Republic of the Philippines
Department of Finance
Securities and Exchange Commission
Commission En Banc

In the matter of:

RIGEN MARKETING

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT

SEC CDO Case No. 06-19-051

x--------------------------------x

RESOLUTION

This resolves the *Notice for* [sic] *Entry of Appearance with Urgent Motion to Lift Cease and Desist Order and for the Issuance of an Order Setting this Case for Hearing and/or Submission of Position Paper* dated 17 June 2019 filed by Rigen Marketing ("RIGEN"), through counsel, before the Office of the General Counsel (OGC) to assail the Cease and Desist Order ("CDO") dated 4 June 2019 issued by this Commission against it.

FACTS

On **3 June 2019**, the EIPD filed before the OGC a *Motion for Issuance of a Cease and Desist Order* against Rigen Marketing.

On **4 June 2019**, the Commission En Banc issued a CDO against Rigen for engaging in the selling and/or offering for sale securities in the form of investment contracts. The CDO expressly states:

> "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."

On **11 June 2019**, the CDO was served and posted by the EIPD to Rigen Marketing's business premises in Room 203, 2nd Floor, PLJ Building, Apokon Road, Tagum City, Davao Del Norte.

On **17 June 2019**, Rigen, through its counsel, Salvanera Guzman Law Office, filed its *Notice for* [sic] *Entry of Appearance with Urgent Motion to Lift Cease and Desist Order and for the Issuance of an Order Setting this Case for Hearing and/or Submission of Position Paper* to assail the merits of the CDO issued against it.

On **18 June 2019**, the Commission, through the OGC, issued an Order setting this case for hearing on 24 June 2019.

On **20 June 2019,** the EIPD filed its Compliance with respect to the posting of the CDO.

On **24 June 2019** the parties appeared before **OGC**. During said hearing, Rigen was ordered to submit its Memorandum twenty (20) days from the date of hearing, while the EIPD was likewise ordered to submit its Comment to said the Memorandum within twenty (20) days from the receipt of Rigen's Memorandum.

On **12 July 2019**, Rigen, through its Counsel, filed a *Motion for Extension of Time to file Memorandum* dated on the same day. The same was however denied by the Commission in an Order dated 12 July 2019 on the ground that the reasons provided for by Rigen is unmeritorious.

On **15 July 2019**, Rigen filed its Memorandum via private courier.

On **5 August 2019,** the EIPD filed its Memorandum.

On **6 September 2019**, the Commission issued an Order submitting this case for resolution.

ISSUE

The issue to be resolved is whether the CDO issued on 4 June 2019 against Rigen Marketing should be lifted.

DISCUSSION

I. The Acknowledgement Receipt.

In the *Motion for Issuance of CDO*, the EIPD attached the Acknowledgement Receipt of one of Rigen's investors indicating that the latter shall receive an incentive of four hundred percent (400%) of their capital as indicated in Rigen's Acknowledgement Receipt which states:

> "I/We will be entitled to an incentive not exceeding 400% of my/our payment **as soon as the company can sell the product** herein sold to the first minimum eight (8) consumers per batch."

EIPD likewise presented several Facebook and Youtube screenshots showing pictures and videos that promoted the investment scheme and products of movant Rigen to the public.

In the Memorandum, Rigen alleged that the EIPD misquoted the Acknowledgement Receipt they presented in their Motion. They contend that the true Acknowledgement Receipt of Rigen contains the statement:

> "I/We will be entitled to an incentive not exceeding 400% of my/our payment **as soon as I/we can sell the product** herein sold to the first minimum eight (8) consumers per batch."

The above quoted statement is different from the EIPD's version which is attached in their Motion for Issuance of CDO. Rigen posits that their buyers are not earning through the efforts of another under the *Howey Test* and that the profits of the company are entirely derived from their FDA-approved products which are sold by its professional network marketers.

Finally, Rigen denied that the Facebook pages and Youtube videos using the name and logo of Rigen and the "PAY-OUT" events posted at RIGENMarketing@rigenmarketingofficial were authored by them.

In their *Comment/Opposition*, the EIPD argues that Rigen's version of the Acknowledgement receipt is self-serving and a mere afterthought.

This Commission finds for the EIPD.

The version of the Acknowledgement Receipt presented by Rigen in its Memorandum is self-serving as it was belatedly presented before this Commission. Rigen could have presented said version when it filed its Motion to Lift the CDO considering that the one presented by the EIPD was already cited in the CDO when it was posted last 11 June 2019.

On the other hand, the document/evidence presented by the EIPD is an actual Acknowledgment Receipt issued by Rigen to one of its investors prior to the issuance of the CDO. In fact, Rigen failed to refute the fact that, Rene Beduya, the person named in the Acknowledgement Receipt presented by the EIPD, is one of their investors. Thus, it is clear that the version presented by the EIPD has more probative value.

II. Rigen is offering securities to the public in the form of investment contracts without license and in violation of Sec. 8 and 12 of the SRC:

Based on the pleadings filed and evidence presented in this case, it has been established that respondents' "product packages" are in fact investment contracts considering that the transactions involving the same satisfy the requisites of an investment contract, as enunciated by the Supreme Court in the case of ***Power Homes Unlimited Corporation vs. Securities and Exchange Commission and Noel Manero, G.R. No. 164182, 26 February 2008***. As discussed in the CDO, the requisites of the investment contracts present in the business scheme of Rigen are as follows:

- **Investment of Money -**
  There is an investment of money as evidenced by Rigen's acknowledgement receipts issued to its investors, which is in the nature of a contract.

- **Common Enterprise -**
  All the acknowledgement receipts and Facebook posts presented by the EIPD in its pleadings point out to Rigen Marketing, Rigen Wellness Product Marketing and/or Rico John Colorines Garcia a.k.a. "John Rigen", which is operating in PLJ Building, Apoko Road Magugpo East, Tagum City.

- **Expectation of Profits -**
  Rigen guarantees a profit of up to four hundred percent (400%) after a month or as soon as the company is able to sell its first batch of products to the public as shown by the statement in their Acknowledgement Receipt which says, "I/We will be entitled to an incentive not exceeding 400% of my/our payment **as soon as the company can sell the product** herein sold to the first minimum eight (8) consumers per batch."

- **Primarily from the Efforts of Others -**
Such profit of the investor is earned through the efforts of Rigen and without the investor doing anything as indicated in the Acknowledgement Receipt they issued to one Rene Beduya which states, "I/We will be entitled to an incentive not exceeding 400% of my/our payment **as soon as the company can sell the product** herein sold to the first minimum eight (8) consumers per batch".

In the Notice for [sic] Entry of Appearance with Urgent Motion to Lift Cease and Desist Order and for the Issuance of an Order Setting this Case for Hearing and/or Submission of Position Paper, Rigen averred, "it has not undertaken any activity that constitutes a violation of the Securities Regulation Code, as it has strictly confined itself in the legitimate business of selling wellness products and other health supplements".

In the Memorandum filed, Rigen explains, "that a purchaser becomes a professional network marketer of RIGEN by purchasing a product package and, thereafter, by promoting the same to other individuals. Once the professional network marketer is able to sell the product to other individuals, the professional network marketer is entitled to his/her incentive (300% as commission and 100% his/her investment)...".

Besides the averments mentioned in the previous paragraphs, Rigen did not elaborate further on the characteristics or nature of its business scheme so as to establish that the scheme is network marketing and not investment taking, so as to remove it from the purview of the SRC.

Rigen also presented certifications issued by the Food and Drug Authority as evidence. The evidence presented by Rigen in its *Motion to Lift* and *Memorandum* are not persuasive for the same does not establish that the business undertaking of Rigen does not involve investment taking. Rigen's defense are mere general denials of EIPD's findings regarding its investment-taking activities.

In contrast, the EIPD has explained the nature of the business scheme which makes it investment-taking, and has sufficiently supported their explanation with evidence. In the Motion for Issuance of Cease and Desist Order, the Acknowledgment Receipt obtained by SEC-DEO was dissected to show that the investment scheme of Rigen involves an investment contract. EIPD likewise found Facebook posts and promotional YouTube videos inviting/soliciting/offering investment to the public.

Considering that investment contracts are considered securities pursuant to Section 3(b) of the SRC[1], Sections 8 and 12 of the same Code applies to Rigen, to wit:

Sections 8 and 12 of the SRC provides:

> "**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.
>
> **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 document as the Commission prescribe."

As shown by the certifications issued by the Corporate Governance and Finance Department and the Market Securities Regulation Department both dated 3 June 2019 in the EIPD's *Motion for Issuance of CDO*, respondent Rigen has no license to offer/sell securities to the public and that its investment contracts are not registered with this Commission. Thus, Rigen's non-registration places it in direct violation of Sections 8 and 12 of the SRC.

CONCLUSION

Taking into consideration all the foregoing circumstances, there is substantial evidence that Rigen is offering securities to the public in the form of investment contracts without the necessary permit from this Commission and is in violation of Sections 8 and 12 of the SRC. Rigen failed to present sufficient grounds for this Commission to overturn the assailed CDO. As such, Rigen must be restrained in order to protect the investing public from fraud and grave damage.

---

[1] Section 3 of the SRC which states that:

> "SEC 3. Definition of Terms. – 3.1. "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. It includes:
>
> Xxxxx
>
> (b) Investment contracts, certificates of interest or participation in a profit sharing agreement, certificates of deposit for future subscription;
>
> Xxxxx".

x---x

WHEREFORE, premises considered, the prayer of Rigen Marketing to lift the CDO issued against it is hereby **DENIED** for lack of merit. The CDO dated 4 June 2019 is hereby **MADE PERMANENT.**

SO ORDERED.

Pasay City, Philippines; 12 September 2019.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

on official business on said date (09/12/19)