Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

In the matter of
PIPC CORPORATION
(formerly known as CARAVAGGIO HOLDINGS, INC.),

SEC Admin. Case No. 08-11-133
For: Revocation of Corporate Registration

ENFORCEMENT AND PROSECUTION DEPARTMENT
(now known as the Enforcement & Investor Protection Department),
Petitioner,
x---x

DECISION

This resolves the Petition, filed by the Enforcement and Prosecution Department (EPD), praying for the revocation of the Certificate of Registration of **PIPC CORPORATION** (PIPC Corp.) on the ground of serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public under Sec. 6 (l) (2) of Presidential Decree No. 902-A (PD 902-A), as amended. It also prays for the issuance of Summons to be effected by publication pursuant to Section 4-9 of the 2006 Rules of Procedure of the Securities & Exchange Commission (SEC).

Summonses were issued but were returned unserved upon PIPC Corp. and its officers. Because PIPC Corp. and its officers moved out of their registered addresses and their whereabouts are unknown and cannot be ascertained by diligent inquiry, service of summons upon PIPC Corp. and its officers were ordered to be effected by publication on 19 October 2011. On 06 January 2012, the EPD filed a Compliance stating that the Order and the Summons were published in the Philippine Star on 29 November 2011 and that the same were posted in the SEC website.

Since no Answer has been filed within the period stated in the published Order, PIPC Corp. is considered as "in default" pursuant to Section 3-12 of the same Rules of Procedure, which reads:

> "Sec. 3-12. Effect of Failure to Answer. — If the respondent fails to answer the complaint within the abovestated 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 that the complainant should be required to submit ex parte additional evidence."

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Hence, we resolve the petition based on the allegations supported by substantial evidence.

Petitioner EPD is the SEC's department mandated to prosecute cases for the revocation of certificates of registration of corporations that violate the laws it implements.

Respondent PIPC Corp. is a stock corporation originally registered as "Caravaggio Holdings, Inc." with the SEC on 21 February 2001 under SEC Registration No. A200102293.[1] Based on the latest General Information Sheet[2] filed with the SEC, its principal office address is located at 31st Floor, Citibank Tower, 8741 Paseo de Roxas, Makati City. Its primary purpose, as stated in its Amended Articles of Incorporation,[3] is as follows:

> "To establish a lawful and formal medium through which general or special management services and/or specific technical, consultancy or advisory services including research and allied facilities may be offered to any and all kinds of enterprises, projects or programs. Within this frame of reference, the scope of the Corporation business shall include but not necessarily be limited to the services specifically stated hereunder, it being understood that the enumeration of specific purposes shall not be held to be a restriction to the undertaking by the Corporation of allied and/or incidental services to that hereby specifically set forth, or to the carrying on by the Corporation of other activities necessary to its existence, to its efficient operation, or conducive to the proper allocation of its resources, **except management of funds, portfolio and similar assets of the managed entity or corporation and without engaging as securities adviser, broker/dealer, and investment house**."

In other words, PIPC Corp. was authorized to act only as a technical or research arm of its clients, whether foreign or local, providing management, consultancy or advisory services, without engaging in activities of a securities adviser, broker/dealer, and investment house or engaging in the management of funds, portfolio and similar assets of the managed entity or corporation.

Notwithstanding the limitations provided by law and its Articles of Incorporation, the Commission received several complaints alleging, among others, that PIPC Corp., through its directors, officers, employees and agents, has solicited from several individuals (complainants-investors) such amounts of money to be invested in

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[1] Records, page 192, Vol. V.
[2] Id., pp. 184-189, Vol. V, 2006 GIS.
[3] Id., p. 183, Vol. V.

Performance Investments Products Corporation (PIPC, a fully owned subsidiary of the Performance Group of Companies) with a promise of higher returns ranging from 12% to 18% interest per annum. It was also alleged that the funds of various investors pooled, batched and deposited by PIPC Corp will form a massive asset base, which will be entrusted to professional and experienced foreign traders chosen by PIPC Corp, while the profits generated will be distributed to the investors without any participation or effort on their part. It was further alleged that PIPC Corp.'s directors, officers, employees and agents conceptualized and packaged the program including the entitlement to the benefits, distributed brochures and solicited monies from complainants-investors and that the latter relied wholly on their representations and enticements.

At the core of this case is determining whether PIPC Corp. exceeded its purposes under its Articles of Incorporation, or specifically, whether it was holding itself out to the public as licensed to offer or sell securities, or to act as a securities adviser, broker/dealer or investment house.

Section 45 of the Corporation Code defines and limits the powers that may be exercised by a corporation to those conferred by law, its Articles of Incorporation and those necessary or incidental to the exercise of the powers so conferred.

In the instant case, the limits of the power of PIPC Corp. as a corporation is very clear in its Articles of Incorporation. Clearly, it is not authorized to engage in the management of funds, portfolio and similar assets of the managed entity or corporation. Nor is it authorized to act as securities adviser, broker/dealer or investment house. While its Certificate of Registration states that juridical personality is granted to the corporation, PIPC Corp. is not authorized "to undertake business activities requiring a secondary license or permit to operate from the SEC or other government agency unless such license or permit is likewise obtained.[4]"

Anent thereto, Section 8 of the Securities Regulation Code (SRC) prohibits the offering for sale or selling of securities within the Philippines without a registration statement duly filed with and approved by the SEC. Securities, as defined in Section 3.1 of the SRC, include investment contracts. An investment contract is 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.[5] In *Power Homes Unlimited Corporation v. Securities and Exchange Commission*,[6] the Supreme Court held that an investment contract exists when there is (1) an investment of money, (2) in a common enterprise, (3) with expectation of profits, and (4) primarily from efforts of others.

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[4] Records, p. 192, Vol. V.
[5] Rule 3 of the Amended Implementing Rules and Regulations of the SRC.
[6] G.R. No. 164182, 26 February 2008.

In the instant case, all the elements of an investment contract are present. PIPC Corp., through its directors, officers, employees and agents, enticed complainants-investors to place their money in PIPC with a promise of higher investment returns than bank deposits. Company and product brochures[7] distributed by PIPC Corp. to complainants-investors reveal that funds of various investors are pooled, batched and deposited by PIPC, through PIPC Corp., with a PIPC designated bank account acting as custodian bank, to form a massive asset base. The funds will thereafter be remitted to an offshore account in the name of Performance Group of Companies (Performance Group), and will thereafter be traded by currency traders selected and monitored by PIPC Corp. Profits generated from such trading is credited into the Profit and Loss Account, which at the end of the eight calendar week lock-in period, will be distributed among the investors.

The same company and product brochures also show that PIPC Corp. selects and monitors the activities of the currency traders, offers investment opportunities with professional management and assists in completing a balanced investment portfolio by optimizing capital investment with calculated risk management. Said brochure also indicates that PIPC Corp. is offering for sale to the public the investment product called "Performance Managed Portfolio (PMP), which is a partnership agreement between the investor and PIPC to participate in the global financial market."

The unrebutted affidavits[8] submitted by the complainants-investors maintain that PIPC Corp., through its directors, officers, employees and agents, enticed complainants-investors to place their monies in PIPC with a promise of profits ranging from 12% to 18% interest per annum, through its investment product PMP, at relatively low-risk as opposed to other types of traditional investment products offered by banks and other financial institutions.

The same affidavits also aver that PIPC Corp. utilized the invested funds for foreign currency trading and as provided in the PMP, profits realized are allocated among the investors and PIPC. Thereafter, the latter will remit the profit earned by the investor to his dollar account in the Philippines after deducting trading commissions and management fees therefrom. Complainants-investors further contend that they relied on the representations of PIPC Corp.'s directors, officers, employees and agents that the funds invested would be managed by experienced fund managers, and that the PIPC Corp. is the Philippine office/branch of Performance Group, which has affiliates in different countries, and that its directors, officers, employees and agents secured proper

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[7] Records, pp. 54-67, Vol. I.
[8] Records, pp. 1-169, Vol. V; pp. 1 – 364, Vol. IV; pp. 1-364, Vol. III; pp. 1-368, Vol. II; and pp. 1-416, Vol. 1.

individual licenses from the SEC as salesmen of securities to enable them to solicit, offer and sell the same.

The same affidavits also reveal that more than Three Million U.S. Dollars (USD$3,000,000.00) worth of investments have been collected by PIPC Corp. from complainants-investors alone.

Clearly, the requisites of an investment contract are present as the entire scheme constitutes a profit-seeking business venture offering an opportunity to its investors to share in the profits of PIPC without any participation in its operation. Consequently, the act of distributing brochures and solicitation by salesmen, agents, employees, officers and directors of PIPC Corp. constitutes a public offering of securities as defined under Rule 3, (1) (N) of the Amended Implementing Rules and Regulations of the SRC, and therefore, requires prior registration with the SEC.

However, PIPC Corp. did not obtain any license or authority to issue or offer or sell securities in the Philippines. The certifications[9] issued by the Corporation Finance Department of the SEC clearly show that PIPC Corp., Performance Investment Products Corporation, Performance Investment Products Corporation B.V. and Performance Investment Products Corporation Ltd. are not registered issuers of securities pursuant to Sections 8 and 12 of the SRC. There is also no record showing that these corporations had secured any exemption from the requirement of registration with the SEC.

Moreover, PIPC Corp's Certificate of Registration only states that juridical personality is granted to the corporation but "does not authorize it to undertake business activities requiring a secondary license or permit to operate from the SEC or other government agency unless such license or permit is likewise obtained.[10]" By offering and selling securities to complainants-investors, PIPC Corp., through its directors, officers, employees and agents, engaged, although indirectly, in the business of managing funds of PIPC, and has acted as a securities adviser, broker and dealer of said securities.

Accordingly, the acts by the salesmen, agents, employees and directors of PIPC Corp. of offering and selling investment contracts to the general public without the required license from the SEC while holding itself out as authorized to do so, violates not only Section 8 of the SRC but also contradicts the primary purpose stated in PIPC Corp.'s Articles of Incorporation. Clearly, these acts constitute serious misrepresentation as to what the corporation can do or is doing to the great prejudice or damage of the public warranting the revocation of PIPC Corp.'s Certificate of Registration pursuant to Sec. 6 (l) (2) of Presidential Decree No. 902-A (PD 902-A).

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[9] Id., pp.299-302, Vol. 2.
[10] See note 4.

WHEREFORE, premises considered, the instant Petition is hereby **GRANTED**. Accordingly, the Certificate of Registration of **PIPC CORPORATION** is hereby **REVOKED**.

Let a copy of this Decision be posted in the Commission's website and published once in a national newspaper of general circulation.

Also, let a copy of this Decision be furnished to the Company Registration & Monitoring Department, Enforcement and Investment Protection Department, Markets & Securities Regulation Department, Human Resources & Administrative Department and the Information & Communications Department for its information and appropriate action.

SO ORDERED.

17 October 2013, Mandaluyong City, Philippines.

TERESITA J. HERBOSA*
Chairperson

MA. JUANITA E. CUETO
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

ANTONIETA FORTUNA-IBE
Commissioner

*On official leave

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