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

05 July 2006

**SEC-OGC Opinion No. 06-31**
**Term of office of the Board of Trustees**

**ATTY. EDSEL E. OCSON**
10 R. Padriga St., Philamlife Village
Las Pinas City

Sir:

This refers to your letter dated 20 October 2005 requesting opinion on the following queries:

1. Whether or not the By-laws of National Archery Association of the Philippines, Inc. (NAAP) may be validly amended so as to provide that the regular election of the members of the Board of Trustees shall be held every four (4) years, instead of every year, as the current By-laws provide; and

2. Whether or not the By-laws of the NAAP may be validly amended so as to provide that the regular meetings of the Board of Trustees shall be held every (4) four months, instead of every month as the current By-laws provide.

Section 92 of the Corporation Code provides:

> SECTION 92. Election and term of trustees. — Unless otherwise provided in the articles of incorporation or the by-laws, the board of trustees of non-stock corporations, which may be more than fifteen (15) in number as may be fixed in their articles of incorporation or by-laws, shall, as soon as organized, so classify themselves that the term of office of one-third (1/3) of the number shall expire every year; and subsequent elections of trustees comprising one-third (1/3) of the board of trustees shall be held annually and trustees so elected shall have a term of three

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(3) years. Trustees thereafter elected to fill vacancies occurring before the expiration of a particular term shall hold office only for the unexpired period.

From the above phrase "unless otherwise provided in the articles of incorporation or by-laws" it is clear that a non-stock corporation may provide the desired term of office of the Board in the articles of incorporation or by-laws. The proposed amendment, however, shall be effective only upon approval of the Commission pursuant to Section 48 of the Corporation Code.[1]

However, while the term of trustees of non-stock corporations may vary under the articles of incorporation or by-laws, lifetime or unlimited term of the board of trustees is not allowed. A lifetime term of office absolutely deprives other members of the corporation of the opportunity to become officers of the corporation.[2]

In another opinion of the Commission, it was held that:

> "It is worth mentioning that under Section 7 of the Corporation Code the exclusive right or privilege to be voted as members of directors of stock corporations is limited only for a period of five (5) years. An analysis of the rationale behind the limitation reveals that it is a remedial legislation designed to prevent possible abuse of the Board. A lifetime or unlimited term of the Board absolutely deprives other stockholders or members of the opportunity to participate in the management of the corporation. In other words, unlimited term of the Board was not intended by the Legislature. While the restriction under Section 7 of the Corporation Code applies to stock corporations, the same is likewise applicable to non-stock corporations in view of Section 87 thereof which states that provisions of the Code governing stock corporations, when pertinent, shall be applicable to non-stock corporations.
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> Thus, in line with the above limitation and the rationale behind it, the Commission limits the term of the members of the Board of non-stock corporations at one time to only (5) years."[3]

Hence, the proposed amendment in your by-laws fixing the term of office of the Board of Trustees of NAAP for a period of four (4) years and regular election of the Board to be held every four (4) years conforms with the abovequoted provision of law and the cited opinion. However, this proposed

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[1] SEC Opinion No. 46-04 dated 7 December 2004 addressed to Philippine Association of Corporate State Auditors, Inc.
[2] SEC Opinion dated December 16, 1991, addressed to Ms. Celedonia M. Aquino
[3] SEC Opinion dated 23 September 1991, addressed to Mr. Nelo R. Roldan.

provision should not be construed as a means to deprive the members of NAAP of the conduct of annual membership meeting.

Anent the second issue, Section 53 of the Corporation Code provides and we quote:

> "Section 53. Regular and special meetings of directors or trustees - Regular meetings of the board of directors or trustees of every corporation shall be held monthly, **unless the by-laws provide otherwise.**"

Thus, the by-laws of NAAP may be amended to stipulate the proposed regular meetings of the Board of Trustees which shall be held every (4) four months, instead of monthly meeting.

It shall be understood that the opinion rendered is based 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 Commission in other cases whether of similar or dissimilar circumstances.

Very truly yours,

**VERNETTE G. UMALI-PACO**
General Counsel