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

OFFICE OF THE GENERAL COUNSEL

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SEC-OGC Opinion No. 14-24
Department Secretaries/ Agency Heads and their Representatives as Directors in a SEC-Registered GOCC

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Sir:

This refers to your letter-request for legal opinion dated July 31, 2012 regarding directorship of a Department Secretary/Agency Head or his designated representative in the board of directors of the Social Housing Finance Corporation (SHFC), a SEC-registered Government-Owned or Controlled Corporation (GOCC).

Briefly, your letter-query stated that Executive Order No. 272, series of 2004, authorized the creation of SHFC, which was later registered with this Commission on June 21, 2005 as a subsidiary corporation of the National Home Mortgage Finance Corporation, another GOCC. Section 4 of the aforesaid Executive Order requires that the Department Secretaries and Agency Heads or their designated representatives be appointed as members of the SHFC Board in an ex-officio capacity. You further stated that the incorporating directors listed in the Articles of Incorporation of SHFC included individuals who are not Department Secretaries/Agency Heads but are their mere representatives.

However, you recognized that Executive Order 272, as well as Governance Commission for Government-Owned or Controlled Corporations (GCG) Memorandum Circular No. 2012-08, permit the designation of alternates and representatives, by the Department Secretaries/Agency Heads to represent them in the SHFC.

Your queries are as follows: (1) Who between the Secretary/Agency Head or his designated representative should be the Board of Director who must be registered with the Securities and Exchange Commission?; (2) Who between the two should sign the documents, e.g. board resolutions, certificates, etc.?; and (3) May two alternates be designated by the Board Director for the practical purpose of attending board meetings?

As to your first query, either the Department Secretary/Agency Head or his duly-appointed alternate may be registered with or reported to the Commission as SHFC's *ex-officio* director, be it in SHFC's Articles of Incorporation or in its General Information Sheets. Under Executive Order No. 272, series of 2004, majority of SHFC's directorships are earmarked for Department Secretaries / Agency Heads, or their duly-designated representatives, the former being the principals and the latter being the agents. This is consistent with the GOCC Governance Law of 2011 (Republic Act No. 10149), which recognizes and permits the appointment of ex-officio directors of GOCC's as well as the designation by them of their alternates. Thus, such directorship in the SHFC is not based on a fixed or definite individual but on the office or who currently occupies the office of a Department Secretary or Agency Head, and as required by the primary functions of its office. This is in keeping with the very nature of an *ex-officio* officer whose designation is by reason and virtue of one's title to another office.[1] The term *ex-officio* refers to an "authority derived from official character merely, not expressly conferred upon the individual character, but rather annexed to the official position." *Ex-officio* likewise denotes an "act done in an official character, or as a consequence of office, and without any other appointment or authority than that conferred by the office." An *ex-officio* member of a board is one who is a member by virtue of his title to a certain office, and without further warrant or appointment.[2]

Accordingly, the Department Secretary / Agency Head or his alternate, for as long as the latter is properly and formally designated by the former in accordance with proper procedure, may be reported and reflected on record with the Commission.

Regarding your second and third queries, please be advised that this Commission, as a matter of policy, refrains from rendering any opinion involving the interpretation of administrative rules and issuances of other government agencies, considering that it is the promulgating agencies which are competent to undertake such construction by reason of their knowledge of the specific intent and extent of application of the subject issuances.[3] Moreover, these are issues which the GCG is more competent to address as SHFC's primary regulatory agency, especially considering that the Corporation Code, insofar as not inconsistent with the GOCC Governance Law, shall only apply suppletorily to GOCCs.[4]

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[1] Section 3 (i), Republic Act No. 10149

[2] *Civil Liberties Union v. Executive Secretary*, G.R. No. 83896 and 83815, February 22, 1991, 194 SCRA 317, citing Black's Law Dictionary, p. 516; 15A Words and Phrases, p. 392.

[3] Section 5.6, SEC Memorandum Circular 2003-15.

[4] Section 30, RA 10149 states: "*SEC. 30. Suppletory Application of The Corporation Code and Charters of the GOCCs.*— **The provisions of "The Corporation Code of the Philippines"** and the provisions of the

It must be pointed out that the GOCC Governance Law provides that the GCG is the competent government agency tasked as the ***"central advisory, monitoring, and oversight body with authority to formulate, implement and coordinate policies governing the GOCC sector"***,[5] and to ***"coordinate and monitor the operations of GOCCs, ensuring alignment and consistency with the national development policies and programs."***[6] Hence, **it is encouraged that SHFC should bring its concerns to the GCG.**

However, for purposes of information and guidance only, please consider the following:

Section 14 of the GOCC Governance Law authorizes the *ex-officio* members of the GOCC Board to designate their respective alternates, thus:

> "***SECTION 14. Ex Officio Alternates***.—The *ex officio* members of the GOCC may designate their respective alternates who shall be the officials next-in-rank to them and whose acts shall be considered the acts of their principals."

In order to implement this provision, the GCG issued Memorandum Circular No. 2012-08.

As to your query as to the appropriate signatory, please find instructive Section 5.1 of the aforesaid Memorandum Circular:

> **"5. A Duly-Designated Alternate of an Ex Officio Board Member Acts With the Same Legal Effect as the Principal Director:**
>
> "5.1. Section 14 of R.A. No. 10149 provides that when an Alternate has been duly designated by an Ex Officio Board Member, **then the acts of such Alternate "shall be considered the acts of [the Principal Director]**."

Anent your query as to the appointment of multiple alternates, the provisions of Sections 6 and 7 of Memorandum Circular No. 2012-08 are relevant, to wit:

> **"6. On Who Are Qualified to Be Designated as Alternates:**
>
> "Any Ex-Officio Board Member (the "Principal Director") may designate as an Alternate to the Governing Board of the GOCC to which he/she is an Ex Officio Director only the following:

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charters of the relevant GOCC, insofar as they are not inconsistent with the provisions of this Act, **shall apply suppletorily to GOCCS**."(Emphasis and underscoring supplied)

[5] Section 5, Republic Act No. 10149; Article 17, GCG Ownership and Operations Manual (GCG MC No. 2012-06)

[6] Section 5 (j), Republic Act No. 10149.

"(a) An Officer of the Department or Agency to which the GOCC is attached who shall have a rank that is not lower than the equivalent of Director III;

"(b) The Alternate must not already be a member of the Governing Board of the GOCC to which he/she is being designated as an Alternate; and

"(c) The Alternate reports directly to the Principal Director on the matters covered by the GOCC.

"7. The Form of the Designation/Revocation of Alternates:

"The Principal Director shall designate a qualified Alternate through a written notice to the Corporate Secretary (or equivalent officer) of the GOCC concerned.

"The Principal Director may also revoke the designation of the Alternate at any time, provided it shall be effective only upon written notice to the Corporate Secretary of the GOCC concerned."

It shall be understood that the foregoing opinion is rendered based solely 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 courts, or upon the Commission in other cases of similar or dissimilar circumstances.[7] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

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[7] SEC Memorandum Circular 2003-15.