Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

IN THE MATTER OF:

WELLCONS UNLIMITED SYSTEMS, INC. ("WELLCONS")

-versus-

SEC CDO CASE No. 06-22-091
Promulgated: 11 August 2022

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.

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RESOLUTION

For consideration of the Commission is the "*Motion to Lift the Cease and Desist Order*" dated 4 July 2022 ("Motion") filed by Wellcons Unlimited Systems, Inc. ("WELLCONS"), through counsel, praying that the Cease and Desist Order dated 23 June 2022 ("Assailed CDO") issued against it be lifted, and it be allowed to sell its health, wellness and beauty products to its consumers without recruiting new members or sellers pending the resolution of the Motion.

The Assailed CDO directed WELLCONS, its president Mr. Merarie E. Pailagao (Mr. Pailagao), and their agents to immediately cease and desist from engaging in the unlawful/unauthorized solicitation, offer and/or sale of securities in the form of investment contracts, after the Commission found, based on substantial evidence, that such investment-taking activities were being carried out in violation of Section 8 of the Securities Regulation Code (SRC).[1] The dispositive portion of the Assailed CDO reads, in part:

> "**WHEREFORE**, premises considered, directing Wellcons Unlimited Systems, Inc., its president, Merarie E. Pailagao, its officers, operators, administrators, promoters, representatives, salesmen, agents, investment team planners, mentors, enablers, influencers, assigns, conduit entities, subsidiaries, and any and all persons claiming and/or acting for and in their behalf, are hereby ordered to **IMMEDIATELY CEASE AND DESIST** from engaging in the unlawful/unauthorized

> solicitation, offer and/or sale of securities in the form of investment contracts and/or any other similar or related acts, until the requisite registration statement is duly filed with and approved by the Commission.
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> Wellcons Unlimited Systems, Inc., its president, Merarie E. Pailagao, its officers, operators, administrators, promoters, representatives, salesmen, agents, investment team planners, mentors, enablers, influencers, assigns, conduit entities, subsidiaries, and any and all persons claiming and/or acting for and in their behalf are likewise directed to immediately **CEASE** their internet presence relating to the transactions and investment scheme covered by this *Cease and Desist Order.* The Commission will institute the appropriate administrative and criminal action against any persons or entities found to act as solicitors, information providers, salesmen, agents, brokers, dealers or the like for and in their behalf.
>
> Finally, the Commission hereby **PROHIBITS** Wellcons Unlimited Systems, Inc., its president, Merarie E. Pailagao, its officers, operators, administrators, promoters, representatives, salesmen, agents, investment team planners, mentors, enablers, influencers, assigns, conduit entities, subsidiaries, and any and all persons claiming and/or acting for and in their behalf from transacting any business involving the funds in its depository banks and/or in any non-bank financial institution, and from transferring, disposing, or conveying in any manner, any and all assets, properties, real or personal, including bank deposits, if any, of which the named persons herein may have interest, claim or participation, whether directly or indirectly, under their custody, to ensure the preservation of the assets of the investors."

In its *Motion*, WELLCONS maintained that it is not engaged in the sale of unregistered securities, arguing that its business consists mainly in the sale of health products which is distributed to the consuming public through the various packages available i.e. Fast Track Package, Global Package, and Executive Package, which have different subscription amounts.[2]

WELLCONS explained that the effectiveness and profitability of its business strategy lies in (a) its ability to sell products at higher prices, and (b) its act of gratitude to its member-investors. As regards the first strategy, WELLCONS alleged that it is capable of giving its member-investors the commissions and rewards because it is selling its products at higher prices i.e. the Health Cee Zinc Plus that it purchased at P250.00/box is being sold at P1,800.00.[3] In relation to its second strategy, WELLCONS claimed that it has not promised its member- investors guaranteed returns, but is merely giving them rewards as a token of

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[2] Pars. 10 and 11 of the Motion

gratitude for their patronage of its products, and to ensure that new customers will be attracted to purchase its products.[4] WELLCONS further clarified that the Bronze, Gold and Silver Packages that it was selling to the public were not investment packages but merely a package of health and beauty products with a determined package price, and the daily reward and the monthly earnings were allegedly not guaranteed.[5]

Finally, WELLCONS countered the finding that it is offering unregistered securities by alleging that it has no control over the persons who are advertising its packages using the online platforms such as Facebook and YouTube. WELLCONS claimed that these persons are actually misrepresenting the business strategy of WELLCONS for which the latter does not have any involvement with and supervision.

On 15 July 2022, the EIPD filed its "*Comment/Opposition (To the Verified Motion to Lift Cease and Desist Order)* of even date praying for the denial of the Motion, thereby making the CDO permanent. The EIPD maintained that WELLCONS is engaged in the unauthorized sale and/or offer of unregistered securities in the form of investment contracts to the public, and has failed to overcome the evidence presented by the EIPD which consisted of the complaints filed by its member-investors, the screenshots of the advertising/marketing materials which were published/posted online and in social media, and the certifications issued by the operating departments of the Commission. The EIPD claimed that WELLCONS used consumer products to make it appear that its business is limited to the sale thereof, when in reality, WELLCONS is actually selling/offering investment contracts without the required license from the Commission.

The EIPD also emphasized how WELLCONS willfully defied the CDO when it continued selling/offering unregistered securities through another entity named "WCI" or WELLCONS CONSUMERISM INC., which it even attempted to register with the SEC-Cagayan De Oro Extension Office. The EIPD manifested in its Comment that the Certificate of Registration of WELLCONS was already revoked on 5 July 2022[6] on the ground of serious misrepresentation on what it is doing to the damage and prejudice of the investing public.

After a careful examination of the allegations, arguments and evidence presented in support of the Motion, the Commission finds the same to be wanting in merit to justify the lifting of the Assailed CDO.

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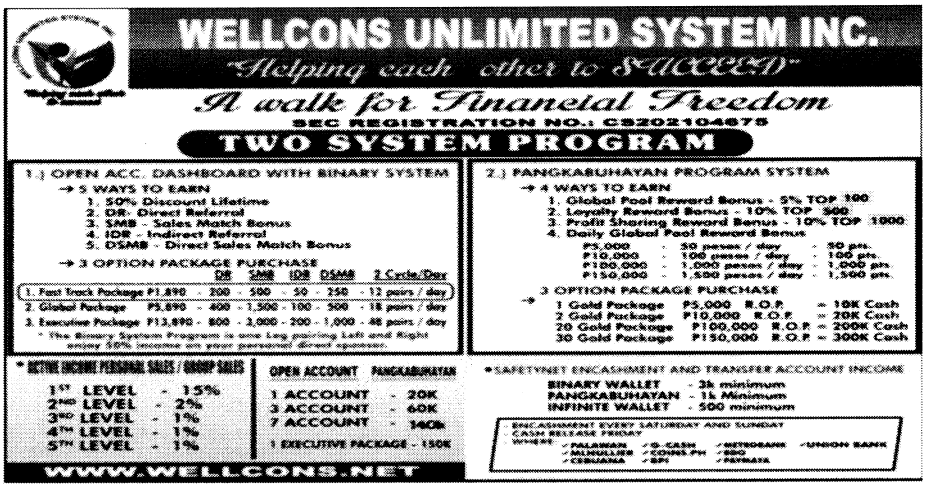
[4] Pars. 12 and 18 of the Motion
[5] Par. 20 of the Motion.

The complaints which the EIPD submitted in evidence show that member-investors actually purchased investment packages with the guaranteed returns, rewards, and monthly earnings as their main consideration for parting with their hard earned money. In fact, the Sales Invoice[7] that WELLCONS submitted in evidence shows that what was purchased by Pro-Am Magadan were "Fast Track Package" and "Gold Package (Pangkabuhayan)" which under its published materials, entitled her to direct and indirect bonus, pairing bonus, sales match bonus, daily rewards, to name a few, to wit:



There is in fact nothing in the Sales Invoice submitted by WELLCONS that will show that Pro-Am Magadan (as well as the other investors) purchased WELLCONS products, contrary to the claim of WELLCONS that what it is selling are health products only. If at all, the Sales Invoice confirmed the sale/offer of investment packages by WELLCONS as stated in the foregoing marketing/advertising material which is published/posted online.

More importantly, the foregoing shows that the allegations and evidence presented by WELLCONS are replete with admissions that the packages that were offered and sold to the public were investment contracts because its member-investors actually bought the same primarily because of the returns/earnings that were promised, and not because of the products. Under this scheme, member-investors of WELLCONS clearly had a stake in the operations of the company in the sense that they profited and/or stood to profit in the continued sale of the investment packages.

At this juncture, it should be emphasized that just like the securities acts of other jurisdictions, specifically the United States of America, the

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SRC adopted a very broad definition of securities,[8] which is intended to be liberally construed in order to achieve the main purpose of its enactment: regulation of the issuance and sale of securities and prevention of fraud.

In relation to the instant case, Rule 26.3.5 of the Implementing Rules and Regulations of the SRC (SRC-IRR) defines an "investment contract" as follows:

> "An investment contract means a contract, transaction or **scheme** whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others. It is **presumed to exist** whenever a person seeks to use the money or property of others on the promise of profits." (Emphasis and underscoring supplied)

The law considers investment contract as securities because what the purported issuer is, or will be using to further his business is money put in by the public who expects a return of their investment. Consistent with the broad definition of securities, the term investment contract should include and cover all forms and varieties thereof which are known or considered, or ought to be known or considered to be such, in the financial world.

Moreover, cognizant of the fact borne by the sad experiences of people around the globe who have been duped by scamsters and con artists, the Supreme Court, adopting the doctrine in the United States (US) case of *SEC v. W.J. Howey Co.,* held in *Power Homes Unlimited Corporation vs Securities and Exchange Commission*[9] (Power Homes Case), that the term "investment contract" embodies a flexible principle that is intended to cover schemes devised by persons who seek to use the money of others on the promise of profits, thus:

> "It behooves us to trace the history of the concept of an investment contract under R.A. No. 8799. Our definition of an investment contract traces its roots from the 1946 United States (US) case of *SEC v. W.J. Howey Co.* In this case, the US Supreme Court was confronted with the issue of whether the Howey transaction constituted an "investment contract" under the Securities Act's definition of "security." The US Supreme Court, recognizing that the term "investment contract" was not defined by the Act or illumined by any legislative report, held that "Congress was using a term whose meaning had been crystallized" under the state's "blue sky" laws in existence prior to the

[8] "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." (Section 3.1 of the SRC)

> adoption of the Securities Act. Thus, it ruled that the use of the catch-all term "investment contract" indicated a congressional intent to cover a wide range of investment transactions. It established a test to determine whether a transaction falls within the scope of an "investment contract." Known as the Howey Test, it requires 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, (4) to be derived solely from the efforts of others. Although the proponents must establish all four elements, **the US Supreme Court stressed that the Howey Test "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits**." Needless to state, any investment contract covered by the Howey Test must be registered under the Securities Act, regardless of whether its issuer was engaged in fraudulent practices." (Emphasis and underscoring supplied)

In the *US case of SEC vs Joiner Leasing Corp.,*[10] the US Supreme Court emphasized that it is not the nature of the assets behind a particular instrument which defines whether the same should be considered a security; what is controlling is the attribution given in commerce based on the terms thereof, to wit:

> "In applying acts of this general purpose, the courts have not been guided by the nature of the assets back of a particular document or offering. The test, rather, is what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect. In the enforcement of an act such as this, it is not inappropriate that promoters' offerings be judged as being what they were represented to be." (Underscoring supplied)

On the basis thereof, it can be said that an investment contract is considered to exist once it is determined that the proponent is offering to the public an opportunity to contribute money and to share in the profits of the operations. In this regard, the importance of a "common enterprise" managed by the proponent in furtherance of the business, comes into play considering that purchasers who are normally untrained in finance, merely rely on the proponent's knowledge and expertise in carrying out the grand investment scheme.

More importantly, in our jurisdiction, a transaction or scheme where a person uses or intends to use money or property of others with a promise of profits is presumed by law to be an investment contract which should be registered with the Commission prior to the offer/sale thereof.

Applying the rules, as well as the parameters established by law and jurisprudence, this Commission finds no cogent reason to disturb its earlier finding. The Assailed CDO should be, as it is hereby is, sustained and made permanent.

Contrary to the vigorous assertion by WELLCONS that its business operations are solely limited to the sale of health and consumer products, its own admissions and the evidence presented by the EIPD show that WELLCONS is actually engaged in the sale/offer of investment contracts. As elaborated in the Assailed CDO, all the elements prescribed under the Howey Test are present in this case, and this established fact was not overcome by WELLCONS.

Finally, we agree with the EIPD that the revocation of the Certificate of Registration (the "Certificate") of WELLCONS justify the outright denial of the Motion on the ground of mootness. The revocation of its Certificate resulted in the demise of WELLCONS as a corporate entity. Consequently, any action by this Commission on the Motion will serve no practical purpose because in the nature of things, the same can no longer be implemented.

WHEREFORE, premises considered, the *Motion to Lift the Cease and Desist Order* dated 4 July 2022 filed by Wellcons Unlimited Systems, Inc., through counsel, is hereby **DENIED** for lack of merit. The Cease and Desist Order dated 23 June 2022 issued against the subject corporation, its president, directors, stockholders, officers, representatives, salesmen, solicitors, agents, uplines, enablers and influencers, and any and all persons claiming for and in their behalf, is hereby made **PERMANENT.**

The Enforcement and Investor Protection Department is hereby **DIRECTED** to: (a) serve this **RESOLUTION** to the President, General Manager, Corporate Secretary, Treasurer or In-House Counsel of Wellcons Unlimited Systems, Inc.; and (b) post copies of the **RESOLUTION** at the entrance of the main offices and/or branches, if any, of Wellcons Unlimited Systems, Inc.

Let a copy of this **RESOLUTION** be posted in the Commission's website and furnished to all relevant operating departments/offices of the Commission for their information and appropriate action.

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The Enforcement and Investor Protection Department, in coordination with other concerned departments, is **FURTHER DIRECTED** to file a compliance with the Commission En Banc within ten (10) days from receipt of this **RESOLUTION**.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner