This refers to your letter dated 17 August 2015, requesting for a legal opinion on whether the by-laws of a non-stock corporation can provide therein that a mere majority of the three (3) original members of the Board of Trustees shall constitute a quorum, when there is in fact five (5) members of the Board of Trustees, the two (2) others being nominated and appointed by the three (3) original members.

You stated in your letter that the Board of Trustees of your client corporation should have five (5) members, two (2) of whom will be nominated and appointed by the three (3) original members. Further, you mentioned that Section 2, Article I of your client’s Amended By-laws provides that only a majority of the three (3) original members of the Board shall be necessary at all meetings to constitute a quorum.

Hence, your query, which we answer in the negative.

The by-laws should be construed and given effect in accordance with the law. The by-laws, to be valid, should be consistent with the Corporation Code (“Code’). In a previous Opinion, the Commission explicitly stated that:

It is the first requisite of validity that the by-laws must be consistent with and not repugnant to or in contravention of the laws of the land (8 Fletcher Sec. 4185). The by-laws are subordinate to the articles of incorporation as well as the Corporation Code and related statutes, and should therefore not
be inconsistent with any of these. Otherwise, they would have no binding effect (Campos and Lopez Campos, Corporation Code, citing Fleischer vs. Botica Nolasco, G.R. No. 23241, March 14, 1925, Phil. 584 (1925). Thus, in case of conflict between the Corporation Code and by-laws, the former shall prevail."

Verily, any provision in the by-laws, not in accordance with the law, is not valid.

As you cited, Section 2, Article I of the Amended By-laws is not consistent with the law for two reasons:

1. It is not in accord with Section 25 of the Code, which provides:

"Sec. 25. Corporate officers, quorum.

xxx

Unless the articles of incorporation or the by-laws provide for greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, xxx"

As a general rule, the quorum in board meetings is the majority of the number of directors or trustees. However, under Section 25 of the Code, the articles of incorporation or by-laws of the corporation may fix a greater number than the majority of the number of board members to constitute the quorum necessary for the valid transaction of business."

The formula in determining the "majority of the number of directors" as quorum would be one-half plus one of the number of directors as fixed in the articles of incorporation notwithstanding the existence of vacancies in the board at the time."

Thus, the Commission opines that the articles of incorporation or the by-laws cannot provide for a lesser number than the majority provided in Section 25 of the Code. To provide that only a majority of the three (3) original members would be necessary to constitute a quorum would be repugnant to the directive of Section 25 of the Code.

Given the prevailing facts, if there are five (5) members of the Board of Trustees as fixed in the articles of incorporation, the majority should be one half

1 SEC Opinion dated 05 July 2006 addressed to Atty Edsel E. Oeson
2 Peña v. Court of Appeals, G.R. No. 91478, February 7, 1991
3 SEC Opinion dated 20 February 1987 addressed to Asian Brothers Corporation
plus one of five (5), hence, at least three (3). If what was provided for in the by-laws would be followed, the majority of the three (3) original members of the board of trustees would only be two (2), which is lesser than the majority of the whole number of the trustees, as contemplated by law.

2. It is also conflicting with Section 92 of the Code which allows non-stock corporations to provide in their articles of incorporation or by-laws the term of office of the Board. While the term of directors or trustees of non-stock corporations may vary under the articles of incorporation or by-laws, lifetime or unlimited term of the Board is not allowed. A lifetime or unlimited term of the Board absolutely deprives other stockholders or members of the opportunity to participate in the management of the corporation. To provide that only the majority of the original members of the board of trustees is required to constitute a quorum for all board meetings implies that the original members will be holding their office as members of the board for an unlimited term.

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. If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.

CAMILO S. CORREA
General Counsel

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4 SEC Opinion dated 23 September 1991, addressed to Mr. Nelo R. Roldan
5 "SECTION 92. Election and term of trustees. — Unless otherwise provided in the articles of incorporation or the by-laws, the board of trustees of non-stock corporations, which may be more than fifteen (15) in number as may be fixed in their articles of incorporation or by-laws, shall, as soon as organized, so classify themselves that the term of office of one-third (1/3) of their number shall expire every year, and subsequent elections of trustees comprising one third (1/3) of the board of trustees shall be held annually and trustees so elected shall have a term of three (3) years. Trustees thereafter elected to fill vacancies occurring before the expiration of a particular term shall hold office only for the unexpired period."