Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
OFFICE OF THE GENERAL COUNSEL
SEC Building, EDSA, Greenhills, City of Mandaluyong

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SEC Opinion No. 06-13
Issuance of Stock Certificates for Partially Paid Subscriptions

Sir:

This is in response to your letter dated February 9, 2006 requesting opinion on whether a corporation may issue stock certificates for partially paid subscriptions. In the said letter, you expressed that your client desires to issue share certificates to cover partially paid subscriptions but is uncertain as to the prevailing view of the Commission with respect to this issue. According to you, this uncertainty arose from conflicting views on the matter by noted authors on Corporation Law.

A reading of the various opinions[1] prepared by the Commission regarding this issue reveals that the Commission consistently held that a stockholder shall only be entitled to the issuance of his certificate of stock upon payment of the full amount of his subscription, together with interest and expenses (in case of delinquent shares), if any is due. Section 64[2] of the Corporation Code (B.P. 68) clearly provides that a subscription is one, entire and indivisible whole contract. This principle of indivisibility of subscription is absolute as Section 64 of the Corporation Code speaks of no exception.[3]

You cited in your letter, the case of ***Baltazar vs. Lingayen Gulf Electric Power Co., Inc.,***[4] wherein the Supreme Court ruled that a corporation may, in the absence of provisions in their by-laws to the contrary, apply payments made by subscribers-stockholders either as: (a) full payment for the corresponding number of stock the par value of each of which is covered by such payment; or (b) as payment pro-rata to each and all the entire number of shares subscribed

[1] SEC Opinion dated March 11, 1980, Mr. Roberto Lugue; SEC Opinion dated September 1, 1982, Feria, Feria, Lugtu and Lao; SEC Opinion dated January 6, 1983, Bay Sunset Tours & Travel Corp.; SEC Opinion dated April 27, 1990, Romulo, Mabanta Buenaventura, Sayoc and de los Reyes; SEC Opinion September 17, 1990, Atty. Luciano S. Borja, SEC Opinion dated June 6, 1991, Atty. Damaso P. Uy; SEC Opinion June 3, 1994, Ms. Concepcion C. Madarang; SEC Opinion October 9, 1995, Atty. A.B.F. Gaviola, Jr..

[2] Section 64. Issuance of stock certificates. – No certificate of stock shall be issued to a subscriber until the full amount of his subscription together with interest and expenses (in case of delinquent shares) if any is due, has been paid.

[3] SEC Opinion dated September 3, 1982, Mr. Adolfo Martinez.

[4] L-16236-38, June 30, 1965.

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for, was decided before the effectivity of the above cited provision. Under the ***Corporation Law, as amended by Act 3518,*** which was applied to this case, the pertinent section on the issuance of stock certificates reads as follows:

> *"Section 37. x x x. No certificate of stock shall be issued to a subscriber as fully paid up until the full par value thereof, or the full subscription in the case of no par stock, has been paid by him to the corporation. Subscribed shares not fully paid up may be voted provided no subscription call or interest due on subscription is unpaid and delinquent."*

A comparison of this provision of the Corporation Law with Section 64 of the Corporation Code would reveal the marked changes in the present law. While Section 37 of the Corporation Law distinguishes between par and no par stock, Section 64 of the Corporation Code makes no such distinction. Instead, Section 64 categorically states that the certificate of stock shall only be issued to a subscriber upon full payment of his subscription together with interest and expenses, if any is due. To reiterate, the rule applies to both par and no par shares, leaving no room for the application of the ***Lingayen Gulf*** rule.[5]

It should be stressed that a perusal of the proceedings of the legislative committee, considering Cabinet Bill No. 3 (now B.P. Blg. 68) held on March 11, 1980, clearly shows the legislative intent of abandoning the Supreme Court ruling laid down in ***Lingayen Gulf***.

As aptly commented by former Assemblymen Emilio Abello: *"To permit the issuance of certificates of stock for a payment of a subscription that does not cover the entire value of the shares subscribed is in effect permitting payment for the subscriptions in ways different from what the subscription agreement says or what the Corporation Code provides".* (Proceedings of March 11, 1980).[6]

Accordingly, the present rule on the matter is that all partial payments on one subscription shall be deemed applied proportionately among the number of shares. Therefore, to permit the issuance of stock certificate for payment of a subscription that does not cover the entire number and value of the shares subscribed would violate the above provision.[7]

Very truly yours,

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General Counsel

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[5] Campos, The Corporation Code Vol. 2 (2000) page 206.
[6] SEC Opinion dated December 1, 1988, Honorable Sotero M. Laurel.
[7] SEC Opinion dated November 12, 1993, Ms. Ma. Luisa J. Hilado.