Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

Office of the General Counsel

09 August 2012
SEC Opinion No. 12-12
Re: Query on Transfer
of Principal Office
Address

Atty. Emmanuel C. Paras
Atty. Hiyasmin H. Lapitan
Sycip Salazar Hernandez & Gatmaitan
Attorneys-at-Law
SSHG Law Centre, 105 Paseo De Roxas
Makati City
1226 Metro Manila Philippines

Re: Century Peak Metals Holdings Corporation

Dear Attys. Paras and Lapitan:

This refers to your request for opinion dated 17 December 2009, on behalf of your client, Century Peak Metals Holdings Corporation (CPMHC), addressed to the Corporation Finance Department (CFD), of the Commission, which was forwarded to the Office of the General Counsel (OGC) on 19 January 2010.

In particular, you asked for the confirmation of your view that SEC Opinion No. 06-24,[1] (the "Opinion No. 06-24") dated 30 March 2006 addressed to Philippine Council for NGO Certification (PCNC), which requested the Commission to revisit *SEC Memorandum Circular No. 3, s 2006, Subject: Principal Office Address; Address of Each Incorporator, Director, Trustee, or Partner* (the "Memo Circular"), applies to CPMHC, and therefore, it can transfer to its new principal office address, prior to the amendment of its Articles of Incorporation (AI), without incurring any penalty.

Our records show that the transfer of CPMHC's principal office to its new address has been approved by the Commission, per CPMHC's Certificate of Filing of Amended Articles of Incorporation (AAI) dated 27 May 2010.

For the record, this Opinion clarifies the actual application of the Memo Circular in conjunction with Opinion No. 06-24.

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[1] Unlike the system of numbering used by CD Technologies (*Lex Libris*) as reflected in Annex "B" of your Letter dated 17 December 2009, OGC numbers its Opinions by year, then by the number of Opinion it has released, thus No. 06-24.

The Memo Circular dated 16 February 2006, which took effect on 28 February 2006 provides:

> 'In line with the "full disclosure" requirement of existing laws, all corporations and partnerships **applying for registration** with the Securities and Exchange Commission should state in their Articles of Incorporation xxx the (i) specific address of their principal office, which shall include, if feasible, the street number, street name, barangay, city or municipality; and (ii) specific residence address of each incorporator, stockholder, director, trustee, or partner.
>
> "Metro-Manila" shall no longer be allowed as address of the principal office.
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> Additionally, all corporations are required to state in their General Information Sheet the specific residence address of each stockholder, officer, director or trustee.
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> Filings that do not comply with the foregoing requirements shall be considered as non-compliant with existing rules and regulations. xxx" (Emphasis supplied)

In your letter-query, you cited Opinion No. 06-24 which states in part:

> "xxx please be informed that Memorandum Circular No. 3, s. 2006 only applies to corporations and partnerships applying for registration with the Commission from 28 February 2006 onwards.[2] It does not apply to those entities that are already registered with the Commission before said date."
>
> There is no need to amend the articles of incorporation of a corporation when it changes its principal office address from one street to another, or from one floor to another of the same building, for as long as the address is in the same municipality or city as the one indicated in the articles of incorporation on file with the Commission. The corporation only has to reflect this change of address in the General Information Sheet submitted to the SEC that will form part of the official records of the corporation on file with the Commission."

Based on your interpretation of Opinion No. 06-24, and considering 1) that CPMHC's new principal office is located within Makati, or the same city where the current office is situated, and 2) that it was incorporated in 2003, prior to the effectivity of the Memo Circular, you are of the conclusion that CPMHC can transfer its principal office address from the 18th Floor of the Security Bank Building, Ayala Avenue, Makati City to Units 1403 and 1404, Equitable Bank Tower Condominium, 8751 Paseo de Roxas (also in Makati) prior to the amendment of the Third Article of its AAI, without incurring any penalty.

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[2] SEC Memo Circ. No. 3, s. 2006 provides that it shall take effect after publication in a newspaper of general circulation. The circular was first published in the Phil. Daily Inquirer on 28 February 2006.

A clarification of the subject Opinion is necessary, *vis-a-vis* the practice of the Company Registration and Monitoring Department (CRMD) of the Commission, which is tasked with implementing the Memo Circular, taking into account the "full disclosure policy" as the guiding principle. Pursuant to this guiding principle, the CRMD policy and implementation of the Memo Circular follows the basic tenet of statutory construction, that "[e]very part of a statute must be interpreted with reference to the context," which means "that the statute must be considered together with other parts, and subservient to the general intent of the whole enactment, not separately and independently."[3]

The pertinent portion of Opinion No. 06-24 which needs to be clarified states that:

> "There is no need to amend the articles of incorporation of a corporation **when it changes its principal office address or office address from one street to another or from one floor to another of the same building,** for as long as the address is in the same municipality or city as the one indicated in the articles of incorporation on file with the Commission. **The corporation only has to reflect this change in the General Information Sheet submitted to the SEC that will form part of the official records** of the corporation on file with the Commission." (Emphasis ours)

There is no need to amend the AI, if the transfer is merely to another floor of the same building, inasmuch as locating the principal office of the corporation in this circumstance, will still be possible.

However, **if the change of address is from one building to another building, even if within the same municipality or city,** CRMD requires an amendment of the AI. This is so, because if the change of address resulting from the change of building is not properly reflected, a difficulty arises in locating the principal office as a necessary consequence of the transfer. Thus, it is not enough to reflect such change merely in the GIS, especially since not all corporations regularly comply with this reportorial requirement.

That said, it is with more reason that **the AOI should be amended when the transfer is from one street to another**. *This is a **development** of Opinion No. 06-24, borne out of experience and practice since 30 March 2006, when subject Opinion was penned.*

Applying this to CPMHC, Article III of its AAI was amended, because it moved from one building to another, and from one street to another, even if both buildings are in the same city, *i.e.*, Makati City: from Security Bank Building located in Ayala

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[3] R.E. Agpalo, Statutory Construction 248 (5th ed., 2003).

Avenue, to Equitable Bank Tower Condominium, located in Paseo de Roxas, Salcedo Village, Makati City.

The rationale for this requirement is stated in Opinion No. 06-24 itself:

> "Show cause letters and the like issued by the Commission have to be addressed to the specific place where the principal office of the corporation is to be found so that these can be suitably received by the parties. Furthermore, the circular seeks to facilitate the addressee's receipt of any and all communications, as well as be properly served of court and any other processes. It is in this light that the said circular, for good and valid reasons, was issued by the Commission.
>
> In addition, other government agencies, as well as the public, rely on the Commission to provide accurate and up-to-date information regarding corporations registered with it."

As to applicability, the Opinion emphasized that the Memo Circular applied only to corporations and partnerships **applying for registration** from 28 February 2006 onwards, and "does not apply to those already registered with the Commission before said date." This merely means that the requirement of indicating the details of the principal office address in the AI already covers those applying for registration at the time of the Memo Circular's effectivity. Beginning 28 February 2006, this previously allowed generic principal office address (i.e."Metro Manila") is no longer allowed.

However, if a corporation, whose generic principal office address of "Metro Manila" was approved prior to the effectivity of the Memo Circular, later changes its generic address to a specific address one, then the Memo Circular applies. The same holds true in the case where the change is from a specific principal office address to another specific one.

Therefore, the phrase, "does not apply to those already registered with the Commission before said date" in Opinion No. 06-24 does not apply to the particular circumstances of CPMHC because the principal office address reflected in its original AI as of 30 December 2003 was specific, and not generic. Hence, the need to amend the AI.

For purposes of imposing a penalty in relation to the change of principal address without amending the AI, while there is a pending application for the amendment of the AI, what must be reconciled are the date reflected in the GIS and the date of the board resolution approving the change of principal office address.

Upon submission of the GIS by the corporation, CRMD examines it and verifies it against the most recent AI. If the findings reveal that there is a pending

application for an AAI, CRMD checks the date of signing of the GIS against the date of the board resolution. If the GIS date is earlier than the date of the board resolution, a stock corporation is fined FIVE THOUSAND PESOS (Php 5,000.00). If the GIS has the same date as, or later than the board resolution date, no penalty is imposed on the corporation.

It shall be understood that the foregoing opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the courts, or upon the Commission in other cases 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,

CAMILO S. CORREA
General Counsel