Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

25 March 2019

SEC-OGC Opinion No. 19-13
Re: Securities to be deposited by a Philippine Branch

CONSTANTINO AND PARTNERS
22ND Floor Citibank Tower
8741 Paseo de Roxas,
Salcedo Village, Makati City

Attention: Atty. Maricris E. Oronea

Gentlemen:

This refers to your letter dated 20 July 2018 requesting for confirmation that the securities mandated to be deposited by a Philippine Branch with the Commission may be in the form of a US Dollar (USD)-denominated bonds which are to be issued by the Philippine Government.

Section 126 of the old Corporation Code ("Old Code")[1] provides that foreign corporations licensed to do business in the Philippines are required to deposit securities with the Commission, for the benefit of present and future creditors of the licensee, with the following prescribed conditions and amounts:

> "Section 126. Issuance of a License. - xxx
> xxx securities satisfactory to the Securities and Exchange Commission, **consisting of bonds or other evidence of indebtedness of the Government of the Philippines, its political subdivisions and instrumentalities, or of government-owned or controlled corporations and entities,** x x x with an **actual market value of at least one hundred thousand (P100,000.)** pesos; Provided, however, That **within six (6) months after each fiscal year of the licensee**, the Securities and Exchange Commission shall require the licensee to **deposit additional securities equivalent in actual market value to two (2%) percent of the amount by which the licensee's gross income for that fiscal year exceeds five million (P5,000,000.00) pesos**. The Securities and Exchange Commission shall also require deposit of additional securities **if the actual market value of the securities on deposit has decreased by at least ten (10%) percent of their actual market value at the time they were deposited.** x x x"
> (Emphasis ours)

[1] Batas Pambansa Blg. 68, The Corporation Code of the Philippines, 1 May 1980

In relation to this, the Commission issued Memorandum Circular No. 2, Series of 2012 (MC No. 2, s.2012)[2], on the Guidelines on Securities Deposit of Branch Offices of Foreign Corporations in the Philippines. Section 6 thereof provides the types of securities acceptable as deposit to the Commission namely, government debt instruments and equity instruments particularly shares of stock in listed domestic corporations.

Section 126 of the Old Code was amended by Section 143 of the Revised Corporation Code ("Revised Code")[3]. The provisions of Section 143 of the Revised Code are essentially the same as those of Section 126 of the Old Code, but increased the actual market value of securities and the threshold of gross income for purposes of determining additional deposits of securities, to wit:

> "Section 143. Issuance of a License. – xxx x x x with an actual market value of at least **five hundred thousand (P500,000.)** pesos; x x x to deposit additional securities equivalent in actual market value to two (2%) percent of the amount by which the licensee's gross income for that fiscal year exceeds **ten million (P10,000,000.00) pesos** xxx" (Emphasis ours)

The last paragraph of Section 143 adds that for purposes of computing the securities deposit, the composition of gross income and allowable deductions therefrom shall be in accordance with the rules of the Commission (i.e. MC No. 2, s.2012).

As Section 143 of the Revised Code and MC No. 2, s.2012 does not differentiate between peso or foreign-currency denominated government debt instruments or securities, we confirm your opinion that the security may be in the form of USD-denominated bonds, provided the same are issued by the Philippine Government, and are compliant with the other provisions of MC No. 2, s.2012.

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. [4] 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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[2] SEC Memorandum Circular No. 2, Series of 2012, 30 May 2012
[3] Republic Act No. 11232, Revised Corporation Code of the Philippines, 20 February 2019
[4] SEC Memorandum Circular No. 15, s. of 2003, No.7, 16 December 2003