Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

4 March 2019

SEC-OGC Opinion No. 19-04
Re: General Financing Activities

MAMARIL LAW FIRM
Unit 512-514 Cityland 10 Tower 2
Dela Costa cor. Valero Sts.
Salcedo Village, Makati City 1227

Attention: Atty. Mary Diana C. Mamaril

Gentlemen:

This refers to your letter dated 28 February 2018 requesting for an opinion on whether (1) Wodel, Inc. ("Wodel"), a holding company, may expand its corporate purpose by just simply adding financing activities to its primary purpose as stated in its Articles of Incorporation; and (2) it is allowed to retain its corporate name, "*Wodel, Inc.*", while being engaged in financing activities.

The Financing Company Act of 1998 ("FCA")[1] and its Implementing Rules and Regulations ("IRR")[2] define financing companies as follows:

> "'**Financing companies**' hereinafter called companies, are corporations, except banks, investments houses, savings and loan associations, insurance companies, cooperatives, and other financial institutions organized or operating under other special laws, which are **primarily organized for the purpose of extending credit facilities to consumers and to industrial, commercial, or agricultural enterprises, by direct lending or by discounting or factoring commercial papers or accounts receivable, or by buying and selling contracts, leases, chattel mortgages, or other evidences of indebtedness, or by financial leasing of movable as well as immovable property**; x x x" (Emphasis ours)

Being a business vested with public interest, financing activities are highly regulated. Thus, no person, association, partnership or corporation shall engage in the business of a financing company and hold itself out as such unless so authorized by the Commission.[3] Before a corporation can engage in financing activities, it must secure a Certificate of Authority to

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[1] Republic Act No. 8556, An Act Amending Republic Act No. 5980, As Amended, otherwise known as the Financing Company Act, 26 February 1998
[2] Rules and Regulations to Implement the Provisions of Republic Act No. 8556 (The Financing Company Act of 1998), 20 May 1999
[3] Ibid, Section 12b.

Operate as a Financing Company ("Certificate") which shall be issued by the Commission if it finds that the requirements under the FCA and its IRR have been complied with and that no valid reason exists for the disapproval of the application.[4]

One of the conditions for the issuance of the Certificate is that the corporation must have, as its primary purpose, general financing activities[5]. In fact, no corporation shall be allowed to include discounting, factoring and leasing, as defined in the FCA, as one of its secondary purposes.[6]

In your letter, you enumerated the financing activities that Wodel would like to engage in and propose to add these activities to its other primary purpose as a holding company. This is not allowed since a financing company must be *primarily organized* for the purpose of extending credit facilities. Merely adding the said activities to Wodel's primary purpose would effectively make them as secondary purposes only. Pursuant to the aforementioned provisions of the FCA and IRR, in connection with Section 14 (2) of the Corporation Code[7], these are prohibited.

On your question whether Wodel may retain its corporate name, assuming Wodel would engage primarily in financing activities, this is also not allowed under Section 2c of the IRR, which provides:

> "Section 2. Form of Organization - x x x
> c. The corporate name of financing companies **shall** contain the term "financing company", finance company", or "finance and investment company" or other title or word(s) **descriptive of its operations and activities as a financing company.**" (Emphasis ours)

It shall be understood, however, that the foregoing opinion is rendered based solely on 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. [8] If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

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[4] Ibid, Section 4c in relation to Section 5a.
[5] Ibid, Section 1a
[6] Ibid, Section 12a.
[7] B.P. No. 68, The Corporation Code of the Philippines, Section14. "Contents of articles of incorporation. xxx (2) The specific purpose or purposes for which the corporation is being incorporated. **Where a corporation has more than one stated purpose, the articles of incorporation shall state which is the primary purpose and which is/are the secondary purpose or purposes.** xxx" (Emphasis ours)
[8] SEC Memorandum Circular No. 15, s. of 2003, No.7