Republic of the Philippines
Department of Finance
Securities and Exchange Commission
PICC Secretariat Bldg., Roxas Blvd., Pasay City

COMMISSION EN BANC

In the Matter of:

RIGEN MARKETING

SEC CDO Case No. **06-19-051**

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),
Movant.
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CEASE AND DESIST ORDER

This resolves the *Motion for Issuance of a Cease and Desist Order* (Motion) filed on June 3, 2019 by the Enforcement and Investor Protection Department (EIPD) praying to enjoin **RIGEN MARKETING** and it's officers, representatives, salesmen, agents and any and all persons claiming and acting for and in its behalf, from any unauthorized public solicitation of investments and sale of securities in the form of investment contracts.

Based on the records of the Commission, **RIGEN MARKETING** (RIGEN) is not registered with the Commission either as a corporation or partnership.

RIGEN MARKETING appears to be a tradename of "**RIGEN WELLNESS PRODUCT MARKETING**" a sole proprietorship whose business name is registered with the Department of Trade and Industry (DTI) under the name of RICO JOHN COLORINES GARCIA[1] a.k.a "John Rigen"[2] whose business address at PLJ Bldg., Apoko Road Magugpo East Tagum City DDN 3100.

The investigation against respondent RIGEN stemmed from the receipt by the EIPD of a Memorandum dated 07 May 2019 SEC Davao Extension Office (SEC-DEO) with attached documents pertaining to RIGEN which was reported to be offering a return of investment of up to four hundred percent (400%).

A careful examination by the EIPD of the Acknowledgement Receipt issued by RIGEN which was attached to the Memorandum that was obtained by SEC-DEO from one of the clients of RIGEN named *Rene A. Beduya,* would show that the investment scheme of RIGEN involves an investment contract as it contained the following statements in the acknowledgement receipt:

a. The deposit of Ten Thousand (P10,000.00)

b. The statement: *"I/We will be entitled to an incentive not exceeding 400% of my/our payment* ***as soon as the***

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[1] https://www.facebook.com/JeanELopez/posts/2207043299365559
[2] https://www.facebook.com/search/top/?q=Rico John C. Garcia&epa=SEARCH_BOX

company can sell the product herein sold *to the first minimum eight (8) consumers per batch.*

c. *Paragraph I. Purchase Order. Purchase order may be held by any person of legal age or any legal entity regardless of citizenship or nationality. If the client is a corporation, partnership or other legal entity, copies of the articles of incorporation and by-laws, certificate of registration and* ***<u>the resolution of the client's Board of Directors authorizing the investment</u>****, all duly certified, must be submitted with the application depending on the approval of the RIGEN MARKETING.*

d. The Terms of Conditions in the Acknowledgement Receipt contains the following provisions:

   i. *"Paragraph II. Right to accept/Reject and Scale Down Applications. RIGEN MARKETING.* ***<u>Reserves the right to accept, reject or reduce the investment applied for in any Application</u>*** *at its sole discretion and in such manner that it may deem appropriate. In the event that this Application is not accepted in whole or in part, the company may refund the corresponding investment to the Client without interest, within seven (7) days from the submission of this Application. x x x"*

   ii. *Paragraph III.* ***<u>The four hundred percent (400%) capital growth will be based on the entry purchase of the RIGEN MARKETING's product as soon as he/she can sell the product herein sold to a minimum of eight (8) consumers.</u>***

   iii. *Paragraph XI. AGREEMENT. This* ***<u>Agreement shall continue and remain in force until termination of the investment in accordance with the contract</u>*** *or with applicable laws or regulations then existing.*

   iv. *NO INVESTMENT ADVICE. The Client hereby acknowledges that RIGEN MARKETING will not and does not provide investment, legal, tax, or accounting advice or advice regarding the suitability or profitability of a security or investment, that RIGEN MARKETING's employees are not authorized to give any such advice and that the Client will not solicit or rely upon such advice.*

e. *ACKNOWLEDGMENT. I/We the undersigned client, warrant that in executing this application,* ***<u>have understood and have relied solely upon the investment's prospectus and the terms and conditions stated on this form</u>****. I also acknowledge that additional investments in the future (if any) shall also be covered by* *the said prospectus and terms and conditions. I have read and understood, and agreed to be bound by the terms and conditions governing the services to be availed of. I hereby expressly, absolutely, and unconditionally release and discharge the Company, and undertake to, at all times, indemnify the Company free and harmless from any and all claims, liabilities, obligations, actions, proceedings, loss, damage, costs and expenses arising from or in connection with, directly or indirectly, any erroneous or inaccurate information contained in this form or any instruction I will provide to the Company. x x x* (Emphasis ours)

In the *"Terms and Conditions"* portion of the *Acknowledgment Receipt* submitted to the EIPD by SEC-DEO, it was likewise stated that:

> *"Processing of Information. The Client authorizes RIGEN Marketing to process, without need of prior notice, any and all information relating to the Account in connection with (i) the opening, facilitating, monitoring, improving the quality of, or otherwise servicing the Account and such other products, services, and facilities availed by the Client: (ii) the establishment or continuation of products, services, facilities by the Rigen Marketing; and (iii) compliance by the RIGEN MARKETING with legal, regulatory, or other obligation. Such processing may be conducted for the duration and even after the cancellation of the Account. The Client likewise authorizes the RIGEN Marketing to process, disclose and share his personal information to its* ***relevant marketing teams in relation to the RIGEN MARKETING's marketing sorts****. As used herein "RIGEN MARKETING" shall include* ***RIGEN MARKETING, its subsidiaries, aliases or related companies and RIGEN MARKETING's agents, representatives, outsourced service providers,*** *while "process" and "processing" shall have the meaning ascribed to them under the Data Privacy Act.*

Upon validation of the contents of SEC-DEO's Memorandum, an ADVISORY was posted on the Commission's website on 24 May 2019 on the activities of respondent RIGEN[3].

After the issuance of the Advisory, the EIPD came across a SUNSTAR article dated 26 May 2019 that was published and made available in the internet[4] entitled "Rigen Wellness Marketing di kabalak-an, Dunay Permit" authored by a certain Orlando B. Dino Excerpt of the SUN STAR news article is quoted as follows and translated in English using google translate:

Bisaya:	x x x *"Giinong nakarehistro ang rigen wellness product marketing sa DTI ug Bureau of Internal Revenue."*
English:	Rigen wellness product marketing is registered in DTI and Bureau of Internal Revenue.

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3 ADVISORY on RIGEN posted on the Commission's website dated May 24, 2019.

4 https:/www.sunstar.com.ph/article/1807265/Superbalita-Davao/Rigen-Wellness-Marketing-di-kabalak-an-dunay-permit

x x x

Bisaya:	*Matod sa tagdulama sa kompanya nga di ilawom sa pagduma sa Securities and Exchange Commission (SEC) ang maong kompanya sanglit usa kini ka sole proprietorship ug di ilawom sa organisasyon, relihiyon, korporasyon o inkorporasyon.*
English:	According to the company, the company does not cover the Securities and Exchange Commission (SEC) because it is a sole proprietorship and is within the organization, religion, corporation or incorporation.

x x x

Bisaya:	*Nanaghap ang nagdumala sa kompanya nga daghan ang gustong miguba kanila sanglit daghan na ang buot moapil sa maong negosyo tungod sa* ***400% gitanyag nga return of investment***
English:	Managers have been hampered by many companies who want to destroy them because many want to join the business because of the **400% proposed return of investment.**

x x x

On 29 May 2019, the EIPD conducted further investigation via online search on the solicitation activities of RIGEN. Findings revealed that a series of Facebook pages using the name and logo of RIGEN with promotional products of RIGEN and Facebook posts and promotional Youtube videos[5] inviting/soliciting/offering investment to the public were made publicly available. A careful review of these Facebook pages further disclosed that the public post regarding "PAY-OUT" events of **RIGEN Marketing @rigenmarketingofficial**,[6] the official Facebook page of "RIGEN" was even used and attended by its members/agents to disseminate/spread or made representations of its investment schemes and to solicit such investment from the public.

Based on the verification and investigation conducted by the SEC-DEO and the EIPD, the latter foumd sufficient evidence showing that RIGEN is soliciting investments from the public employing what is commonly known as a Ponzi scheme in its investment scheme.

We find the *Motion* meritorious.

EIPD's Motion, as supported by substantial evidence, shows that RIGEN is engaged in the offer and/or sale of securities to the public in the form of investment contracts without the necessary license from the Commission.

Securities are "shares, participation or interests 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" and includes an "investment contract".

In a plethora of cases, it has been stated that an "investment contract" is a transaction, contract, or scheme whereby a person: (1) makes an investment of money; (2) in a common enterprise; (3) with the expectation of profits; and (4) to be

5 https://www.youtube.com/watch?v=y22-op9fa4U
6 https://www.facebook.com/rigenmarketingofficial/

derived solely from the efforts of others.[7] This definition has been adopted by the Supreme Court of the Philippines which succinctly stated that an investment contract in our jurisdiction, to be a security subject to regulation by the Commission, must be proved to be (1) an investment of money; (2) in a common enterprise; (3) with expectation of profits; and (4) primarily from efforts of others.[8]

As aptly elucidated by the EIPD, it was able to show that the investment scheme of respondent **RIGEN** falls within the ambit of an investment contract because of its essential features, as follows:

(1) The investor **enters into a contract**. There is a placement of money where for a certain sum the investors are guaranteed four hundred percent (400%) return in just thirty (30) days.

(2) **The money invested is placed in a common enterprise and the investor-member expects to derive profits.** As stated under the Acknowledgment Receipt provided by SEC-DEO to EIPD, *the four hundred percent (400%) capital growth will be based on the entry purchase of the RIGEN MARKETING's product as soon as he/she can sell the product herein sold to a minimum of eight (8) consumers.*

(3) Finally, the member-investor **expects to earn profits from the entrepreneurial and managerial efforts of others.** The investor need not do anything but go to the office of RIGEN and receive the guaranteed return to them. The investors just have to invest money. The **PAY-OUT PROCESS** i.e, *The pay-out payment will be received by the client after three-to-five day working hours* the stipulated in the Terms of Conditions of the Acknowledgment Receipt proves that the investors are made to expect profits from this scheme.

On 3 June 2019 certification from the CGFD stated that "**RIGEN MARKETING** is not a registered issuer of mutual funds, exchange traded funds and proprietary/non-proprietary shares or membership certificates and timeshares pursuant to Sections 8 and 12 of the Securities and Regulation Code and therefore not licensed to offer or sell such securities to the public."

On the other hand, the 3 June 2019 Certification from the MSRD likewise states that "**RIGEN MARKETING** has not registered any securities pursuant to Sections 8 and 12 of the Securities Regulation Code (SRC). Likewise, the Department has not issued Permit to Sell Securities in favor of **RIGEN MARKETING**. Further, said entity has not filed nor has any pending application for registration/permit to sell securities."

Having established that the investment scheme of RIGEN is an investment contract, the provisions of Section 8.1 of the SRC should be complied with before said securities could be offered or sold to the public.

Thus, RIGEN has engaged itself in offering or selling such securities to the general public sans the necessary license or permit as attested by the Market

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[7] Securities and Exchange Commission v. W.J. Howey Co 328 U.S. 293, 66 S. Ct. 1100, 90 L.Ed. 1224, 163 A.L.R. 1043 (1946)

[8] Power Homes Unlimited Corporation v. Securities and Exchange Commission G.R. No. 164182, February 26, 2008.

Securities Regulation Department (MSRD) and Corporate Governance and Finance Department (CGFD) of this Commission.

Worse, the investment scheme of RIGEN has the characteristics of a **Ponzi scheme** as it promises an exorbitant rate of return with little or no risk at all to investors as exemplified in the case of *People of the Philippines vs. Palmy Tibayan and Rico Z. Puerto (G.R. Nos. 209655-60, January 14, 2015)*, where 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. ***Its organizers often solicit new investors by promising to invest funds in opportunities claimed to generate high returns with little or no risk.*** In many Ponzi schemes, the ***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***. 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)

The EIPD adduced sufficient evidence to support its allegations that RIGEN is engaged in offering for sale securities to the public through indiscriminate or random offering online[9] promoting its investment scheme to potential investors without prior registration. Thus, Section 64 of the Securities Regulation Code would apply, to wit:

> SEC. 64. **Cease and Desist Order**. - 64.1. The Commission, after proper investigation or verification, *motu proprio*, 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.

The Commission is duty-bound to protect the interest of the investing public. Thus, it is necessary that a Cease and Desist Order be issued to enjoin RIGEN from further offering and selling unregistered securities to the public. Otherwise, to allow RIGEN to continue soliciting investments and/or selling or offering for sale securities to the public without the necessary license or permit will operate as a fraud on investors or is likely to cause grave or irreparable injury or prejudice e to the

[9] Under Rule 3.1.17.4 of the 2015 SRC Rules, any offering, solicitation and presentation of securities for sale to the public through information communication technology, such as internet, shall be presumed to be a public offering.

investing public.[10]

Hence, the selling or offering for sale of securities by the respondent **RIGEN MARKETING, RIGEN WELLNESS PRODUCT MARKETING, AND ITS ALLIED ENTITIES AND/OR RICO JOHN COLORINES GARCIA[11] a.k.a "John Rigen** should be immediately restrained to prevent any further grave injury or prejudice to the investing public. Likewise, it is imperative that a Cease and Desist Order be issued as the continued public offering and sale of such securities without the required license from the Commission makes the public offering and selling a continuing illegal act.

As a final word, there is no question that the investment-taking activities of **RIGEN** is under the jurisdiction of the Commission notwithstanding that it is a sole proprietorship registered with the DTI. The Commission has the authority to issue a Cease and Desist Order under the circumstances, considering that the Commission's functions include enforcement and administration of the SRC. Consequently, the power to refrain activities in violation of the SRC is vested with the Commission. Moreover, the Commission is expressly imposed the duty to protect investors and the investing public from acts that would operate as fraud upon investors or are likely to cause grave or irreparable injury or prejudice to the investing public, and to penalize fraudulent acts, course of business, transactions or practices in connection with the sale or purchase of securities, regardless of whether or not the person or entity involved is registered with the Commission.

WHEREFORE, premises considered, **RIGEN MARKETING, RIGEN WELLNESS PRODUCT MARKETING, AND ITS ALLIED ENTITIES AND/OR RICO JOHN COLORINES GARCIA[12] a.k.a "John Rigen**, their partners, officers, agents, representatives, conduits, assigns and ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND IN THEIR BEHALF are hereby ordered to **IMMEDIATELY CEASE AND DESIST UNDER PAIN OF CONTEMPT**, from engaging in activities of selling and/or offering for sale securities in the form of investment contracts or any other forms of the same nature, as discussed above.

Furthermore, the subject entities and individuals are directed to CEASE from promoting its investment scheme through the internet and/or delete or remove immediately the promotional presentation of such investment scheme from the websites.

Moreover, to forestall grave damage and prejudice to all concerned and to ensure the preservation of the assets for the benefit of the investors, respondents or any of their representatives, or any person/s acting for and in their behalf, and such other persons directing or controlling the activities of such corporation, officers, representatives, salesmen and agents, are all ENJOINED from a) transacting any and all business involving the funds in its depository banks, and b) from transferring, disposing or conveying in any other manner any and all assets, properties, real or personal, and including bank deposits, if any, of which the named persons herein may have any interest, claim or participation whatsoever, whether directly or indirectly, under their custody, immediately upon receipt of this Order, until further orders from this Commission.

The Enforcement and Investor Protection Department and/or the Commission's Extension Offices having jurisdiction over the area where the principal office of the subject of this Cease and Desist Order is located, are hereby directed to:

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[10] *In the matter of Boracay Transpacific Properties Inc. & Paradisya Land Inc.,* SEC CDO Case No. 07-14-01 February 26, 2015.

[11] https://www.facebook.com/JeanELopez/posts/2207043299365559

[12] https://www.facebook.com/JeanELopez/posts/2207043299365559

(1) serve this Order to **RIĢEN MARKETING, RIGEN WELLNESS PRODUCT MARKETING, AND ITS ALLIED ENTITIES AND/OR RICO JOHN COLORINES GARCIA[13] a.k.a "John Rigen** its General Manager, In-House Counsel or partners; and 2) post copies of the Order at the entrance of the main office and/or branches, if any, of **RIGEN MARKETING and RIGEN WELLNESS PRODUCT MARKETING AND ITS ALLIED ENTITIES.**

Let a copy of this Order be also posted in the Commission's website, published in a national newspaper of general circulation and furnished to the Company Registration and Monitoring Department, the Corporate Governance and Finance Department and the Economic Research and Information Department for their information and appropriate action.

The EIPD and/or the Extension Office who served and posted this order are further directed to submit a formal compliance report, by way of a pleading, to the Commission *En Banc* within ten (10) days from receipt of this Cease and Desist Order.

In accordance with the provisions of Sec. 64.3 of SRC and Sec. 4-3 of the 2016 Rules of Procedure of the Commission, the parties subject of this Cease and Desist Order may file a request for the lifting thereof within five (5) days from receipt hereof.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Pasay City, Philippines, 04 June 2019.

EMILIO B. AQUINO
Chairperson

Antonieta Ibe

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG *
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

* On Leave

[13] https://www.facebook.com/JeanELopez/posts/2207043299365559