IN RE: ORGANICO AGRIBUSINESS VENTURES CORP.,

SEC CDO Case No 04-19-047

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.

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RESOLUTION

For consideration of the Commission En Banc (En Banc) is the ***Motion to Lift (With Qualification) Cease and Desist Order*** (Motion) filed by Organico Agribusiness Ventures' (Organico).[1]

The Commission En Banc issued a Cease and Desist Order (CDO) dated 28 May 2019 against Organico after it found that the latter was engaged in the selling and/or offering for sale unregistered securities in the form of investment contracts to the public without the necessary secondary license from the Commission.

During the hearing[2] on the Motion, Organico through its counsels, manifested that Organico already ceased its operations even before it has been served with the CDO. According to Organico's counsels, its client is requesting for a period of six (6) months to return the amounts invested by its investors/clients. The Enforcement and Investor Protection Department (EIPD), on the other hand, argues that Organico should first submit to the Commission a list of its investors/clients with the corresponding amount of investment and scheme they invested into as well as the procedure on how Organico will return the investments it collected from its investors/clients.

In an Order dated 17 July 2019, Organico was given a period of fifteen (15) days or until **02 August 2019** to submit a Manifestation/Report copy furnishing the EIPD, with the following documents:

a. Complete List of Investors/Clients of Organico with their respective amount of contribution/investment and the scheme to which they invested;
b. An Audited Financial Statement of Organico;
c. List of Creditors/Suppliers, if any;

[1] By registered mail on 17 June 2019.
[2] on 17 July 2019

d. Liquidation plan on how Organico will settle its obligations; and
e. Such other documents necessary to establish Organico's claim that the it is praying for the lifting of the Cease and Desist Order to "settle its obligations to customers, clients, and buyers and wind up all its business affairs with its previous business transactions."[3]

On 5 August 2019, Organico filed its ***Manifestation/Compliance*** (Compliance) to Order dated 17 July 2019 averring the following:

1. On 17 July 2019, a hearing was conducted pertaining to the Motion to Lift filed by the undersigned counsel dated 17 June 2019;

2. In the course of the hearing, ORGANICO was ordered to furnish the Honorable Commission the list of its buyers with its corresponding amount;

3. As confided to the undersigned, since the ordered listing involves processing of personal information, ORGANICO had conducted an inquiry to its individual buyers to seek for their prior consent, pursuant to Republic Act 10173 or Data Privacy Act of 2012;

4. As confided to the undersigned, as of to date, ORGANICO failed to receive any consent from its buyers;

5. Thus, ORGANICO could not comply with the Honorable Commission's Order without the consent from its Buyer's, which is none as of to date;

The EIPD in its *Comment* prayed that the Motion be **PARTIALLY** approved but only "for the **SOLE PURPOSE OF** allowing Organico **to disburse funds to return the investments of its investors**; and **MAKE PERMANENT** as to all other respects, the Cease and Desist Order against **ORGANICO AGRIBUSINESS VENTURES CORP.**"[4]

ISSUE

The sole issue to be resolved in this case is whether or not the CDO against Organico should be lifted to allow it to return the money of its investors/clients?

*The Commission En Banc resolves to **deny** the Motion.*

DISCUSSION

From the Motion, Organico seeks the lifting of the CDO to allow it to settle "its obligations to its customers, clients, and buyers and wind up all its business affairs with its previous business transactions."[5]

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[3] Motion to Lift (With Qualification) Cease and Desist Order, Paragraph 2
[4] Page 6, Comment of the EIPD.
[5] Ibid.

Relatedly, the CDO directed Organico to cease and desist 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 the above-mentioned investment activities."

At the onset, ***the CDO is directed towards Organico's unregistered investment taking activities***. In its Motion, Organico did not deny nor provide for any defense to the finding that it is offering/selling unregistered securities in the form of investment contracts. It merely asserted that contrary to the doctrine laid down in *SEC vs. Performance Foreign Exchange Corporation*,[6] the CDO was issued without proper investigation or verification.[7]

The EIPD in its *Comment* argued that there was proper investigation and it was able to gather substantial evidence to support its findings that Organico was engaged in the selling of unregistered securities to the public.[8]

In effect, Organico by resorting to general denials and citing alleged procedural infirmities, and more importantly by voluntarily ceasing its operations has admitted EIPD's findings.

The burden of proof lies with Organico but it failed to adduce any evidence in its defense against the finding that it is engaged in the selling of unregistered securities to the public. ***There is no reason for the CDO pertaining to its investment taking activities to be lifted.*** Consequently, ***the cease and desist order issued against ORGANICO on its investment taking activities is hereby made PERMANENT.***

On another matter, Organico prays for the lifting of the CDO to "***settle its obligations to its customers, clients, and buyers and wind up all its business affairs with its previous business transactions***."[9] Organico finds this necessary in view of the portion of the CDO which reads,

[6] G.R. No. 154131, 20 July 2006.
[7] Motion to Lift (With Qualification) Cease and Desist Order, Paragraph 5
[8] Comment, Paragraph 7 to 8.
[9] Motion to Lift (With Qualification) Cease and Desist Order, Paragraph 2

> 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.**

In this regard, the EIPD requested for a list of Organico's clients with their corresponding contribution and scheme invested into for which Organico was given time to comply. However, as stated in its *Compliance*, Organico manifested that it cannot comply with the Order because allegedly, it failed to get the consent of the buyers as required by the Data Privacy Act (DPA).

Organico's excuse for non-compliance is utterly unmeritorious. The EIPD correctly pointed out the DPA provides that:

> "xxx (e) ***Information necessary in order to carry out the functions of public authority*** which includes the processing of personal data for the performance by the independent, central monetary authority and ***law enforcement and regulatory agencies of their constitutionally and statutorily mandated functions***. xxx"[10] (emphasis and underscoring supplied)

is excepted from the prohibition. The Commission is mandated under the Securities Regulation Code (SRC) to protect investors and the general public. Requiring Organico to submit said list is in the exercise of the Commission's mandate. Hence, Organico ***cannot use the DPA as an excuse for its non-compliance nor can the Commission allow Organico access to its bank accounts, deposits and other properties without proper oversight.***

Furthermore, and as pointed out by the EIPD, ***the list of investors is only one of the documents that was required to be submitted by Organico.*** In its Compliance, Organico did not mention nor provide any explanation why it failed to furnish the other documents such as an audited financial statement, liquidation or distribution plan, etc.

The documents required by the EIPD are reasonable and Organico had ample time to comply with this requirement; yet, it failed to do so. This is indicative of a lack of sincerity as it made no serious effort to comply with the Commission's Order.

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[10] Section 4(e) of the Data Privacy Act.

WHEREFORE, premises considered, the *Motion to Lift (With Qualification) Cease and Desist Order* is **DENIED.** The Cease and Desist Order dated 28 May 2019 is hereby made **PERMANENT.**

SO ORDERED.
Pasay City, Philippines; 10 September 2019.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner