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

October 10, 2005

SEC Opinion No.05-13
Non-holding of annual meeting

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Gentlemen:

This pertains to your letter dated September 27, 2005 requesting clarification on whether an amendment in the by-laws of your client Essensa East Forbes Condominium Corporation to move the annual membership meeting from the last Thursday of October of every year to the last Thursday of April of every year would result to a non-holding of annual meeting for the calendar year 2005.

Relative thereto, where the date of the annual meeting is fixed in the by-laws of the corporation, the board of directors or trustees cannot change the date so as to lengthen their term of office.[1]Unless and until the by-law provision is changed, modified or repealed in accordance with Section 48 of the Corporation Code, the meeting can not be postponed or suspended unless for some valid and meritorious reasons.[2]

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[1] The Corporation Code of the Philippines Annotated by Hector S. de Leon 1980 ed.
[2] SEC Opinion dtd. May 19,1993 addressed to Mr. Conrado F. Mendoza

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In the case of the subject corporation, the amendment in the by-laws as approved by the SEC as shown in the Certificate of Filing of Amended By-Laws issued on September 16, 2005 would justify a suspension or postponement of the annual meeting for the calendar year 2005. In such case, the annual meeting may be postponed to a date later than that fixed in the by-laws, provided proper notice of the change of date is given to the members.[3] However, it was observed that the scheduled annual meeting of the corporation as provided for in the by-laws which was the last Thursday of April, had already lapsed. It is therefore advised that the annual meeting of the corporation for the year 2005 be called at the soonest possible time, with proper notice as stated earlier. It is the duty of the board of directors or trustees to call the annual meeting without the unnecessary delay or within a reasonable time, particularly when a demand therefor is made on them by the stockholders or members, because they can continue to hold-over, only as long as their successors have not been elected; hence, it is not within their power to delay such election as to prolong their stay in office.[4]

With respect to your query regarding the submission of the General Information Sheet, your attention is invited to the provision of our "Amended Rules Requiring the Filing of Information Sheet by Domestic Corporations" which prescribe, under paragraph 2 thereof, that "A General Information Sheet shall be filed with this Commission within thirty (30) days following the date of the annual stockholders' meeting. No extension of said period shall be allowed, except for very justifiable reasons stated in writing by the President, Secretary, Treasurer or other officers, upon which the Commission may grant an extension for not more than ten (10) days". It has to be emphasized that violation of said rules carries the corresponding penalty prescribed therein.

Please be guided accordingly.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

[3]SEC Opinion dtd. 11 December 2003 addressed to Atty. Bede S . Tabalingos
[4]Ibid.

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