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

Office of the General Counsel

17 May 2012
SEC Opinion No. 12-08
Re: Query on Validity of By-Laws

Ronald S. Baquiano
Counsel for the Board
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(Back of Harrison Park, Osmeña Blvd.)
32 V. Urgello Street,
6000 Cebu City, Philippines

Re: Southwestern University Inc.

Dear Atty. Baquiano,

This refers to your letter dated 6 March 2012, requesting an opinion, on behalf of your client, Southwestern University Inc. (SWU), as to the validity of an amendment made in the by-laws of SWU. The questioned amendment provides the following:

> "Section 1 – The government of said institution is hereby vested in the Board of Directors of Southwestern University, Inc.
>
> The Board of Directors shall be composed of Nine (9) members representing their respective stockholdings. (as amended on December 17, 2010).
>
> The members of the Board of Directors and its officers shall hold office *for a term of three (3) years* and the same shall be applicable to the current Board of Directors. (as amended on March 8, 2012)"
> (emphasis supplied).

Section 23 of the Corporation Code provides that members of the board of directors *shall hold office for one year.*[1] The Supreme Court has construed the provision to mean that "the term of the members of the board of directors shall

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[1] Corporation Code, Section 23 provides:
"Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the **board of directors** or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporations, **who shall hold office for one (1) year** until their successors are elected and qualified."

be only for one year; and that their term expires one year after election to the office."[2] Clearly, the said provision is explicit in fixing the term of office of directors to only one (1) year.[3] The rationale is to protect the corporation, as well as its creditors and the public dealing with it so that if an improvident or wrongful act is committed by the board of directors, the subsequent board can redress or prevent the perpetration of the wrong, and thereby protect its stockholders, creditors and the public having dealings with it.[4]

Furthermore, the said provision cannot be voided by mere expedient of providing otherwise in the by-laws.[5] This was reiterated by the Supreme Court in a case[6] where members of an association formally adopted by-laws creating a permanent seat for one of its members which is contrary to Section 23 of the Corporation Code. The Court stated, "the members of the association may have formally adopted the provision in question, but their action would be of no avail **because no provision of the by-laws can be adopted if it is contrary to law."**

It must be noted that Section 23 of the Corporation Code applies and not Section 108 of the said Code. Section 108 of the Corporation Code provides:

> "Section 108 of the Corporation Code:
>
> "Trustees of educational institutions organized as NON-STOCK CORPORATIONS shall not be less than five (5) nor more than fifteen (15)
>
> x x x
>
> Unless otherwise provided in the articles of incorporation on the by-laws, the board of trustees of incorporated schools, colleges, or other institutions of learning shall, as soon as organized, so classify themselves that the term of office of one-fifth (1/5) of their number shall expire ever year. x x x **Trustees elected thereafter to fill vacancies caused by expiration of term shall hold office for five (5) years.**
>
> x x x
>
> **For institutions organized as stock corporations, the number and term of directors shall be governed by the provisions on stock corporations."**
> (Emphasis Supplied).

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[2] *Valle Verde Country Club, Inc. v. Africa*, G.R. No. 151696, September 4, 2009.
[3] SEC Opinion dated October 29, 2001 addressed to Atty. Manuel R. Singson.
[4] *Id.*
[5] *Id.*
[6] *Grace Christian High School v. Court of Appeals*, G.R. No. 108905, 23 October 1997.

Thus, Section 23 applies to educational stock corporations whereas Section 108 applies only to non-stock educational corporations. If SWU were a non-stock corporation, the by-laws may be amended to allow its members to hold office for a term of five (5) years. In this case, SWU is a stock-corporation and its members of the board can only hold office up to one (1) year.

It must be noted that SWU was organized on 4 April 1951 during the effectivity of Act No. 1459.[7] Section 169 of the said Act provides that the trustees shall hold office for five years. However, the whole chapter on "COLLEGES AND INTITUTIONS OF LEARNING" (Sections 165-170) indicates that the same applies only to non-stock educational corporations. At any rate, SWU is still governed by the Corporation Code which took effect 1 May 1980, pursuant to Section 148 thereof, to wit:

> Corporation Code, Section 148 provides:
>
> "**All corporations lawfully existing and doing business in the Philippines on the date of the effectivity of this Code and heretofore authorized, licensed or registered by the Securities and Exchange Commission,** shall be deemed to have been authorized, licensed or registered under the provisions of this Code, subject to the terms and conditions of its license, and **shall be governed by the provisions hereof**: *Provided,* That if any such corporation is affected by the new requirements of this Code, said corporation shall, unless otherwise herein provided, be given a period of not more than two (2) years from the effectivity of this Code within which to comply with the same." (Emphasis ours)

Thus, the amended by-laws adopted by SWU providing for a term of office for three (3) years is not valid for being contrary to law, i.e. Section 23 of the Corporation Code. The SEC will not approve the amended by-laws of SWU.

Very truly yours,

CAMILO S. CORREA
General Counsel

[7] The Corporation Law, enacted 1 March 1906.