Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

29 March 2011

SEC-OGC Opinion No. 11-18
Corporate investments

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ATTENTION: Atty. Ruby Rose J. Yusi
Atty. Christine S. Trinidad

Mesdames:

This refers to your letter dated 01 September 2008 requesting opinion on whether BCU & Sons, Inc.'s (BCU) planned investment in another corporation requires ratification by the stockholders representing two-thirds (2/3) of the outstanding capital stock in accordance with Section 42 of the Corporation Code.[1]

You represent that the primary purpose of BCU, as provided in its Articles of Incorporation, is:

> "To acquire, subdivide, develop, hold, manage and dispose of, by purchase, sale, exchange, mortgage, lease, grant or otherwise, conditionally or absolutely, real estate or any interest therein."

In response to your query, we refer you to SEC Opinion No. 54-03[2] that states:

> "Section 42 of the Corporation Code of the Philippines provides:
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> SECTION 42. Power to Invest corporate funds in another corporation or business or for any other purpose. — Subject to the provisions of this Code, a private corporation may invest its funds in any other corporation or business or for any purpose other than the

[1] Batas Pambansa Bilang 68 (1980).
[2] Addressed to Mr. Wilfredo U. Villanueva, November 3, 2003.

primary purpose for which it was organized when approved by a majority of the board of directors or trustees and ratified by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or by at least two thirds (2/3) of the members in the case of non-stock corporations, at a stockholders' or members' meeting duly called for the purpose. Written notice of the proposed investment and the time and place of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally: Provided, That any dissenting stockholder shall have appraisal right as provided in this Code: Provided, however, That where the investment by the corporation is reasonably necessary to accomplish its primary purpose as stated in the articles of incorporation, the approval of the stockholders or members shall not be necessary.

Based on the foregoing provision, corporations like CIGI Foundation Inc. are expressly authorized to invest their corporate funds in another corporation or business as a means of obtaining the best returns of their investible funds. [C. L. Villanueva, Philippine Corporate Law (2001ed.), p. 257]

Where the investment by the corporation is reasonably necessary to accomplish its primary purpose as stated in its articles of incorporation, the approval only of the board of directors or trustees is necessary. [J. Campos and M.C. Campos, I The Corporation Code (1990 ed.), p. 493, citing De La Rama -vs- Ma-ao Sugar Central, GR-L-17504 & L-17506, February 26, 1969]

However, where the investment of funds is made in any other corporation or business or for any purpose other than the primary purpose for which the investing corporation was organized, the approval by the majority of the board of directors or trustees need the ratification by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock or by at least two-thirds (2/3) of the members in case on non-stock corporation.

In this case, you assert that the investment of the Foundation in shares of stock of another corporation is in furtherance of its primary purpose, hence, requires only authorization from the board of trustees.

In our view, it is within the authority and business discretion of the Foundation's board of trustees to determine whether or not the investment by the corporation is reasonably necessary to accomplish its primary purpose as stated in its articles of incorporation. This is premised on the principle that one who has the power to perform an act is also vested with authority to decide whether the circumstances for the exercise of such power exists. [s. Tabios, Action Guides For Corporate Legal Management (1991 ed.) p. 200] This Commission cannot make such determination for this agency ought not to meddle in matters which clearly involve the

exercise of business judgment of the board of directors or trustees of a corporation."[3]

In accordance with SEC Opinion No. 54-03, we leave it to the discretion of BCU's Board of Directors to determine whether or not the intended investment is in line with the primary purpose of the corporation, and thus, does not require ratification from the stockholders. We advise that any stockholder that takes exception to the Board's determination can initiate an intra-corporate case with the courts in order to finally settle any issues on the matter.

This Opinion is rendered based solely on the facts and circumstances disclosed 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. If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.

VERNETTE G. UMALI-PACO
General Counsel

[3] Emphasis Supplied.