



Republic of the Philippines
Department of Finance
Securities and Exchange Commission

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT

In the matter of

**ARIANE ESTOLONIO-BITPRIME SOFTWARE
OPC
SEC No.: 2022080062716-01**

**BITPRIME / BITPRIME COMPUTER SOFTWARE
TRADING**

SEC EIPD Case No. 2023-691

For Revocation of Certificate of Incorporation for violation of the Corporation code of the Philippines in relation to Presidential Decree No. 902-A for serious misrepresentation as to what the corporation can do to the great prejudice of or damage to the general public

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ORDER OF REVOCATION

ARIANE ESTOLONIO-BITPRIME SOFTWARE OPC is a One-Person Corporation registered with the Commission on 04 August 2022 under Company Reg. No. 2022080062716-01. Its principal office address is located at 202 Pedro Diaz Street Poblacion, City of Muntinlupa, Fourth District, National Capital Region (NCR) 1776. Its primary purpose as stated in its Articles of Incorporation is:

“To engage in the business of information technology products and services, such as but not limited to the research, software development, production, management, and operation of software and hardware technology, and other information technology applications, and to do all activities directly or indirectly connected therewith or incident thereto.

Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts.”

The Department received numerous emails inquiring and/or reporting about **BITPRIME / BITPRIME COMPUTER SOFTWARE TRADING / ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC** and its alleged investment-taking activities where it promised a guaranteed return of investments.

Investigation conducted by the Department revealed that **BITPRIME / BITPRIME COMPUTER SOFTWARE TRADING / ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC** offers five (5) types of investments to the public ranging from a minimal amount of PHP 500 up to PHP 100,000 per account with earnings as much as 45% for 15 days. Furthermore, for Team Leaders, (1) a 5% referral income is given for every successful referral, (2) a weekly allowance of PHP 2,500 for at least 10 active members with group sales of a minimum of PHP 100,000 and (3) royal incentives amounting to 3% of the total weekly sales.

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STAKING PROGRAM
45% PROFIT IN 15 DAYS

STAKE	WITHDRAWABLE
P900	P725
P1,000	P1,450
P5,000	P7,250
P10,000	P14,500
P15,000	P21,750
P20,000	P29,000
P50,000	P72,500
P75,000	P105,750
P100,000	P145,000

SILVER PLAN
2.5% DAILY PROFIT IN 60 DAYS

INVESTMENT	DAILY RETURN	WITHDRAWABLE
P1,000	P25	P1,500
P5,000	P125	P7,500
P10,000	P250	P15,000
P15,000	P375	P22,500
P20,000	P500	P30,000
P25,000	P625	P37,500
P50,000	P1,250	P75,000
P75,000	P1,875	P112,500
P100,000	P2,500	P150,000

GOLD PLAN
20% PROFIT IN 15 DAYS

INVESTMENT	20%	WITHDRAWABLE
P1,000	P200	P1,200
P5,000	P1,000	P6,000
P10,000	P2,000	P12,000
P15,000	P3,000	P18,000
P20,000	P4,000	P24,000
P25,000	P5,000	P30,000
P50,000	P10,000	P60,000
P75,000	P15,000	P90,000
P100,000	P20,000	P120,000

DIAMOND PLAN
50% PROFIT IN 30 DAYS

INVESTMENT	50%	WITHDRAWABLE
P1,000	P500	P1,500
P5,000	P2,500	P7,500
P10,000	P5,000	P15,000
P15,000	P7,500	P22,500
P20,000	P10,000	P30,000
P25,000	P12,500	P37,500
P50,000	P25,000	P75,000
P75,000	P37,500	P112,500
P100,000	P50,000	P150,000

EMERALD PLAN
FIRST 9 MONTHS 50% & THE LAST 3 MONTHS 20% COMPOUNDING LOCK-IN IN 12 MONTHS

INVESTMENT	12 MONTHS RETURN	WITHDRAWABLE
P1,000	P149,076.69	P150,076.69
P5,000	P749,883.45	P754,883.45
P10,000	P1,499,766.90	P1,509,766.90
P15,000	P2,249,650.36	P2,264,650.36
P20,000	P2,999,533.81	P3,019,533.81
P25,000	P3,749,417.26	P3,774,417.26
P50,000	P7,498,834.52	P7,548,834.52

Since what is being offered for sale by **BITPRIME / BITPRIME COMPUTER SOFTWARE TRADING / ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC** are securities in the form of investment contracts, the Securities Regulation Code (SRC) requires that said offer and sale of securities must be duly registered with the Commission and that the concerned corporation and/or its agents have appropriate registration and/or license to sell such securities to the public.

However, **BITPRIME / BITPRIME COMPUTER SOFTWARE TRADING / ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC** is not authorized to solicit, accept or take investments/placements from the public nor to issue investment contracts and other forms of securities defined under Section 3 of the Securities and Regulation Code (SRC) as it has not applied for or has been issued a Secondary License to offer and/or sell securities to the public.

Thus, on 26 January 2023, an SEC Advisory was posted on the Commission’s website informing the public, that:

Based on the Commission's database, **ARIANE ESTOLONIO-BITPRIME SOFTWARE OPC**, was registered as a One-Person Corporation on 04 August 2022. However, **ARIANE ESTOLONIO-BITPRIME SOFTWARE OPC** has not secured prior registration and/or license to solicit investments from the Commission prescribed under Section 8 of the Securities Regulation Code (SRC).

Further, the scheme employed by **BITPRIME / BITPRIME COMPUTER SOFTWARE TRADING / ARIANE ESTOLONIO-BITPRIME SOFTWARE OPC**, shows indication of a possible **"Ponzi Scheme"** where monies from new investors are used in paying "fake profits" to prior investors and is designed mainly to favor its top recruiters and prior risk takers and is detrimental to subsequent members in case of scarcity of new investors.

The offering and selling of securities in the form of investment contracts using the **"Ponzi Scheme"** which is fraudulent and unsustainable, is **NOT** a registrable security. The Commission will not issue a License to Sell Securities to the Public to persons or entities that are engaged in this business or scheme.

In view thereof, the public is hereby advised to **STOP INVESTING** in the investment scheme being offered by **BITPRIME / BITPRIME COMPUTER SOFTWARE TRADING / ARIANE ESTOLONIO-BITPRIME SOFTWARE OPC**, and its representatives.

Despite the issuance of the above-mentioned SEC Advisory against **BITPRIME / BITPRIME COMPUTER SOFTWARE TRADING / ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC**, the said entity did not pay attention thereto, and in fact, continued its investment-taking activities.

On 06 March 2023, a Cease and Desist Order (CDO) was issued by Commission *En Banc* against **BITPRIME, BITPRIME COMPUTER SOFTWARE TRADING, and ARIANE ESTOLONIO-BITPRIME SOFTWARE OPC** which states that:

"WHEREFORE, premises considered, Bitprime, Bitprime Computer Software Trading, and Ariane Estolonio-Bitprime Software OPC, and their incorporators, operators, directors, officers, including its Nominee: Ms. Mey Ann De Leon Araulan, and Alternate Nominee: Ms. Joanna Marie Cruz de Vera, and its representatives, salesmen, agents, uplines, influencers, enablers, conduits, subsidiaries, and any and all persons, claiming, acting and operating for in their behalf, are hereby order to IMMEDIATELY CEASE AND DESIST from engaging in the unlawful/unauthorized solicitation, offer and/or sale of securities in the form of investment contracts or any others of the same nature, as discussed in this Cease and Desist Order, until the requisite registration statement is duly filed with and approved by the Commission."

Further, a **Show Cause Order** was issued and served against **BITPRIME / BITPRIME COMPUTER SOFTWARE TRADING / ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC** on 13

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March 2023 at its principal address indicated in its Articles of Incorporation and to the incorporator and nominees of the said entity (**ARIANE MAE AFABLE ESTOLONIO, MEY ANN DE LEON ARAULAN** and **JOANNA MARIE CRUZ DE VERA**) and to the company's official e-mail, estelonioariane@gmail.com, directing the company to show cause why its Certificate of Incorporation should not be revoked for serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public and for committing fraud in the procurement of its Certificate of Incorporation and to show cause why no administrative sanction and/or criminal charges should be filed against SOPHIA FRANCISCO HOLDING OPC for violation of the Securities Regulation Code.

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, the factual backdrop having been laid, we now resolve the instant case on the basis of available evidence.

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

"3.1 "Securities" are 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 character. It includes:

- (a) Shares of stocks, bonds, debentures, notes, evidences of indebtedness, asset-backed securities;
- (b) ***Investment contracts***, certificates of interest or participation in a profit-sharing agreement, certificates of deposit for a future subscription;
- (c) Fractional undivided interests in oil, gas or other mineral rights;
- (d) Derivatives like option and warrants;
- (e) Certificates of assignments, certificates of participation, trust certificates, voting trust certificates or similar instruments;
- (f) Proprietary or non-proprietary membership certificates in corporations; and
- (g) Other instruments as may in the future be determined by the Commission. "

An *investment contract* on the other hand, is defined under SRC Rule 26.3.5 of the 2015 *Implementing Rules and Regulations of the Securities Regulation Code (2015 SRC IRR)*, as follows:

"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."

Further, the elements of an investment contract were enumerated in the case of *Power Homes Unlimited Corporation vs. SEC* which traces its roots from the US case of *SEC vs. Howey Co.* and was later modified in the case of *SEC vs. Glenn W. Turner Enterprises, Inc.* as follows:

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

Section 8, in relation to Section 12 of the SRC provides, that:

“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.

“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.”

Securities, such as investment contracts, as defined by the SRC in relation to *SRC Rule 26.3.5 of the 2015 SRC IRR*, must be registered before the same can be ***sold or offered*** or distributed to the public. Hence, as a form of security, investment contracts must be registered under Section 8 of the SRC before they can be sold or offered to the public.

Rule 3.1.17 of the 2015 SRC IRR defined **Public Offering** as “any 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:

“3.1.17.1 Publication in any newspaper, magazine or printed reading material which is distributed within the Philippines or any part thereof;

3.1.17.2 Presentation in any public or commercial place;

3.1.17.3 **Advertisement or announcement** on radio, television, telephone, **electronic communications, information communication technology or any other forms of communication;** or

3.1.17.4 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.**” (Emphasis supplied)

On the other hand, a “*Broker*” is defined under Section 3.3. of the SRC, as a person engaged in the business of buying and selling securities for the account of others while “*Salesman*” is defined under 3.13 of the SRC as a natural person, employed as such or as an agent, by a dealer, issuer or broker to buy and sell securities.

Consequently, Section 28 of the SRC provides that:

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“SEC. 28. Registration of Brokers, Dealers, Salesman and Associated Persons. – 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.

Thus, any person, without proper license from the Commission who acts as brokers, dealers 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 (P5,000,000.00) or penalty of Twenty-One (21) years imprisonment or both pursuant to Section 73 of the SRC.

In this particular case, the Department carefully examined the characteristics of the investments offered by against **BITPRIME / BITPRIME COMPUTER SOFTWARE TRADING / ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC** to determine if they satisfy the elements of an investment contract. In our evaluation, indeed, the elements of an investment contract are manifested in the investments being offered by against **BITPRIME / BITPRIME COMPUTER SOFTWARE TRADING / ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC** as follows:

- First, there was an **investment of money** by the public in the investment scheme of **ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC** who were enticed to invest in their scheme;
- Second, there was a **common enterprise** in the sense that the investors’ monies were pooled in respondent **ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC’s** alleged profit-making venture;
- Third, there was clearly an **expectation of profits** on the part of its investors who were promised that their money would earn as much as 45% in 15 days depending on their chosen plan; and
- Lastly, the expectation of profits is **derived primarily from the efforts of others. Here the investors had no hand in the management of ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC and earned profits by merely investing in said entity.**

It is important to emphasize that as a juridical person, **ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC** is only allowed to exercise powers inherent to its existence as provided in the Revised Corporation Code of the Philippines and those conferred in its Articles of Incorporation. (AOI). In other words, what a corporation or partnership can do is necessarily circumscribed by its primary purpose clause in its AOI.

The purpose clause in the Articles of Incorporation of **ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC** clearly and explicitly state, among others, that:

“This Certification DOES NOT AUTHORIZE INVESTMENT SOLICITATION AND INVESTMENT-TAKING WITHOUT A SECONDARY LICENSE FROM THIS COMMISSION.”

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 or 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 stated in **ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC**'s Articles of Incorporation ***prohibited it to operate an investment-taking scheme***.

Section 44 of the Revised Corporation Code of the Philippines, 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 opinion¹, the Commission pronounced that:

“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.”

Likewise, the Certificate of Registration issued to **ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC** explicitly states that:

“This Certification DOES NOT AUTHORIZE INVESTMENT SOLICITATION AND INVESTMENT-TAKING WITHOUT A SECONDARY LICENSE FROM THIS COMMISSION.”

The act of **ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC** 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.

Likewise, the investment scheme of respondent **ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC** promising a return of 3% per day has the characteristics of a Ponzi scheme. A **Ponzi scheme** is an investment program that offers impossibly high returns and pays these returns to 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 bonds² 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. Such scheme is prohibited under Section 26 of the SRC:

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

¹ SEC-OGC Opinion No. 11-33 dated 29 July 2011 addressed to Mr. Jesus B. Lapuz.

² Actually, postal reply coupons

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.”

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)

The offering and selling of securities in the form of investment contracts using the “**Ponzi Scheme**” which is fraudulent and unsustainable, is **NOT** a registrable security. The Commission will not issue a License to Sell Securities to the Public to persons or entities that are engaged in this business or scheme.

The investment scheme of **ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC** also operates to defraud investors as it deceives the investing public by making it appear that it has the authority to deal in securities. This also amounts to serious misrepresentation as to what it can do or is doing to the damage and prejudice of the investing public.

Under Section 6 of Presidential Decree 902-A, the Commission has the power to suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships and associations, 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. Likewise, Section 5.1 (m) of the SRC and Section 179 (j) of the Revised Corporation Code of the Philippines (RCCP) empower the Commission to revoke the franchise or Certificate of Incorporation/registration of corporations registered with it.

Under the 2016 Rules of Procedure of the SEC, the EIPD shall exercise authority over persons and entities, whether under the primary authority of other Operating Departments, involved in the following:

xxx “1. Investigations and administrative actions involving the following:

xxx c) Selling, offering or transacting unregistered securities by entities without secondary license;

- d) *Ultra Vires* acts committed in violation of the Revised Corporation Code;
2. Petitions for revocation³ of corporate registration in all cases, except those which fall under the original authority of CRMD;
3. Administrative actions for fraudulent transactions involving securities;
4. Administrative actions for all other violations under PD 902-A, except those cases which fall under the original authority of other Operating Departments;
5. All other matters involving investor protection filed by the public, referred by self-regulatory organizations, or referred by other Operating Departments after initial evaluation or findings that there is a possible violation of laws, rules or regulations that the Commission implements but do not fall under their respective original authority.”

Further, in SEC Admin Case No. 11-10-124 entitled *In re: PHILBIO Renewable Energy Resources Corp.*, promulgated on 27 April 2016, the Commission provided 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.”*

In the case of *SEC vs. CJH DEVELOPMENT CORPORATION (G.R. No. 210316, 28 November 2016)* the Supreme Court held that:

“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.”

Considering that nowhere is it stated in the primary purpose **ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC** that it is authorized to engage in the selling or offering for sale of securities to the public, compounded by the fact that it does not have the required

³ Revocation refers to involuntary dissolution of corporate registration pursuant to Section 138 of the Revised Corporation Code.

Secondary License from the Commission to offer or sell securities to the public, its activity of selling or offering securities or investment contracts to the public is considered an *ultra vires act* and therefore constitutes serious misrepresentation as to what the corporation can do or is doing to the great prejudice or damage to the general public which is a ground for the revocation of a corporation's primary franchise or certificate of registration/ incorporation under PD 902-A.

WHEREFORE, for violation of Section 44 of the Revised Corporation Code of the Philippines (R.A. No. 11232) in relation to Sections 8.1, 26 and 28.1 of the Securities Regulation Code and Section 6 (i)(2) of P.D. 902-A, Section 5.1 (m) of the SRC and Section 179 (j) of the RCCP, the Certificate of Incorporation and registration as a corporation of **ARIANE ESTOLONIO – BITPRIME SOFTWARE OPC**, is hereby **REVOKED**.

Accordingly, let this Order be attached by the Corporate Filing and Records Division of the Company Registration and Monitoring Department (CRMD) to the records of the corporation on file with the Commission. Further, the Information and Communications Technology Department (ICTD) of this Commission is likewise requested to enter the "revoked" status of Subject Corporation in the online database of the Commission.

SO ORDERED

Makati City, 21 March 2023.



OLIVER O. LEONARDO
Director