Republic of the Philippines
Department of Finance
Securities and Exchange Commission

XINAGASIA MARKETING CORPORATION,
Petitioner,

- versus -

SEC Administrative Case No. 04-14-170
For: Revocation of Corporate Registration

ENFORCEMENT & INVESTOR PROTECTION DEPARTMENT,
Respondent.
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DECISION

For the consideration of the Commission *En Banc* is the *Petition (For Revocation of Corporate Registration) with Motion for Issuance of Cease and Desist Order* (Petition for Revocation) filed on 28 April 2014 by petitioner Enforcement and Investor Protection Department (EIPD) praying that the Certificate of Registration of respondent XINAGASIA MARKETING CORPORATION (Xinagasia Marketing) be revoked pursuant to Section 6(l), sub-paragraph 2 of Presidential Decree No. 902-A (PD 902-A). The EIPD further prays that the Commission issue a Cease and Desist Order (CDO) against, among others, Xinagasia Marketing, directing it to immediately cease and desist from further engaging in activities of offering for sale securities, in the form of bonds described as "Cooperate Bond Notes" until the requisite registration statement is duly filed with and approved by the Commission.[1]

Xinagasia Marketing is a corporation duly registered with the Commission on 28 December 2012 with SEC Registration No. CS201223348.[2] The primary purpose of Xinagasia Marketing is *"to engage in the business of trading and marketing goods, manufactured or unmanufactured commodities, food products, and all kinds of merchandise which are lawful object of commerce on wholesale basis, and engage in or undertake the general management or promotion of product launches, events, exhibits, merchandising, marketing, and promotions of any enterprise similar in nature with the purposes for which this corporation was formed."* However, its PRIMARY PURPOSE and CERTIFICATE OF INCORPORATION **prohibit** it from 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, commodity/financial futures exchange/broker/merchant, financing company unless it secures first from the Commission a secondary license to

[1] *Petition for Revocation* dated 23 April 2014.
[2] *Id.*, Annex "A" (Certificate of Registration of Xinagasia Marketing).

undertake such business activities.[3] The officers of Xinagasia Marketing are the following: Joselito Del Rosario (Chairman/President), Macaria Leonardo (Treasurer/Secretary) and Martin G. Junio (Assistant Secretary).[4]

In the Petition for Revocation, the EIPD alleges that Xinagasia Marketing is acting as a broker/dealer for Xinagasia Lending & Investors Corp. and Xinagasia Invest & Trust Bank Corp. by offering the latter's "Cooperate Bond Notes", through Xinagasia Marketing's advertising on its website. Such offering of securities is in violation of Section 28 of the Securities Regulation Code (SRC)[5] since Xinagasia Marketing is not registered with the Commission as a broker/dealer.

The Commission, finding merit to the EIPD's Motion for Issuance of Cease and Desist Order, issued on 22 May 2014 the CDO against, among others, Xinagasia Marketing. The Commission stated that the offering of securities denominated as "Cooperate Bond Notes" operates as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public, pursuant to Section 64.1 of the SRC.[6] Thereafter, the EIPD posted the CDO at the main door of the principal office of Xinagasia Marketing, and proceeded to serve the CDO on Macaria Leonardo, who is the Corporate Secretary of Xinagasia Marketing, at her residential address, and was received by a person residing therein.[7]

On 30 May 2014, the Commission issued Summonses to Xinagasia Marketing and the latter' directors and officers directing them to file their *Answer* to the EIPD's Petition for Revocation. On 9 June 2014, Jamie Rodil, who is the authorized Process-Server of the Commission, attempted to personally serve the Summons on the officers and directors of Xinagasia Marketing, including Macaria Leonardo, who is the Corporate Secretary and Treasurer of Xinagasia Marketing at her residence. However, Mr. Rodil failed to personally serve the Summons on the officers and directors of Xinagasia. It must be noted that Mr. Rodil stated that, in the case of Ms. Leonardo, she was not at her residential address and Martin Junio received the Summons on her behalf.[8]

On 19 October 2016, Jamie Rodil attempted again to personally serve the Summons to Macaria Leonardo. However, upon arriving at the residential address of Ms. Leonardo, Mr. Rodil was encountered by Arcardia G. Junio. Ms. Junio informed Mr. Rodil that she is the sister in law of Ms. Leonardo, and that Ms. Leonardo is not at the residence during the day

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[3] *Id.,* Annex "B" (Second Article of the Articles of Incorporation of Xinagasia Marketing).
[4] *Id.*, Annex "C" (General Information Sheet for the year 2013).
[5] Section 28 of the SRC, known as Republic Act No. 8799 (2000), provides that no person shall engage in the business of buying or selling securities in the Philippine 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.
[6] Section 64.1., SRC. The Commission, after proper investigation or verification, *motu propio*, or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.
[7] Motion for Issuance of Permanent CDO, par. 3.
[8] Records, p. 80.

considering she is at work. In which case, it appears that there is an impossibility of personal service on Ms. Leonardo considering that Mr. Rodil previously attempted to personally serve the summons on 9 June 2014 but was not successful in such service. Instead, Mr. Rodil then served the Summons on Arcardia G. Junio by substitute service on behalf of Ms. Leonardo at her residence.[9]

To date, Xinagasia Marketing did not file any Answer to the EIPD's Petition for Revocation.

The effect of the failure to file an Answer is provided under Section 3-12 of Rule III of the 2006 Rules of Procedure, to wit:

> "**If the respondent FAILS TO ANSWER the complaint within the above-stated period,** he shall be considered as *in default*. **The Hearing Panel, or Officer shall, *motu proprio*, proceed to render judgment granting the complainant such relief as the complaint may warrant**, unless the Hearing Panel or Officer determines the complainant should be required to submit *ex parte* additional evidence." (Emphasis ours)

Considering that Xinagasia Marketing failed to file its Answer to the Petition for Revocation, the Commission *motu proprio* is constrained to render a judgment based on evidence and records thereof.

As declared in the CDO, Xinagasia Markeing is acting as a broker/dealer with regard to its public offering of bonds denominated as "Cooperate Bond Notes",[10] through the latter's advertising on its website. However, its PRIMARY PURPOSE provides that it is to engage in the business of trading and marketing, among others, goods and food. The primary purpose, including its Certificate of Incorporation, prohibits it from acting as broker or dealer in securities, including bonds. Moreover, the certifications of the Markets and Securities Regulation Department (MSRD) and Company Registration and Monitoring Department (CRMD) provide that Xinagasia has not been issued a license to act as a broker/dealer in securities. Further, the certifications provide that Xinagasia has no pending application for such license.[11]

Clearly, Xinagasia is committing serious representation as to what it can do or is doing to the great prejudice of or damage to the general public, which is a ground for revocation pursuant to Section 6(l), sub-paragraph 2 of P.D. 902-A. Hence, the revocation of the certificate of incorporation of Xinagasia Marketing is warranted.

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[9] Affidavit of Service, p. 102.
[10] Supposedly issued by Xinagasia Lending & Investors Corp. and Xinagasia Invest & Trust Bank Corp.
[11] Petition for Revocation, par. 28; and Annex "N" (Certificate issued by MSRD dated 3 February 2014), and Annex "O" (Certificate issued by CRMD dated 20 January 2014).

WHEREFORE, premises considered, the Petition for Revocation filed by Enforcement and Investor Protection Department of the Commission against Xinagasia Marketing Corporation is **GRANTED**. The Certificate of Incorporation of XINAGASIA MARKETING CORPORATION is **REVOKED**, pursuant to Section 6(l), sub-paragraph 2 of Presidential Decree No. 902-A, for its commission of serious misrepresentation as to what it can do or is doing to the great prejudice of or damage to the general public.

SO ORDERED.

Mandaluyong City, 29 November 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner