Republic of the Philippines
Department of Finance
Securities and Exchange Commission
PICC Secretariat Building, PICC Complex, Pasay City

COMMISSION EN BANC

IN RE: ORGANICO AGRIBUSINESS VENTURES CORP.

SEC CDO Case No. 04-19-047

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.

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CEASE AND DESIST ORDER

This resolves the *Motion for Issuance of Cease and Desist Order* filed on 3 May 2019 by the Commission's Enforcement and Investor Protection Department (EIPD), enjoining **ORGANICO AGRIBUSINESS VENTURES CORP. (ORGANICO)** and their directors and officers, representatives, salesmen, agents, and any and all persons, conduits, entities and subsidiaries claiming and acting for and in their behalf, **to cease and desist** from engaging in activities of selling and/or offering for sale securities in the form of **investment contracts** until the requisite registration statement is duly filed with and approved by the Commission and the corresponding license to offer/sell securities is issued.

RELEVANT FACTS

ORGANICO is a domestic corporation incorporated on **8 May 2018** (Company Reg. No. CS201806980). It is alleged to be one and the same as "ORGANICO AGRIBUSINESS VENTURES," which was an unincorporated business at the start of the EIPD investigation.

Its original principal office was located at Unit 7 UN Building, Aviles Street, Alegria, **Ormoc City**, Leyte, Region VIII, Philippines 6538. This was later amended on 19 December 2018 to 3rd Floor Crown 7, Pope John Paul II Avenue, **Cebu City**.

ORGANICO's original primary purpose was:

> To engage in the business of operating a commercial Hog, Livestock, and Farm Animal Raising Facility and providing services, [including] but not limited to hog,

> livestock, farm animal raising, management, technical services, and other related activities, including farm to market service for hog, livestock, and farm animal owners and growers.
>
> Provided that, the corporation shall not solicit, accept, or take investments/placements from the public, neither shall it issue investment contracts.[1]

This was later amended as follows:

> To engage, **invest**, in the business of operating a commercial Hog, Livestock, and Farm Animal Raising Facility and providing services, [including] but not limited to hog, livestock, farm animal raising, management, technical services, and other related activities, including farm to market service for hog, livestock, and farm animal owners and growers **and to franchise**.[2]

ORGANICO has an authorized capital stock of **PHP 5 MILLION**, with **PHP 3 MILLION** subscribed and paid. Its incorporators are:

Name	Citizenship	Address
Cerrone Roial Posas	Filipino	Door 2 Fajaron Apt., Barangay Rd., Guiwan 1, Palompon, Leyte, Region VIII, Philippines 6538
Marve Subere Posas	Filipino	Door 2 Fajaron Apt., Barangay Rd., Guiwan 1, Palompon, Leyte, Region VIII, Philippines 6538
Renato Subong	Filipino	Domino Compound, Rizal Ext., Barangay 26, Ormoc City, Leyte, Region VIII, Philippines 6541
Anthony Butaslac	Filipino	Sugbo Homes, Nivel Hills, Holy Family Rd., Busay, Cebu City, Cebu, Region VII, Philippines 6003
Karen Maasin	Filipino	56 Liloan St., Airport, Ormoc City, Leyte, Region VIII, Philippines 6541

REPORTS FROM THE PUBLIC

On **2 November 2017**, the EIPD received a report through the Commission's I-MESSAGE MO online facility, viz.

> Hi please do research about this company ORGANICO AGRIBUSINESS VENTURE located at Ormoc[,] Leyte[.] They are promising high return of interest rate they don't have any legal documents. Thank you[.][3]

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[1] Articles of Incorporation of ORGANICO dated 8 May 2018 (**Annex A** of the Motion)
[2] Amended Articles of Incorporation of ORGANICO dated 7 Nov 2018 (**Annex X** of the Motion)
[3] Ticket No. 2017110221212574, sent by "Liway Tagle" on 2 Nov 2017 (**Annex B** of the Motion)

Attached was a digital photo[4] of the alleged offer which contained words like "invest," "wait and earn," "profit," and "investments," viz.

> **INVEST... WAIT and EARN**
>
> We are looking for organic minded businessmen who are willing to earn organic profit with 100% pure organic heart.
>
> Support our Organic Piggery, Poultry and High Value Crops project[.]
>
> **STANDARD PLAN**
>
> **For investments Php 1800 up to Php 34,200**
>
> - 15 Days Payout (Available)
> - with contract and PDC (for payouts above Php 4500)
> - 90 Days Payout (Not Available)
>
> **PREMIUM PLAN**
>
> **For investments Php 36,000 and above**
>
> - 15 Days Payout (Available) with contract and PDC
> - 90 Days Payout (Available) with contract and PDC

On **3 November 2018**, the EIPD received another[5] report through the Commission's I-MESSAGE MO online facility, viz.

> Good Day:
>
> Some of my friends invested money in ORGANICO AGRIBUSINESS VENTURES
> https://www.facebook.com/organix.ronAdmin/
>
> I have several questions:
> 1. Does OAV need to register with BIR and SEC?
> 2. If yes, is OAV registered with SEC?
> 3. I have the impression that OAV is a PONZI SCHEME SCAM. Would you please investigate and let me know.
>
> Thank you very much for your kind assistance.
>
> Best regards,
>
> Albert Uy[6]

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[4] Photo of alleged offer (**Annex B** of the Motion)
[5] Ticket No. 2107110310464521, sent by "David Moille" on 3 Nov 2017 (**Annex C** of the Motion)
[6] Although the report is signed "Albert Uy" the online profile was under the name "David Moille."

CRMD NEGATIVE CERTIFICATION

On **14 December 2017**, in response to an EIPD request dated 22 November 2017, the Commission's Company Registration and Monitoring Department (CRMD) issued a Certification[7] that ORGANICO is not registered as either a corporation or a partnership. [Note: At the time of the request, ORGANICO was not yet incorporated].

OCULAR INSPECTION OF SEC CEBU IN ORMOC

On **19 February 2018**, in response to a EIPD request to investigate dated 24 November 2017, the **SEC Cebu Extension Office (SEC Cebu)** conducted an ocular inspection at ORGANICO's principal office at UN Building, Alegria, Ormoc City, Leyte.[8]

SEC Cebu discovered that ORGANICO occupied several units on the 2nd Floor of the building. On one of the doors, there was a signage that read: "Organico Agribusiness Ventures **Corporation.**" SEC Cebu was able to talk to some staff of ORGANICO, but did not get an answer as to why the business was being falsely represented to be a corporation [Note: At the time of the inspection, ORGANICO was not yet incorporated].

SEC Cebu learned from the staff that ORGANICO is owned by a certain "Cerrone Posas" who owns "many diverse businesses."[9] The staff also stated that ORGANICO engages in "crowdfunding activities through the internet." According to the staff: (1) an investor must invest at least 10 "shares," with each "share" valued at Php 1,800; and (2) a "share" entitles an investor to receive Php 450 every 15 days for 3 months.

DOCUMENTS OBTAINED FROM ORGANICO

SEC Cebu was able to obtain a document authored by ORGANICO [It even states: "Copyrights © **Organico Agribusiness Ventures**, All Rights Reserved"] entitled "FAQ," which clarifies its scheme, viz.

[7] CRMD Negative Certification dated 19 Dec 207 (**Annex F** of the Motion)
[8] Prior to this inspection, SEC Cebu obtained a Certification from the Ormoc Mayor's Office that ORGANICO does not have a Business Permit to operate in Ormoc City. (*See* **Annex G** of the Motion)
[9] **Annex G** of Motion includes handwritten notes of SEC Cebu investigators which enumerate Cerrone Posas' businesses, such as: (1) piggery, (2) telemarketing, (3) music studio, and (4) construction.

FAQ

What is the 15-day payout?
- For every Php1,800.00 investment, you get Php450.00 every 15 days for a total of Php2700.00 in 3 months. That's a 150% return [on] investment in 3 months. You will get guaranteed cash back of Php1800.00 plus the Php900.00 profit as easy as you read the ABC Alphabet.

What is the 90-day payout?
- For every Php3600 investment, you get a one-time payout of Php700.00 after 90 days. That's a 194% return [on] investment. You will get guaranteed cash back of Php3600.00 plus the Php3400.00 profit as easy as one plus one.

What is a referral bonus?
- This is a payment given to an existing investor who recruits a new investor. This serves [as] a way of [saying] thank you to our loyal and devoted investors.

Do you think our investment is secured and guaranteed?
- Yes, as we promise, your investment is in good hands because we make sure[,] [for] every investment deposited[,] we put expertise and thorough study of every venture we decide.
- Besides, we provide Physical Agreement Contract and Post-Dated Cheques [to be delivered] to your desired address.

How can I invest or join?
- Simple just follow the step below

[Screenshot of the ORGANICO online signup page]

-Fill in your personal information

What are the assets of the company?
- We don't disclose our assets unless you will invest 10 Million.

Is there a cut off of your investment?
So far, it won't happen because we venture more profitable businesses that can sustain our payouts and can be able to help jobless Filipinos.

What are your future plans?
- The future plans of the company [is that we] will be the number one employment provider, to help more people by sharing [with] them [the] easy way to earn profit at home.

Copyrights © **Organico Agribusiness Ventures** – All Rights Reserved[10]

SEC Cebu also obtained a document authored by ORGANICO entitled "About Organico Agribusiness Ventures," where it represented itself as a corporation (even though unincorporated at the time), viz.

About Organico Agribusiness Ventures

> The concept of Organico Agribusiness Ventures Corporation simplifies [sic] this quote:
> *"Great things in business are never done by one person. They're done by a team of people." – Steve Jobs*
>
> OAVC (Organico Agribusiness Ventures Corp.) is a local agricultural-based crowdfunding company, originally focused in the cultivation and breeding of animals, vegetables, livestock, and other products used to sustain and enhance human life through science. The good thing about us [is] we manufacture our own feeds and fertilizers through the use of indigenous herbs, legumes, and probiotics.
>
> Let us learn together the basic knowledge of Organic Farming, Organic Poultry, and Organic Piggery by its integrated individual definition.
>
> **What is Organic?**
> - It's a living matter or known as natural resurces.
>
> **What is Agribusiness?**
> - It engages in the producing operations of a farm, manufactures and distributes farming supplies, and processes, stores and sells farm commodities.
>
> **What is Venture?**
> - It's a risky decision that dares to undertake [an] unpleasant business journey
> - A venture is a project or activity which is new, exciting, and difficult because it involves the risk of failure.
>
> Organico Agribusiness Ventures is a corporation that engages [in] organic farming, poultry, piggery, agricultural products, and other non-agricultural products.[11]

The same "About Organico" document includes a list of ORGANICO's various affiliates, viz.

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[10] "FAQ" document is included in **Annex G** of Motion
[11] "About Organico Agribusiness Ventures" is included in **Annex G** of the Motion

> On August 12, 2017, Organico Agribusiness Ventures Corporation opened [its] new physical office at 2/F UN Bldg., Barangay Alegria, Ormoc City, Leyte, Philippines 6541.
>
> Later, in October 2017, the first fruit of labor [was] established and became operational. We named it "O'Mart," [which stands for] "Organico Meatshop & Mart," located at Rizal Extension, District 26, Ormoc City, Leyte, Philippines 6541. And more branches will be coming soon.
>
> Organico Agribusiness Ventures Corporation affiliates [with] and subsidizes different profitable companies, namely: **Organico Beach Farm**, located at Brgy. Bantigue, Ormoc City; **O'Bookstore Café Spot**, located at Unit 5, UN Bldg., Brgy. Alegria, Ormoc City; **Undercover Talent Center**, located at Unit 2 Rizal Ext., Ormoc City; **O'Music Lights & Sounds**, located at Unit 4, UN Bldg., Brgy. Alegria, Ormoc City; **O'Support Contact Solution**, located at Unit 6 UN Bldg., Brgy. Alegria, Ormoc City; and more soon to come.[12]

ORGANICO goes on to state that investors simply have to **"invest, wait, and earn,"** making it crystal clear that the **investors "don't need to work,"** viz.

> Invincibly [sic], OAVC is now widely known and recognized in local, nationwide, and abroad, because of their devoted and loyal investors who have been earning great return [on] their investment in a very simple step, the "INVEST, WAIT, AND EARN."
>
> The **INVEST-WAIT-EARN** concept was thoroughly formulated by the Founder/CEO/President, Cerrone Roial G. Posas, that provides a passive income while at home. **<u>It means, "You don't need to work on your own money to earn profit. But simply invest and we will do the rest."</u>** What we provide is assurance, unlimited bonuses, and **great profit at no risk**. You will receive Physical Agreement Contract to be sent directly to your desired address, and a post-dated <u>cheque</u> based on the computed receivable amount you have invested.
>
> "WE ARE LOOKING [FOR] ORGANIC MINDED BUSINESSMEN WHO ARE WILLING TO EARN ORGANIC PROFIT WITH 100% PURE ORGANIC HEART."
>
> REACHING PEOPLE, BUILDING LIVES... GO ORGANICO!

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[12] Id.

Copyrights © **Organico Agribusiness Ventures** – All Rights Reserved[13]

1st NEGATIVE CERTIFICATIONS FROM MSRD/CGFD

Acting on SEC Cebu's findings, the EIPD obtained Certifications from the Commission's Markets and Securities Regulation Department (MSRD) dated **27 March 2018**, stating that ORGANICO is not a registered issuer or broker-dealer of securities, and from the Commission's Corporate Finance and Governance Department (CGFD) dated **2 April 2018**, stating that ORGANICO is not a registered issuer of mutual funds, exchange-traded funds, or proprietary shares.

SEC ADVISORY ISSUED AGAINST ORGANICO

On **21 May 2018**, the En Banc issued an advisory stating that ORGANICO is not licensed to offer, sell, or distribute securities.

INCORPORATION AND REQUEST TO LIFT ADVISORY

On **8 May 2018**, ORGANICO was incorporated. However, it did not apply for registration as an issuer of securities.

On **7 June 2018**, ORGANICO wrote through counsel that: (1) it had already incorporated; and (2) the SEC Advisory should be lifted because it is not soliciting investments from the public and has faithfully complied with its primary purpose which is merely to operate a piggery.

On **29 June 2018**, the EIPD denied the request to lift because ORGANICO was not able to prove that it was no longer soliciting investments from the public.

2nd NEGATIVE CERTIFICATIONS FROM MSRD/CGFD

On **2 July 2018**, the EIPD obtain a second set of Negative Certifications from the MSRD and CGFD, after it inquired as to whether ORGANICO had any pending applications to be a registered issuer of securities and confirming that there were no such applications.

On **3 July 2018**, the EIPD proposed to the En Banc that the SEC Advisory should be amended since it only says that:

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[13] Id.

> ORGANICO AGRIBUSINESS VENTURES CORPORATION is NOT registered with the Commission as a corporation or as a partnership under the Corporation Code of the Philippines.

The EIPD alleged in its Motion that the proposed amendment would have stated:

> [...] Please be informed that the records of the Commission showed that the subject company has already secured its primary registration with Company Registration No. CS201806980 [...]
>
> [...] To date, ORGANICO has ***NOT*** applied for and/or obtained a secondary license [...] nor has it been issued a permit to offer/sell securities, nor [does it have] a pending application for registration of securities pursuant to Sections 8 and 12 of the Securities Regulation Code.
>
> The public is hereby informed that primary registration of ORGANICO merely confers upon the entity a juridical personality under the Corporation Code of the Philippines, and we ***REITERATE*** that ORGANICO AGRIBUSINESS VENTURES CORPORATION ("ORGANICO") is not authorized to offer, solicit, sell, or distribute any investments/securities. Such activities require a Secondary License from the Commission, and the securities or investment product should likewise be registered with the SEC before they can be offered or sold to the public under Sections 8 and 12 of the Securities Regulation Code (SRC). [...]

The En Banc confirmed that EIPD was correct in not granting ORGANICO's request to lift. However, it refrained from amending the original SEC Advisory on that occasion.

MEMORANDUM FROM CRMD THAT ORGANICO HAS NO SECONDARY LICENSE

On **25 July 2018**, the CRMD sent a Memorandum to EIPD, in response to a query as to whether ORGANICO had been issued a Secondary License to issue securities, and confirming that ORGANICO did not have a secondary license.

NEGATIVE CERTIFICATION FROM BUREAU OF ANIMAL REGISTRY

On **11 October 2018**, the Bureau of Animal Registry, responding to an inquiry from the EIPD, certified that ORGANICO does not have the necessary permit to operate a hog farm (*i.e.* its primary purpose).

EIPD'S SHOW CAUSE ORDER FOR SERIOUS MISREPRESENTATION

On **9 August 2018**, the EIPD issued a Show Cause Order to ORGANICO, directing it to file an Answer as to why it should not be revoked for *Serious Misrepresentation as to what the corporation can do or is doing to the great prejudice of damage to the public.*

On **23 October 2018**, the EIPD received ORGANICO's Answer, which merely describes the growth of ORGANICO as a piggery. It recounts that ORGANICO was a "backyard piggery business" among friends that ***started in late 2017***, and that it had become profitable after its founders enlisted "the best farm technicians and experts in hog raising, in order to reach the optimal growth of their hogs at the least cost."[14]

ORGANICO further stated that their expansion plans (e.g. wholesale/retail) for the piggery were stalled by requests for supporting documents from potential suppliers and customers. Thus, the founders incorporated ORGANICO in May 2018.

Furthermore, ORGANICO explicitly denied that it was soliciting investments from the public and maintained that its sole business activity was running a piggery, viz.

> **The officers and incorporators of ORGANICO [deny] that it is engaged in investment-taking activities and solicitation activities as described in the SEC Advisory.** Instead, ORGANIZCO is into the buy-and-sell of livestock, specifically piglets/swine, and [it has] tied-up with numerous farm-owners in the provinces for the rearing of the same.[15]

It explained that its clients are probably misusing the term "invest" or "investment," viz.

> According to ORGANICO, its officers, and incorporators, **the confusion may have started since its clients loosely use the term "invest" and "investment" whenever one [of them] purchases of a thing of value [which] may have the potential for appreciation. Most of the clients who availed of the program and**

[14] ORGANICO's Answer, entitled "Show Cause Order-Reply" (**Annex U** of the Motion).
[15] Id.

> **[opted] to [turnover] the piglets to ORGANICO for rearing would call it an "investment" considering the piglets' value will increase over time.** This is contrary to the legal definition of "invest" or "investment," which most laymen do not have knowledge on. The word of mouth among clients and third parties is extremely difficult for ORGANICO to control and correct. As much as possible, whenever one avails of the program of ORGANICO, all the details of the sale and its corresponding option agreement are well-explained to its clients. **However, how these clients explain to third persons the program of ORGANICO is not anymore under its control.**[16] (Emphasis supplied)

ORGANICO described its business model, viz.

> ORGANICO's clients may buy hogs/swine from it for a price to be determined by the existing market value of the piglets. The client may opt to bring with him/her the purchased swine/hog, or **he/she may choose to turn-over the said farm animal to ORGANICO for rearing, considering that ORGANICO [has] tied-up with several farm in the provinces.** After [a] certain period, wherein said animal [would have] reached its optimal growth and is ready for sale, **the client may claim back the swine/hog at a certain price, less the original purchase price.** The client may opt to claim back the animal, [in which] case, **ORGANICO shall pay the said client a certain fee, as well.**[17] (Emphasis supplied)

In addition, ORGANICO claimed that it is distinct from another "ORGANICO" that has been posting videos online, viz.

> ORGANICO understands that there have been several Facebook posts and Youtube videos circulating about ORGANICO and how its business works. **ORGANICO and its officers and incorporators categorically deny that these are from ORGANICO.** ORGANICO does not have an official Facebook page. All Facebook posts relating to ORGANICO are not sanctioned by said corporation and are not [its] doing. **Aside from that, the kind of business being described in the said posts and not the same as that of ORGANICO.** The people who posted on Facebook are not in any way connected with ORGANICO, and ***most*** of them are unknown to ORGANICO's officers and incorporators.[18]
>
> At present, the official website of ORGANICO is still under construction. Considering that ORGANICO AGRIBUSINESS VENTURES CORPORATION, as a new

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[16] Id.
[17] Id.
[18] Id.

> business which only started out this year, [it has] not yet completed [its] website which is organicoagricorp.com Moreover, ORGANICO does not have any Facebook page, Facebook posts, and Youtube channel or posts.[19]

ORGANICO also provided a **Sample Deed of Sale with Memorandum of Agreement,**[20] viz.

> 1. WHEREAS, the BUYER is willing to buy piglet/s from the seller's farm/facility and raise them as their own for a reduced price of only **THREE THOUSAND SIX HUNDRED (Php3,600.00) PESOS** per piglet. The BUYER may buy as many piglets as he/she wishes after complying with the requirement set by the seller;
>
> 2. WHEREAS, instead of giving/turning-over the piglet/piglets to the BUYER for the latter to rear, **the SELLER is willing to rear the piglet/piglets for and [on] behalf of the buyer, using a special system in hog-raising**, feeding them with special fermented feed mix which are from indigenous materials and probiotics, provide full vaccination, and all other hog-raising services that [will] ensure optimal disposal after 3 months from turn-over of the piglet/piglets. Three month is the average period within which a pig [will] reach its optimal growth;
>
> 3. WHEREAS, **the SELLER accepts full responsibility to feed, vaccinate, and provide all other care required and necessary for the optimal growth of the pigs.** There will be no additional costs to the BUYER other than the amount paid during the sale. All costs thereafter will pertain to the SELLER;
>
> 4. WHEREAS, after 90 days/3 months (period of optimal growth of pigs) from sale, the BUYER has to choose [from] any of the following options:
>
> 4.1. Claim back the pig/s (swine) from the SELLER at Php3,600.00 (each pig/swine) +15% service fee, less the selling price/purchase price of the piglet/piglets (@Php3,600.00 each). The amount paid by the BUYER covers the total cost of rearing the animals, which includes, but is not limited to: feeds, vaccination, labor, and utilities; OR
>
> **4.2. The SELLER offers to retain (buy out) the pig/piglets [at] a rate of Php6,000 (each pig/swine) which will directly be deposited to the assigned bank account of the BUYER;**

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[19] Id.
[20] Attached to Answer (**Annex U** of the Motion)

5. WHEREAS, the BUYER has the right to inspect the farm/facility at any time during the 90-day period/3 months (period of optimal growth for pigs) after giving notice or informing the SELLER of said intention at least 5 days before said inspection. All expenses/costs related to said inspection shall pertain to the BUYER;

6. WHEREAS, the BUYER shall be free only from the following hog/swine risk and loss from the time of the sale and during the 90-day period/3 months: death, sickness, theft, poor farm/facility management. However, the SELLER shall not assume risks and loss caused by the following and all related calamities thereto: (1) acts of God [...] which will affect the facility/farm or the transport of feeds and hogs; (2) force majeure; (3) similar other natural and man-made calamities and incidents that will greatly affect the hog-raising management. A local/national declaration of state of calamity or emergency is not necessary. IN such case, the SELLER shall immediately (within 24 hours), in whatever form of notice (e.g. call, SMS, email) inform the BUYER of said risk/loss.

<u>This is not an investment contract</u>, neither [is it] a contract of partnership between the parties. Their liabilities shall only be limited up to what is agreed on in this Memorandum. (Emphasis supplied)

Note that <u>the "**Php3,600 per piglet**" investment and "**90 days/3 months**" payback period, are the same terms as in the offer documents obtained by SEC Cebu.</u>

However, ORGANICO promises a payback of only Php6,000.00 in this document, as opposed to the Php7,000.00 payback stipulated on the offer documents from Ormoc City.

ORGANICO'S AMENDED PRIMARY PURPOSE

On **7 November 2018**, ORGANICO amended the purpose clause in its Articles of Incorporation, viz.

To engage, **<u>invest</u>**, in the business of operating a commercial Hog, Livestock, and Farm Animal Raising Facility and providing services, [including] but not limited to hog, livestock, farm animal raising, management, technical services, and other related activities, including farm to market service for hog, livestock, and farm animal owners and growers **<u>and to franchise</u>**.

NEGATIVE CERTIFICATION FROM THE BPLO-ORMOC AND COOPERATIVE DEVELOPMENT AUTHORITY (CDA) ADVISORY

On **12 November 2018**, the EIPD obtained a Certification from the Business Permits, Licensing and Franchising Office (BPLO) of Ormoc City dated 30 October 2018 that ORGANICO, even after incorporation, did not have a business permit to operate a piggery.

The EIPD also sought to verify an email report from a certain "Ms. Peachy Lei" that ORGANICO had organized itself as a cooperative.[21] On **23 November 2018**, the Cooperative Development Authority (CDA) published a CDA Advisory[22] on its website, stating that ORGANICO has not filed any application to register as a cooperative, and that the same entity is the subject of a SEC Advisory for possible violation of the SRC.

OCULAR INSPECTION OF EIPD IN QUEZON CITY

Meanwhile, the EIPD acted on a Facebook post stating that ORGANICO had expanded its operations to Metro Manila.

On **4 December 2018**, the EIPD conducted an ocular inspection at the alleged ORGANICO office at 2nd Floor Shoppes Victoria Towers, Timog corner Panay Street, Quezon City. The results were summarized in an **EIPD Field Report (Annex AA** of the Motion), viz.

> a. [According to the Front Desk Secretary] ORGANICO is currently [unable] to orient or entertain the team, since they are [still busy] conducting collection of "pay-ins" of those [new investors] who availed of the "Double Your Money Promo;"
>
> b. The Front Desk Secretary, however, explained that an investment of Php3,600.00 earns Php7,000.00 after 90 days, [while] the [return] was originally Php6,000;
>
> c. That the promo is good until 18 December 2018;
>
> d. The Lady Guard, together with various people inside the office, concurred with the information given and added that there is a necessity for a "referror;"
>
> e. The persons inside the office confirmed that each member/investor is allowed to orient and offer investments being offered by ORGANICO;

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[21] The email report is attached to the EIPD Letter to the CDA (**Annex W** of the Motion)
[22] **Annex Z** of Motion

f. For every referral in the pay-ins [new investors], the referrer is entitled to a commission of Php140.00;

g. Pay-outs are given through bank-to-bank transactions; and

h. There is a **Memorandum of Agreement (MOA)** issued for every investment, [a copy of] which was shown to the Investigating Team during the inquiry.

SIGNAGE AT QUEZON CITY

The EIPD Filed Report includes a photo[23] of the **signage** at the Quezon City office, viz.

ORGANICO **Reaching People, Building Lives**

This is the exact same advertising slogan of the ORGANICO "online crowdfunding" business inspected by SEC Cebu in Ormoc City.

ORGANICO DOCUMENT FROM QUEZON CITY

Although not mentioned in the Motion, the EIPD Field Report also includes a **Pay-In/Pay-Out invoice** from ORGANICO Quezon City.

It contains the mark **"ORGANICO AGRIBUSINESS VENTURES"** and a **circular logo** with a depiction of a plant/tree. The exact same combination of words and logo is on the offer document entitled "90 Days Investment" gathered by SEC Cebu from the ORGANICO "online crowdfunding business" in Ormoc City."[24]

It also mentions "CASH Pay-Out in **QC Office**," implying that there may be offices elsewhere, but there is no mention of Ormoc City.

Finally, the invoice contains the old-fashioned spelling of the word check (**"cheque"**) which is exactly same as in the "INVEST, WAIT, AND EARN" portion of the "About Organico" document from Ormoc City.[25]

ORGANICO'S AMENDED PRINCIPAL ADDRESS

[23] **Annex AA** of the Motion
[24] **Annex G** of the Motion
[25] **Annex G** of the Motion

On **19 December 2018**, ORGANICO's principal address in its Articles of Incorporation was amended to **3rd Floor Crown 7, Pope John Paul II Avenue, Cebu City.**

AFFIDAVIT OF RONALYN G. DE LOYOLA

On **21 December 2018**, the EIPD obtained the Affidavit[26] of a certain Ronalyn G. De Loyola, an investor/member of ORGANICO, which was summarized in its Motion, viz.

> a. She was invited by a certain Rochelle Camacho to invest an amount of **Php3,600.00** with a guaranteed [payback] of Php6,000.00
>
> b. She was added to the closed group chat exclusively for ORGANICO;
>
> c. She was also added to ORGANICO's Facebook closed/secret group named "ORGANICO AGRIBUSINESS VENTURES CORPORATION" where, to date, there are **20,703 members**;
>
> d. She was able to see the MOA sent by Karen Camacho;
>
> e. Ron Posas, ORGANICO's President, is also a member of the Facebook closed/secret group; and
>
> f. She learned that there is a referral bonus of Php140.00 for every investment of **Php3,600**.

Although not highlighted in the Motion, the Affidavit also includes **screenshots** from Ms. De Loyola's cellphone, which she swears ***under oath*** are genuine, viz.

> xxx xxx xxx
>
> 13. Attached herein are my observed posts in the said closed group chat and closed Facebook secret group;
>
> xxx xxx xxx
>
> 15. That I took screenshots of the abovementioned group chats, MOA, messages, and other documents, as herein attached;
>
> 16. That I have not edited nor changed the attached screenshots taken from my cellphone and [that these] are a complete reproduction thereof.[27]

[26] **Annex AC** of the Motion
[27] Id.

The screenshots show a Facebook group named "ORGANICO AGRIBUSINESS VENTURES CORPORATION" and bearing the same circular logo as in the documents from Ormoc City and Quezon City.

The **"LHEN GAUDIA DE LOYOLA, New Member"** in these screenshots is allegedly one and the same as "Ronalyn Gaudia De Loyola," as her name appears in her Driver's License submitted to EIPD.

It also shows a certain **"RON GACASAN POS, Admin"** who is allegedly one and the same as "Cerrone Roial G. Posas," who is (1) the Founder of ORGANICO the unincorporated "online crowdfunding" business in Ormoc City, and (2) the President and Incorporator of ORGANICO corporation, which claims to be a piggery.

"RON GACASAN POS, Admin" (Cerrone Roial G. Posas) uploaded pictures of the SEC Advisory in one post, and stated the following:

> Important Notice:
>
> In response to this "complaint" issued from the SEC, we would like to inform all members that we do not need to act on this notice because it is only a complaint filed by any person, may it be a member or a non-member, and the SEC requires the complainant to present verified information or proof of transaction, or any receipt or check that is proven unpaid and overdue.
>
> If the complainant CANNOT present any documents that can be used against Organico, then this will just be filed as pending complaint or may be dismissed by the Commission.
>
> No need to worry. Rest assured, ALL payouts have been paid to date.
>
> We are also actively returning the money of those who have fears and doubts of [sic] our company's integrity.
>
> We have grown stronger and better. Expect more enemies and adversaries to go against us. But this is nothing compared to the people we've helped. Let us continue our advocacy to "Reach more people, and Build more lives."
>
> Go Organico!!!

In another post, "RON GACASAN POS, Admin" (Cerrone Roial G. Posas) states that he is aware of the SEC Advisory and nevertheless advises ORGANICO members to **go against the SEC Advisory**, while assuring them that they are planning to reorganize as a cooperative (*i.e.*, in an effort to evade SEC scrutiny), viz.

> Effective October 15, 2018
>
> URGENT ANNOUNCEMENT!!!
>
> Please be advised that [as to] the recent promo, that we [have] alarmed the BSP and SEC for the 3rd time and advised our Unionbank account to be closed immediately.
>
> Now only BDO is left and is already red flagged. Unionbank account manager also informed us that there was a person who submitted a SEC Advisory in one of their branches which started their compliance protocol.
>
> With this situation, <u>WE ADVISE THAT ALL PAY-INS WILL BE THRU THE OFFICE ONLY.</u>
>
> Rest assured that <u>WE ARE SPEEDING UP THE PROCESS OF OUR COOPERATIVE</u> so that we can redirect our cashflow.
>
> We advise <u>ALL UNIONBANK CHECK HOLDERS</u> for both Organico Builders and Organico Agri to coordinate with our office regarding your payouts. We will deposit it to your account.

Finally, the picture of the ORGANICO Memorandum of Agreement attached by Ronalyn G. De Loyola appears to be exactly the same as the Memorandum of Agreement obtained by the EIPD in Quezon City.

Hence, this Motion.

<u>DISCUSSION</u>

It must be mentioned at the outset that the EIPD has established through substantial evidence that: (1) ORGANICO, the unincorporated business in Ormoc City, founded by Cerrone Roial G. Posas, which was inspected by SEC Cebu, is **one and the same as** (2) ORGANICO, the corporation, where Cerrone Roial G. Posas serves as President/Incorporator. They are also one and the same as the ORGANICO inspected by the EIPD in Quezon City. <u>Thus, we refer to any and all of them when we refer to "ORGANICO."</u>

The En Banc rejects ORGANICO's unsupported claim to be separate and distinct from the "Organico Agribusiness Ventures Corporation" on Facebook, Youtube, and other sites which solicits investments.

The EIPD was able to prove with substantial evidence that ORGANICO, the online entity, is **one and the same** as ORGANICO, the respondent corporation. It has also proven with substantial evidence that Cerrone Roial G. Posas is one and the same as "RON GACASON POS," the administrator of the ORGANICO Facebook group.

The En Banc has noted certain telling similarities such as:

(1) The same Founder/Incorporator and President, CERRONE ROIAL G. POSAS;
(2) The same name, marks, logos, and slogans;
(3) The same terms (P3,600 per piglet, 3-month payback period);
(4) The same pretext of raising pigs;
(5) The same absence of permits to operate a piggery;
(6) The same absence of secondary license to sell securities.

Moreover, the En Banc noted certain admissions of ORGANICO in its Answer and in its Sample Memorandum, such as:

> The people who posted on Facebook are not in any way connected with ORGANICO, and **<u>most</u>** of them are unknown to ORGANICO's officers and incorporators.

<u>ORGANICO'S INVESTMENT CONTRACTS ARE SECURITIES</u>

There is ***substantial evidence*** that **ORGANICO** is selling or offering for sale **securities** in the form of **<u>investment contracts</u>** in the Philippines, without the necessary license from the Commission.

Securities are defined in **Section 3.1 of the SRC**, viz.

Section 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.

According to the Supreme Court, "The term **'securities'** embodies a flexible rather than static principle, one that is capable of adaptation to meet the countless and variables schemes devised by those who seek to use the money of others on the promise of profits."[28]

Here, the **securities** are **investment contracts**, which are *participation* in a *profit-making venture* (e.g., piggery where ORGANICO will do the hog-raising), evidenced by *instruments* in *written* (e.g., "Invest, Wait, and Earn" document, "90 Days Investment" document, Memorandum of Agreement, Pay-In/Pay-Out) *or electronic form.*

Moreover, ORGANICO's investment contract satisfies the four (4) elements of the ***Howey Test***[29] as laid down in the case of Power Homes Unlimited Corporation v. SEC,[30] viz.

(1) Investment of Money –
ORGANICO's investors/members "pay-in" an initial sum, supposedly to buy a pig. [Note that ORGANICO has no permit to operate a piggery, so it cannot do that legally].

The element is satisfied even if amount of initial investment may vary (e.g., "P1,800 per share," or "P3,600 per piglet"). This is precisely what is referred to as "INVEST" in ORGANICO's "Invest-Wait-Earn."

(2) Common Enterprise –
ORGANICO will direct the investments of its members into a profit-making venture (e.g., a piggery). ORGANICO has taken great pains to establish that it is really just a piggery including an unbelievable tale of a "backyard venture" turned corporation that enlisted "hog-raising experts." [To reiterate, ORGANICO has no permit to operate a piggery, let alone enlist hog-raising expert to run its farms, if any.]

But even if there is no piggery, the element would be satisfied. This is because merely *managing the investments* is an enterprise.

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[28] Gabionza, et. al. v. CA, G.R. No. 161057, 12 September 2008 (citing 69 Am Jur 2d, p. 604)
[29] Originally pronounced in the U.S. Supreme Court case of SEC v. Howey Co. (66 S.Ct.1100, 27 May 1946), as modified by SEC v. Glenn Turner Enterprises, Inc. (474 F.2d 476, 1 February 1973).
[30] G.R. No. 164182, 26 February 2008.

(3) **Expectation of Profit –**
ORGANICO's investors expect to be paid-back at a profit (e.g. P7,000, which is a profit of P3,400) after 90 days or 3 months (during which time ORGANICO claims it will have raised/sold a pig). They can also earn referral fees. <u>This pertains to "EARN" in ORGANICO's "Invest-Wait-Earn."</u>

(4) **Primarily from the Efforts of Others –**
ORGANICO will exert all or almost all of the effort (supposedly to raise/sell a pig), while investors do nothing. <u>This is what is meant by "WAIT" in ORGANICO's "Invest-Wait-Earn."</u>

In light of the *Howey Test*, here again is a description of ORGANICO's "INVEST-WAIT-EARN" system, which is still carried-over to its more recent "Promos," viz.

> The **INVEST-WAIT-EARN** concept was thoroughly formulated by the Founder/CEO/President, Cerrone Roial G. Posas, that provides a passive income while at home. **<u>It means, "You don't need to work on your own money to earn profit. But simply invest and we will do the rest."</u>** What we provide is assurance, unlimited bonuses, and **great profit at no risk**. You will receive Physical Agreement Contract to be sent directly to your desired address, and a post-dated <u>cheque</u> based on the computed receivable amount you have invested.
>
> "WE ARE LOOKING [FOR] ORGANIC MINDED BUSINESSMEN WHO ARE WILLING TO EARN ORGANIC PROFIT WITH 100% PURE ORGANIC HEART."
>
> REACHING PEOPLE, BUILDING LIVES... GO ORGANICO!
>
> Copyrights © **Organico Agribusiness Ventures** - All Rights Reserved[31]

Likewise, applying **Section 3.1 of the SRC**, there is a participation (as investor) in profit-making enterprise (ORGANICO) in written form (Memorandum of Agreement), and this is therefore a **Security**.

It is immaterial that ORGANICO has written "This is not an investment contract" on its Memorandum of Agreement," as mere denial does not make the contract regular.

Therefore, ORGANICO's investment contracts satisfy both Section 3.1 of the SRC and the Howey Test and are clearly **"securities"** within the regulatory power of the Commission.

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[31] **Annex G** of the Motion

ORGANICO IS OFFERING SECURITIES FOR SALE

As a general rule, securities cannot be sold or offered for sale within the Philippines without a **Registration Statement duly filed with and approved by the Commission** pursuant to Sections 8 and 12 of the Securities Regulation Code (SRC).

The registration of securities is provided in **Section 8.1 of the SRC**, viz.

> ***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.

In this regard, **Rule 3.1.17 of the 2015 Implementing Rules and Regulations of the SRC** defines "Public Offering" as:

> [A]ny offering of securities to the public or to anyone, whether solicited or unsolicited.
>
> Any solicitation or presentation of securities for sale through any of the following **modes** shall be presumed to be a public offering:
>
> 1. Publication in any newspaper, magazine or printed reading material which is distributed within the Philippines;
> 2. Presentation in any public or commercial place;
> 3. Advertisement or announcement on radio, television, telephone, electronic communications, information communication technology or other forms of communication; or
> 4. Distribution and/or making available flyers, brochures or any offering material in a public or commercial place or to prospective purchasers through the postal system, information communication technology and other means of information distribution.

Here, ORGANICO is offering investment contracts (in the guise of profit-sharing in the raising of pigs), which is considered a security. This constitutes a **public offering** as defined under SRC Rule 3.1.17, and is subject to the strict registration requirements under **Sections 8 and 12 of the SRC** before being offered or sold to the public.

The variances in the terms of the investment contract—among the Ormoc City documents, the Quezon City documents, and the screenshots attached to Ms. De Loyola's Affidavit—do not affect its nature as a security, the offer and sale of which requires a secondary license.

The record contains Certifications issued by the Commission's **MSRD, CGFD, and CRMD**, stating that ORGANICO **does not possess** the requisite secondary license to sell or offer to sell securities to the public. Moreover, there is no record that ORGANICO has ever applied for a secondary license.

The record also disproves ORGANICO's claim to be a legitimate business operation (*i.e.* piggery), since it does not even have the requisite permits from the Bureau of Animal Industry and the Business Permits, Licenses and Franchises Office (BPLO). Even if ORGANICO actually did own or operate a piggery, or if its profits are earned somehow from piggery, it is still not authorized to solicit investments into any kind of profit-making enterprise.

Therefore, the **unregistered public offering** investment contracts by ORGANICO is in violation of Sections 8 and 12 of the SRC.

LIABILITY OF PARTICIPANTS IN THE OFFER OR SALE

In the case of ***Securities and Exchange Commission vs. Oudine Santos***,[32] the Supreme Court held that even "information providers" may be held liable for "solicitation" in relation to the selling or offering for sale of unregistered securities, viz:

> **Solicitation** is the act of seeking or asking for business or information; it is not a commitment to an agreement.
>
> Santos, by the very nature of her function as what she now unaffectedly calls an **information provider**, brought about the sale of securities made by PIPC Corporation and/or PIPC-BVI to certain individuals, specifically private complainants Sy and Lorenzo by **providing information on the investment products** of

[32] G.R. No. 195542, March 19, 2014.

> PIPC Corporation and/or PIPC- BVI **with the end in view** of PIPC Corporation **closing a sale.**
>
> While Santos was not a signatory to the contracts on Sy's or Lorenzo's investments, Santos procured the sale of these unregistered securities to the two (2) complainants by **providing information** on the investment products being offered for sale by PIPC Corporation and/or PIPC-BVI and convincing them to invest therein.
>
> No matter Santos' strenuous objections, it is apparent that **she connected the probable investors**, Sy and Lorenzo, to PIPC Corporation and/or PIPC-BVI, **acting as an ostensible agent** of the latter on the viability of PIPC Corporation as an investment company. At each point of Sy's and Lorenzo's investment, Santos' participation thereon, even if not shown strictly on paper, was prima facie established.[33]

This ruling applies to the present or future agents of ORGANICO AGRIBUSINESS VENTURES CORP. in the unregistered public offering and sale of investment contracts.

Neither can respondents engage a ***broker, dealer, salesman,*** or ***associated person***, in violation of **Section 28.1 of the SRC,** which clearly provides that "no person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as salesmen, or an associated person or any broker or dealer unless registered to act as such with the Commission."

THE CDO IS URGENT AND MAY BE ISSUED EX PARTE

Section 64.1 of the SRC provides that the Cease and Desist Order may be issued without necessity of a prior hearing if it, viz:

> **SEC. 64.** ***Cease and Desist Order.*** -
> **64.1.** The Commission, after proper investigation or verification, motu propio, or upon verified complaint by any aggrieved party, may issue a cease and desist order **without 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 SRC is explicit that, as a general rule, securities should be registered with the Commission before being offered or sold to the public in order to protect the investing public from worthless securities, which,

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[33] Id.

if unchecked, **is likely to cause grave and irreparable damage** and injury to the investors and the public in general.

The continued public offering and sale of investment contracts by ORGANICO without the required license from the Commission makes the public offering and selling a **continuing illegal act** which makes it imperative and necessary that a Cease and Desist Order be immediately issued.

WHEREFORE, premises considered, **ORGANICO AGRIBUSINESS VENTURES CORP. (a.k.a. ORGANICO AGRIBUSINESS VENTURES CORPORATION a.k.a. ORGANICO AGRIBUSINESS VENTURES a.k.a. ORGANICO) and CERRONE ROIAL G. POSAS[34] (a.ka. "RON GACASAN POS")**, their partners, officers, directors, 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,[35] UNDER PAIN OF CONTEMPT**, from engaging in activities of selling and/or offering for sale securities in the form of **investment contracts** or any others of the same nature as discussed in this *Order*, until the requisite registration statement is duly filed with and approved by the Commission and the corresponding permit to offer/sell is issued.

Respondents are directed to **cease its internet presence** relating to above-stated investment activities.

Moreover, to forestall grave damage and prejudice to all concerned, and to ensure the preservation of the assets for the benefit of 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 depositary banks, and (b) from transferring, disposing, or conveying in any other manner any and all assets and properties, real or personal, including bank deposits, if any, under their custody**, of which the named persons herein may have any interest, claim, or participation whatsoever, whether directly or indirectly, **immediately upon receipt of this Order, until further orders from this Commission.**

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[34] TIN Number 927-680-106-000 based on ORGANICO's Articles of Incorporation
[35] **Section 64.1 of the SRC** – The Commission, after proper investigation or verification, *motu propio*, 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 fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

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 behalf of the subject corporations.

The **EIPD** is hereby **DIRECTED** to:

[A] Serve this *Order* to **ORGANICO AGRIBUSINESS VENTURES CORP.**, and on its President, General Manager, Corporate Secretary, Treasurer, In-House Counsel or partners; and

[B] Post copies of the *Order* at the entrance of the main office and/or branches, if any, of **ORGANICO AGRIBUSINESS VENTURES CORP.**

The **EIPD** is further directed to submit a **Compliance Report** to the Commission En Banc **within five (5) days** from receipt of this *Cease and Desist Order.*

In accordance with the provisions of **Section 64.3**[36] **of the SRC** and **Section 4-3 of the 2016 Rules of Procedure** of the Commission, the respondents may file a **Motion to Lift the CDO within five (5) days** from receipt of this *Cease and Desist Order.*

SO ORDERED.

Pasay City, Philippines; 28 May 2019.

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

[36] **Section 64.3 of the SRC** – Any person against whom a cease and desist order was issued may, within five (5) days from receipt of the order, file a formal request for a lifting thereof. xxx