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

OFFICE OF THE GENERAL COUNSEL

27 March 2008
SEC-OGC Opinion No. 08-09
Re: Proxy Requirements

BERNAD & ASSOCIATES
94 Road 1, Project 6, Quezon City,
Metro Manila, Philippines

Attention: Atty. Ana Celeste P. Bernad

Madam:

This refers to your letter of 29 January 2008 requesting opinion on the interpretation of the word *"acknowledged"* used in, and relative to the proxy requirements of, the by-laws of the Rural Bank of Rizal (K. A.), Inc. ("corporation", for brevity), of which your clients are stockholders.

You mentioned that your clients' representatives were not allowed to attend, much less observe, the corporation's 2005 stockholders' meeting and election of board of directors on the ground that their proxies were not *"notarized"* as is meant by the word *"acknowledged"* in the corporation's by-laws. Your clients maintain, however, that *"acknowledged"* is used in its ordinary or dictionary sense, i.e. *"to make known the receipt of"*[1]; therefore, the proxies should only be shown to have been received by the Corporate Secretary.

Section 58 of the Corporation Code ("the Code") reads:

> "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. xxx."

Hence, in the absence of a provision in the articles of incorporation or by-laws requiring a particular form for proxy, the board of directors cannot prescribe any other form; otherwise, the imposition thereof would be void, making it perfectly valid for any stockholder to use other forms of proxy as long as it is compliant with the minimum requirements of Section 58.[2]

[1] Random House Webster's Modern Office Dictionary, 1999.
[2] SEC Opinion, 14 June 1995, XXIX SEC Quarterly Bulletin 36 (No. 4, Dec. 1995); SEC Opinion, 4 October 1987.

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From the foregoing, the corporation's articles of incorporation and by-laws must be consulted. The former has no pertinent provision but the latter has[3], to wit:

> "Sec. 6. *Right to Vote by Proxies.* - Every stockholder entitled to vote shall have the right to vote in person or by proxy. A proxy may be entitled to vote provided he is authorized by the stockholder in writing, properly witnessed, **acknowledged**, and filed with the records of the corporation."

The problem, however, is the afore-mentioned differing interpretations of the word *"acknowledged"*.

Please be informed that Section 5 of SEC Memorandum Circular No. 5, Series of 2003 ("Memo No. 5"), provides that:

> "5. As a matter of policy, the Commission shall refrain from rendering opinion on the following:
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> xxx xxx xxx;
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> 5.2 Matters which involve the **substantive and contractual rights of private parties** who would, in all probability, contest the same in court if the opinion turns out to be adverse to their interest;
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> 5.3 Matters **which would necessarily require a review and interpretation of contracts** or an opinion on the validity of contracts **since interpretation of contract is justiciable in nature and contract review calls for legal examination of contract on a general basis and not on specific legal issues**;
>
> xxx xxx xxx."

Considering that your query affects substantive and contractual rights of private parties, i.e. voting rights of stockholders vis-a-vis proxy requirements of your corporation, and entails interpretation and ascertaining the intent of the framers of your By-Laws[4] in using the word *"acknowledged"*, we refrain from categorically answering your query. However, for purposes of information, the following are imparted:

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[3] Article III, Section 6, By-Laws.

[4] Essentially, By-Laws are in themselves contracts in that they are rules of action adopted by the corporation for its own government and for the government of its members and those having the direction, management and control of its affairs. (Agbayani, Commercial Laws of the Philippines p. 1470). Their function is "[t]o regulate the conduct and define the duties of the members towards the corporation and among themselves" (8 Fletcher, 634).

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