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

07 April 2006

SEC Opinion No. 06-25
SRC Rule 19: Tender offer

PETRON CORPORATION
Petron Megaplaza
358 Sen. Gil Puyat Avenue
Makati City 1200

Attn: **Atty. Luis A. Maglaya**

Sir:

This refers to your letter dated 09 February 2006, requesting clarifications on SRC Rule 19 concerning tender offer. You stated in your letter that Petron Corporation (Petron) is currently considering buying back shares below board lot (999 shares and below) in its effort to consolidate small accounts for efficiency and cost management.

You posed several questions, as follows:

1. Is the tender offer to reacquire a specific class of shares (i.e., below board lot) allowed?

2. Should a premium be considered in this option?

3. Would the instant case fall under those exempt from mandatory tender offer requirement under SRC Rule 19.3?

4. Would Petron be in violation of the SRC or any SEC circular if it directly writes to those stockholders owning less than a board lot and offers to buy the same at market price?

Anent the first question, we answer in the affirmative. A tender offer to reacquire a specific class of shares is allowed and the classification of *below board lot* is a valid classification.

As for the second question, the offer should be at the prevailing market price within a period of time of the buy back.

To answer your third question, the instant case falls under those exempt from mandatory tender offer requirement under SRC Rule 19.3. The situation contemplated in this query is clearly not covered by the mandatory tender offer rule under Rule 19 of the SRC. Said rule on mandatory tender offer provides:

"2. Mandatory tender offers

A. Any person or group of persons acting in concert, who intends to acquire thirty five percent (35%) or more of equity shares in a public company shall disclose such intention and contemporaneously make a tender offer for the percent sought to all holders of such class, subject to paragraph (9)(E) of this Rule.

xxx.

B. Any person or group of persons acting in concert, who intends to acquire thirty five percent (35%) or more of equity shares in a public company in one or more transactions within a period of twelve (12) months, shall be required to make a tender offer to all holders of such class for the number of shares so acquired within the said period.

C. If any acquisition of even less than thirty five percent (35%) would result in ownership of over fifty one percent (51%) of the total outstanding equity securities of a public company, the acquirer shall be required to make a tender offer under this Rule for all the outstanding equity securities to all remaining stockholders of the said company at a price supported by a fairness opinion provided by an independent financial advisor or equivalent third party. The acquirer in such a tender offer shall be required to accept any and all securities thus tendered.

(76)

xxx."

A reacquisition of Petron of its own shares is not covered by the mandatory tender offer rule; rather, said case is properly dealt with under tender offer by an issuer/buy back provided for under Rule 19.4. Said section provides that:

"4. Tender Offer by an Issuer/Buy Back

A. A reacquisition or repurchase by an issuer of its own securities shall only be made if such issuer has unrestricted retained earnings in its books to cover the amount of shares to be purchased, and the same is pursuant to any of the following purposes:

i. to implement a stock option or stock purchase plan;
ii. to meet short-term obligations which can be settled by the re-issuance of the repurchased shares;
iii. to pay dissenting or withdrawing stockholders entitled to payment for their shares under the Corporation Code;
iv. such other legitimate corporate purpose/s.

In case of acquisition pursuant to subparagraph (i) or (ii) above, the same may be accounted for as "Investment in Marketable Securities", in accordance with International Accounting Standards.

x x x."

A corporation can only buy back its shares if it has unrestricted retained earnings and the buy back is pursuant to any of the purposes provided for in the abovementioned provision. Based on records on file with the Commission, Petron has unrestricted retained earnings in the amount of P10.319 Billion as of 30 September 2005.[1] Likewise, the objective "to consolidate small accounts for efficiency and cost management" may be considered as a legitimate corporate purpose under SRC Rule 19.4 (A).

The Commission cannot give a categorical answer to your fourth query in the absence of specific details and procedures, such as the manner of the buy back and how this will be executed.

[1] CFD Memorandum dated 10 March 2006

It shall be understood that the opinion rendered is based solely on the facts disclosed in your query and relevant to the particular issue raised therein and shall not be used in the nature of a standing rule binding upon the Commission in other cases of similar or dissimilar circumstances.

For your guidance.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

74