



ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT

In the Matter of:

NEW GEN -Z HOLDINGS INC;
SEC Registration No. 2023080111516-07.

SEC-EIPD Case No. 2023-7626
For Revocation of Primary
Registration

THE ALL NEW GENERATION Z INC; and
SEC Registration No. 2023080111609-00

NEW GEN-Z HOLDINGS MARKETING GROUP.
X-----X

ORDER OF REVOCATION

This has reference to the reports received by the Commission that **NEW GEN-Z HOLDINGS MARKETING GROUP, NEW GEN-Z HOLDINGS INC. and/or THE ALL NEW GENERATION Z INC.** ("NEW GEN-Z", for brevity) are allegedly engaged in the offering/selling of unregistered securities to the public without prior registration and/or secondary license to offer and solicit investments from the Commission.

NEW GEN-Z HOLDINGS INC., is a corporation registered with the Securities and Exchange Commission ("**SEC, Commission**") on 08 August 2023 under Company Registration No. 2023080111516-07 and with principal office located at 1401 Antel Corporate Centre, 121 Valero Street Salcedo Village, Singkamas, City of Makati, Fourth District, National Capital Region (NCR), 1204. Its primary purpose as stated in its Articles of Incorporation ("AOI") is, as follows:

*"To invest in, purchase, or otherwise acquire and own, hold, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of real property and personal property of every kind and description, including shares of stocks, bonds, debentures, notes, evidences of indebtedness and other securities or obligations of any corporation or corporations, association or associations, domestic or foreign, for whatever lawful purpose or purposes the same may have been organized and to pay thereof in money or by exchanging thereof stocks, bonds, and other evidences of indebtedness or securities of this or any other corporations, stocks, bonds, debentures, contracts, or obligations, to receive, collect and dispose of interest, dividends, and income arising from such property, and while the owner or holder thereof, to exercise all the rights, powers and privileges of ownership, including all voting powers of any stocked so owned; **provided that it shall not act as stock broker or dealer in securities nor solicit, take, accept and/or issue investments and/or investment contracts from public investors;***

Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts." (Emphasis supplied)

On the other hand, **THE ALL NEW GENERATION Z INC.** is also a registered corporation with the Commission on 09 August 2023 under Company Registration No. 2023080111609-00 and with the same principal office as **NEW GEN-Z HOLDINGS INC** which is located at Unit 1401 Antel Corporate Centre, 121 Valero Street Salcedo Village, San Antonio, City of Makati, Fourth District, National Capital Region (NCR), 1203. Its primary purpose as stated in its Articles of Incorporation ("AOI") is, as follows:

*"To engage in, conduct and carry on the business of buying, selling, distributing, marketing on retail basis insofar as may be permitted by law, all kinds of goods, wares and merchandise of every kind and description, and enter into all kinds of contracts for export, import, purchase, acquisition sale on retail basis and other disposition for its own account as principal or in representative capacity as main distributor, manufacturer's representative, merchandise broker, indenter, commission, merchant, factors, or agents, upon consignment of all kinds of goods, services, merchandise or products whether natural or artificial, **without engaging in investment solicitation nor investment taking activity from public investors;***

Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts." (Emphasis supplied)

Investigation conducted by the Department revealed that **NEW GEN-Z**, without any authority from the Commission, recruits investors by offering an investment program with guaranteed profits ranging **from 5% to 11%, equivalent to a total of 60% or 132% return of investment** within a one (1) year lock-in period.

A scrutiny of its business platform¹ and the marketing/table of investment plan of **NEW GEN-Z** undoubtedly show that it is offering and selling securities in the form of investment contracts in the guise of a **co-partnership program**. The investment scheme as presented through social media (*displayed under "NEW GEN-Z HOLDINGS MARKETING GROUP*) is summarized as follows:

1. **Plan A** for **5% monthly gain** or a total of **60% per annum** with payout every month.
2. **Plan B** for **6% monthly gain** or a total of **72% per annum** with payout every 2-month period.
3. **Plan C** for **7% monthly gain** or a total of **84% per annum** with payout every 3-month period.
4. **Plan D** for **8% monthly gain** or a total of **96% per annum** with payout every 4-month period.
5. **Plan E** for **9% monthly gain** or a total of **108% per annum** with payout every 6-month period.
6. **Plan F** for **11% monthly gain** or a total of **132% per annum** with payout every 12-month period.

¹ Presentations of the Marketing Agents, Memorandum of Agreement and other business schemes posted on social media.

As a result of the EIPD's investigation, on 09 November 2023, the Commission issued and posted on the Commission's website an SEC Advisory² informing the public that **NEW GEN-Z** is not authorized to solicit investments from the public.

Thereafter, the EIPD issued on 05 January 2024, a **Show Cause Order** (dated 03 January 2024) against **NEW GEN-Z HOLDINGS INC.** and **THE ALL NEW GENERATION Z INC.** and their **identical incorporating directors**, namely, Homer C. Lim, Darwin Briz C. Lopez, Misher Liza G. Menor, Arjay C. Bautista, Genver Crisologo Alfiler, Mary Rose Anne Young Agosto, and John Keven Perez Varga directing the company to show cause why:

1. The Certificate of Incorporation of **NEW GEN-Z HOLDINGS INC.** and **THE ALL NEW GENERATION Z INC.** should not be revoked for serious misrepresentation as to what the corporation can do or is doing to the great prejudice or damage to the general public; and
2. No administrative sanctions and/or criminal charges should be imposed against the subject corporation and its incorporators, directors and officers for violations of Securities Regulation Code (SRC) and its Implementing Rules and Regulations, and the Financial Products and Services Consumer Protection Act.

The Show Cause Order was sent to the official email address of **NEW GEN-Z HOLDINGS INC.** and **THE ALL NEW GENERATION Z INC.** per the records of the Commission at leonaralpz@gmail.com on 5 January 2024.

To date, despite such receipt and presumptive notice of the Show Cause order as detailed above, the company failed to respond, which shall be construed as a waiver of its right to be heard as to matters stated in the aforementioned Show Cause Order.

Hence, we now resolve the instant proceedings on the basis of the documents submitted and the available information and evidence gathered.

ISSUE

The sole issue to be resolved is whether or not **NEW GEN-Z** is engaged in the selling or offering for sale of securities that require authority from the Commission, and therefore, would warrant the revocation of its Certificate of Incorporation/Registration 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 or damage to the general public and for engaging in *ultra vires* acts in violation of the Revised Corporation Code of the Philippines and the imposition of administrative sanction and/or criminal charges in violation of R.A. No. 8779 and Section 11 of the Republic Act 11765 also known as the Financial Products and Services Consumer Protection Act.

DISCUSSION

NEW GEN-Z IS ENGAGED IN THE OFFERING OR SELLING FOR SALE OF SECURITIES

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

² <https://www.sec.gov.ph/advisories-2023/new-gen-z-holdings-marketing-group/#gsc.tab=0>

character. The same provision enumerates different securities which include, among others, investment contracts, as enumerated on the same provision and under SRC Rule 26.3.5 of the 2015 Implementing Rules and Regulations of the Securities Regulation Code (2015 SRC IRR), to wit:

“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.

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.”

The elements of an investment contract enumerated in the case of *Power Homes Unlimited Corporation vs. SEC* (G.R. No. 164182 February 26, 2008) were traced from the case of *SEC vs. Howey Co.* (66 S.Ct.1100 May 27, 1946) and was later modified in the case of *SEC vs. Glenn W. Turner Enterprises, Inc.* (474 F.2d476 February 1, 1973), as follows:

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

It must be emphasized that Section 8.1³, in relation to Section 12.1⁴ of the Securities Regulation Code (SRC) provides the prohibition on the selling or offering for sale of unregistered securities to the public. Thus, securities such as investment contracts and credit agreements must be registered with the Commission pursuant to Sections 8 and 12 of the SRC before the same can be **offered or sold** for distribution to the public.

Conversely, SRC Rule 3.1.17.4, provides, among others, that the distribution or making available or offering of any material through, among others, information technology is presumed to be a public offering as contemplated under SRC Rule 3.1.17.⁵

Aside from the prohibition on the selling or offering for sale of unregistered securities, the SRC also prohibits any person to engage in the business of buying and selling of securities (broker⁶) or to act as a salesman⁷ or agent in relation to the selling or offering for sale of securities to the public without the necessary registration from the Commission⁸. Thus, any

³ **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.

⁴ **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.

⁵ **SRC Rule 3.1.17 Public Offering** is any offering of securities to the public or anyone, whether solicited or unsolicited.

⁶ **Section 3.3 of the SRC** – “Broker” is a person engaged in the buying and selling of securities to the account of others.

⁷ **Section 3.113 of the SRC** – “Salesman” is a natural person, employed as such or as an agent, by a dealer, issuer or broker to buy and sell securities.

⁸ Section 28 of the SRC on the Registration of Brokers, Dealers, Salesmen & Associated Person

person, without proper license from the Commission who acts as brokers or agents of a company, selling or convincing people to invest in the 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 (Php5,000,000.00) or penalty of Twenty-One (21) years imprisonment or both pursuant to Section 73 of the SRC.

Based on the information gathered, **NEW GEN-Z** shows that its main strategy is the offering and selling securities through its investment scheme as presented on social media (*displayed under "NEW GEN-Z HOLDINGS MARKETING GROUP"*). Such offering is being made under the pretense of a **co-partnership program**, however, evidence showed that **NEW GEN-Z** is engaged in the selling and/or offering of securities in the form of investment contract as the following elements are present:

1. There is an **investment of money**.

Investors were enticed to place their money amounting to a minimum amount of Php100,000.00.

2. The money-investment are placed into a **common enterprise**.

The monies as investment goes to **THE ALL NEW GENERATION Z INC.** by depositing it to its bank account.

3. The placement of money gives rise to an **expectation of profits**.

Investors were prompted to invest their money in NEW GEN-Z with the promise of earning from **5% to 11% or for a total earning of 132% per annum**;

4. Investors are **expecting to earn profits from the entrepreneurial and managerial efforts of others**.

Investors were solely required to invest their money without any need to participate in the alleged business operations.

Based on Commission's records, **NEW GEN-Z HOLDINGS MARKETING GROUP** is not registered with the Commission as a corporation or a partnership. Likewise, the aforementioned entity has not secured prior registration and/or license from the Commission to solicit investments from the public as prescribed under Sections 8 and 28 of the Securities Regulation Code (SRC).

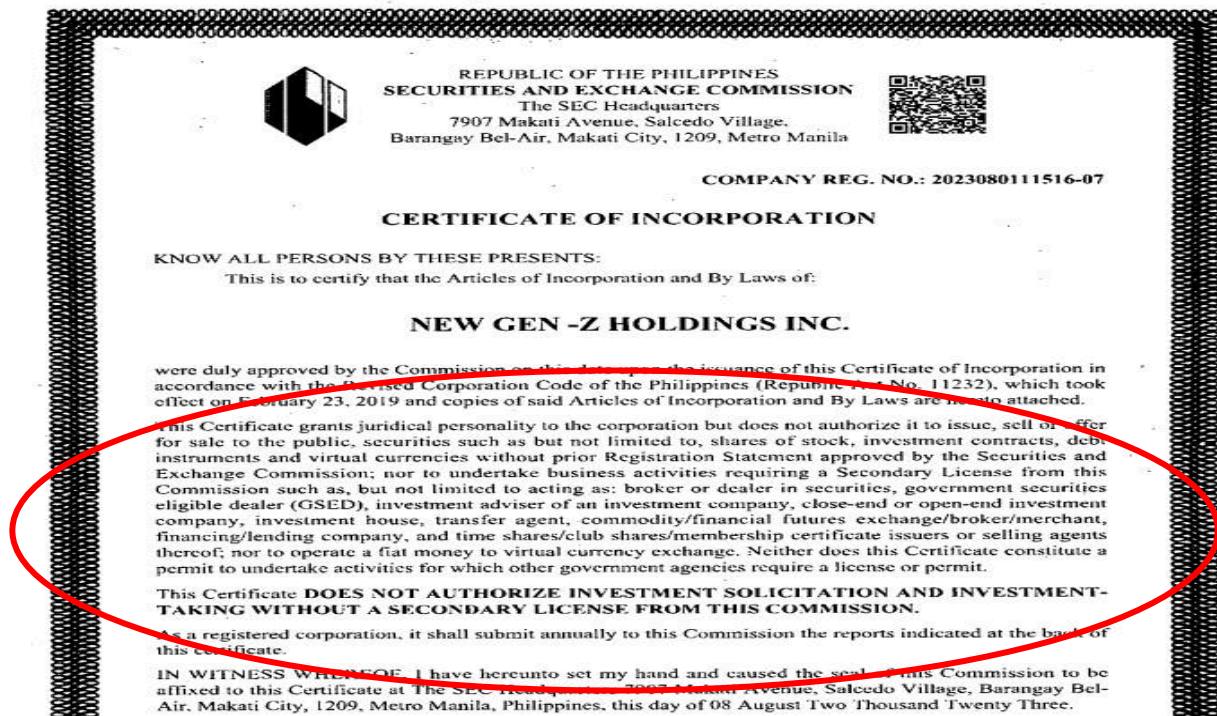
While **NEW GEN-Z HOLDINGS INC.** and **THE ALL NEW GENERATION Z INC.** are registered with the Commission, both are not authorized to solicit investments from the public since both have not secured prior registration and/or secondary license from the Commission to engage in such activity. Pursuant thereto, the Commission issued an Advisory informing the public that **NEW GEN-Z** group has no authority to solicit, investments from the public.

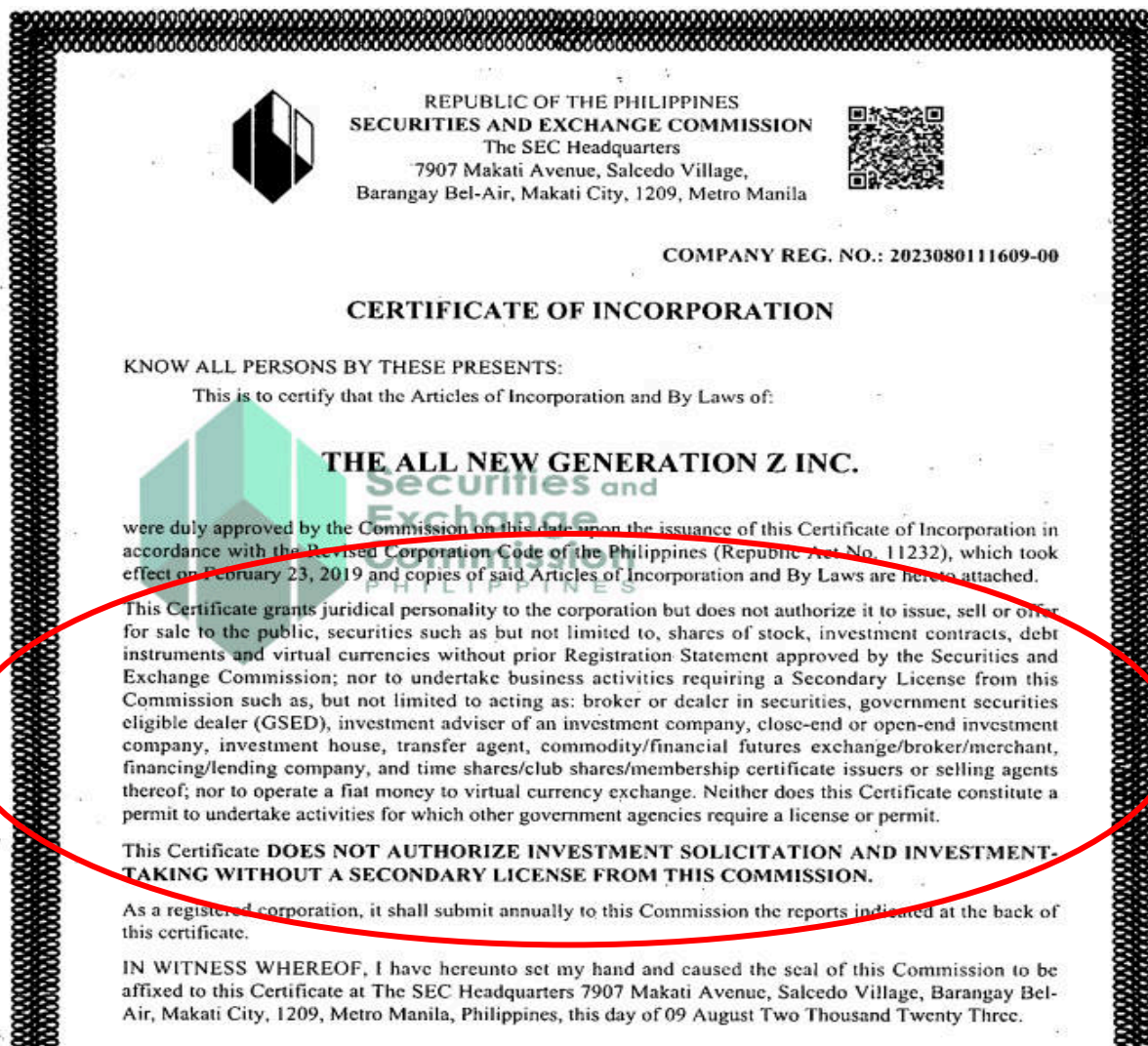
It is important to emphasize that **NEW GEN-Z HOLDINGS INC.** and **THE ALL NEW GENERATION Z INC.** as juridical persons, are only allowed to exercise powers inherent to their corporate existence as provided in the Revised Corporation Code of the Philippines and

those conferred in their Articles of Incorporation (AOI). In other words, what a corporation can do is necessarily circumscribed by its primary purpose clause in its AOI.

Please note that the registrations of **NEW GEN-Z HOLDINGS INC.** and **THE ALL NEW GENERATION Z INC.** with the Commission as corporations only grant them the authority to engage into the purposes stated in their Articles of Incorporation (AOI) which do not include the offering to sell, selling or promoting the sale to the public its own securities in the form of investment contract. In fact, their AOIs categorically provided that **NEW GEN-Z HOLDINGS INC.** and **THE ALL NEW GENERATION Z INC.** “**shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts.**”

Nonetheless, 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 *ultra vires*. 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 fact, the purpose in both Articles of Incorporation of **NEW GEN-Z HOLDINGS INC.** and **THE ALL NEW GENERATION Z INC.** expressly prohibit them to operate an investment taking scheme’.





In the instant case, it is stated in the AOIs and Certificates of Incorporation of **NEW GEN-Z HOLDINGS INC.** and **THE ALL NEW GENERATION Z INC.** that these corporations are not authorized to engage in the business of investment activities, thus considered as an *ultra vires* act and therefore constitute serious misrepresentation.

Thus, the act of **NEW GEN-Z** through its affiliates in allowing certain persons acting as their agents or representatives to make public presentations of their investment scheme, inviting the public to invest in the companies through social media renders them liable for the unauthorized public offering of securities and the misrepresentation committed in connection with such public offering.

Section 44 of the RCCP provides:

SEC. 44. Ultra Vires Acts of Corporations. — No corporation shall possess or exercise corporate powers other than those conferred by this Code or by its articles of incorporation and except as necessary or incidental to the exercise of the powers conferred.

In an opinion⁹, the Commission pronounced that:

⁹ SEC-OGC Opinion No. 11-33 dated 29 July 2011 addressed to Mr. Jesus B. Lapuz.

"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.

Therefore, the offering of unregistered securities to the public by **NEW GEN-Z** constitutes fraudulent transactions under Section 26 of the SRC as the public were made to believe that respondents have the authority to deal on such securities:

"SEC. 26. Fraudulent Transactions. – It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale 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 or 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."

As held in the case of **SEC vs. CJH Development Corporation, (G.R. No. 210316, 28 November 2016)**¹⁰, the Supreme Court ruled that *the sale and/or offer of securities without the requisite license, necessarily operates as a fraud on investors, thus:*

"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)

Further, the **Financial Products and Services Consumer Protection Act (FCPA)** specifically provides that any form of deceptive solicitation such as the offering or selling of investment scheme from the public without a secondary license or permit from the Commission constitute investment fraud and is an unlawful activity in violation of Section 11 of the said Act.

In addition, the investment scheme of respondents **NEW GEN-Z** promising a high return of **5% to 11%, equivalent to a total of 60% or 132% return of investment** within a one (1) year lock-in period has the characteristics of a ponzi scheme. A ponzi scheme is an investment program that offers impossibly high returns and pays these returns to

¹⁰ SEC vs. CJH Development Corporation, (G.R. No. 210316, 28 November 2016)

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 bonds¹¹ 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.¹²

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

Pursuant to Section 6 of Presidential Decree 902-A, the Commission has the power to suspend, or revoke, after proper notice and hearing, the franchise of certificate of registration or corporations, partnerships and associations, on the ground of serious misrepresentations as to what the corporation can do or is doing to the great prejudice of or damage to the general public. Further, 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.”*

Considering that nowhere is it stated in the respective primary purposes of **NEW GEN-Z HOLDINGS INC.** and **THE ALL NEW GENERATION Z INC.** that they are not authorized to engage in the selling or offering for sale of securities to the public, compounded by the fact that they do not have the required Secondary License from the Commission to offer or sell securities to the public, their activity of selling or offering the public securities or investment contracts is considered an *ultra vires* act and therefore constitutes serious misrepresentation as to what the corporations can do to the great prejudice or damage to the general public, a ground for the revocation of the corporations’ primary franchise or certificates of incorporation under PD 902-A.

WHEREFORE, premises considered:

¹¹ Actually, postal reply coupons

¹² *People v. Priscilla Balasa*, G.R. 105367, September 3, 1998.

1. For violation of Section 44 of the Revised Corporation Code of the Philippines (RCC or R.A. 11232) in relation to Sections 8.1, 12.1, 28.1 and 26.1 of the Securities Regulation Code, Section 11 in relation to Section 3 (f) of the Financial Products and Services Consumer Protection Act, P.D. 902-A and Section 179 (j) of the RCC and Section 5 (m) of the SRC, the Certificates of Incorporation and the registrations of **NEW GEN-Z HOLDINGS INC.** and **THE ALL NEW GENERATION Z INC.** as corporations, are hereby **REVOKED**; and
2. The following incorporators-directors of **NEW GEN-Z HOLDINGS INC.** and **THE ALL NEW GENERATION Z INC.**, for conceptualizing, offering and propagating their “co-partner plans” to the public, an unregistered security in the form of an investment contract, are found to be administratively liable for investment fraud, a fraudulent act, and are hereby **DISQUALIFIED** from being a director of a corporation for a period of five (5) years from date of this Order pursuant to Section 26 of the Revised Corporation Code of the Philippines:
 - a) **HOMER C. LIM;**
 - b) **DARWIN BRIZ C. LOPEZ;**
 - c) **MISHER LIZA G. MENOR;**
 - d) **ARJAY C. BAUTISTA;**
 - e) **GENVER CRISOLOGO ALFILER;**
 - f) **MARY ROSE ANNE YOUNG AGOSTO;** and
 - g) **JOHN KEVEN PEREZ VARGA.**

Accordingly, let this Order be posted on 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 Commission. Further, the Information and Communications Technology (ICTD) of the Commission is likewise requested to enter the “**REVOKED**” status of the subject corporation in the electronic/online database of the Commission.

SO ORDERED.

Makati City, 02 February 2024.


ATTY. OLIVER O. LEONARDO
Director