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

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and Mr. Renato K. De Borja, Jr.
Metrobank Card Corporation
6778 Ayala Avenue, Makati City

SEC Opinion No. 08-13
Financing Act : 25% limit
on real estate acquisition.

Madam/Sir:

This pertains to your letter dated 14 August 2007 requesting opinion on the interpretation of Section 9(a) of the Implementing Rules and Regulations of Republic Act 8556 (Financing Act of 1996) which reads:

'Section 9. Loans and Investments

Unless otherwise authorized by the Commission:

(a) The total investment of a financing company in real estate and in shares of stock in a real estate development corporation and other real estate based projects shall not at any time exceed twenty-five (25%) percent of its networth'.[1]

It is alleged that Metrobank Card Corporation (MCC) will convert into a Finance Company to enable it to engage in quasi-banking activities and for this purpose, will have to secure the requisite license from the Bangko Sentral ng Pilipinas.

At the moment, MCC has the option to purchase the real property situated at 6778 Ayala Avenue, Makati which the corporation leases and utilizes as its head office. The purchase price estimated at Four Hundred Fifty-Five

[1] Networth is the excess of assets over liabilities, net of appraisal surplus, unbooked valuation reserves, capital adjustments, overstatement of assets and unrecorded liabilities (Sec. 1(l) of the Rules and Regulations to Implement the Provisions of Republic Act No. 8556 (The Financing Company Act of 1998).

as its head office. The purchase price estimated at Four Hundred Fifty-Five Million Pesos (Php 455,000,000.00) which may exceed the twenty-five percent (25%) net worth of MCC if the incremental cost in acquiring such property and other real property holdings are included. Hence, MCC now seeks confirmation from the Commission that MCC is not covered by the 25% limit considering that the acquisition of real estate in this instance is not an investment in real estate corporation or real estate based projects for purposes of generating profit. It is an acquisition of real property to be used as its head office and to house other operating offices. (**Annex "A"**)

In the event the 25% restriction under Section 9 of the Financing Act shall be interpreted to cover all types of investment in real estate including real properties for use in its normal business operations, MCC thus requests that it be authorized to acquire the property based on the hereunder quoted considerations:

(i) the property is being purchased to serve as the main office of MCC and the excess of 0.54% above the 25% restriction is within reasonable limits considering the property's prime location;

(ii) the excess of 0.54% relates mainly to incremental costs in acquiring the property, e.g. documentary stamps tax, transfer tax and registration fees; and

(iii) the acquisition cost and manner of acquiring the subject property shall be made under reasonable terms and conditions, hence, shall not adversely affect its primary business activities.

MCC shall purchase the property from a sister-company, Global Holdings, Inc., under a lease with option to purchase arrangement. The property will be acquired at a pre-determined price of P455 Million, less 50% of whatever lease payments MCC has made (P4,259,696.00/month) commencing April 15, 2007. Since the previous lease payments form part of the purchase price and shall be deducted therefrom, the company will not experience sudden financial strain so as to significantly impact the conduct of its card operations and its intended financing company activities.

(36)

The sole issue raised herein is whether the proposed acquisition is not violative of the 25% investment limit under Section 9 of the Implementing Rules and Regulations of Republic Act 8556.

Black defines " [i]nvestment" as [A]n expenditure to acquire property or other assets in order to produce revenue; the *asset*[2] so acquired. The placing of capital or laying out of money in a way intended to secure income or profit from its employment. Securities & Exchange Commission v. Wickham , D.C. Minn. 12 F. Supp. 245, 247. To purchase securities of a more or less permanent nature, or to place money or property in business ventures or real estate, or otherwise lay it out, so that it may produce revenue or gain (or both) in the future. [3]

A careful scrutiny of the phrase in the aforequoted provision of the implementing rules and regulations, *"total investment of a financing company in real estate and in shares of stock in a real estate development corporation and other real estate based projects"* indicates a form of infusion of funds in a venture that would generate income or revenue. This is apparent from the use of conjunctive word *"and"* linking "real estate" with the words *"development"* and *"projects."* Thus, under the statutory construction rule on associated words known as ***noscitur a sociis, the meaning of a questionable or doubtful words is or may be known from their associates.*** [4]

On this score, the intended investment of MCC by acquiring the real estate premises to house their principal office and other operating departments, though in furtherance of its corporate objectives, would not necessarily fall within the context of "investment" as envisioned under the Financing Act and its Implementing Rules and Regulations.

Precisely, the Philippine Accounting Standards (PAS) [IAS 40] laid down the yardsticks when an investment shall be treated as an *"investment property"* or as an *"owner occupied property"* in this wise:

"xxx xxx xxx"

> ***Investment property*** is property (land or building- or part of a building or both) held (by the owner or by the lessee under a finance lease) to earn rentals or for capital appreciation or both, rather than for:

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[2] In the determination of whether a piece of property is a capital asset or an ordinary asset, a careful examination and weighing of all circumstances revealed in each case must be made. (Glossary of Terms for State Auditors p. 105).

[3] Black's Law Dictionary, p. 825.

[4] It is known from its associates. The meaning of a word is or may be known from the accompanying words. Under the doctrine of *"noscitur a sociis"*, the meaning of questionable or doubtful words or phrases in a statute may be ascertained by reference to the meaning of the other words or phrases associated with it. Wong Kam Wo vs. Dulles, C.A. Hawaii, 236 F.2d 622,626.

(a) use in the production or supply of goods or services or for administrative purposes; or

(b) sale in the ordinary course of business.

Owner Occupied property is property held by the owner or by the lessee under a finance lease) for use in the production or supply of goods or services or for administrative purposes.

6. *A property interest that is held by a lessee under an operating lease may be classified and accounted for as investment property if, and only if, the property would otherwise meet the definition of an investment property and the lessee uses the fair value model set out in paragraphs 33-55 for the asset recognized. This classification alternative is available on a property-by-property basis. However, once this classification alternative is selected for one such property interest held under an operating lease, all property classified as investment property shall be accounted for using the fair value model. When this classification alternative is selected, any interest so classified is included in the disclosures required by paragraphs 74-78.*

7. Investment property is held to earn rentals or for capital appreciation or both. Therefore, an investment property generates cash flows largely independently of the other assets held by an entity. This distinguishes investment property from owner occupied property. The production or supply of goods or services (or the use of property for administrative purposes) generates cash flows that are attributable not only to property, but also to other assets used in the production or supply process. IAS 16, Property, Plant and Equipment applies to owner-occupied property.

8. the following are examples of investment property:

(a) land held for long-term capital appreciation rather than for short-term sale in the ordinary course of business.

(b) land held for currently undetermined future use. (if an entity has not determined that it will use the land as owner-occupied property or for short time sale in the ordinary course of business, the land is regarded as held for capital appreciation.)

(c) a building owned by the entity (or held by the entity under a finance lease) and leased out under one or more operating leases.

(d) A building that is vacant but is held to be leased out under one or more operating leases.

9. The following are examples of items that are not investment property and are therefore outside the scope of this Standard:

(a) Property intended for sale in the ordinary course of business or in the process of construction or development for such sale (see IAS 2 Inventories), for example, property acquired exclusively with a view to subsequent disposal in the near future or for development and resale.

(b) Property being constructed or developed on behalf of third parties (see IAS 11 *Construction Contracts*).

(c) Owner -occupied property (see IAS 16), including (among other things) property held for future use as owner-occupied property, property held for future development and subsequent use as owner-occupied property, property occupied by employees (whether or not the employees pay rent at market rates) and owner-occupied property awaiting disposal.

(d) Property that is being constructed or developed for future use as investment property. IAS 16 applies to such property until construction or development is complete, at which time the property becomes investment property and this Standard applies. However, this Standard applies to existing investment property that is being redeveloped for continued future use as investment property (see paragraph 58).

(e) Property that is leased to another entity under a finance lease.

10. Some properties comprise a portion that is held to earn rentals or for capital appreciation and another portion that is held for use in the production or supply of goods or services or for administrative purposes. If these portions could be sold separately (or leased out separately under a finance lease), an entity accounts for the portion separately. If the portions could not be sold separately, the property is investment property only if an insignificant portion is held for use in the production or supply of goods or services or for administrative purposes.

11. In some cases, an entity provides ancillary services to the occupants of a property it holds. An entity treats such a property as investment property if the services are insignificant to the arrangement as a whole. An example is when

the owner of an office building provides security and maintenance services to the lessees who occupy the building.

12. In other cases, the services provided are significant. For example, if an entity owns and manages a hotel, services provided to guests are significant to the arrangement as a whole. Therefore, an owner-managed hotel is owner-occupied property, rather than an investment property.

13. It may be difficult to determine whether ancillary services are so significant that a property does not qualify as investment property. For example, the owner of a hotel sometimes transfers some responsibilities to third parties under a management contract. The terms of such contracts vary widely. At one end of the spectrum, the owner's position may, in substance, be that of a passive investor. At the other end of the spectrum, the owner may simply have outsourced day-to-day functions while retaining significant exposure to variation in the cash flows generated by the operations of the hotel.

14. Judgment is needed to determine whether a property qualifies as investment property. An entity develops criteria so that it can exercise that judgement consistently in accordance with the definition of investment property and with the related guidance in paragraphs 7-13. Paragraph 75 (c) requires an entity to disclose these criteria when classification is difficult.

15. In some cases, an entity owns property that is leased to, and occupied by, its parent or another subsidiary. The property does not qualify as investment property in the consolidated financial statements, because the property is owner-occupied from the perspective of the group. However, from the perspective of the entity that owns it, the property is investment property if it meets the definition in paragraph 5. Therefore, the lessor treats the property as investment property in its individual financial statements.

Recognition

16. investment property shall be recognized as an asset when, and only when:

(a) it is probable that the future economic benefits that are associated with the investment property will flow to the entity; and

(b) the cost of the investment property can be measured reliably.

xxx xxx xxx[5]

[5] Philippine Accounting Standard 40, Investment Property, PAS, Vol. 3, pp. 8-11.

Clearly, the proposed purchase of the real estate to house the principal office of Metrobank Card and its operating departments comprising of 10029.158 square meters or 97.86% of the total area of 10248.163, (the remaining 190.1155 square meters is occupied by PS Bank and 28.88 square meters or 2.13% is occupied by Kooky and Luscious Coffee Shop), may not violate the prescribed 25% limit on investment in real estate by a financing company for as long as the same shall be ***significantly*** used for ***administrative purposes***. In which event, the property shall not be treated as an "*investment property*" but an "***owner-occupied property***" under the Philippine Accounting Standard 40 rule.

Stated differently, the intended ***significant*** use of the real property to be acquired by MCC for administrative purposes, is not an "investment" that falls within the prescribed 25% limit real estate acquisition under the Financing Act. Nonetheless, the intended acquisition by MCC should strictly conform with the guidelines under the Philippine Accounting Standards and said corporation shall set forth the criteria for investment property to be disclosed in its financial statement pursuant to par. 75 of PAS 40.

In the event that the corporation shall engage in activities governed by the General Banking Act or related Bangko Sentral ng Pilipinas (BSP) issuances, it should comply with such other rules that may be applicable to quasi-banks.

It shall be understood that the foregoing opinion is rendered based only on the facts and circumstances disclosed in the query and relevant solely 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 whether of similar or dissimilar circumstances. If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

cc: Chairperson Fe B. Barin
Dir. Justina F. Callangan, CFD
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