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

February 02, 2006

SEC Opinion No. 06-08
PSE query on classification of
broker corporations/firms

PHILIPPINE STOCK EXCHANGE, INC.
PSE Center, Exchange Road,
Ortigas Centre, Pasig City
Facsimile No.: (632) 634-5113

Attn: **Atty. Aissa V. Encarnacion**
Corporate Secretary

Gentlemen:

This refers to your letter dated January 2, 2006, requesting our opinion on whether the inactive brokers of the Philippines Stock Exchange, Inc. (PSE) may properly be categorized as and should belong to the industry of brokers and dealers as defined in Section 3 of the Securities Regulation Code (SRC).

Sections 3.3 and 3.4 of the SRC define Broker and Dealer as follows:

"3.3. 'Broker' is a person engaged in the business of buying and selling securities for the account of others.

"3.4. 'Dealer' means any person who buys and sells securities for his/her own account in the ordinary course of business."

Your contention is, basically, that since the law defines brokers and dealers as those "engaged in the business," or one "who buys and sells securities" then brokers who ceased operations as such or who no longer hold a valid license to operate should no longer be classified as brokers. You stated that unless a firm is actually operating with a valid license and has complied with all the legal requirements for operation, it cannot be considered as a broker or dealer, because even if still existing, if it has, nevertheless, ceased operations then it cannot be considered as being in the business of buying or selling securities. You further posit that, unless they comply with the requirements of the Commission, these brokers cannot legally buy or sell securities, thus "negating any presumption that they are actually brokers or dealers as defined under the law."

We reply as follows:

Inactive brokers of the PSE are categorized as and belong to the industry of brokers and dealers as defined in Section 3 of the SRC.

The reference to an industry or business group classification in Section 33.2(c) of the SRC should be interpreted in a manner consistent with the industry classification followed by this Commission. Under our jurisdiction, the activity or inactivity of a firm does not determine the particular industry or business group to which a firm belongs.

It is the corporation's purpose clause which **confers**, as well as limits, the powers which a corporation may exercise[1] and the character of a corporation is usually determined by the objects of its formation and the **nature of its business as stated in the articles.**[2] The primary purpose of the corporation, as stated in its articles of incorporation, is the first business to be undertaken by the corporation. Hence, the primary purpose determines its classification.[3]

Outside of the primary purpose, the secondary purposes might determine a corporation's classification on the condition that the corporation is actually engaged in the business stated therein.[4]

In the case of inactive brokers or dealers, the lack of activity on their part, or their choice not to act as brokers or dealers, does not alter their classification as such as long as their primary purpose remains the same--- to engage in the business of a broker or dealer.

It should be underscored that the rationale for the twenty percent (20%) limitation on the beneficial ownership or control of a particular industry or business group of the voting rights of the Exchange is to avert abuses, such as advancing their respective industry's vested interests, by certain sector representatives in the Board of Directors. The ability of any industry sector or business group to control an exchange is regulated in order to achieve better corporate governance. For as long as these firms have corporate charters as brokers, it is expected that they will continue to uphold the interest of their industry.

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[1] Campos, J., et al., The Corporation Code, Vol. I, p. 74
[2] 18A Am Jur 2d, Corporations § 204
[3] SEC Opinion Letter to Mr. Aniceto Y. Dideles, November 8, 1972

[4]SEC Opinion Letters to Atty. Juan Ricardo B. Tan of Romulo Mabanta Buenaventura Sayoc & De Los Angeles dated June 6, 1995; Mr. Salvador C. Martin of the Dept. of Environment & Natural Resource (DENR), February 7, 1994; The Acting Director of the Bureau of Mines dated March 22, 1974; and Mr. Sixto S. de Guzman, Jr., August 29, 1972

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Thus, unless the concerned corporations amend the primary purpose of their articles of incorporation, they shall be classified as brokers or dealers for purposes of the SRC Section 33.2 (c). Should the concerned broker or dealer corporations desire exclusion from this classification, they can amend their primary purposes accordingly.

It shall be understood that the opinion rendered is based solely on the facts disclosed in your query and relevant 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 of similar or dissimilar circumstances[5].

For your guidance.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

cc: Dir. Jose P. Aquino
MRD

[5] SEC Memorandum Circular No. 15, s. 2003

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