Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

June 17, 2019

SEC-OGC Opinion No. 19-23
Re: SEC Approval of Issuance of Cash and Stock Dividends

TOYOTA MANILA BAY CORPORATION
Roxas Boulevard cor. EDSA Extension
Boulevard 2000, Pasay City 1308

Attention: MR. ALBERT JAMES C. ALIGADA AND MR. HIROYA MIYAHARA

Gentlemen:

This refers to your letter dated 02 January 2019 requesting an opinion on whether it is necessary to wait for the written approval/advice of the Securities and Exchange Commission (SEC) before Toyota Manila Bay Corporation (TMBC), an unlisted corporation, can validly issue cash and stock dividends to its stockholders.

You stated that TMBC declared the issuance of both cash and stock dividends to its stockholders not later than 31 December 2018, as approved by a majority vote of its Board of Directors and two-thirds (2/3) vote of its outstanding capital stock. It was further disclosed that TMBC has already submitted the documentary requirements as enumerated in SEC's website. Hence, your query.

Paragraph 1, Section 42 of the Revised Corporation Code (RCC)[1] provides:

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> "Section 42. Power to Declare Dividends. **The board of directors of a stock corporation may declare dividends out of the unrestricted retained earnings which shall be payable in cash, property, or in stock to all stockholders on the basis of outstanding stock held by them**: Provided, That any cash dividends due on delinquent stock shall first be applied to the unpaid balance on the subscription plus costs and expenses, while stock dividends shall be withheld from the delinquent stockholders until their unpaid subscription is fully paid: **Provided, further, That no stock dividend shall be issued without the prior approval of stockholders representing at least two-thirds (2/3) of the outstanding capital stock at a regular or special meeting duly called for the purpose.**" (Emphasis ours)

[1] Republic Act No. 11232 otherwise known as An Act providing for the Revised Corporation Code of the Philippines

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Based on the above provision, it is not mandatory for the corporation to seek prior approval/advice from the Commission to declare cash and stock dividend provided the following are complied with:

A. For cash dividend declaration:

1. Board of Directors approval of the cash dividend declaration; and
2. Sufficient unrestricted retained earnings as of the last fiscal or calendar year.

B. For stock dividend declaration:

1. Board of Directors approval of the stock dividend declaration;
2. Stockholders' approval representing at least two-thirds (2/3) of the outstanding capital and sufficient portion of the present authorized capital; and
3. Sufficient unrestricted retained earnings as of the last fiscal or calendar year.

However, corporations may, ***at their option***, apply for acknowledgment notice of their declaration of the cash and/or stock dividend out of the unissued portion of their previously approved authorized capital stock for whatever legal purpose it may serve. If they avail of such option, they are required to submit the documentary requirements stated in the SEC's website (Other Applications – Documentary Requirements) and pay the applicable filing fee.

Further, if the stock dividend declaration requires an increase of authorized capital stock, an application therefor is mandated to be filed with the Commission pursuant to Section 37 (Section 38 of the Corporation Code) of the RCC.

It shall be understood that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein. It 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.[2] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

[2] SEC Memorandum Circular 2003-15, No.7