06 January 2011

SEC Opinion No. 11-01
Public Access to Reports filed with the SEC; Registration Number

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Sir:

This refers to your letter dated 22 October 2010 requesting our opinion on the following queries posed therein:

1. Can the Securities and Exchange Commission ("SEC") deny a request for copies of documents or reports submitted to it by a private corporation?

2. Can the SEC designate the same registration number to two (2) different registered entities?

In response to your first query, please take note of Section 66 of the Securities Regulation Code ("SRC")¹, which provides:

"SEC. 66 Revelation of Information Filed with the Commission. –

66.1. All information filed with the Commission in compliance with the requirements of this Code shall be made available to any member of the general public, upon request, in the premises and during regular office hours of the Commission, except as set forth in this Section.

¹ Republic Act No. 8799 (2000).
66.2. Nothing in this Code shall be construed to require, or to authorize the Commission to require, the revealing of trade secrets or processes in any application, report or document filed with the Commission.

66.3. Any person filing any such application, report or document may make written objection to the public disclosure of information contained therein, stating the grounds for such objection, and the Commission may hear objections as it deems necessary. The Commission may, in such cases, make available to the public the information contained in any such application, report, or document only when a disclosure of such information is required in the public interest or for the protection of investors; and copies of information so made available may be furnished to any person having a legitimate interest therein at such reasonable charge and under such reasonable limitations as the Commission may prescribe.

66.4. It shall be unlawful for any member, officer, or employee of the Commission to disclose to any person other than a member, officer or employee of the Commission or to use for personal benefit, any information contained in any application, report, or document filed with the Commission which is not made available to the public pursuant to Subsection 66.3.

66.5. Notwithstanding anything in Subsection 66.4 to the contrary, on request from a foreign enforcement authority of any country whose laws grant reciprocal assistance as herein provided, the Commission may provide assistance in accordance with this subsection, including the disclosure of any information filed with or transmitted to the Commission, if the requesting authority states that it is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws relating to securities or commodities matters that the requesting authority administers or enforces. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of law of the Philippines.” (Emphasis ours)

Pursuant to the above provision, the Commission adopted SRC Rule 66.3 of the Amended Implementing Rules and Regulations of the SRC, which provides:

“SRC Rule 66.3

Confidential Treatment of Information Filed with the Commission

1. Any person required to file an application, report or document (hereinafter collectively referred to as the “report”) with the Commission under Section 8 or 17 of the Code may remove any confidential information from such required report, provided that he files with the Commission such confidential information in a supplemental report prominently labeled "CONFIDENTIAL".
together with a request for confidential treatment of the report and specific grounds for the grant thereof and complies with this Rule; provided, however, that the Commission may require disclosure of such confidential information.

2. For purposes of this Rule, confidential information shall include, but is not limited to, such matters as trade secrets, commercial or financial information that has been prepared by analysts within or outside the company for strategic purposes and similar information which raises concerns for business confidentiality.

3. The Commission shall maintain the confidentiality of the information contained in the supplemental report, pending a determination by the Corporation Finance Department in consultation with the Office of the General Counsel as to the validity of the request for confidential treatment.

4. Within seven (7) days from receipt of the special report, the Corporation Finance Department shall make a determination regarding the confidentiality of the information contained in the supplemental report.

5. If it is determined by the Corporation Finance Department that confidential treatment is not warranted with respect to all or part of the information in question, the person requesting confidential treatment of the information will be notified of this decision by telephone, followed up by written notification sent by mail. Such notice will also advise such person that he has the right, which shall be exercised no later than within ten (10) days of receipt of notification by telephone, to request that the Commission En Banc reconsider such determination.

6. A request for reconsideration shall be in writing and include additional factors for the Commission En Banc to consider.

7. The Commission En Banc may reconsider such determination only once and its administrative decision shall not be subject to judicial review.

8. If the Commission En Banc makes a determination that any or all of the information in the supplemental report is not entitled to confidential treatment, the person who submitted the request shall promptly make an amended filing with the Commission containing such information."

It is, and has always been, a policy of the Commission to implement a system of full disclosure to the public. In consonance with this policy, the above-quoted provisions of the SRC and its implementing rules were put in place to ensure that
the public's right to information with respect to records on file with the Commission is adequately protected. The only exception to this rule of full disclosure is the confidentiality of certain information contained in reports filed with the Commission. As stated in Rule 66.3, information shall be deemed confidential upon a written request specifying the grounds thereof and after it has been determined by the Commission that confidential treatment of said information is indeed warranted. Moreover, Section 66.3 of the SRC authorizes the Commission to withhold the public disclosure of certain information contained in applications, documents or reports submitted to it upon a timely written objection to said disclosure, and may allow public access to it only when it is required in the public interest or for the protection of investors.

Likewise, please be informed that the reports submitted by private corporations to the Commission in compliance with reportorial requirements are available online through the SEC i-View, an online database facility readily accessible to the public for a nominal fee to cover maintenance costs. Reports such as the General Information Sheet and Audited Financial Statements may be obtained from this facility.

Anent your second query, please be advised that the Commission does not, as a matter of settled policy, render opinions on queries or transactions involving justiciable issues that may eventually be litigated in the future and that could only be clarified and determined in a proper proceeding, such as those presented in your letter. The opinion that may be rendered thereon would not be binding upon private parties who would in all probability, if the opinion happens to be adverse to their interest, take issue therewith and contest it before the Court. For this reason, the Commission refrains from giving opinions on this kind of query. However, for purposes of information only, please be informed that for corporations and other juridical entities registered with the Commission, each of them is assigned one (1) SEC registration number, and that number corresponds only to them. This registration number remains unchanged even if a corporation obtains a secondary license from the Commission. Thus, there can never be two or more SEC-registered entities with the same SEC registration number.

The foregoing opinion rendered is 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 Commission.\[^3\]

Please be guided accordingly.

\[^3\] Ibid.
Copy furnished:

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