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

15 December 2005

SEC Opinion No. 05- 20
Officers of ROHQ

MS. MA. VICTORIA A. VILLALUZ
Sycip Gorres Velayo & CO.
6760 Ayala Avenue, 1226 Makati City

Madam:

This refers to your letter dated 15 August 2005 requesting opinion on whether the President and General Manager of Hershey Philippines, Inc. ***("HPI")***, a wholly owned foreign subsidiary of Hershey International, Ltd. ***("HIL")***, can concurrently assume the position of General Manager of Hershey Food Corporation-RHQ ***("HFC")***, a Regional Headquarter of the same foreign corporation planning to convert to a Regional Operating Headquarter (***ROHQ***).

A Regional Operating Headquarter (ROHQ) shall mean a foreign business entity which is allowed to derive income in the Philippines by performing qualifying services to its affiliates, subsidiaries or branches in the Philippines, in the Asia Pacific Region and in other foreign markets. [1]

Republic Act No. 8756, Chapter II, Article 59(b)(1) enumerates the qualifying services which ROHQ is authorized to perform to service its own affiliates, subsidiaries or branches located in the areas above stated. However, the said law prohibits ROHQs to directly or indirectly solicit or market goods and services whether on behalf of their mother company, branches, affiliates, subsidiaries or any other company.

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[1]Section 2, No. 3, Republic Act 8756. "An Act Providing for the Terms, Conditions and Licensing Requirements of Regional or Area Headquarters, Regional Operating Headquarters, and Regional Warehouses of Multinational Companies, Amending for the purpose certain Provision of Executive Order No. 226, Otherwise known as The Omnibus Investment Code of 1987."

(59)

In the aforequoted law, there is no provision prohibiting a Filipino executive of a ROHQ from assuming concurrent positions in a subsidiary or in any company for that matter. However, the same cannot be said about their foreign counterparts.

Chapter III, Article 60 prescribes that foreigners who seek entry into the Philippines to work as executives of RHQ or ROHQ should work exclusively with the company. We quote:

> "Article 60. Multiple Entry Visa. - Foreign personnel of regional or area headquarters and regional operating headquarters of multinational companies, their respective spouses and unmarried children under twenty-one (21) years of age, if accompanying them or if following to join them after their admission into the Philippines as non-immigrant shall be issued a multiple entry special visa within seventy-two hours upon submission of all required documents, and which shall be valid for a period of three (3) years to enter the Philippines: *Provided,* That a responsible officer of the applicant company submits a duly authenticated certificate to the effect that **the person who seeks entry into the Philippines is an executive of the applicant company and will work exclusively for applicant's regional or area headquarters or regional operating headquarters** which is duly licensed to operate in the Philippines, and that he will receive a salary and will be paid by the headquarters in the Philippines an amount equivalent to at least Twelve Thousand United States dollars (S12,000.00), or the equivalent in other foreign currencies per annum."

It is therefore clear from the foregoing Article that only foreign, and not Filipino, executives of the ROHQ are required to work exclusively with the company.

Thus, we affirm that the **Filipino** President and General Manager of HPI may be allowed to concurrently assume the position of General Manager of the proposed ROHQ subject to compliance with all the requirements of R.A. 8756, its implementing rules and regulations and subject to the Visitorial Powers of this Commission under Section 19, Rule XVII of the IRR for R.A. 8756.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

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