Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

23 March 2018

SEC-OGC Opinion No. 18-06
RE: Applicability of Retail Trade Liberalization Act

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Unit 1009, Prestige Tower,
F. Ortigas, Jr. Road (formerly Emerald Avenue),
Ortigas Center, Pasig city

Attention: **ATTY. MICHELLE SALCEDO**

Madame:

This refers to your letter dated 18 September 2017, requesting confirmation of your position that the activities of Johnson Controls – Hitachi Airconditioning Phils. Inc. (JCH-PH) fall outside the coverage of Republic Act No. 8762 or the Retail Trade Liberalization Act of 2000 (RTLA).

You mentioned in your letter that JCH-PH is a domestic corporation duly organized and existing under Philippine laws. According to you, its Articles of Incorporation indicates that its primary purpose is "to engage in the manufacture and sale **on wholesale** of home appliances and air conditioners, importation and sale of raw materials and spare parts for air conditioner and air conditioning finished products, sale of wasted materials from production, and testing services of air conditioners".

You also stated that JCH-PH sells airconditioning products to dealers such as but not limited to SM, Robinsons, and ESLA (Emilio S. Lim Appliance), which in turn sell the products to commercial or industrial clients and end-users. It also sells its products to contractors like Asia Design and Double Dragon, which use the same in their building projects. It also does direct selling to hospitals, schools, supermarkets, and hotels, which use the airconditioning products to provide a comfortable and conducive interior environment.

Thus, you want us to confirm your position that JCH-PH's sale of airconditioning products to the above customers does not constitute "retail trade" within the purview of the RTLA.

Under Section 3 of the RTLA, "retail trade" shall mean any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption.

However, Section 2(e), Rule I, of the Implementing Rules and Regulations (IRR) of the RTLA enumerates certain sales transactions which are not considered as retail, to wit:

> "Section 2. Sales Not Considered As Retail. – The following sales are not considered as retail:
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> xxx
>
> e. Sales to industrial and commercial users or consumers who use the products bought by them to render service to the general public and/or produce or manufacture of goods which are in turn sold by them; xxx."

The Commission had long opined that the sale of "Network Box" to industrial and commercial users to provide computer network security for the said business firms and not for personal, family or household use, consumption and utilization is not embraced in the category of retail trade.[1] In another opinion, the sale of door control, automatic and revolving door, glass fittings and systems, room dividing systems, etc., to the real estate developer, which shall be used by the same in the construction of buildings and other infrastructure, is not considered as retail trade.[2]

In a 2016 opinion, the Commission held that:

> "In a more closely-related matter, the Commission also opined that the sale of chemical reagents, equipment and instruments directly to hospitals and laboratories cannot be considered as retail trade because the buyers will use the products to render service to the general public.
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> As presented in your letter, the products of EPI includes laboratory, medical and healthcare equipments used for storing, protecting, handling and analyzing substances, hazardous chemicals and other related materials. xxx.
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> **Furthermore, it appears from the circumstances that the buyers (i.e., laboratories, hospitals, commercial enterprises, schools and government agencies) of EPI's products will use the equipment to render service or produce goods to the general public. In this regard, the sale activities of EPI fit well within the activities enumerated in the above-mentioned Section 2 of the IRR.** (emphasis ours)
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> Thus, we confirm your position."[3]

Applying the above-mentioned principles to your case, and on the assumption that the airconditioning products you mentioned in your query as being sold in the manner described therein includes "raw materials and spare parts for air conditioner and

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[1] SEC Opinion No. 06-32 addressed to Cayetano Sebastian Ata Dado & Cruz dated 2 August 2006.
[2] SEC Opinion No. 13-07 addressed to Atty. Rosario S. Bernaldo dated 30 July 2013.
[3] SEC-OGC Opinion No. 16-25 addressed to Meer, Meer & Meer Attorneys-At-Law dated 14 October 2016.

airconditioning finished products" as well as "wasted materials from production", we confirm your position.

The sale of said airconditioning products directly to department stores and appliance centers cannot be considered as retail trade because these buyers will in turn sell the products to their commercial or industrial clients and end users. In fact, it appears that such sales are on a wholesale basis. Neither can sales of these products directly to contractors, hospitals, schools, supermarkets and hotels be considered as retail for the same will be used by these buyers to render service to the general public.

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 similar or dissimilar circumstances.[4] If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,

CAMILO S. CORREA
General Counsel

[4]SEC Memorandum Circular No.15, Series of 2003