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

24 May 2016

SEC-OGC Opinion No. 16-11
Re: Voting in Non-Stock Corporations

ATTY. LUCAS M. MANAGUELOD F.I.C.D.
Acting Chairman and Concurrent Vice Chairman and CEO
PUBLIC SAFETY SAVINGS AND LOAN ASSOCIATION, INC.
524 EDSA, Cubao, Quezon City, 1109

Dear Atty. Managuelod:

This refers to your letters dated 16 March 2016 and 09 September 2015, requesting for confirmation of your interpretation of the provisions on Quorum and Voting Rights in your existing By-Laws.

As stated in your letters, on 19 December 2014, the Board of Trustees of the Public Safety Savings and Loan Association, Inc. ("PSSLAI") approved certain amendments to the By-Laws of the said association. The proposed amendments were then ratified by its members during the annual meeting held on 17 January 2015. Thereafter, PSSLAI submitted all the documentary requirements to the Bangko Sentral ng Pilipinas ("BSP") for endorsement of its application for amendment of By-Laws. However, the BSP held in abeyance the processing of PSSLAI's proposed amendments, until the association obtains a more definitive ruling from the Commission to clarify the issues on quorum and voting requirements, taking due notice of the peculiar existing By-Laws provision of such association on the residual voting powers of its Chairman.

The concerned By-Laws provisions are as follows:

> Section 4. Quorum – The attendance of majority of the members at any meeting of the Association either in person or by proxy shall constitute a quorum, and the majority of such quorum shall decide any question that may come before the meeting, except in those matters where the law requires the affirmative vote of a greater portion. (As amended on 15 January 2011)
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> Section 5. Voting – At all meetings, only regular members are entitled to vote and each regular member is entitled to only one (1) vote. Associate members are not entitled to vote nor can be voted upon. **The chairman of the Board of Trustees shall be entitled to cast the remaining registered number of votes after deducting the total votes cast by the members present or represented by proxies from the total registered number of votes of qualified members.** (As amended on 15 January 2011) (Emphasis ours).

It is your view that pursuant to PSSLAI's By-Laws, qualified members who are not present physically or by proxy during the annual meeting are deemed to have executed an authority in favor of PSSLAI's Chairman to represent them pursuant to the residual voting rights of the Chairman. You further state that the presence of PSSLAI's Chairman, by himself and representing all the absent members, is sufficient to determine and certify the existence of quorum during PSSLAI's Annual Meeting.

However, the BSP views otherwise and contends that an automatic proxy in favor of the PSSLAI Chairman is untenable as it violates Section 58[1] of the Corporation Code and that the residual voting power of the said Chairman pertains only to voting and not to the quorum requirements of the association.

In order to properly address your queries, we summarized your contentions into two issues, to wit:

1. Whether the provision on residual voting in Section 5 of PSSLAI's By-Laws which entitles its Chairman of the Board of Trustees to cast the remaining registered number of votes after deducting the total votes cast by the members present or represented by proxies from the total registered number of votes of qualified members, is allowed.

2. Whether the residual voting right of PSSLAI's Chairman must be counted for purposes of determining the presence of a quorum.

Please be advised that based on SEC Memorandum Circular No. 15, Series of 2003, it has been the policy of the Commission not to render **categorical** opinions on matters which would require an examination and review of the acts and rulings of another government agency since the Commission does not review acts and ruling of other government agencies, as well as those 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.

Considering that your queries require a review of the act of BSP in expressing its opinion that an automatic proxy in favor of PSSLAI's Chairman is untenable, as well as affect substantive and contractual rights of private parties, i.e. residual voting rights of the Chairman vis-à-vis determination of quorum, we refrain from **categorically** answering your queries.

However, for purposes of information only, the following may be imparted.

As to the first issue, Section 89 of the Corporation Code provides:

"***Section 89.*** *Right to vote. – The right of the members of any class or*

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[1] Sec. 58. Proxies. - Stockholders and members may vote in person or by proxy in all meetings of stockholders or members. Proxies shall in writing, signed by the stockholder or member and filed before the scheduled meeting with the corporate secretary. Unless otherwise provided in the proxy, it shall be valid only for the meeting for which it is intended. No proxy shall be valid and effective for a period longer than five (5) years at any one time.

> *classes to vote may be limited, broadened or denied to the extent specified in the articles of incorporation or the by-laws.* ***Unless so limited, broadened or denied, each member, regardless of class, shall be entitled to one vote.*** *"* (Emphasis ours.)

Thus, in a non-stock corporation, the general or default rule is that each member shall be entitled to one vote, regardless of the amount of contribution.[2] The exception is when the right of members of any class to vote is limited, broadened or denied to the extent specified in the articles of incorporation or the by-laws.[3]

In a previous opinion issued by the Commission, wherein the By-Laws of AFP Savings and Loan Association which, similar to Section 5 of PSSLAI's By-laws, authorizes the AFP Chief of Staff to "cast the total number of votes remaining after deducting the total votes of the members and the proxies present from the registered number of votes of qualified members", was questioned for being unconstitutional, unwarranted and immoral, the Commission opined that:

> "SECTION 89. Right to Vote. — The right of the members of any class or classes to vote may be limited, broadened or denied to the extent specified in the articles of incorporation or the by-laws. Unless so limited, broadened or denied, each member, regardless of class, shall be entitled to one vote." (emphasis supplied)
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> xxx xxx xxx
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> From the above-quoted provision, it is clear that the articles of incorporation or by-laws of a non-stock corporation may limit, broaden or even deny a member's right to vote. In your case, the right to vote of each member was limited to a maximum of one thousand (1,000) votes irrespective of the amount of his capital contribution. **It likewise broadened the right to vote of the Chief of Staff of the AFP by allowing him to vote the remaining balance after deducting the total votes of the members/proxies.**"[4] (Emphasis supplied)

As to the second issue, the pertinent provision is Section 52 of the Corporation Code, *viz*:

> ***Section 52****. Quorum in meetings. – Unless otherwise provided for in this Code or in the by-laws, a quorum shall consist of the stockholders representing a majority of the outstanding capital stock or a majority of the members in the case of non-stock corporations.*

Verily, the quorum in meetings is based on the presence of the stockholders or members, **entitled to vote**, representing the majority of the outstanding capital stock or

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[2] Tan v. Sycip & Lim, G.R. No. 153468, 17 August 2006; SEC Opinion dated 17 August 1998 addressed to Atty. Edilberto S. Gaddi; SEC Opinion dated 03 July 1992 addressed to Ms. Myrna Yao & Ms. Patricia M. Alvarez.
[3] *Ibid.*
[4] SEC Opinion dated 23 April 1987 addressed to Mr. Noe S. Andaya, AFP Savings and Loan Association, Inc.

majority of the members. As enunciated by the Supreme Court in the case of *Paul Lee Tan, et. Al. v. Paul Sycip and Merritto Lim*[5]*:*

> "In non-stock corporations, the voting rights attach to membership. Members vote as persons, in accordance with the law and the bylaws of the corporation. Each member shall be entitled to one vote unless so limited, broadened, or denied in the articles of incorporation or bylaws. We hold that when the principle for determining the quorum for stock corporations is applied by analogy to non-stock corporations, only those who are actual members with voting rights should be counted.
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> Under Section 52 of the Corporation Code**, the majority of the members representing the actual number of voting rights,** not the number or numerical constant that may originally be specified in the articles of incorporation**, constitutes the quorum**."

Further, as previously opined by the Commission:

> "As a rule, a majority of members is a quorum for the transaction of a corporation's business and other corporate acts unless otherwise provided in the Code or in the by-laws. Save in cases in which the Code imposes a different rule, the by-laws may provide for more or less than the majority of the members. However, in cases where the Code requires or fixes a minimum stockholders' or members' vote for a certain corporate action (e.g., 2/3 of the stockholders representing the outstanding capital stock or the members, for amendment of the articles of incorporation), **then there must necessarily be present or represented such number of members or stocks needed to make the required minimum vote. In other words, this required minimum vote would in effect also be the required quorum in such cases**." [6]

From the foregoing, it is evident that the voting rights of stockholders and members are considered in the determination of quorum. In other words, a stockholder or member who is entitled to vote, and is present or **represented** by another person, must be counted for the purpose of making a quorum.

Nevertheless, it shall be understood that the foregoing 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 or upon courts, 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.

Very truly yours,

MANUEL HUBERTO B. GAITE
OGC Supervising Commissioner

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[5] Tan v. Sycip & Lim, G.R. No. 153468, 17 August 2006.
[6] SEC Opinion dated 20 November 2013 addressed to Mr. James Cu Unjieng.