Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

Office of the General Counsel

13 June 2014

SEC-OGC Opinion No. 14-14
Re: Public Offering

GABIONZA DE SANTOS & PARTNERS
20/F 139 Corporate Center
Valero St., Salcedo Village
Makati City 1227

Attention: Atty. Santiago T. Gabionza, Jr., Atty. Oliver M. Zorilla,
Atty. Vincent Patrick R. Cruz, and Atty. Teresa S. Villanueva-Tiansay

Gentlemen:

This is in response to your letter dated 16 May 2013, seeking for our opinion as to the proper definition of the term "Public Offering," more particularly on whether there are any qualifications as to what constitutes the same.

The request is made on behalf of your clients, Angeles Electric Corporation, Iligan Light & Power, Inc., and Tarlac Electric Corporation. In your letter, you cited two relevant bases for your queries. First is the definition of "Public Offering" under Rule 3 of the Amended Implementing Rules and Regulations ("IRR") of the Securities Regulation Code ("SRC"), and the other, an opinion of the Commission dated 8 December 1997, where the Commission considered the sale of securities to twenty (20) or more persons as selling to the public.

It is your position that selling to twenty (20) or more persons constitutes public offering, which will require registration with the Commission.

Your queries are summarized thus:

1. Would the term "Public Offering," by and of itself, necessarily require listing and selling in the Philippine Stock Exchange or any stock exchange for that matter?
2. When a particular law provides that a corporation "shall offer and sell to the public" a particular portion of its common shareholdings, without any other qualifications, would it be sufficient to hold that "Public Offering" through any of the modes provided for in the SRC shall be deemed as compliance with such mandate?

"Public Offering" under Rule 3, Section 1(N) of the IRR is defined thus—

"Public Offering" means a random or indiscriminate offering of securities in general to anyone who will buy, whether solicited or unsolicited. Any solicitation or

presentation of securities for sale through any of the following modes shall be presumed to be a public offering:

1. Publication in any newspaper, magazine or printed reading material which is distributed within the Philippines or any part thereof;
2. Presentation in any public or commercial place;
3. Advertisement or announcement in any radio or television, or in any online or e-mail system; or
4. Distribution and/or making available flyers, brochures or any offering material in a public or commercial place, or mailing the same to prospective purchasers.

Under the definition provided for in the IRR, the following are the elements of a Public Offering:

1. There is an offering of securities for sale; and
2. The offer is made randomly or indiscriminately to anyone who will buy, whether solicited or unsolicited.

The Commission previously opined that the sale of securities to 20 or more persons is selling to the public.[1] This was codified under Section 10(k) of the SRC, which provides that the sale of securities by an issuer to fewer than twenty (20) persons (meaning, nineteen or less) in the Philippines during any twelve-month period is a transaction exempted from registration.

Based on the foregoing, sale of securities to twenty (20) or more persons is considered as a public sale that necessarily involves a public offer; hence, the same requires registration to, and approval by, the Commission. We reiterate that under Section 8.1 of the SRC, the mere offer for sale of said securities requires the said registration and approval before the same can be made.[2]

We answer your first query in the negative. Listing in an exchange is a form of public offering. By listing in an exchange, the issuer is randomly and indiscriminately offering for sale or selling securities to the public. However, listing in an exchange is not the only form of public offering, pursuant to the afore-quoted Rule 3, Section 1(N) of the IRR of the SRC. Hence, public offering does not involve only listing in a stock exchange.

Anent the second query, please be advised that the Commission does not, as a matter of settled policy, render opinions on matters which are **speculative** and anticipatory in character. Hence, we cannot give a categorical answer to that particular query.[3] However, for purposes of information only, the following may be imparted.

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[1] SEC Opinion dated 8 December 1997, addressed to Atty. Conchitina Gregorio Panganiban.
[2] Section 8.1. **Securities shall not be** sold or **offered for sale or distribution** within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.
[3] SEC Memorandum Circular No. 15, series of 2003

A law's provision requiring a corporation to offer and sell to the public a particular portion of its common shareholdings partakes of a minimum public ownership requirement. As to what acts will satisfy the said requirements will depend on that particular law, as well as its implementing rules and other relevant issuances thereunder. If that particular law (the primary law) does not limit "public offering" to certain modes only, and allows or permits application of the SRC, then the SRC will apply suppletorily. For more information about this matter, queries should be addressed to the proper administrative agency tasked to define compliance with that particular law.

It shall be understood, however, that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely 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 or upon the courts whether of similar or dissimilar circumstances. If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.[4]

Please be guided accordingly.

Very truly yours,

CAMILO S. CORREA
General Counsel

[4] Ibid.