



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

OFFICE OF THE GENERAL COUNSEL

20 July 2015

SEC-OGC Opinion No. 15-04
Broker/Dealer in Proprietary Shares;
Mutual Fund Distributor

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NOVEL CAPITAL, INC.
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Sir:

This pertains to your letter dated 31 January 2013 inquiring whether it is possible for Novel Capital, Inc. (Novel Capital) to incorporate an affiliate as *Securities Broker/Dealer in Proprietary Shares (Non-SRO Member)* so that under the law, the minimum paid-up capital required will only be Php10,000,000.00, and to subsequently register as a Mutual Fund Distributor (MFD).

You stated that Novel Capital wishes to incorporate an affiliate which will operate solely and exclusively as a MFD.

Novel Capital can incorporate an affiliate as a *Broker/Dealer in Proprietary Shares*, provided that it will comply with the requirements for registration. In connection to this, applicants for *Broker/Dealer in Proprietary Shares (Non-SRO Member)* are required to put up the minimum paid-up capital amounting to Php5,000,000.00. The Php10,000,000.00 minimum paid-up capital is required from those corporations registering as Securities Broker/Dealer (SRO Members). These requirements are posted in and can be viewed from the Commission's website¹. Hence, upon compliance with the aforementioned requirements for registration, the affiliate could be registered as a *Broker/Dealer in Proprietary Shares*.

However, after registration as *Broker/Dealer in Proprietary Shares*, the affiliate may not subsequently register as MFD because only registered Investment Company

¹ SEC Form 28-BD/28-BDA posted in http://www.sec.gov.ph/download/annexes_form.html and http://www.sec.gov.ph/gsr/primary/other_applications.html#table55.

Advisers, Brokers/Dealers in Securities, and Investment Houses are allowed to register as MFDs. These entities are permitted to register as such for the primary reason that their authority to distribute securities, which includes mutual fund shares, is an inherent function of their respective secondary licenses. In contrast, *brokers/dealers in proprietary shares* are authorized to deal only in proprietary shares, and such authority does not include buying, selling or distributing shares of stocks of investment companies and mutual funds.

Thus, Novel Capital can incorporate an affiliate as *Securities Broker/Dealer in Proprietary Shares* by complying with the requirements for registration, such as putting up a minimum paid-up capital of Php5,000,000.00, among others; however, it may not subsequently register as MFD in view of the restriction on its authority to deal only in proprietary shares.

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.² If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.


CAMILLO S. CORREA
General Counsel

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