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

Office of the General Counsel

7 July 2014

SEC-OGC Opinion No. 14-17
Re: Certificate of Ownership
of Columbary Vaults

ATTY. PHILLIP WENDELL YOTOKO
7 Yellowbell St.
Lexington Garden Village
San Joaquin, Pasig City

Sir:

This is in response to your letter dated 17 April 2007 on behalf of your client, SJ Holdings, Inc. ("SJHI"), requesting for our opinion as to whether the certificates or instruments evidencing a purchaser's ownership or right to use columbary vaults are securities.

You mentioned that SJHI, a corporation duly registered under SEC Reg. No. CS200617951, had acquired from a previous owner a specific number of ash vaults of "The Sanctuarium," a columbary and memorial service provider, owned by The Everliving Company, Inc., located at G. Araneta Ave., Brgy. Tatalon, Quezon City.

You represented that each ash vault is intended as a repository of up to four (4) urns and internment of cremated human remains based on the sample contract of the service provider. Ownership of the vaults grants perpetual use, subject to rules and regulations governing and restricting the right, use, maintenance, and upkeep thereof and of the building that houses the vault as may be promulgated by the columbary/memorial service provider. Each ash vault, upon complete payment and within a reasonable time, shall be covered with a Certificate of Full Payment and a Certificate of Ownership to be issued by the columbary/memorial service provider evidencing the purchaser's right to the aforesaid vault and use thereof.

Based on the foregoing, your query is whether the abovementioned ash vaults, or any of the certificates or instruments evidencing a purchaser's ownership and right to use the vaults are deemed to be securities, and if so determined to be securities, need to be registered accordingly.

Pertinent to the query is the definition of "securities" under Section 3.1 of the Securities Regulation Code ("SRC"), which reads:

> 3.1. "Securities" are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes:
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> a) Shares of stock, bonds, debentures, notes, evidences of indebtedness, asset-backed securities;

b) Investment contracts, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription;
c) Fractional undivided interests in oil, gas or other mineral rights;
d) Derivatives like option and warrants;
e) Certificates of assignments, certificates of participation, trust certificates, voting trust certificates or similar instruments;
f) Proprietary or non proprietary membership certificates in corporations; and
g) Other instruments as may in the future be determined by the Commission.

We opine that the Certificate of Ownership of ash vault at "The Sanctuarium" are not securities, nor do they fall under the definition and/or enumeration of securities in the Securities Regulation Code.

The essential attribute of a security is that it is a share in a corporation, a participation in a commercial enterprise, or an interest in a profit-making venture. Admittedly, the definition of securities is broad. Included within the scope of "security" are such standard types as stocks and bonds. Also included are instruments of a more variable character designated by such descriptive terms as "investment contract" and "in general any interest or instrument commonly known as security." In particular, the term "investment contract" has been viewed by the courts as a "catch all" phrase designed to encompass novel devices which serve the same purpose as a "security."[1]

To be an investment contract subject to regulation by the Commission, the Supreme Court, in *Power Homes Unlimited Corporation v. Securities and Exchange Commission*,[2] held that an investment contract in our jurisdiction must be proved to be (1) an investment of money, (2) in a common enterprise, (3) with expectation of profits, (4) primarily from efforts of others. This test is the basis of the definition of an investment contract under the Implementing Rules and Regulations of the SRC.[3]

In the case of the Certificate of Ownership you mentioned, the issuance of the same confers to the purchaser ownership over the vault, entitles the purchaser to its possession and perpetual use, as provided for in the contract. As it appears, the certificate, by itself, represents only ownership over the vaults and no profits are expected or derived by the purchaser.

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[1] SEC-OGC Opinion No. 05-11, dated 26 January 2011, addressed to Mr. Fabio Moretti, citing *In Re: Octopus Network, Inc.*, SEC-PED Case No. 98-2220, May 22, 1998.
[2] G.R. No. 164182, 26 February 2008.
[3] SRC Rule 3 Paragraph 1(G) provides:

> An investment contract means a contract, transaction or scheme (collectively "contract") whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others.
>
> 1. An investment contract is presumed to exist whenever a person seeks to use the money or property of others on the promise of profits.
> 2. A common enterprise is deemed created when two (2) or more investors "pool" their resources, creating a common enterprise, even if the promoter receives nothing more than a broker's commission.

However, stipulation No. 3 of the contract which you attached provides that the issuer of the Certificate of Ownership may devise a scheme by which a residual share in certain areas of "The Sanctuarium" is recognized in favor of all the owners of the vaults. It is also stated in the same contract that the purchaser grants authority to the issuing company to devise and implement a scheme on behalf of the purchasers, including the authority to execute on behalf of the purchasers.

The scheme referred to in the contract may be in the form of a share in the revenue earned from areas (i.e., common areas) of "The Sanctuarium" which may be used to produce income or profits primarily through the efforts of the issuer or someone else, as among the purposes of the issuing company are operating and conducting business with respect to its properties which may be necessary, proper or desirable to support or enhance those properties. Due to this possibility of deriving profits through the efforts of others, the Certificate of Ownership may come under the purview of investment contracts, thus be considered a security.

In sum, the certificate, as long as it only covers ownership over the vault and does not in any way have the purchaser derive any profit of any kind from the co-owned areas through the efforts of others, may be considered as **not** securities. Otherwise, they will be considered securities and therefore require registration with the Commission in accordance with Section 8.1 of the SRC.

It shall be understood, however, that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein and shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances. If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.[4]

Please be guided accordingly.

Very truly yours,

CAMILO S. CORREA
General Counsel

/MPB

[4] SEC Memorandum Cricular No. 15, Series of 2003.