

# The SEC

and its role in  
Investor Protection



**Securities and  
Exchange  
Commission**  
PHILIPPINES



**2022 1ST PAGBA SEMINAR**

Bacolod City  
November 23-26, 2022

What is the  
**Securities** and  
**Exchange**  
**Commission?**



# What is the SEC?

The Securities and Exchange Commission (SEC) is the national **government regulatory agency** charged with supervision over the corporate sector, the capital market participants, the securities and investment instruments market, and the investing public.

Created on October 26, 1936 by Commonwealth Act (CA) 83 also known as The Securities Act, the Commission was tasked to regulate the **sale and registration** of **securities, exchanges, brokers, dealers and salesmen.**



# What is the SEC?

SEC is the **registrar and overseer** of the **Philippine corporate sector**; it supervises corporations and evaluates the financial statements (FS) filed by them. SEC also develops and regulates the capital market, a crucial component of the Philippine financial system and economy. As it carries out its mandate, SEC contributes significantly to government revenues.



# Investment Scams





3

Investment Scam

in

WAYS



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Traditional

Traditional + Online

Purely Online

# Old Trick or Traditional Way

A hand is shown holding a stack of papers, possibly contracts or documents. The image is overlaid with a large, semi-transparent green rectangle that covers most of the frame. The text is white and positioned on the green background.

- a) **Face-to-face** transaction
- b) **Execution of investment contracts**
- c) Issuance of **PDCs**
- d) **Office** transactions



# Purely Online

- a) Invitation & **recruitment are online**
- b) Issuance of **Log-in IDs** for online monitoring of transactions through PM
- c) **Wire transfer** of payments (pay-ins & pay-outs) for subsequent transactions

# Old Trick or Traditional Way + New Trick or Online Way

a) **Face-to-face** transaction

b) **Execution of contracts** of investment

c) Issuance of **PDCs**

d) **Office** transactions



e) **Wire transfer** of payments (pay-ins & pay-outs) for subsequent transactions

f) Issuance of **Log-in IDs** for online monitoring of transactions through PM

g) Invitation & **recruitment are online**



# 2

Most Popular  
**INVESTMENT  
SCAMS**  
in the  
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# PYRAMID & PONZI SCHEMES



# VICTIM PROFILES:

Anyone with money to invest.

OFWs  
Retirees  
Farmers



# SOLICITOR/ AGENT:

Friend  
Relative  
Teacher  
Religious People



## "Chain distribution plans" or "pyramid sales schemes"

Sales devices whereby a person, upon the condition that he makes an investment, is granted by the manufacturer or his representative a right to recruit for profit one or more additional persons who will also be granted such right to recruit upon condition of making similar investments: Provided, That, the profits of the person employing such a plan are derived primarily from the recruitment of other persons into the plan rather than from the sales of consumer products, services and credit: Provided, further, That the limitation on the number of participants does not change the nature of the plan.

Hides scam  
by layering or  
associating the  
scheme with  
products or  
privileges.

Have no real value.

Priced high.

Do not appeal to the investors  
without the promise of getting  
commissions from recruitment.



# DSAP

## 8-Point Test



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1. Is there a **product**?
2. Are **commissions paid on sale** of products and not on registration/entry fees?
3. Is the **intent to sell** a product not a position?
4. Is there **no direct correlation** between the number of **recruits and compensation**?
5. If recruitment were to be **stopped today**, will the participants **still make money**?
6. Is there a reasonable **product return policy**?
7. Do the products have **fair market value**?
8. Is there a compelling **reason to buy**?



If the answer to each question is

If the answer to any of the question is

**Pyramid Schemes earn from registration/entry fees of its members while Multi-level Marketing companies earn from the sale of product.**

then the company is  
**legitimate**

it might be a  
**pyramid scam**



Pyramid schemes are inherently  
**INJURIOUS TO INVESTORS**

because as a mathematical certainty

THEY ARE DOOMED  
**TO COLLAPSE**



# ONLY THOSE ON TOP MAKE MONEY

hence the stress on:



Positioning



Timing



Getting  
downlines



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# Pyramiding Scam or Legitimate Multi-Level Marketing Scheme?

DTI

Violation of Securities Regulation Code or  
Illegal Investment – Taking Activity?

SEC



When does the SEC take  
action over pyramid schemes?



# Pyramiding

Focused on **recruitment**.

Earns from the registration or **entry fees** of members and gives them the authority to sell products.

Involves marketing **products** with little or no real value to evade prosecution.

Members are compensated according to the number of their respective recruits and **downlines**.

# Ponzi


Focused on the **promise of high returns/interest**.

Earns from **investments** made by its members and promises them extremely high returns.

Involves offering and/or sale of **investment contracts**.

Earlier members are **paid** with the investments made **by later members**.





If what appears to be a pyramid scheme partakes of the features of a ponzi scheme, the same may be violative of both the Consumer Act of the Philippines and the Securities Regulation Code.



What are “securities”  
according to the SRC?




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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. It includes:

- a. Shares of stock, 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 incorporations; and
- g. Other instruments as may in the future be determined by the Commission.





An investment contract is a form of security.



# Investment Contract

*Power Homes Unlimited Corporation v. SEC*

1. An **investment** of money,
2. In a **common enterprise**,
3. With expectation of **profits**,
4. Primarily from the **efforts of others**.



# Presumption of existence

Rule 26.3.5 of the 2015 SRC Rules

1. An **investment contract** is presumed to exist whenever a person seeks to **use the money or property of others** on the **promise of profits**.
2. 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.



# Unauthorized selling of securities

- 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.



# Expanded definition of public offering

- **“Public Offering”** is any means 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)





# SEC vs. CJH DEVELOPMENT CORPORATION (G.R. No. 210316, 28 November 2016)

- **“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.”



# Ponzi Schemes



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# History of the Ponzi Scheme

Named after Charles Ponzi (Carlo Pietro Giovanni Guglielmo Tebaldo Ponzi) an Italian businessman and con artist

In the early 1920's, **he promised clients a 50% profit within 45 days, or 100% profit within 90 days,** by buying discounted postal reply coupons\* in other countries and redeeming them at face value in the United States as a form of arbitrage.

In reality, Ponzi was **paying early investors using the investments of later investors.** This type of scheme is now known as a "Ponzi Scheme". His scheme ran for over a year before it collapsed, costing his "investors" \$20 million.

\* An **international reply coupon (IRC)** is a coupon that can be exchanged for one or more postage stamps for the purpose of allowing a person to send someone in another country a letter, along with the cost of postage for a reply.

# Features



“Profits” to investors are not created by the success of the underlying business but instead are **derived from the capital contributions of others.**

# How Ponzi Scheme works

COMPANY

“A” tells others of good investment opportunity

“A” invests



COMPANY

Company price  
\$100 per share

Company returns profit  
\$20 per share

“A” and “B” tell others of good investment opportunity

“A”

“B” invests



And the cycle continues





P  
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ner  
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# How does a Ponzi Scheme unravel?

The obligation to **pay off** all the previous investors **can no longer be met** with the revenues collected from new recruits.

News of non-payment of investments spreads and **investors rush in** to withdraw their funds similar to a “**bank run**”

**The Promoter disappears** together with the investors' money.



## People vs. Palmy Tibayan and Rico Z. Puerto (G.R. Nos. 209655-60, 14 January 2015)

“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.”



# Red Flags

Unrealistic **high returns** on investment

Underlying business activity is **not explained well** or **is too complicated** and laden with technical terms such as “commodity futures trading”, “Gold-backed long-term securities” or “Foreign Exchange Swap Arrangements”

The Promoter discourages the investor from cashing out his investment and encourages the **rolling over** of the investment and/or infusing more money





# WHAT ARE THE PONZI SCHEME “RED FLAGS”?

1. HIGH INVESTMENT RETURNS WITH LITTLE OR NO RISK
2. OVERLY CONSISTENT HIGH RETURNS
3. UNREGISTERED INVESTMENT PRODUCTS
4. UNLICENSED SELLERS
5. SECRETIVE AND/OR COMPLEX STRATEGIES
6. ISSUES WITH PAPERWORK
7. DIFFICULTY RECEIVING PAYMENTS

# SEC in Action

- Investigations are conducted through **complaints** or **motu proprio actions** initiated by the Commission through received reports, researches, news, etc.
- **Advisories** are issued against companies offering investment opportunities to warn the public to be extra cautious in parting with their hard-earned money in this type of companies;
- **Cease and Desist Orders** are likewise issued by the SEC directing the subject entities to stop their illegal business operations;
- **Orders of Revocation** are issued for serious misrepresentation as to what a corporation can do or is doing to the great prejudice of or injury to the public
- Criminal complaints were already filed at the Department of Justice for violations of **Sections 8 and 28** of the Securities Regulation Code;



# SEC in Action

- Complaints-Affidavit are being filed by the SEC with DOJ for criminal violations of the SRC.
- **Rosario Baladjay** was found guilty of SRC violations with penalty of imprisonment of 455 years.
- Webinars on investor protection & scam prevention are regularly conducted via FB live & uploaded at the SEC's website & FB page (SEC is also on Twitter, IG, Youtube)
- Launched SEC Campaign Advocacy Network (SEC CAN) in partnership with other govt. agencies & private organizations
- Launched SEC Check App available on Google Play & Apple App Store
- Appearances on media to inform the public of the risks of participating in illegal investment schemes.



**BEFORE YOU**  
**INVESTIGATE**  
**FIRST**



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# Get the following information



Name



Address



Contact No.



SEC Registration

**Landline Number.** Do not use personal cellular number(s) – the  
Address registration is **per se a single company**.  
owner cannot be traced.



# Get the following information

Primary License

Certificate of Registration



SEC Registration



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REPUBLIC OF THE PHILIPPINES  
SECURITIES AND EXCHANGE COMMISSION  
SEC Building, EDSA, Greenhills  
City of Mandaluyong, Metro Manila

COMPANY REG. NO. CS201300327  
COMPANY TIN 008-443-776

### CERTIFICATE OF INCORPORATION

KNOW ALL PERSONS BY THESE PRESENTS:

This is to certify that the Articles of Incorporation and By-Laws of

#### ABC 123 TRADING INCORPORATED


were duly approved by the Commission on this date upon the issuance of this Certificate of Incorporation in accordance with the Corporation Code of the Philippines (E.O. 186, as amended), and copies of said Articles and By-Laws are hereto attached.

This Certificate grants juridical personality to the corporation but does not authorize it 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 company, pre-need plan issuer, general agent in pre-need plans and time shares/club shares/membership certificates issuers or selling agents thereof. Neither does this Certificate constitute as permit to undertake activities for which other government agencies require a license or permit.

As a registered corporation, it shall submit annually to this Commission the reports indicated at the back of this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of this Commission to be affixed at Mandaluyong City, Metro Manila, Philippines, this 11<sup>th</sup> day of January, Twenty Thirteen. PM

www.sec.gov.ph

  
FERDINAND B. SALES  
Acting Director

Company Registration and Monitoring Department

For SEC use only.  
(01/2013) (PSEC-AC-revised)



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# Get the following information



SEC Registration

## Secondary License

Authorizes the corporation to undertake certain business activities which require prior approval from the Commission such as offering and/or sale of securities to the public, e.g., solicitation of investments from the public.





REPUBLIC OF THE PHILIPPINES  
**SECURITIES AND EXCHANGE COMMISSION**  
SEC Building, EDSA, Greenhills, Mandaluyong City  
Corporation Finance Department

## CERTIFICATE OF PERMIT TO OFFER SECURITIES FOR SALE

THE ISSUANCE OF THIS CERTIFICATE OF PERMIT IS PERMISSIVE ONLY AND DOES NOT  
CONSTITUTE A RECOMMENDATION OR ENDORSEMENT OF THE SECURITIES PERMITTED TO BE ISSUED

THIS IS TO CERTIFY that from the date hereof, the securities of

### **PEPSI-COLA PRODUCTS PHILIPPINES, INC.**

consisting of **Three Billion Six Hundred Ninety Three Million Seven Hundred Seventy Two Thousand Two Hundred Seventy Nine (3,693,772,279) Common Shares**, with a maximum offering price of **P3.50 per share** have been registered and may now be sold or offered for sale in the Philippines subject to full compliance with the reporting requirements and other requirements of the Securities Regulation Code and its Implementing Rules and Regulations, Code of Corporate Governance and to further orders of the Securities and Exchange Commission.



Issued at Mandaluyong City, Philippines this 21st day of January, Two Thousand and Eight by virtue of the powers vested in me by R.A. 8799, otherwise known as the Securities Regulation Code.

  
**JUSTINA F. CALLANGAN**  
Director

**SEC. 28. Registration of *Brokers, Dealers, Salesmen 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.



# Sample Questions

Is the **investment contract** registered?

Is the **person soliciting** registered?

It is important to **authenticate** the information gathered from the promoter

Who are the **people managing**?

Analyze their **financial statements** if any.



# What can you do?

Do not merely rely on the favorable testimonies of ordinary people even your own friends and family. **These scams prey and exploit these kinds of relationships.**

Inquire from the SEC whether or not the entity offering investment opportunities possesses a **secondary license** to do so or if its salesmen have *bona fide* licenses.





# What can you do?

**Exercise caution** and do not part with your money unless you have verified the legitimacy of the promoter's operations.

**The SEC cannot guarantee the recovery of your money**

Set to **private** setting the social media account.

In case of doubt, **consult a regulator**.



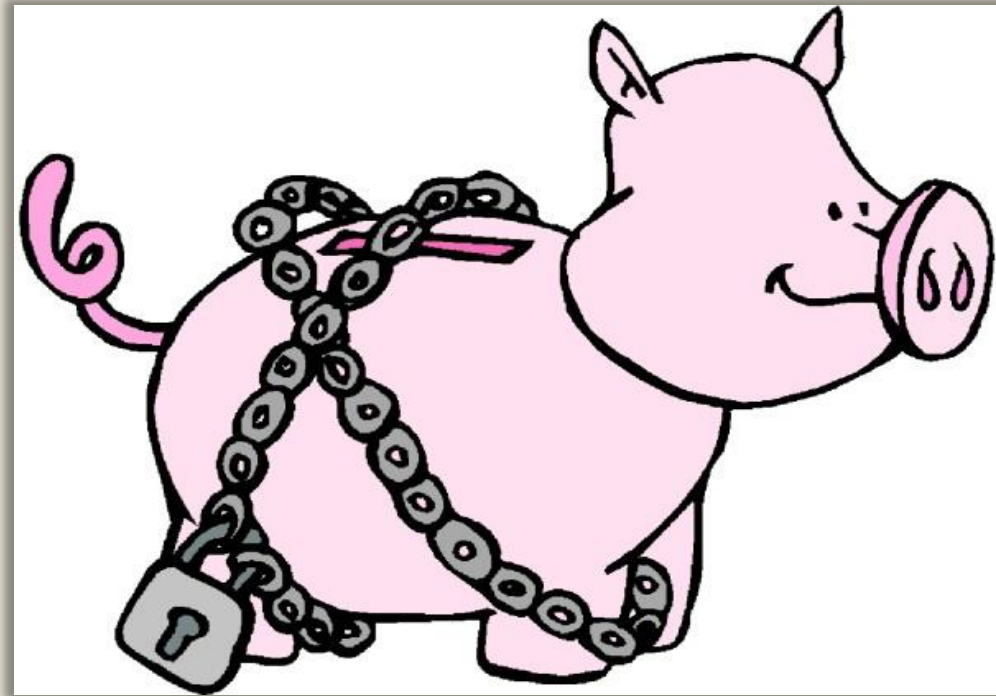
# HOW TO AVOID PONZI SCHEMES AND OTHER INVESTMENT FRAUDS?

WHEN YOU CONSIDER YOUR NEXT  
INVESTMENT OPPORTUNITY, START  
WITH THESE FIVE QUESTIONS:

- Is the **seller licensed**?
- Is the **investment registered**?
- How do the **risks compare with the potential rewards**?
- Do I **understand the investment**?
- Where can I **turn for help**?



Rule of Thumb:  
**When in doubt, just keep your money!!!**



If the offer of an  
"opportunity" appears  
too good to be true, it is  
probably a scam.



visit our website  
[www.sec.gov.ph](http://www.sec.gov.ph)

Thank you for Listening!

**THE END**



Our Location : The SEC Headquarters,  
SEC e-Building, 7907  
Makati Avenue, Salcedo  
Village, Bel-air, Makati  
City

Contact our Enforcement : [epd@sec.gov.ph](mailto:epd@sec.gov.ph)  
& Investor Protection  
Department



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