Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills
Mandaluyong City Metro Manila
Philippines

08 June 2005

SEC Opinion No. 05-06
Re: Election of a Representative of a corporate member in the Board of Trustees of a Condominium Corporation

ATTY. RODERICK R.C. SALAZAR III
Fortun Narvasa Salazar
23F, Multinational Bancorporation Centre
6805 Ayala Avenue, Makati City

Sir:

This refers to your letter dated 31 May 2005 requesting opinion whether a representative of a corporate member of a non-stock condominium corporation may be elected as a member of the Board of Trustees of such corporation.

As a rule, the qualifications of directors/trustees pursuant to the Corporation Code are as follows:

1. Only natural persons can be elected as directors/trustees;

2. He must own at least one (1) share of the capital stock of the corporation in his own name. For non-stock corporations, only members in good standing can be elected as member of the board of trustees (Section 23);

3. A majority of the directors/trustees must be residents of the Philippines (Section 23);

16

4. He must not have been convicted by final judgment of an offense punishable by imprisonment for a period exceeding six (6) years, or a violation of the Corporation Code, committed within five (5) years prior to the date of his election (Section 27);

5. He must not have substantial interest in a competing corporation. (Gokongwei vs. SEC., G.R. No. L-45911, April 11, 1979); and,

6. Other qualifications as may be prescribed in the by-laws of the corporation (Section 47[5]).

It is clear from the foregoing qualifications that board members, whether as directors or trustees, must either be elected from among the shareholders of stock corporation or from the general membership of the corporation in case of non-stock corporation.

Nevertheless, the rule admits certain exceptions, as in the case of corporate unit owner/member of a condominium corporation.

In 1991, SEC rendered the following opinion:

"xxx xxx xxx

While a corporation cannot act by itself being a juridical person, it can act through its officers and authorized agent. Accordingly, an officer or duly authorized agent or trustee who has been designated in the Board Resolution of the corporate unit owner or member as its representative for the express purpose of qualifying him as director and whose appointment as such has been recorded in the corporate books, may be eligible to be elected as director. To rule otherwise would create a situation where there would be no Board of Directors of the corporation". [1]

In another opinion, the Commission had occasion to rule that, "in the case of condominium corporation where all the members thereof are corporate members or juridical person, an officer or duly authorized agent or trustee who has been designated by a corporate unit owner/member of a condominium corporation as its representative for the express purpose of qualifying him as director, may be eligible to be elected as director.[2]

---

[1] SEC Opinion dated 16 April 1991 addressed to Atty. Augusto B. Sunico
[2] SEC Opinion dated 12 May 1995 addressed to Mr. Hans-Jachim-Hanush.

The exception is also equally applicable in case the condominium units are partially owned by corporate or juridical members and individual unit owners. However, such co-owners must agree and designate the co-owner who shall represent them in the corporation.

Finally, a condominium corporation may validly adopt a provision in the by-laws granting authority to the representatives of juridical person or corporate members to be elected as members of the board of trustees.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

(14)