Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

In the Matter of:

AYALA CORPORATION GROUP INC., AYALA CORPORATION BUDGETARIAN ONLINE SHOP, GLOBAL ONLINE AYALA CORPORATION, BELLAVITA AYALA CORPORATION, AYALA CORPORATION E COMMERCE, RICA ANN HARDER, AND LETECIA AYAW GARZO,

Respondents,

SEC CDO Case No. 02-24-110
Promulgated: 22 February 2024

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),

Movant.

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CEASE AND DESIST ORDER

This resolves the ***Motion for the Issuance of a Cease and Desist Order*** (the "*Motion*") dated 16 January 2024 filed by the Enforcement and Investor Protection Department (EIPD) of even date, praying that a Cease and Desist Order ("CDO") be issued (a) directing **AYALA CORPORATION GROUP INC. AYALA CORPORATION BUDGETARIAN ONLINE SHOP, GLOBAL ONLINE AYALA CORPORATION, BELLAVITA AYALA CORPORATION, AYALA CORPORATION E COMMERCE** (the "Bogus AC Group"), their operators, directors, officers, representatives, salesmen, agents, enablers, influencers (collectively referred to as the "Agents"), and any and all persons, conduit entities and subsidiaries claiming and acting for and in its behalf, to immediately cease and desist from further engaging in the sale/offer of unregistered securities without the requisite license from the Commission; and (b) prohibiting the Bogus AC Group and its Agents from transacting any and all business involving the funds in its depository banks, and from transferring, disposing, or

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conveying in any other manner, any and all assets, properties, real or personal, including bank deposits, if any, of which the named and/or covered persons herein may have any interest, claim or participation whatsoever, whether directly or indirectly, under their custody, without authority from the Commission.

PARTIES

Movant, EIPD is one of the Commission's operating departments tasked, among others, to investigate *motu proprio* or upon complaint or referral, violations of laws, rules, and regulations administered, implemented, or issued by the Commission, and to seek the issuance of a CDO whenever warranted by the circumstance.[1]

The Bogus AC Group are entities not registered with the Commission either as a corporation or as a partnership[2] and does not have the authority or license to offer and/or sell securities to the public.

RELEVANT FACTS

Beginning June 2023, the EIPD received numerous reports and complaints regarding the alleged investment solicitation activities of the Bogus AC Group which prompted the EIPD to investigate the matter for possible violations of Securities Regulation Code (SRC)[3], the Revised Corporation Code (RCC), and other rules and regulations administered and implemented by the Securities and Exchange Commission (the "Commission").

The investigation of the EIPD showed that the Bogus AC Group is engaged in a scheme called *"Tasking and Recharging"*, which offers online jobs to prospective investors who will be asked to perform certain tasks in exchange for monetary rewards in the form of commissions. Under this scheme, an investor who successfully completes a task is given another task which will entitle him/her to receive additional commission(s), if completed. The investor can withdraw the commissions earned upon payment of a so-called "Tax Charge."

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[1] SEC Office Order No. 512, series of 2013.
[2] *Motion (n1),*
[3] R.A. No. 8799.

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In carrying out the unregistered investment scheme, the Bogus AC Group uses an online application called "*Ayala Investment App*" where it claims to be the "*largest commercial intermediary platform in the Philippines* with *main partner-sellers from Amazon, Lazada, and Shopee.*" On its website and social media platforms, the Bogus AC Group entices and invites the investing public to participate in its program, on a part-time basis, by simply buying consumer products from the partner-sellers/merchants in order to improve store ranking, which in turn, will provide more opportunities and secure more customers.[4] Under the program, merchants pay the Bogus AC Group commissions for each order made by its members. The commission is then paid to the members after the Bogus AC Group deducts the 10% service fee for utilizing the app.

The unauthorized investment scheme of the Bogus AC Group essentially involves soliciting money from the investing public which it requires to be sent directly to the accounts of its managers/operators. The amounts paid by its members, a number of whom have already filed a complaint against the Bogus AC Group, have been obtained by the latter through fraudulent machinations y making member-investors believe that they are purchasing consumer goods or paying taxes and similar service fees. The scheme is attractive and has in fact enticed a considerable number of member-investors i.e. 30,000 as claimed by the Bogus AC Group, because of the guaranteed commissions. However, as soon as a member-investor parts with his/her money, it can no longer be recovered. The evidence on record shows that in some instances, the member-investor is held hostage by the Bogus AC Group which demands for additional investment as a condition for the return of the original investment.

The investigation likewise revealed that the unregistered investment scheme is being offered on the website of the Bogus AC Group accessible at https://www.77777shop.vip/index/support/index.[5]

To entice the public to invest, the Bogus AC Group is using the fake DTI Certifications and SEC Registrations shown below:[6]

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[4] *Motion (n1),* Photocopy of Complaints attached as Annex "A."
[5] Motion "Annex B"
[6] *Ibid.*

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AYALA COPORATION GROUP, INC.

REGION 7 (CENTRAL VISAYAS)

ANTONINO T. AQUINO

Certificate of Business Name registraion

RAMON M. LOPEZ

Certificate No. 00009285

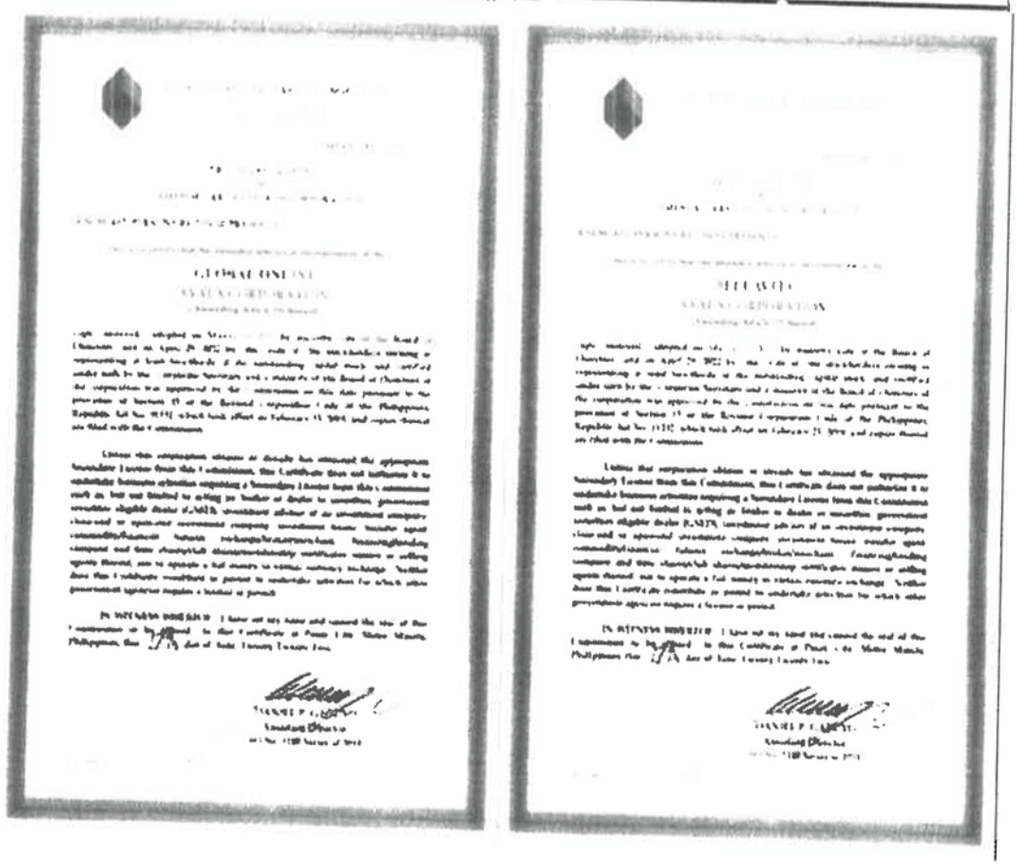
AYALA CORPORATION BUDGETARIAN ONLINE SHOP

DELOS SANTOS MARIDOL

Certificate of Business Name Registration

RAMON M. LOPEZ

Business Name Ayala Corporation



On 22 September 2023, the EIPD received an electronic mail from Ayala Corporation's Public Affairs Group - External Affairs & Relations Team ("Ayala Corporation"), seeking guidance from the Commission on how to address the apparent use and misrepresentation of its company

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logo on various social media platforms of the Bogus AC Group which misleads the public into the belief its operations are legitimate and is connected with Ayala Corporation.

Ayala Corporation expressly disclaimed and denied any involvement in the investment solicitation activities of the Bogus AC Group, and has advised the public that Ayala Corporation does not have an application or a website dedicated to investments. Ayala Corporation also informed the public that as a listed company, its stocks may only be purchased via licensed stockbrokers accredited by the Philippine Stock Exchange.

In support of its allegation that the Bogus AC Group is engaged in the unauthorized sale/offer of unregistered securities, the EIPD submitted in evidence the Certifications issued by the Company Registration and Monitoring Department (CRMD), the Markets and Securities Regulation Department (MSRD), and the Corporate Governance and Finance Department (CGFD) which all confirmed that AYALA CORPORATION BUDGETARIAN ONLINE SHOP, GLOBAL ONLINE AYALA CORPORATION, AYALA CORPORATION GROUP, INC.,[7] BELLAVITA AYALA CORPORATION,[8] and AYALA CORPORATION E COMMERCE are not registered as corporations, partnerships, or One Person Corporations (OPCs)[9]; has not registered any securities under Section 8 and 12 of the SRC; has not filed any application for the registration of, and/or a license to sell securities; has not been issued any license to sell securities; and is not a registered issuer of mutual funds, exchange traded funds and proprietary/non-proprietary shares or membership certificates and timeshares under Sections 8 and 12 of the SRC.[10]

On 10 October 2023, the Commission issued an Advisory informing and warning the public not to invest or to stop investing in any scheme offered by the Bogus AC Group and their Agents which are not authorized to solicit investments from the public, not having secured the requisite licenses from the Commission.

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[7] A corporation bearing the name Ayala Corp. under SEC Registration No. 0000034218 is registered with the Corporation (Annex "J").

[8] A corporation bearing the name Belllavita Land Corp. under SEC Registration No. AS95002879 is registered with the Commission (Annex "O.")

[9] *Ibid,* Annexes "E," "G," "J," "O," and "R."

[10] *Ibid,* Annexes "F," "I," "K," "M," and "P."

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However, notwithstanding the issuance of the Advisory, the EIPD continued to receive reports about Bogus AC Group's unauthorized investment solicitation activities. [11]

ISSUE

Whether the allegations and the evidence presented by the EIPD in support of its Motion warrant the issuance of a CDO.

RULING

The Commission finds merit in the *Motion* and hereby grants the same.

The EIPD was able to establish by substantial evidence that Respondents and their Agents are offering and/or selling securities to the public in the form of investment contracts without the requisite license from the Commission.

Section 3.1 of the SRC, defines "securities" as follows:

> Sec. 3. Definition of Terms. – 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:
>
> "xxx
>
> ii. **Investment contracts**, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription. (Underscoring supplied)
>
> xxx". (Emphasis supplied)

An investment contract is defined as follows:

> "An investment contract is a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits primarily through the efforts of others. It is presumed to exist when a person seeks to use the money or property of other persons on the promise of profits. 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." (Emphasis and underscoring supplied)

[11] *Ibid,* Annex "T."

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In *SEC v. Howey Co.*[12], the US Supreme Court defined an investment contract as 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. Investment contracts have been used and adopted in various 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 someone other than themselves.

This concept of an investment contract has since been used in the Philippines in the landmark case of *Power Homes Unlimited Corp. v. Securities and Exchange Commission*[13] where the Supreme Court held that an investment contract in our jurisdiction, to be a security subject to regulation by the Commission, must be proved to be attended by the following elements: (1) an investment of money; (2) in a common enterprise; (3) with expectation of profits, (4) primarily from efforts of others. Under this definition, whenever an investor relinquishes control over his or her funds and submits their control to another for the purpose of deriving profits from them, he or she is in fact investing in a security.[14]

Applying the foregoing to the instant case, this Commission finds and so holds that Respondents are engaged in the unauthorized sale and/or offer of unregistered securities in the form of an investment contract, considering that all the elements of the Howey Test are present, thus:

> **First**, there is an investment of money. Under the investment scheme of the Bogus AC Group, member-investors are required to invest their hard-earned money for the alleged purpose of buying consumer products and services from partner-sellers/merchants. The evidence presented by the EIPD showed that investors actually invested money in amounts ranging from Six Thousand Pesos (Php 6,000.00) to Ninety Thousand Pesos (Php 90,000.00).[15]
>
> **Second**, the EIPD was able to show that the investment scheme involves the pooling of amounts which are directly paid to the managers/operators of the Bogus AC Group, for use in the purchase of consumer goods and services. The Bogus AC Group then utilizes these amounts to pay the promised commissions. This is the common enterprise that is being sustained by the investments that

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[12] 328 U.S. 293 (1946).

[13] G.R. No. 164182, February 26, 2008.

[14] *Investment Co. Institute v. Camp*, 274 F. Supp. 624 (D. D.C. 1967).

[15] *Motion* (n1), Complaints attached as Annex "A."

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the Bogus AC Group is receiving from the public, and which ensures its continued operations;

Third, under the scheme of the Bogus AC Group, an investor expects to earn commissions from partner-seller/merchants in Amazon, Lazada and Shopee every time they purchase consumer goods and services.[16] Investors are "*attracted primarily by the prospects of a return on their investment.*"[17]

Fourth, the expectation of profits is derived primarily through the marketing and managerial efforts of the managers and operators of the Bogus AC Group and/or its Agents who, through the use of the social media, website and online applications continue to entice the public to invest in the Bogus AC Group.

Furthermore, the act of the Bogus AC Group in carrying out its unauthorized investment-taking activities using the social media, website and online applications constitutes public offering as defined under Rule 3.1.17 of the 2015 SRC IRR, to wit:

> "3.1.17. **Public offering is 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:
>
> x x x
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> 3.1.17.3 Advertisement or announcement in radio, television, telephone, **electronic communications, information communication technology or any other forms of communication**;" (Emphasis supplied)

Section 8.1 of the SRC categorically provides that securities shall not be sold or offered for sale or distribution within the Philippines, if the same is not registered with the Commission in the form of an approved Registration Statement and a Permit to Offer/Sell issued in favor of the applicant, to wit:

> "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." (Emphasis supplied)

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[16] *Motion (n1),* Photocopy of Complaints attached as Annex "A."
[17] *Ibid,* Screenshot of "About Us"

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In the case of *Herbosa vs. CJH Development Corporation,*[18] the Supreme Court emphasized that the purpose of the provision of the SRC requiring the registration of securities is to afford the public protection from investing in worthless securities.

In the instant case, the Certifications issued by the MSRD, CGFD, and CRMD all confirm that the Bogus AC Group and its Agents have no license to sell, offer, or deal with securities; neither have they caused the registration of the securities that they are currently offering or selling. Respondents are therefore in clear and continuing violation of Sec. 8 of the SRC. This justifies the immediate issuance of a CDO for the protection of the investing public.

Relative to the prayer of the EIPD for issuance of a CDO, Section 64.1 of the SRC provides that the Commission may issue a CDO without the necessity of conducting a hearing if, to its mind, the act or practice will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public, thus:

> "Section 64. *Cease and Desist Order.* — 64.1. *The Commission,* after proper investigation or verification, *motu proprio* or upon verified complaint by any aggrieved party, **may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.**" (Emphasis supplied)

Under the afore-quoted provision, there are two (2) essential requisites that must be complied with for a valid issuance of a CDO:

1. There must be a conduct of a proper investigation or verification; and
2. There is a finding that the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.[19]

This Commission finds that the foregoing requisites have been substantially complied with in the instant case.

First, the records disclose that the EIPD conducted an independent investigation which resulted in the gathering and presentation of evidence in support of its Motion i.e. Certifications from the

[18] G.R. No. 210316, 28 November 2016.
[19] *Securities and Exchange Commission vs. Performance Foreign Exchange Corporation* (G.R. No. 154131, July 20, 2006)

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Commission's CRMD, MSRD, and CGFD; copies of the spurious DTI Certifications and SEC Registrations,[20] screenshots of the online application, screenshots of deposits made by the public and copies of complaints and reports from the public; copy of the email of Ayala Corporation reporting the unauthorized use of its logo by the Respondents.

Second, Respondents willfully employed fraud by making it appear to the public that they are legitimate corporations authorized to sell, offer, and deal with securities. The Bogus AC Group deliberately impersonated Ayala Corporation, a publicly-listed holding company, by using its official logo on their social media and platforms, to actually defraud and steal money from the investing public. The Bogus AC Group also used spurious DTI Certifications and SEC Registration Certificates to provide its unauthorized investment-taking activities a semblance of legitimacy. The foregoing shows a clear intent on the part of the Bogus AC Group to defraud the public which, if unrestrained, will likely prejudice them. In this regard, the case of *Securities and Exchange Commission vs. CJH Development Corp.*[21] is apt and instructive, thus:

> **"The law is clear on the point that a cease and desist order may be issued by the SEC *motu proprio*,** it being unnecessary that it results from a verified complaint from an aggrieved party. **A prior hearing is also not required whenever the Commission finds it appropriate to issue a cease and desist order that aims to curtail fraud or grave or irreparable injury to investors. There is good reason for this provision, as any delay in the restraint of acts that yield such results can only generate further injury to the public that the SEC is obliged to protect.**
>
> **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." (Emphasis supplied)

WHEREFORE, premises considered, **BOGUS AYALA CORPORATION GROUP INC. AYALA CORPORATION BUDGETARIAN ONLINE SHOP, GLOBAL ONLINE AYALA CORPORATION, BELLAVITA AYALA CORPORATION, AYALA CORPORATION E COMMERCE,** and their representatives, salesmen, solicitors, agents, uplines, enablers and influencers, and any and all persons claiming and acting for and in their

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[20] *Motion* (n1), par. 5.
[21] G.R. No. 210316, November 28, 2016.

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behalf, are hereby directed to **IMMEDIATELY CEASE AND DESIST** from further engaging in, promoting and facilitating selling and/or offering for sale securities in the form of investment contracts and/or other activities/transactions relative thereto, until the requisite registration and registration statements are duly filed with and approved by the Commission, and the corresponding license and/or permit to offer/sell securities are issued.

BOGUS AYALA CORPORATION GROUP INC. AYALA CORPORATION BUDGETARIAN ONLINE SHOP, GLOBAL ONLINE AYALA CORPORATION, BELLAVITA AYALA CORPORATION, AYALA CORPORATION E COMMERCE, representatives, salesmen, solicitors, agents, uplines, enablers and influencers, and any and all persons claiming and acting for and in their behalf, are likewise directed to **CEASE** their internet presence relating to the transactions and investment scheme covered by this Cease and Desist Order. The Commission will institute the appropriate administrative and criminal action against any persons or entities found to act as solicitors, information providers, salesmen, agents, brokers, dealers, or the like for and on their behalf.

Finally, the Commission hereby **PROHIBITS THE BOGUS AYALA CORPORATION GROUP INC. AYALA CORPORATION BUDGETARIAN ONLINE SHOP, GLOBAL ONLINE AYALA CORPORATION, BELLAVITA AYALA CORPORATION, AYALA CORPORATION E COMMERCE,** their partners, operators, directors, officers, salesmen agents, representatives, promoters, and all persons, conduit entities and subsidiaries claiming and acting for and on its behalf from transacting any business involving the funds covered by this CDO in its depository banks, and from transferring, disposing, or conveying in any manner, all assets, properties, real or personal, including but not limited to bank deposits, of which the named persons herein may have any interest, claim or participation whatsoever, directly or indirectly, under its/their custody, to ensure the preservation of the assets for the benefit of the investors.

The **EIPD** of the Commission is hereby **DIRECTED** to cause the posting of this *Cease and Desist Order* in the Commission's website considering that the **BOGUS AYALA CORPORATION GROUP INC. AYALA CORPORATION BUDGETARIAN ONLINE SHOP, GLOBAL ONLINE AYALA CORPORATION, BELLAVITA AYALA CORPORATION, AYALA CORPORATION E COMMERCE** are not registered entities.

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The EIPD is **FURTHER DIRECTED** to submit a formal compliance report, by way of a pleading, to the Commission *En Banc* within ten (10) days from receipt of this ***Cease and Desist Order***.

Let a copy of this Cease and Desist Order be furnished to the Company Registration and Monitoring Department, Corporate Governance and Finance Department, and the Information and Communications Technology Department of this Commission, the Bangko Sentral ng Pilipinas, the Department of Trade and Industry, the National Privacy Commission, and the Department of Information and Communications Technology, for their information and appropriate action.

In accordance with the provisions of Section 64.3 of the SRC and Section 4-3 of the 2016 Rules of Procedure of the Commission, the parties subject of this CDO may file a verified motion to lift the CDO within five (5) days from receipt thereof. The Motion to Lift the CDO must be filed to the Commission En Banc through the Office of the General Counsel.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO*
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ*
Commissioner

**On Official Business*

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