Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

5 September 2018

SEC-OGC Opinion No. 18-17
RE: Applicability of SEC
Memorandum Circular No. 08-13
to Investment Houses

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Attention: **Atty. Herminio S. Ozaeta, Jr.**
Atty. Cristina Collantes-Garcia

Attorneys:

This refers to your letter dated 18 October 2013 requesting for an opinion on behalf of your client, UBS Investment Philippines (hereinafter referred to as "*UBS Philippines*"), on whether an investment house is covered under the SEC's Memorandum Circular No. 08-13 (hereinafter referred to as "*MC No. 08-13*") issued pursuant to the rulings on *Gamboa v. Teves* (Decision)[1] and *Heirs of Gamboa v. Teves* (Resolution)[2] and whether there is a need to revise or amend the current ownership structure of UBS Philippines in accordance with MC No. 08-13.

You stated that UBS Philippines is an investment house. It is currently structured, such that 100% of the preferred non-voting shares are held by UBS AG, a Swiss national. While 40% of the common voting shares of UBS Philippines are held by Filipino nationals and 60% of the common voting shares are held by foreign nationals.

The issues are premised on whether an investment house is covered under MC No. 08-13 and whether there is a need to revise or amend the current ownership structure of UBS Philippines in accordance with MC No. 08-13.

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[1] G.R. No. 176579, June 28, 2011
[2] G.R. No. 176579, October 9, 2012

Section 1 of MC No. 08-13 provides:

> "Section 1. This Circular shall apply to **all corporations** ("covered corporations") **engaged in identified areas of activities or enterprises specifically reserved, wholly or partly, to Philippine Nationals** by the Constitution, the FIA, and other existing laws, amendments thereto and IRRs of said laws, except as may otherwise be provided therein."[3] (Emphasis supplied)

The second paragraph of Section 2 of MC No. 08-13, however, provides that corporations which are covered by special laws are excluded from the coverage of MC No. 08-13, to wit:

> "Section 2. All covered corporations shall, at all times, observe the constitutional or statutory ownership requirement. For purposes of determining compliance therewith, the required percentage of Filipino ownership shall be applied to BOTH (a) the total number of outstanding shares of stock entitled to vote in the election of directors; AND (b) the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors.
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> **Corporations covered by special laws which provide specific citizenship requirements shall comply with the provisions of said law."**[4] (Emphasis ours)

MC No. 08-13 cited laws like the Lending Company Regulation Act of 2000, the Financing Company Act of 1998, and the Investment Houses Law as examples of such special laws.

Presidential Decree No. 129 (hereinafter referred to as "P.D. 129") as amended, which is the law governing investment houses, provides for a different citizenship requirement, as enunciated in Section 5:

> "Section 5. *Citizenship requirements* – At least forty percent (40%) of the **voting stock** of any Investment House shall be owned by citizens of the Philippines. In determining the percentage of foreign-owned voting stocks in Investment Houses, the basis for the computation shall be the citizenship of each stockholder, and of the stockholder is a corporation, the citizenship of the individual stockholders holding voting shares in that corporation. In approving foreign equity applications in Investment Houses, the Securities and Exchange Commission shall approve such applications only if the same or similar rights are enjoyed by Philippine nationals in the applicant's country. xxx"[5] (Emphasis ours)

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[3] SEC Memorandum Circular No. 08, sec. 1, s. of 2013

[4] SEC Memorandum Circular No. 08, sec. 1, s. of 2013

[5] P.D. No. 129, otherwise e known as, "The Investment Houses Law," as amended by R.A. 8366, Section 5

P.D. 129 clearly provides that at least 40% of the voting stock of an Investment house shall be owned by citizens of the Philippines. Hence, in determining compliance with the nationality requirement, the basis is only the **voting stock** and **not** the two-tiered test mentioned in MC No. 08-13 (*i.e.* the total number of outstanding shares of stock entitled to vote in the election of directors and the total number of outstanding shares of stock, whether or not entitled to vote in the election of directors).

Consequently, since 40% of the voting stock of UBS Philippines is held by Filipino citizens, then UBS Philippines need not revise or amend its current ownership in accordance with MC No. 08-13.

It shall be understood, however, that the foregoing opinion is rendered based solely on facts and circumstances disclosed and relevant solely to the particular issues raised therein and 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. If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.[6]

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

[6] SEC Memorandum Circular No. 15, s. of 2003