ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT

In the Matter of:

For revocation of certificate of incorporation for violation of the Revised Corporation Code of the Philippines (R.A. 11232) in relation to Sections 8.1, 28.1 and 26.3 of the Securities Regulation Code (R.A. 8799) and Section 6 (i) (2) of Presidential Decree No. 902-A for serious misrepresentation as to what the corporation can do to the great prejudice of or damage to the general public

UNITY-PREMIER BUSINESS GROUP OPC
COMPANY REG. NO. 2022050051432
x---x

ORDER OF REVOCATION

This has reference to **UNITY-PREMIER BUSINESS GROUP OPC ("UNITY PREMIER"),** a one person corporation registered with the Commission under Company Registration No. 2022050051432-03. It's principal office is located at G/F Hsinchu C.M. De Los Reyes Manggahan, General Trias, Cavite, Region IV-A (Calabarzon), 4107.

The primary purpose for which such corporation is incorporated is as follows:

> **"Direct selling of all beauty products;**
>
> **Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts."**

Its sole stockholder-director-president, nominee, alternate nominee and treasurer are:

NAMES	ADDRESS	NATIONALITY
1. MINERVA A. LORILLA (sole stockholder-director-president)	1100 Juan Luna Tondo I/II- Barangay 155 First District, City of Manila, First District, National Capital Region (NCR), 1013	Filipino
2. RENALYN A. LORILLA (Nominee/Treasurer)	4707 Irosin Santo Domingo, City of Sorsogon, Sorsogon, Region V (Bicol Region), 4700	Filipino
3. LEONIDA L. BANDOJO (Alternate Nominee)	Irosin Tabon Tabon Santo Domingo Purok 6, City of Sorsogon, Sorsogon, Region V (Bicol Region), 4700	Filipino

Acting on reports and inquiries from the public relative to the activities of UNITY PREMIER, the Enforcement and Investor Protection Department (EIPD) conducted a formal investigation on its business operations for possible violation(s) of the Securities Regulation Code ("SRC"), the Revised Corporation Code ("RCC"), and other laws, rules and regulations administered and implemented by the Commission.

Accordingly, the information and data gathered by the EIPD in the course of its investigation confirmed that UNITY PREMIER operates primarily through its Facebook page wherein it presents itself as a financial institution that provides its members the opportunity to both start their own e-commerce and affiliate platform and beauty products business. Moreover, it entices the public to invest through guaranteed passive income without selling its business products.

The EIPD requested the Commission's Markets and Securities Regulation Department (MSRD). Corporate Governance and Finance Department (CGFD) and Company Registration and Monitoring Department (CRMD) to determine if UNITY PREMIER BUSINESS GROUP OPC was issued or has a pending application for a permit to offer securities for sale.

In reply, the MSRD certified that UNITY PREMIER BUSINESS GROUP OPC has not registered securities pursuant to Section 8 and 12 of the Securities Regulation Code. Likewise, MSRD has not issued a permit to sell Securities in favor of UNITY PREMIER BUSINESS GROUP OPC. Further, said entity has not filed nor has any pending application for registration/permit to sell securities.

The CGFD certified that UNITY PREMIER BUSINESS GROUP OPC is not a registered issuer of mutual funds, exchange traded funds and proprietary/non-proprietary shares or membership certificates and timeshares pursuant to Section 18 and 12 of the Securities Regulation Code and therefore not licensed to offer sell such securities to the public.

On the other hand, the CRMD certified that UNITY PREMIER BUSINESS GROUP OPC has not been issued a secondary license as a Lending Company, Broker and/or Dealer of Securities, Dealer in Government Securities, Investment Adviser of an Investment Company, Investment House and Transfer Agent. Further, it has not filed nor has any pending application for secondary license with CRMD.

On 8 August 2022, a show cause order was issued to UNITY PREMIER BUSINESS GROUP OPC and its single stockholder-director-president, nominee and alternate nominee, directing them to show cause within five (5) days from receipt thereof why:

I. The Certificate of Registration/Incorporation of UNITY PREMIER BUSINESS GROUP OPC should not be revoked pursuant to Section 6 (i) (2) of Presidential Decree No. 902-A for serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public; and

II. No administrative sanctions should be imposed against the subject corporation and its directors, officers, nominee and alternate nominee for violation of Section 8.1., 28.1. and 26.3. of the Securities Regulation Code (SRC) and its Implementing Rules and Regulations.

The show cause letter was sent on 08 August 2022, to the company's official email: leomae24@yahoo.com which is the same email of the company's "contact person" per records of the Commission, none other than its sole stockholder-director-president, Ms. Minerva A. Lorilla.

On 16 August 2022, a Cease and Desist Order was issued by the Commission *En Banc* directing UNITY-PREMIER BUSINESS GROUP OPC/ UNITY PREMIER BEAUTY AND WELLNESS PRODUCTS TRADING and its CEO sole stockholder-director-president, Minerva Aganan Lorilla, nominee Leonida L Bandojo, and its operators, promoters, representatives, salesmen, agents, uplines, enablers, influencers, conduits, subsidiaries, affiliates, and any and all persons, claiming, acting, and operating for in their behalf, to IMMEDIATELY CEASE AND DESIST from engaging in the unlawful/unauthorized solicitation, offer and/or sale of securities in the form of investment contracts or any others of the same nature, until the required registration statement is duly filed with and approved by the Commission.

On 25 August 2022, the Commission also caused the posting of a Press Release at the SEC website entitled "SEC STOPS UNITY PREMIER'S ILLEGAL INVESTMENT SCHEME"[1], and also disseminated the same to the media. An excerpt of the Press Release stated that:

> "In an order dated August 16, the Commission En Banc directed the company, which also operates under the name Unity Premier Beauty and Wellness Products Trading, to immediately cease and desist from engaging in the unlawful or unauthorized solicitation, offer, and/or sale of securities in the form of investment contracts without the necessary license from the SEC.
>
> The order also covers Unity Premier's chief executive officer and sole stockholder Minerva Aganan Lorilla, nominee and treasurer Renalyn A. Lorilla, and alternate nominee Leonilda L. Bandojo, as well as its operators, promoters, representatives, salesmen, agents, uplines, enablers, influencers, conduits, subsidiaries, and affiliates.

[1] https://www.sec.gov.ph/pr-2022/sec-stops-unity-premiers-illegal-investment-scheme/

> The company and its officers have likewise been ordered to cease their internet presence relating to their investment scheme. They were further prohibited from transacting any business involving funds in its depository banks, and from transferring, disposing, or conveying any related assets to ensure the preservation of the assets of the investors.
>
> The Commission issued the order after the SEC Enforcement and Investor Protection Department (EIPD) found that Unity Premier has been touting itself as a financial institution that can provide its members the opportunity to start their own e-commerce and affiliate platform and beauty product business.
>
> Unity Premier was found to be offering investment packages worth P100 to P50,000 each with promised returns ranging from P3.50 to P1,750 daily. Investors only needed to create an account through Unity Premier's website and pay for the investment package of their choice. Investors were also promised a 15% commission when recruit more people into the system."

Said Press Release was prominently carried by major publications and websites[2]. To date, despite such receipt and presumptive notice of the Show-Cause Order as detailed above, the company failed to respond which shall be taken against it and construed as a waiver of its right to be heard as to the allegations stated in the aforementioned Show Cause Order.

Accordingly, the factual backdrop of this case having been laid, we now resolve the instant proceedings on the basis of available evidence.

Section 3.1 of the Securities Regulation Code (SRC) defines securities as:

> 3.1 "Securities" are shares, participation or interest in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes:
>
> xxx
>
> *(b)* ***Investment Contracts*** xxx"

An investment contract on the other hand, is defined under SRC, Rule 26.3.5. of the 2015 Implementing Rules and Regulations of the Securities Regulation Code (2015 SRC Rules) as follows:

> An **investment contract** means a contract, transaction or scheme (collectively "contract") whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others.

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[2] https://businessmirror.com.ph/2022/08/26/regulators-to-unity-premierstop-soliciting-investments/

https://www.manilatimes.net/2022/08/28/business/sunday-business-it/sec-stops-unity-premier-solicitations/1856253

A common enterprise is deemed created when two (2) or more investors "pool" their resources, creating a common enterprise, even if the promoter receives nothing more than a broker's commission."

Further, the elements of an investment contract were enumerated in the case of ***Power Homes Unlimited Corporation vs. SEC*** which traces its roots from the case of ***SEC vs. W. J. Howey Co.*** and was later modified in the case of ***SEC vs. Glenn W. Turner Enterprises, Inc.*** as follows:

- A contract, transaction or scheme;
- An investment of money;
- A common enterprise;
- Expectation of profits;
- Profits arises primarily from the entrepreneurial and managerial efforts of others.

Section 8, in relation to Section 12 of the SRC provides that:

"SEC. 8. ***Requirement of Registration of Securities***. – 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.

SEC. 12. Procedure for Registration of Securities. –

12.1. All securities required to be registered under Subsection 8.1. shall be registered through the filing by the issuer in the main office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission shall prescribe. The registration statement shall include any prospectus required or permitted to be delivered under Subsections 8.2, 8.3 and 8.4."

Securities such as investment contracts as defined by the SRC and in relation to SRC Rule 26.3.5 of the 2015 SRC Rules must be registered before the same can be ***sold or offered*** for distribution to the public. As a form of security, investment contracts must be registered under Section 8 of the SRC before they can be sold or offered to the public.

Rule 3.1.17 of the 2015 SRC IRR defined ***Public Offering*** as any offering of securities to the public or to anyone, 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.

3.1.17.1 Publication in any newspaper, magazine or *printed reading material which is distributed within the Philippines or any part thereof*;

3.1.17.2 Presentation in any public or commercial place;

> 3.1.17.3 Advertisement or announcement on radio, television, telephone, electronic communications, information communication technology or any other forms of communication; or
>
> 3.1.17.4 Distribution and/or making available flyers, brochures or any offering material in a public or commercial place, or to prospective purchasers through the postal system, ***information communication technology*** and ***other means of information distribution***." (Emphasis supplied)

On the other hand, a "Broker" is defined under Section 3.3. of the SRC as a person engaged in the business of buying and selling securities for the account of others while a "Salesman" is defined under 3.13 of the SRC as a natural person, employed as such or as an agent, by a dealer, issuer or broker to buy and sell securities.

Consequently, Section 28 of the SRC provides that:

> "SEC. 28. ***Registration of Brokers, Dealers, Salesman and Associated Persons***. – 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission."

Thus, any person, without proper license from the Commission who acts as brokers or agents of a company selling or convincing people to invest in an investment scheme, including solicitations or recruitment through the internet, may likewise be prosecuted and held criminally liable under Section 28 of the SRC and penalized with a maximum fine of Five Million pesos (P5,000,000.00) or a penalty of Twenty One (21) years imprisonment or both pursuant to Section 73 of the SRC.

In this particular case, the Department carefully examined the characteristics of the investments offered by UNITY PREMIER in relation to their investment offering to determine if they satisfy the elements of an investment contract. Indeed, the elements of investment contracts are manifested in the investments being offered by UNITY PREMIER as follows:

First, UNITY PREMIER requires their members to purchase its various investment packages to earn guaranteed profits;

Second, the investment scheme of UNITY PREMIER involves the pooling of the amount invested by members utilized to pay the guaranteed returns of its existing investors and intended to ensure the continued operation of the corporation;

Third, investors clearly expect guaranteed returns from the investment packages offered by UNITY PREMIER ranging from 3.5% daily passive income in forty (40) days to 200% guaranteed return via the Unity Lock in contract arrangement;

Lastly, the expectation of profits is derived primarily from the managerial efforts of UNITY PREMIER, and its agents who continue to promote its investment-taking scheme to ensure that investors are paid. The investors are not required nor expected to do anything to earn their guaranteed returns.

It is important to emphasize that UNITY PREMIER as a juridical person, is only allowed to exercise powers inherent to its corporate existence as provided in the Revised Corporation Code of the Philippines and those conferred in its Articles of Incorporation (AOI). In other words, what a corporation can do is necessarily circumscribed by its primary purpose clause in its AOI.

In UNITY PREMIER's AOI as approved by the Commission, it is clearly provided that the business of the subject company is:

"DIRECT SELLING OF ALL BEAUTY PRODUCTS"

In fact, the Certificate of Incorporation of UNITY PREMIER expressly states:

> "This Certificate grants juridical personality to the corporation but does not authorize it to issue, sell, or offer for sale to the public, securities such as but not limited to shares of stock, investment contracts, debt instruments and virtual currencies without prior Registration Statement approved by the Securities and Exchange Commission; nor to undertake business activities requiring a secondary license from this Commission such as, but not limited to acting as: broker or dealer in securities, government securities eligible dealer (GSED), investment adviser of an investment company, close-end or open-end investment company, investment house, transfer agent, commodity/financial futures exchange/broker/merchant, financing company, pre-need plan issuer, general agent in pre-need plans and time shares/club shares/membership certificates issuers or selling agents thereof. Neither does this Certificate constitute as permit to undertake activities for which other government agencies require a license or permit.
>
> *This certificate **DOES NOT AUTHORIZE IT TO UNDERTAKE BUSINESS ACTIVITIES REQUIRING A SECONDARY LICENSE FROM THIS COMMISSION.**" (emphasis ours)*

The purpose stated in the Articles of Incorporation need not set out with particularity the multitude of activities in which the corporation may engage. The effect of broad purposes or objects is to confer wide discretionary authority upon the directors and management of the corporation as to the kinds of business in which it may engage. However, ***dealings which are entirely irrelevant*** to the purposes are unauthorized and called ***<u>ultra vires</u>***. The purpose clause of the articles of incorporation indicates the extent as well as the limitations of the powers which a corporation may exercise.

In an opinion[3], the Commission pronounced that:

> *"It is the corporation's primary purpose clause which confers, as well as limits, the powers which a corporation may exercise and the character of a corporation is usually determined by the objects of its formation and the nature of its business as stated in the articles. The primary purpose of the corporation, as stated in its articles of incorporation, is the first business to be undertaken by the corporation. Hence, the primary purpose determines its classification."*

[3] SEC-OGC Opinion No. 11-33 dated 29 July 2011 addressed to Mr. Jesus B. Lapuz.

To make matters worse, the scheme being offered by UNITY PREMIER bears the tell-tale signs of a Ponzi scheme[4] where the profits or pay-outs taken from the incoming investors or additional "pay-ins" shall be paid to existing or earlier members-investors - *-in a nutshell, encapsulated by the idiom or phrase, "robbing Peter to pay Paul"*-- considering that it does not have any underlying legitimate business where it could source its promised return on investments to its investors. Such scheme is prohibited under Section 26 of the Securities Regulation Code which provides:

> "SEC. 26. ***Fraudulent Transactions***. – It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities to:
>
> 26.1. Employ any device, scheme, or artifice to defraud;
>
> 26.2. Obtain money or property by means of any untrue statement of a material fact of any omission to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading; or
>
> 26.3. Engage in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person."

In the case of ***People of the Philippines vs. Palmy Tibayan and Rico Z. Puerto*** *(G.R. Nos. 209655-60, January 14, 2015)*, the Supreme Court held that:

> *"To be sure, a Ponzi scheme is a type of investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors.* ***<u>Its organizers often solicit new investors by promising to invest funds in opportunities claimed to generate high returns with little or no risk.</u>*** *In many Ponzi schemes, the* ***<u>perpetrators focus on attracting new money to make promised payments to earlier-stage investors to create the false appearance that investors are profiting from a legitimate business</u>****. It is not an investment strategy but a gullibility scheme, which works only as long as there is an ever increasing number of new investors joining the scheme. It is difficult to sustain the scheme over a long period of time because the operator needs an ever larger pool of later investors to continue paying the promised profits to early investors. The idea behind this type of swindle is that the "con-man" collects his money from his second or third round of investors and then absconds before anyone else shows up to collect. Necessarily, Ponzi schemes only last weeks, or months at the most." (Underscoring added for emphasis)*

In ***SEC vs. CJH Development Corporation***[5], the Supreme Court ruled that the sale and/or offer of securities without the requisite license, necessarily operates as a fraud on investors, thus:

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[4] A **Ponzi scheme** is an investment program that offers impossibly high returns and pays these returns to early investors out of the capital contributed by later investors. Named after Charles Ponzi who promoted the scheme in the 1920s, the original scheme involved the issuance of bonds *(*actually postal reply coupons)* which offered 50% interest in 45 days or a 100% profit if held for 90 days. Basically, Ponzi used the money he received from later investors to pay extravagant rates of return to early investors, thereby inducing more investors to place their money with him in the false hope of realizing this same extravagant rate of return themselves. (*People of the Philippines v. Priscilla Balasa, et. al., G.R. 106357, dated September 3, 1998*)

[5] G.R. No. 210316, 28 November 2016.

"The act of selling unregistered securities would necessarily operate as a fraud on investors as it deceives the investing public by making it appear that respondents have authority to deal on such securities. Section 8.1. of the SRC clearly states that 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 SEC and that prior to such sale, information on the securities, in such form and with such substance as the SEC may prescribe, shall be made available to each prospective buyer." (Emphasis ours)

Finally, under Section 6 of Presidential Decree 902-A, the Commission has the power to suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration or corporations, partnerships and associations, on the ground of serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public. Under the 2016 Rules of Procedure of the Securities and Exchange Commission, the EIPD shall exercise authority over persons and entities, whether under the primary authority of other operating departments, involved in the following:

> xxx
> 1. Investigations and administrative actions involving the following:
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> xxx
>
> c) selling, offering or transacting unregistered securities by entities without secondary license;
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> d) ultra vires acts committed in violation of the (Revised) Corporation Code;
>
> 2. Petitions for revocation[6] of corporate registration in all cases, except those which fall under the original authority of CRMD;
>
> 3. Administrative actions for fraudulent transactions involving securities;
>
> 4. Administrative actions for all other violations under P.D. 902-A, except those cases which fall under the original authority of other Operating Departments; and
>
> 5. All other matters involving investor protection filed by the public, referred by self-regulatory organizations, or referred by other Operating Departments after initial evaluation or findings that there is a possible violation of laws, rules or regulations that the Commission implements but do not fall under their respective original authority."

SEC Admin Case No. 11-10-124 entitled *In Re: PHILBIO Renewable Energy Resources Corp.*, promulgated on 27 April 2016 provides what constitutes serious misrepresentation, to wit:

> *"From the foregoing, it is indubitable that PHILBIO misrepresented itself to the public that it can solicit investments despite the fact that it is* ***not one of the purposes of the corporation****. Worse, it* ***does not have a license to offer/sell securities****. PHILBIO operates an investment-taking scheme which is therefore considered an* ***ultra vires act****. These constitute serious misrepresentation as to what the corporation can do or doing to the great prejudice to the general public."*

[6] Revocation refers to the involuntary dissolution of corporate registration pursuant to Section 138 of the Revised Corporation Code of the Philippines.

Considering that nowhere is it stated in the primary purpose clause of UNITY PREMIER in its Articles of Incorporation that it is authorized to engage in the selling or offering for sale of securities to the public, coupled with the fact that it does not have the necessary Permit to Offer and Sell Securities, the activities of UNITY PREMIER of selling or offering for sale securities in the form investment contracts is considered an ultra vires act and therefore constitute serious misrepresentation.

WHEREFORE, for violation of Section 44 of the Revised Corporation Code of the Philippines (RCC or R.A. 11232) in relation to Sections 8.1, 28.1 and 26.3 of the Securities Regulation Code, P.D. 902-A and Section 179 (j) of the RCC and Section 5.1 (m) of the SRC, the Certificate of Incorporation and the registration of UNITY-PREMIER BUSINESS GROUP OPC is hereby **REVOKED.**

Accordingly, let this Order be posted at the SEC website and attached by the Corporate Filing and Records Division of the Company Registration and Monitoring Department (CRMD) to the records of the corporation on file with the Commission. Further, the Information and Communications Technology Department (ICTD) of this Commission is likewise requested to enter the "*revoked*" status of Subject Corporation in the online database of the Commission.

SO ORDERED

Makati City, 5 September 2022.

OLIVER O. LEONARDO
Director

I-17