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

OFFICE OF THE GENERAL COUNSEL

13 January 2010

SEC-OGC Opinion No. 10-01

Allowed activities for a foreign bank's representative office in the Philippines

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ATTENTION: Attys. Rafael A. Morales, Vicente D. Gerochi IV, and Arlene M. Maneja

Gentlemen:

This refers to your letter dated 28 December 2009, requesting our confirmation of your view that your client ING Asia Private Bank Limited's (a banking corporation registered and existing under Singaporean laws; "IAPBL," for brevity) proposed representative office here in the Philippines may legally engage in the following activities:

> "1. Prospect clients and invite such clients to open offshore accounts with IAPBL;
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> 2. Assist clients in the account opening process and send the account opening documents signed by clients to IAPBL's offshore head office for acceptance and opening;

3. Communicate with the clients and provide them with the available information about their accounts including reporting to clients on the performance, structure and individual components of their offshore portfolios;

4. Determine client's investment risk profile, investment goals and constraints and, in line with the client's risk profile and investment goals, provide client with appropriate investment proposals and model portfolios for such client's offshore investment;

5. Promote and market IAPBL's products and services such as listed/unlisted foreign equities, bond, funds, derivatives, foreign exchange and loans including giving advice to clients in the management of their assets deposited in their offshore accounts with IAPBL;

6. Refer clients to IAPBL's offshore trust and insurance teams, as clients may require, without offering insurance products;

7. Transmit clients' orders or instructions to IAPBL's offshore head office for acceptance and execution, and confirm to clients that their orders or instructions have been executed by IAPBL abroad; and

8. Transmit clients' instructions to obtain loan facilities with IAPBL offshore."

The above-enumerated activities shall be subject to the following parameters or restrictions:

"(a) The Representative Office will not transact any banking business, such as acceptance of deposits and foreign exchange trading.

(b) All transactions entered into through the promotional and marketing efforts of the Representative Office will be booked only by IAPBL in Singapore or by any of IAPBL's branches in other jurisdictions. The Representative Office will not charge any fees in the performance of its activities and functions, as it is not authorized to generate income from such activities and functions in the Philippines.

(c) IAPBL's products and services, while promoted by the Representative Office in the Philippines, can only be sold or

executed outside the country. Thus, all proposed transactions with clients in the Philippines are subject to acceptance and confirmation by IAPBL in Singapore or the relevant branch of IAPBL in another jurisdiction. Once so accepted and confirmed, IAPBL Singapore or such branch will execute the transactions or perform the services outside the Philippines;

(d) Payments for IAPBL's products and services are made by Philippine clients directly to IAPBL Singapore or its contracting branch outside the Philippines. The Representative Office is not allowed to receive such payments;

(e) Any marketing of securities in the Philippines is subject to the provisions and requirements of the Securities Regulation Code and its implementing rules and regulations."

We confirm that the representative office may engage in these activities provided it strictly adheres to the said parameters or restrictions. The representative office's conduct of these activities subject to the parameters is consistent with the Implementing Rules and Regulations of the Foreign Investments Act of 1991, which provides that:

> "Representative or liaison office deals directly, with the clients of the parent company but does not derive income from the host country and is fully subsidized by its head office. It undertakes activities such as but not limited to information dissemination and promotion of the company's products as well as quality control of products."[1]

We emphasize that these activities are limited only to marketing and promotion of IAPBL's products and services to Philippine clients. However, all transactions will be booked, sold or executed outside the Philippine's jurisdiction, and it will derive no income from within the country. Thus, the representative office will not exceed its authority. **Regarding the marketing of listed/unlisted foreign securities, we further emphasize that the representative office will still be subject to the requirements of the Securities Regulation Code and its implementing rules and regulations including but not limited to the registration of securities.[2] This ensures**

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[1] IMPLEMENTING RULES & REGULATIONS OF THE FOREIGN INVESTMENTS ACT OF 1991 (Republic Act No. 7042), Rule I, Section 1.

[2] SECURITIES REGULATION CODE, (REPUBLIC ACT NO. 8799, approved 19 July 2000), Section 8 provides:

"SEC. 8. Requirement of Registration of Securities.

that prospective Philippine clients investing in foreign securities are also protected.

This *Opinion* is rendered based solely on the 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 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.

Please be guided accordingly.

VERNETTE G. UMALI-PACO
General Counsel

8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser."