Republic of the Philippines
Department of Finance
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills
Mandaluyong City Metro Manila
Philippines

December 12, 2005

SEC OPINION No. 05-22
Re: Restrictions on
Transferability of Shares

Mr. Artemio F. Dulay
Brgy. 3, Maria Aurora
3202 Aurora Province

Sir:

This refers to your letter of October 7, 2005 requesting opinion on the queries posed therein.

As stated in your letter, you and your wife are stockholders/founding members of Rural Bank of Maria Aurora Incorporated, (RBMAI for brevity).

Previously, you were able to sell shares of stock of RBMAI whenever you encountered financial difficulties.

However, at present, you, and your daughter-in-law, who is likewise a stockholder, could not sell your shares to outsiders since it is the policy of the new manager/majority stockholder that you are allowed to sell only to insiders, mainly to the employees who are also stockholders. You allege that these employees buy at very low prices while there are buyers willing to buy the said shares at your price.

Queries:

1.) Is such policy by the new manager/majority stockholder okay?

2.) Could you sell or transfer your shares to your siblings, relatives and/or outsiders willing to buy at your price?

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3.) Could your daughter-in-law sell or transfer her shares of stock to her sister?

Please be advised that the Commission does not, as a matter of settled policy, render opinions on matters that clearly involve the exercise of business discretion, or judgment, which properly falls within the competence of the management of the entities concerned.[1]

However, since the questioned policy already transgresses the transferability of shares of stock of a corporation, it is deemed best to impart the following:

> Shares of stock in a corporation are personal property, and it is well-settled that the owner, as in the case of other personal property, has an absolute and inherent right, as incident of his ownership, to sell and transfer the same at will except insofar as the right may be restricted by the charter of the corporation or the general law, provided the transfer is in good faith, and to a person capable of assuming the obligations of a stockholder. (12 Fletcher Cyc. Corp. Section 5452). Section 6 of the Corporation Code provides in part:
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> > " . . . The shares of stock of stock corporation may be divided into shares or series, or both, any of which classes or series of shares may <u>have such rights privileges or restrictions as maybe stated in the articles of incorporation</u>" (underscoring supplied).
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> Thus, on several occasions, the Commission opined that in order to be valid and enforceable, any restriction on the transfer of shares of stock must be explicitly provided for in the articles of incorporation.
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> Restrictions on the transfer of shares are essentially contractual in nature between the stockholders and the corporation. Hence, such restrictions must be embodied in their contract, i.e. the articles of incorporation.
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> Considering further that shares of stock burdened with restrictions on transferability may fall into the hands of innocent purchasers, the Commission, as a matter of policy, also requires that the restrictions on transfer of shares must be printed in the stock certificates.[2]

[1] Section 5.9, SEC Memorandum Circular 15, series of 2003
[2] SEC Letter to Ozaeta, Gibbs and Ozaeta dated October 13, 1964

Hence, to directly answer your first query, the subject corporate policy, which restricts the transfer of shares only to present stockholders must be reflected in the articles of incorporation and in the certificate of stocks in order to be valid and enforceable.

With regard to your second and third queries, unless the requirements set forth by law as mentioned above are strictly observed with respect to restrictions on transferability of shares, your shares of stock as well as your daughter-in-law's shares of stock can be sold and/or transferred freely to any person of your choice.

Please be guided accordingly.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel