

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT

In the matter of:

SEC EIPD CASE NO. 2023-7611

MELON PLUS/PRIMELOGIX MARKETING INC.

Company Registration No. 2023060101833-01

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MELON PLUS/PRIMELOGIX MARKETING INC.

Unit 1015, 10th Floor, Parkway Corporate Center,
Corporate Ave. cor. Parkway Place, Brgy. Alabang,
City of Muntinlupa, 1780

jgm.incorporation@gmail.com

JOHN JERICO HAYAGAN OPERIO

576 Room 606 Marvel Building Juan Luna St.,
Binondo – Barangay 293, City of Manila, First
District, National Capital Region, 1006

JERWIN HAYAGAN OPERIO

576 Room 606 Marvel Building Juan Luna St.,
Binondo – Barangay 293, City of Manila, First
District, National Capital Region, 1006

REVOCATION ORDER

PRIMELOGIX MARKETING INC. was issued a Certificate of Registration by the Commission on 1 June 2023 under Company Registration No. 2023060101833-01 with the following as its incorporators:

Name	Citizenship	Residential Address
JOHN JERICO HAYAGAN OPERIO	Filipino	576 Room 606 Marvel Building Juan Luna St., Binondo – Barangay 293, City of Manila, First District, National Capital Region, 1006
JERWIN HAYAGAN OPERIO	Filipino	576 Room 606 Marvel Building Juan Luna St., Binondo – Barangay 293, City of Manila, First District, National Capital Region, 1006

The primary and secondary purposes of **MELON PLUS/PRIMELOGIX MARKETING INC.** as stated in its Articles of Incorporation, are:

Primary:

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

Secondary:

To engage in the business of general advertising as principal, proponent, consultant, partner, and or agent providing services such as but not limited to conceptualization, development, design, arrangement, promotion and implementation of such advertisements thru multi-media such as billboards, print, TV, radio, web, and any other digital infrastructure and social platforms available. To provide also ancillary services such as branding and trade marking of institutions and products.

To act as managers or managing agency of persons, firms, associations, corporations, partnerships and other entities; to provide management and technical advice for commercial, industrial, manufacturing and other kinds of enterprise; and to undertake, carry on, assist or participate in the promotion, organization, management, liquidation or reorganizations or corporations, partnerships and other entities, except the management of funds, securities, portfolio or similar assets of the managed entities of corporation.

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.

To operate, manage, and engage in the business of courier activities that includes pickup, sorting, transport and delivery (domestic or international) of letter-post and (mail-type) parcels and packages by firms not operating under a universal service obligation either self-owned (private) transport or via public transport.

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

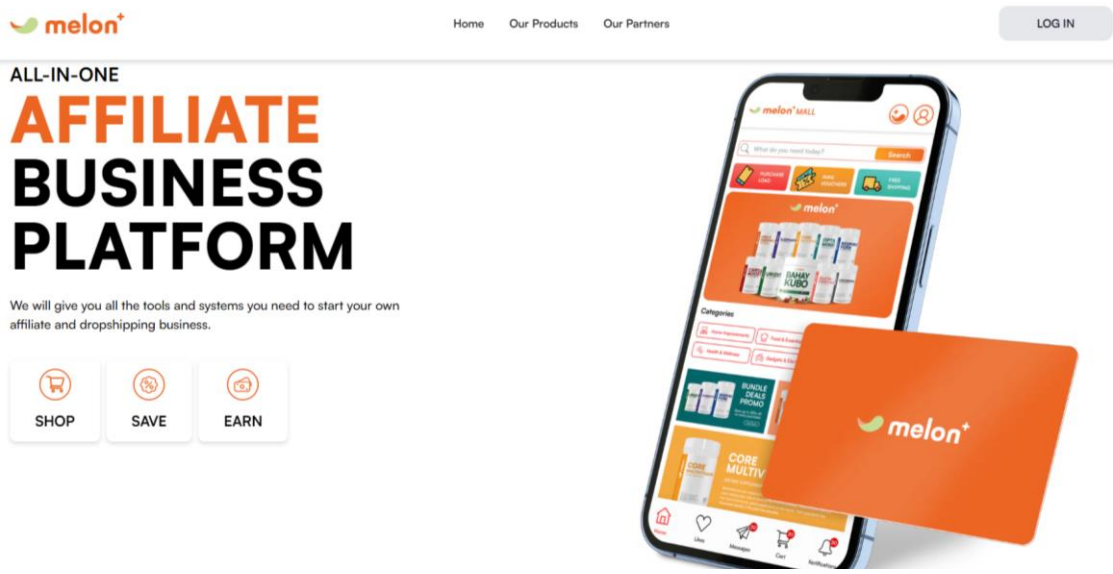
In the month of September 2023, the Commission began receiving information that individuals or group of persons representing an entity named **MELON PLUS/PRIMELOGIX MARKETING INC.** are enticing the public to invest their money in the said entity with a promise of high monetary rewards or profits.

As posted on the website, www.melonplus.com, **MELON PLUS/PRIMELOGIX MARKETING INC.** features Dropshipping Platform, Membership Card Club, Affiliate Rewards System and Discounts and Vouchers. A prospective investor or an affiliate may enjoy privileges such as access to Melon Plus factory priced products, up to 40% discount

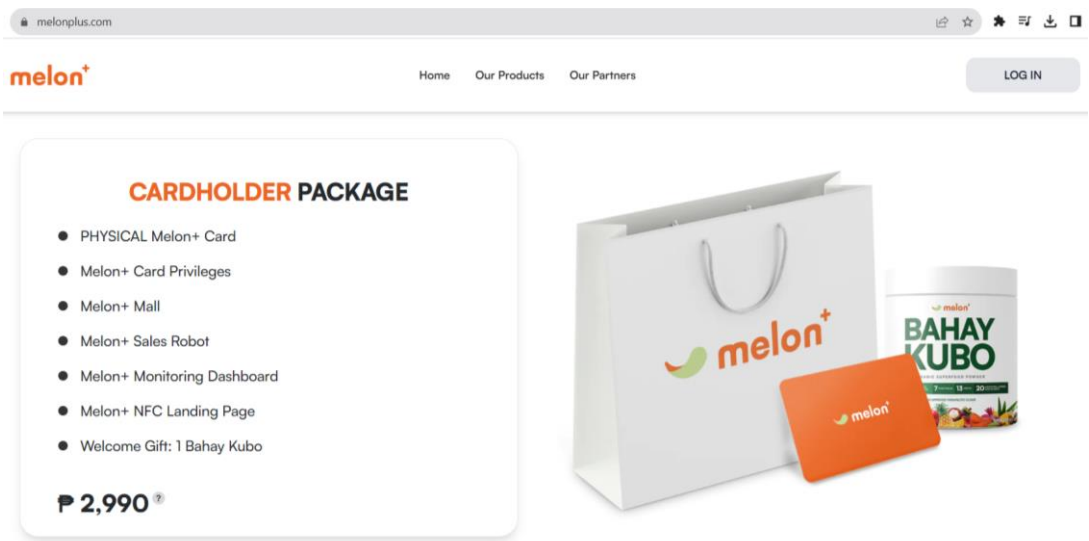
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on all Melon Plus products, discounted products in Melon Plus Mall, access to Melon Plus Mall promos, free vouchers with Melon Plus partner brands, free pass to Melon Plus exclusive events and access to Melon Plus affiliate rewards.



Further, to be a subscriber or an affiliate, a prospective investor should avail of the minimum package worth Php2,990.00:



Upon availing of the said package, a prospective investor will become a new affiliate and can now enjoy the 6 ways of earning.

1. Direct Referral Commission – a prospective investor will earn 1000 points for every recruit. 1 point is equal to 1 Peso.
2. Indirect Referral Commission
 - 2nd level – 200 points = Php200.00
 - 3rd level – 100 points = Php100.00
 - 4th level – 100 points = Php100.00

- 5th level – 60 points = Php60.00
 - 6th to 10th level – 20 points = Php20.00
3. Subscription Box – part of the Php2990.00 membership fee, Php500.00 will go to subscription fee to access tools and the system. 2.5% commission for every affiliate under your box.
 4. Multi-tier Commission – 50% commission of the total subscription box earning of your direct referral.
 5. Indirect Multi-tier Commission –
 - 10% commission on the 2nd level
 - 5% commission on the 3rd and 4th level
 - 3% commission on the 5th level
 6. Drop-shipping Commission

As earlier mentioned, **MELON PLUS/PRIMELOGIX MARKETING INC.** is a registered corporation under Company Registration No. 2023060101833-01, however, it is not authorized to solicit investments from the public as it did not secure prior registration and/or license to solicit investments from the Commission as prescribed under Section 8 of the Securities Regulation Code (SRC).

On 11 September 2023, the Commission posted Advisory against **MELON PLUS/PRIMELOGIX MARKETING INC.**, excerpts of which are quoted below:

While Melon plus is registered with Companies Registry of Hongkong, they are operating in the Philippines under the name **Primelogix Marketing Inc.** headed by **Mr. John Jerico Hayagan Operio** and **Mr. Jerwin Hayagan Operio**.

Moreover, a video presentation circulating online shows that **Mr. Reiner Cadiz** (who is an incorporator of **iWatch.ph**) is part of the company as he is the one who explains and presents the marketing scheme of **Melon Plus/Primelogix Marketing Inc.**

Previously, the Commission issued an Advisory against **iWatch.ph** and an Order of Revocation revoking its registration as a corporation for violation of Section 44 of the Revised Corporation Code of the Philippines in relation to Sections 8.1 and 28.1 of the Securities Regulation Code and Section 6 (i) (1) and (2) of P.D 902-A, Section 5.1 (m) of the SRC and Section 179 (j) of the RCCP.

As the scheme of **Melon Plus/Primelogix Marketing Inc.** involves the sale of securities to the public, the SRC requires that the issuing entity must be a registered corporation with the SEC, the said securities offered are duly registered and that the appropriate license and/or permit to offer and sell securities to the public are issued to the corporation and/or its agents, pursuant to the provisions of Sections 8 and 28 of the SRC.

Records of the Commission show that while **Primelogix Marketing Inc.** is registered with the Commission as a corporation, it is **not authorized to solicit investments from the public** as it did not secure prior registration and/or license to solicit investments from the Commission as prescribed under Section 8 and 28 of the SRC.

The public is advised **NOT TO INVEST** or **STOP INVESTING** in any investment scheme being offered by any individual or group of persons allegedly for or on behalf of **Melon Plus/Primelogix Marketing Inc.** and to exercise caution in dealing with any individuals or group of persons soliciting investments for and on behalf of it.

On 21 September 2023, a **Show Cause Order** was issued against **MELON PLUS/PRIMELOGIX MARKETING INC.**, *directing the company to show cause why no administrative sanctions and/or criminal charges should be imposed/filed against MELON PLUS/PRIMELOGIX MARKETING INC. and/or its incorporators, directors or officers for violation of the Securities Regulation Code and other pertinent laws, rules and regulations of the Commission, to show cause why no administrative sanctions and/or criminal charges should be imposed/filed against MELON PLUS/PRIMELOGIX MARKETING INC. and its incorporators, directors or officers for offering and/or selling unregistered securities to the public in violation of Section 8, 26, and 28 of the Securities Regulation Code, to show cause why its Certificate of Incorporation should not be revoked pursuant to Section 6(i)(2) of Presidential Decree No. 902-A for serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public and for engaging in ultravires acts in violation of the Revised Corporation Code of the Philippines, and to show cause why no administrative sanction and/or criminal charges should be filed against MELON PLUS/PRIMELOGIX MARKETING INC and/or its incorporators, directors and officers for committing investment fraud in violation of Section 11 of Republic Act No. 11765 otherwise known as the Financial Products and Services Consumer Act.*

The Show Cause Order was sent through the declared email address of the company as reflected in the records of the Commission at jgm.incorporation@gmail.com.

On 4 October 2023, the Department received an email from the counsel of **MELON PLUS/PRIMELOGIX MARKETING INC.** requesting for a conference meeting to discuss the correct business model of **MELON PLUS/PRIMELOGIX MARKETING INC.** Attached to the email is the *Entry of Appearance with Verified Answer/Explanation* to the Show Cause Order issued by the Enforcement and Investor Protection Department (EIPD).

In the said *Verified Answer/Explanation*, **MELON PLUS/PRIMELOGIX MARKETING INC.** claims that it merely operates an e-commerce platform that houses

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various merchants and allows affiliate marketing for the promotion and marketing of the products sold by the onboarded merchants.

As further argued, **MELON PLUS/PRIMELOGIX MARKETING INC.** is the developer and operator of Melon Plus, an e-commerce platform which operates as a marketplace of various products sold by their respective merchants and resellers. These merchants and resellers sign up with **MELON PLUS/PRIMELOGIX MARKETING INC.** so that they can start selling and marketing their products in the platform.

In paragraph 2.13, it was explained that Melon Plus employs affiliate marketing in order to boost sales and online presence of merchants. Affiliate marketing as defined in the Verified Answer, is an advertising model where merchants and sellers engage third-parties to generate traffic to their services or products. This can be done through social media pages, websites, email marketing and other online channels and in return, these affiliates get commission fee incentives.

On 10 October 2023, a reply letter was sent to the counsel of **MELON PLUS/PRIMELOGIX MARKETING INC.** granting the request to have a conference meeting to discuss the company's business model.

On 18 October 2023, a clarificatory conference was held at the EIPD where **Melon Plus/Primelogix Marketing Inc.** was represented by Mr. Jerwin Operio, Mr. John Jerico Operio and their counsel Atty. John Henley Godinez.

During the conference, Mr. John Operio explained the business model of **MELON PLUS/PRIMELOGIX MARKETING INC.** They were also advised to activate the website temporarily to test whether an ordinary person can create an account as a buyer. However, since the posting of the Advisory, the operations of **MELON PLUS/PRIMELOGIX MARKETING INC.** was affected and the process of buying a specific product cannot push through.

It was also discussed that **MELON PLUS/PRIMELOGIX MARKETING INC.** is an affiliate-led platform. Affiliates can sell products from merchants with corresponding commission ranging from 5% - 45%. The subscription fee is Php500.00 and a one-time fee of Php2,490.00 for a total of Php2,990.00 to sign up as an affiliate. Mr. Operio also mentioned that at present, there were already approximately 300 people signed-up as affiliates.

On 24 October 2023, the Department issued an Order dated 19 October 2023, reiterating that based on the investigation and the information gathered by the EIPD, **MELON PLUS/PRIMELOGIX MARKETING INC.** publicly offered a scheme with the representation that those who invest would be able to obtain huge profits. Likewise, **MELON PLUS/PRIMELOGIX MARKETING INC.** was required to submit within fifteen (15) days from receipt of the Order, the company's interim Financial Statements, Inventory report of the company, copies of all contracts with the merchants, FDA approval of **MELON PLUS/PRIMELOGIX MARKETING INC.**'s products and lists of all the affiliates signed-up with **MELON PLUS/PRIMELOGIX MARKETING INC.**

On 8 November 2023, **MELON PLUS/PRIMELOGIX MARKETING INC.**, through counsel submitted a *Motion for Extension to submit Supplemental Answer and Additional Documents.*

On 13 November 2023, the Department granted its request for an additional period of ten (10) days to submit its supplemental answer and additional documents.

On 17 November 2023, the Department received the Supplemental Answer and other Documents.

In the said Supplemental Answer, **MELON PLUS/PRIMELOGIX MARKETING INC.** disagreed with the findings of the Department as it claims that it is not yet operating as an e-commerce platform. As mentioned, **MELON PLUS/PRIMELOGIX MARKETING INC.**, while not yet operating at full capacity in terms of features and functionalities, was supposed to be launched in early September. However, because of the Advisory issued by the Commission, **MELON PLUS/PRIMELOGIX MARKETING INC.** was prompted to suspend the launch and the commencement of its commercial operations.

In a reply to the Supplemental Answer dated 5 December 2023, it was discussed that based on the initial review of its *Unaudited Financial Statements*, the bulk of the expenses recorded in the books was *Commission Expense (Commission Expense-Unilevel)*. If such e-commerce platform is not yet operational as claimed by **MELON PLUS/PRIMELOGIX MARKETING INC.**, why then is there a Commission Expense presented in the Income Statement when an affiliate/member can only receive a commission upon selling a product of a merchant. Thus, contrary to its claim, a pyramiding scheme-cum-unregistered offering of securities in the form of investment contracts is clearly present in the business model of **MELON PLUS/PRIMELOGIX MARKETING INC.** Thus, the request of **MELON PLUS/PRIMELOGIX MARKETING INC.** to lift the Advisory was denied.

DISCUSSION:

The scheme of **MELON PLUS/PRIMELOGIX MARKETING INC.** has the characteristics of a Pyramid scheme. The Pyramiding scheme involves securities because for payment of a sum of money, often nominal, the investor participates in a recruitment scheme that promises a stream of profits. The scheme that requires recruitment in a two-pronged structure takes the form of a pyramid, one that grows wider at the bottom, and thrives with the supply of new recruits to the scheme. Here, the recruitment fees collected from new recruits are used to pay the recruiting commissions to earlier recruits.

As the scheme of **MELON PLUS/PRIMELOGIX MARKETING INC.** involves the sale of securities to the public, the SRC requires that the issuing entity must be a registered corporation with the SEC, the said securities offered are duly registered and that the appropriate license and/or permit to offer and sell securities to the public are issued to the corporation and/or its agents, pursuant to the provisions of Sections 8 and 28 of the SRC.

Section 3.1 of the Securities Regulation Code (SRC) defines **securities** as shares, participation or interest in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in 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* (G.R. No. 164182 February 26, 2008) traced from the case of *SEC vs. Howey Co.* (66 S.Ct.1100 May 27, 1946) and was later modified in the case of *SEC vs. Glenn W. Turner Enterprises, Inc.* (474 F.2d476 February 1, 1973), as follows:

- A contract, transaction or scheme;
- An investment of money;
- A common enterprise;
- Expectation of profits; and
- Profits 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 Page 11 of 14 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 and in relation to SRC Rule 26.3.5 of the 2015 SRC IRR must be registered with the Commission pursuant to Sections 8 and 12 of the SRC before the same can be **offered or sold** for distribution.

Meanwhile, 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. “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:

“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 registration or license from the Commission who acts as brokers or agents of a company selling or convincing people to invest in the investment scheme including solicitations or recruitment through the internet may likewise be prosecuted and held criminally liable under Section 28 of the SRC and penalized with a maximum fine of Five Million pesos (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 **MELON PLUS/PRIMELOGIX MARKETING INC.** 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 **MELON PLUS/PRIMELOGIX MARKETING INC.**, which are as follows:

- By investing in the company, **the investor enters into a contract;**
- There is a **placement of money** from the public as they are enticed to invest in **MELON PLUS/PRIMELOGIX MARKETING INC.** that represented to be engaged in a lucrative business and are required to invest money in order for them to earn profits;
- The money invested is placed in a **common enterprise;**
- The **investors expect to derive profits** as they are primarily attracted to join **MELON PLUS/PRIMELOGIX MARKETING INC.** for a promise of receiving a guaranteed monthly interest; and
- The investors expect to earn profits derived primarily from the efforts of others or from **MELON PLUS/PRIMELOGIX MARKETING INC.**

An evaluation of **MELON PLUS/PRIMELOGIX MARKETING INC.** marketing scheme reveals that a huge portion of the earning of its members is based on recruitment.

A member or an agent will receive One Thousand Pesos (Php1,000.00) for every recruit. The more packages that the prospect will avail of, the more income for the recruiter.

Upon joining the company, the agent/member can enjoy six (6) ways of earning through Direct referral, Indirect Referral, Subscription Box, Multi-tier Commission, Indirect Multi-tier Commission, and Drop-shipping Commission.

In other words, stripped to its core, the marketing/compensation plan of **MELON PLUS/PRIMELOGIX MARKETING INC.** showed that the thrust of the company's offering is not the sale of products for use or consumption but the offering and selling of an "income opportunity" or "ways to earn" through its package worth Php2,990.00 to the public to lure the latter to participate in **MELON PLUS/PRIMELOGIX MARKETING INC.** income-generating recruitment activities.

MELON PLUS/PRIMELOGIX MARKETING INC. employment of e-commerce and Drop-shipping Platform, Membership Card Club is nothing but a way to ostensibly make it appear that it is involved in selling consumer products when the fact of the matter is that it is offering the opportunity to earn profits by investing in its investor-recruitment business in the guise of selling product packages.

Hence, from the foregoing discussions, **MELON PLUS/PRIMELOGIX MARKETING INC.'s** scheme bears the hallmarks of an unlawful selling of unregistered securities-cum-pyramiding scheme based on the following factors:

- **No genuine product or service** – contrary to what **MELON PLUS/PRIMELOGIX MARKETING INC.** would have us believe, an investor-member cannot join **MELON PLUS/PRIMELOGIX MARKETING INC.** if he does not purchase its package worth Php2,990.00.
- **No demonstrated revenue from retail sales** - the Unaudited Financial Statements submitted by **MELON PLUS/PRIMELOGIX MARKETING INC.** do not reflect sales of their platform e-commerce or a Commission Expense related to the sale of a product.
- **Buy-in required** – for an investor to be a member of or participate in **MELON PLUS/PRIMELOGIX MARKETING INC.** program, he has to purchase **MELON PLUS/PRIMELOGIX MARKETING INC.** package worth Php2,990.00.
- **Emphasizes recruiting** – an investor-member cannot earn just by purchasing **MELON PLUS/PRIMELOGIX MARKETING INC.** packages but profits are earned from recruiting others to participate in the plan through **MELON PLUS/PRIMELOGIX MARKETING INC.** incentive system, that is, Direct referral, Indirect Referral, Subscription Box, Multi-tier Commission, Indirect Multi-tier Commission, and Drop-shipping Commission. Thus, commissions are paid out of money from new recruits rather than revenue from product sales or external purchasers by end-users based on market demand or need for the product.

Clearly, **MELON PLUS/PRIMELOGIX MARKETING INC.** is offering an investment scheme which is within the definition of securities under Section 3.1 of the SRC in the nature of an investment contract. As defined, an investment contract is a contract or scheme for the placing of capital or laying out of money in a way intended to secure income or profit from its employment.¹ It has been applied to a variety of situations where individuals were led to invest money in a common enterprise with the expectation that they would earn a profit through the efforts of the promoter or of someone other than themselves.²

MELON PLUS/PRIMELOGIX MARKETING INC. is not authorized to solicit investments from the public as it did not secure prior registration and/or license to solicit investment from the Commission as prescribed under Section 8 of the Securities Regulation Code. Hence, the act of **MELON PLUS/PRIMELOGIX MARKETING INC.** in soliciting investments from the public without the necessary secondary license from the Commission is unauthorized.

Further, Section 11 of Republic Act No. 11765 or the Financial Products and Services Consumer Protection Act (FCPA) also prohibits investment fraud which is defined under the law as any form of deceptive solicitation of investments from the public which includes Ponzi schemes and such other schemes involving the promise or offer of profits or returns sourced from the investments or contributions made by the investors themselves and the offering or selling of investment schemes to the public without a license.

It is important to emphasize that **MELON PLUS/PRIMELOGIX MARKETING INC.** as a juridical person, is only allowed to exercise powers inherent to its corporate 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 can do is necessarily circumscribed by its primary purpose clause in its AOI.

MELON PLUS/PRIMELOGIX MARKETING INC.’s primary and secondary purposes as clearly provided in its Articles of Incorporation, states that:

“To engage in, conduct and carry on the business of buying, selling, distributing, marketing on wholesale and retail basis insofar as may be permitted by law, all kinds of goods, wares and merchandise of every kind and description, and enter into all kinds of contracts for export, import, purchase, acquisition sale on wholesale and retail basis and other disposition for its account as principal or in representative capacity as main distributor, manufacturer’s representative, merchandise broker, indentor, commission, merchant, factors or agents, upon consignment of all kinds of goods, services, merchandise or products whether natural or artificial

¹ *SEC vs Howey Co.*, 328 U.S. 293 (1946)

² *Ibid.* Although the definition as stated in the *Howey* case qualified that the earning of profit was expected to be solely through the efforts of another party, Rule 3.1G of the SRC’s IRR replaces this qualifier with “primarily”, acknowledging that an investment contract may still be present where the individual who placed the money exerted a small amount of effort in an attempt to earn the profits promised.

without engaging in investment solicitation nor investment taking activity from public investors.

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

Nonetheless, the purpose stated in the Articles of Incorporation need not set out with particularity the multitude of activities in which the corporation may engage. The effect of broad purposes or objects is to confer wide discretionary authority upon the directors and management of the corporation as to the kinds of business in which it may engage. However, dealings which are entirely irrelevant to the purposes are unauthorized and called ***ultra vires***. The purpose clause of the articles of incorporation indicates the extent as well as the limitations of the powers which a corporation may exercise. In fact, the purpose in **MELON PLUS/PRIMELOGIX MARKETING INC.**'s Articles of Incorporation expressly prohibits it to operate an investment-taking scheme.

In an SEC opinion³, 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 **MELON PLUS/PRIMELOGIX MARKETING INC.** explicitly states that:

This Certificate grants juridical personality to this corporation **BUT DOES NOT AUTHORIZED it:**

- a. **To issue, sell or offer for sale to the public, securities** such as but not limited to, shares of stock, **investment contracts**, debt instruments and virtual currencies without prior Registration Statement approved by this Commission

- b. **To undertake business activities requiring a Secondary License from this Commission such as, but not limited to acting as broker or dealer in securities**, government securities eligible dealer (GSED), investment adviser of an investment company, close-end or open-end investment company, investment house, transfer agent, commodity/financial futures exchange/broker/merchant, financing lending

³ SEC-OGC Opinion No. 11-33 dated 29 July 2011 addressed to Mr. Jesus B. Lapuz.

company, and time shares/ cash shares/membership certificate issuers or selling agents thereof nor to operate a fiat money to virtual currency exchange **nor engage in investment solicitation and investment taking requiring a Secondary License from this Commission.**

- c. To act as a permit to undertake activities to which other government agencies require license or permit.

To exacerbate matters, the scheme being offered by **MELON PLUS/PRIMELOGIX MARKETING INC.**, is clearly in the nature of a *ponzi* scheme⁴ where the profits or payouts shall be taken from incoming investors or additional pay-ins of existing members-investors, considering that it does not have any underlying legitimate business from where it could source its promised return on investments to its investors. 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:

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 of 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.”

On the other hand, as held in the case of *SEC vs. CJH Development Corporation, (G.R. No. 210316, 28 November 2016)*⁵, the Supreme Court ruled that *the sale and/or offer of securities without the requisite license, necessarily operates as a fraud on investors, thus:*

“The act of selling unregistered securities would necessarily operate as a fraud on investors as it deceives the investing public by making it appear that respondents have authority to deal on such securities. Section 8.1 of the SRC clearly states that securities shall not be sold or offered for sale or

⁴ 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 bonds 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. (*People of the Philippines v. Priscilla Balasa, et. al., G.R. 106357, dated September 3, 1998*).

⁵ SEC vs. CJH Development Corporation, (G.R. No. 210316, 28 November 2016)

distribution within the Philippines without a registration statement duly filed with and approved by the SEC and that prior to such sale, information on the securities, in such form and with such substance as the SEC may prescribe, shall be made available to each prospective buyer.” (Emphasis ours)

Under Section 6 of Presidential Decree 902-A, the Commission has the power to suspend, or revoke, after proper notice and hearing, the franchise of certificate of registration or corporations, partnerships and associations, on the ground of serious misrepresentations as to what the corporation can do or is doing to the to the great prejudice of or damage to the general public. Further, SEC Admin Case No. 11-10-124 entitled *In re: PHILBIO Renewable Energy Resources Corp.*, promulgated on 27 April 2016 provides what constitute serious misrepresentation, to wit:

“From the foregoing, it is indubitable that PHILBIO misrepresented itself to the public that it can solicit investments despite the fact that it is not one of the purposes of the corporation. Worse, it does not have a license to offer/sell securities. PHILBIO operates an investment-taking scheme which is therefore considered an ultra vires act. These constitute serious misrepresentation as to what the corporation can do or doing to the great prejudice to the general public.”

Considering that nowhere is it stated in its primary purpose that **MELON PLUS/PRIMELOGIX MARKETING INC.** is authorized to engage in the selling or offering for sale of securities to the public, the activity of **MELON PLUS/PRIMELOGIX MARKETING INC.** of selling or offering for sale of investments is considered an ultra vires act and therefore constitute serious misrepresentation.

Section 44 of the RCCP provides:

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

WHEREFORE, for violations of Section 44 of the Revised Corporation Code of the Philippines (R.A. 11232), Sections 8.1, 26.1 and 28.1 of the Securities Regulation Code, Section 11 of the Financial Products and Services Consumer Protection Act, P.D. 902-A in relation to Section 179 (j) of the RCCP and Section 5.1 (m) of the SRC, the Certificate of Incorporation and the registration of **MELON PLUS/PRIMELOGIX MARKETING INC.** as a corporation, is hereby **REVOKED**.

Further, Section 54 of the Securities Regulation Code provides:

SEC 54. Administrative Sanctions. – 54.1. If, after due notice and hearing, the Commission finds that: (1) There is a violation of this Code, its rules, or its orders; xxx it shall, in its

discretion, impose any or all of the following sanctions as may be appropriate in the light of the facts and circumstances:

xxx.

(ii) A fine of no less than Ten thousand pesos (P10,000.00) nor more than One million pesos (P1,000,000.00) plus not more than Two thousand pesos (P2,000.00) for each day of continuing violation;

xxx.”

Hence, a fine of **ONE MILLION PESOS (P1,000,000.00)** is hereby imposed against **MELON PLUS/PRIMELOGIX MARKETING INC.**, for offering securities to the public without prior registration and license from the Commission and **MELON PLUS/PRIMELOGIX MARKETING INC.**, its incorporators and directors are directed to pay a fine of **One Million Pesos (P1,000,000.00)** pursuant to Section 54.1 (ii) of the SRC within a period of Fifteen (15) days from receipt of this Order.

Accordingly, let this Order be posted on the SEC website and attached by the Corporate Filing and Records Division of the Company Registration and Monitoring Department (CRMD) to the records of the 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, 23 January 2024.


OLIVER O. LEONARDO
Director