On the premise that they are not secondary licensees, the following are imparted:**

Public companies are those which have total assets of at least Fifty Million Pesos (P50,000,000.00) or such other amount as the Commission shall prescribe, and having two hundred (200) or more holders each holding at least one hundred (100) shares of a class of its equity securities.[3]

Although your clients have assets of Fifty Million Pesos (P50,000,000.00), they do not have two hundred (200) or more stockholders each owning one hundred (100) shares. Hence, they are not public companies. Accordingly, they are not covered by the SEC Circular.

It does not mean, however, that your clients' banks cannot impose their aforementioned requirement.

Pursuant to the policy of the Bangko Sentral ng Pilipinas ("BSP") to ensure that banks' credit risk management processes are sound and effective, the BSP Circular was approved to govern the use of banks' internal credit risk rating systems.[4] Said issuance is in accordance with Sections 40 and 42 of The General Banking Law of 2000[5] which we quote, respectively, thus:

> "Section 40. Requirement for Grant of Loans or Other Credit Accommodations.--- Before granting a loan or other credit accommodation a bank must ascertain that the debtor is capable of fulfilling his commitments to the bank.

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[2] As to the list of secondary licensees, see SEC Memorandum Circular No. 15, Series of 2004
[3] Section 3.6, SEC Memorandum Circular No. 13, Series of 2003
[4] Section 1, Statement of Policy, BSP Circular No. 439, Series of 2004
[5] Republic Act No. 8791

Towards this end, a bank may demand from its credit applicants a statement of their assets and liabilities and of their income and expenditures and such information as may be prescribed by law or by rules and regulations of the Monetary Board to enable the bank to properly evaluate the credit application which includes the corresponding financial statements submitted for taxation purposes to the Bureau of Internal Revenue. xxx.

xxx xxx xxx."

"Section 42. Other Security Requirements for Bank Credits.--- The Monetary Board may, by regulation, prescribe further security requirements to which the various types of bank credits shall be subject...."

Administrative regulations and policies enacted by administrative bodies to interpret the law have the force of law and are entitled to great respect. However, administrative agencies are not authorized to substitute their own judgment for any applicable law or administrative regulation with the wisdom or propriety of which they do not agree, at least, not before such law or regulation is set aside by the authorized agency of government as unconstitutional or illegal and void.[6]

Having been issued by the BSP in the exercise of its regulatory jurisdiction over banks, the BSP Circular commands respect from the Commission.

We hope we have clarified your concern.

VERNETTE G. UMALI-PACO
General Counsel

[6] Cruz, Philippine Administrative Law, 1998 Edition, p. 31, citing Eslao v. COA, 236 SCRA 161 (1994)

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