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

06 March 2006

SEC Opinion No. 06-16
Proxy rules governing
condominium corporation

ATTY. ANTHONY B. PERALTA
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Dear Atty. Peralta:

This refers to your letter dated 03 January 2006 requesting opinion whether five-year proxies are still valid.

Section 58 the Corporation Code prescribes the minimum requirement of proxies, thus:

> "SECTION 58. Proxies. — Stockholders and members may vote in person or by proxy in all meetings of stockholders or members. Proxies shall be in writing, signed by the stockholder or member and filed before the scheduled meeting with the corporate secretary. Unless otherwise provided in the proxy, it shall be valid only for the meeting for which it is intended. No proxy shall be valid and effective for a period longer than five (5) years at any one time. (n)"

The afore-quoted provision applies to non-stock corporations as well pursuant to Section 87 of the Corporation Code which in part provides as follows:

" XXX XXX XXX

The provisions governing stock corporation, when pertinent, shall be applicable to non-stock corporations, except as may be covered by specific provisions of this Title.(n)"

On 23 May 2001, the Commission issued Memorandum Circular No. 05-01 series of 2001 adopting the rules laid down in Memorandum Circular No. 5 dated 06 August 1991, which applies only to publicly listed companies, regarding the conduct of annual stockholders or membership meetings and the acceptance and validation of proxies for stock corporations whose stocks are not registered under the Securities Regulation Code and non-stock corporations. Memorandum Circular No. 05-01 series of 2001, however, applies only *in the absence of rules, guidelines or provisions in the by-laws* of the corporation regarding the conduct of annual stockholders or membership meetings and the acceptance and validation of proxies. Thus, if the by-laws have specific provision on proxies then said by-laws are controlling.

With regard to the validity of a proxy, the proxy may fix the period during which it may be used, but it cannot exceed five (5) years, renewable for not more than five (5) years for each renewal. If the proxy does not fix the period, then it expires after the meeting for which it was given. It cannot be used again for a subsequent meeting unless it is renewed.[1] The reason is that though the duration of the proxy may be fixed by its own terms, the Corporation Code regulates the time of continuance of proxies.[2]

In an opinion, this Commission had the occasion to state that a proxy may be specific or continuing depending on the extent of authority given in the instrument. If it is specific, then the authority granted the proxy holder is merely for a particular meeting on a specific date. [3] Stated differently, if the proxy does not expressly state the duration of its validity, it is understood that it is only valid for a particular meeting after which it is deemed to have expired. Corollary thereto, if the proxy instrument states its validity period then the instrument shall be valid for the stated period; provided, however, that the validity period of the proxy does not exceed five (5) years from the date of the instrument.

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[1] Campos, Jr. Jose and Campos, Maria Clara L. THE CORPORATION CODE: Comments, Notes and Selected Cases. Vol. 1 (1990), pp. 516-517.
[2] SEC Opinion dated 28 October 1991 addressed to Mr. Norberto Capistrano.
[3] Dated 19 August 2005 addressed to Mr. F. B. Reyes.

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In the case of The Alexandra Condominium Corporation (TACC), Section 9 Article II of its by-laws provides as follows:

> "Section 9. Manner of Voting. At all meetings of members, only a non-delinquent member may vote either in person or by proxy executed in writing by the member or his authorized attorney-in-fact. Unless otherwise provided in the proxy, it shall be valid only for the meeting at which it has been presented to the Secretary. All proxies must be in the hands of the Secretary not later than ten (10) days before the time set for the meeting. Such proxies filed with the Secretary may be revoked by the members either in an instrument duly presented and recorded with the Secretary at least three (3) days prior to a scheduled meeting. The decision of the Secretary on the validity of proxies shall be final and binding until set aside by a court of competent jurisdiction or the proper government agency."

As earlier stated, Memorandum Circular No. 05-01 series of 2001 only applies to cases where there are no rules, guidelines or provisions in the by-laws of a corporation that specifically address the acceptance and validation of proxies. In the case of TACC, its by-laws clearly provide that a proxy shall be valid only for a particular meeting, unless another validity period is stated, which should not exceed five (5) years from the date of the instrument.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

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