Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

19 March 2018

SEC-OGC Opinion No. 18-03
Re: Conversion of Stockholder's Loan to APIC to Wipe Out Deficit

PHILIPPINE BIO-SCIENCES CO.
105 Paseo de Roxas
19th Floor Unit C, Strata 100 Bldg., Emerald Avenue
Ortigas Center 1650, Pasig City

ATTENTION: Mr. Romark Peralta and Antonio De Castro
Managers of Legal Office and Accounting Office

Dear Sirs:

This refers to your letter requesting an opinion on whether or not it is mandatory to seek the Commission's approval for the conversion of stockholder's advances to a corporation into additional paid-in capital (APIC) of the corporation without issuance of new shares and for the use of such APIC to wipe out the capital deficit of the corporation.

Please be informed that the Commission has adopted the policy of allowing corporations, at their option, to apply for the Commission's approval of the creation of APIC, subject to the payment of the filing fee applicable for such application.[1]

The Commission already had the opportunity to address a similar issue wherein a corporation proposed the creation of APIC without issuance of shares. In the said Opinion, the Commission stated that the application for the approval of the creation of the APIC is at the option of the corporation. Otherwise stated, it is not mandatory for the corporation to seek prior approval of the Commission for the creation of the APIC.[2]

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[1] SEC RES. No. 94, s. of 2006.
[2] SEC OGC Opinion No. 34-10 dated 22 December 2010, addressed to Mr. Melquiades T. Malabanan.

However, the application of the APIC that is already reflected as such in the audited financial statements to wipe out the capital deficit of the corporation requires the approval of the Commission upon the filing of a request for equity restructuring and upon payment of the corresponding filing fee. This is pursuant to SEC Memorandum Circular No. 11, Series of 2008[3] which states that:

> "Additional Paid-in Capital Stock shall neither be declared as dividend nor shall it be reclassified to absorb deficiency except through an **organizational restructuring duly approved by the Commission**."

You may check the requirements for the creation of APIC and for equity restructuring in our website (*sec.gov.ph*). Further inquiries as to such requirements could also be made to our Company Registration and Monitoring Department through these contact numbers: 818-5922 and 818-8520.

It shall be understood, however, that the foregoing 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 or upon the courts whether of similar or dissimilar circumstances. If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,

CAMILO S. CORREA
General Counsel

[3] Re: Guidelines on the determination of retained earnings available for dividend declaration.