Republic of the Philippines
Department of Finance
Securities and Exchange Commission
PICC Secretariat Building, PICC Complex, Pasay City

COMMISSION EN BANC

IN RE: LDT AGRO INDUSTRIAL HUB CORPORATION AND THE BNP CLIENT PROJECT

SEC CDO Case No. 05-19-048

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.

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CEASE AND DESIST ORDER

This resolves the *Motion for Issuance of Cease and Desist Order* (Motion) filed by the Commission's Enforcement and Investor Protection Department (EIPD), for **LDT AGRO INDUSTRIAL HUB CORPORATION and THE BNP CLIENT PROJECT** and their directors and officers, representatives, salesmen, agents, and any and all persons, conduits, entities and subsidiaries claiming and acting for and in their behalf, **to cease and desist** from engaging in activities of selling and/or offering for sale securities in the form of **investment contracts** until the requisite registration statement is duly filed with and approved by the Commission and the corresponding license to offer/sell securities is issued.

RELEVANT FACTS

LDT AGRO INDUSTRIAL HUB CORPORATION (LDT AGRO) is a domestic corporation registered with the Commission on 12 September 2018 (Company Registration No. CS201820040) with principal address at Buenavista, Dipaculao, Region III, Aurora, Philippines. Its primary purpose is:

> To develop, manage, own, lease, and operate agriculture-related facilities, **rice milling**, processing, distribution, wholesale, trading, and other related services.[1]

[1] **Articles of Incorporation** of LDT AGRO (**Annex A** of the Motion)

LDT AGRO's incorporators/directors are:

Name	Residence	Nationality
Armando G. Gabriel	Dipaculao, Aurora (complete address omitted)	Filipino
Aniceto F. Muyot	Sto. Domingo, Nueva Ecija (complete address omitted)	Filipino
Hernando D. Gabriel	Dasmariñas City, Cavite (complete address omitted)	Filipino
Jenica P. Muyot	Sto. Domingo, Nueva Ecija (complete address omitted)	Filipino
Gloria G. Gabriel	Dasmariñas City, Cavite (complete address omitted)	Filipino

LDT AGRO's slogan is: "Empower the Filipino Farmers and Make High Quality Rice Available to All." It does business online under the name **"THE BNP CLIENT PROJECT."**[2]

"BNP" stands for "**B**IO**N**UTRIGREEN **P**ROCEDURE," while "CLIENT" refers to **C**ONVERGENCE FOR **L**INKING **I**NVESTORS AND **ENT**ERPRISES.

REPORT FROM THE PUBLIC

This investigation was prompted by an email sent by the Federation on People's Sustainable Development Cooperative (FPSDC) regarding Nutriwealth Multi-Purpose Cooperative (NMPC), now VCM-NW Corporation, whose business advocacy is being continued through LDT AGRO.

EIPD INVESTIGATION

The EIPD proceeded to verify the information by visiting the Facebook page of THE BNP CLIENT PROJECT (*i.e.* LDT AGRO). Screenshots were included by the EIPD in the body of its Motion.

One screenshot shows a Facebook post by THE BNP CLIENT PROJECT dated March 28, viz.

> **The BNP Client Project**
> March 28
>
> WELCOME, our Most Valued Clients,

[2] THE BNP CLIENT PROJECT identifies itself on its Facebook posts as one and the same as LDT AGRO (Annex J of the Motion)

We want to know if YOU are catching the same vision with us, of doing BUSINESS + ADVOCACY!
☑ Be a CLIENT Today! Our Filipino Farmers today needs YOU!
☑ **Commit to Purchase their Produce.** [Emphasis supplied]
☑ We help finance the Farm Inputs they needed with ZERO INTEREST!
☑ We buy their PALAY higher [than] the farm gate [price].
☑ We deliver to you the HIGHEST Quality of Rice at a very special and discounted PRICE (Almost 50% of the Prevailing Market Price)!
☑ Your Purchase Amount will earn 100% interest as REWARD!
☑ Options: You can have the rice for family consumption or **allow the company to market them and monetize the Reward [Emphasis supplied].** As in the case of some OFW Clients that have joined the Project.
If you find our posts helpful to you personally…
Or if you are interested to know more about The CLIENT Project…
Or if you want to know how you can participate in this project…
Please feel free to click the SEND MESSAGE Button, and we are more than willing to message you back concerning your inquiries.
God bless us all!

We need YOU![3]

Another screenshot shows a Facebook post by THE BNP CLIENT PROJECT dated March 25, viz.

BUSINESS + ADVOCACY = POSSIBILITY!

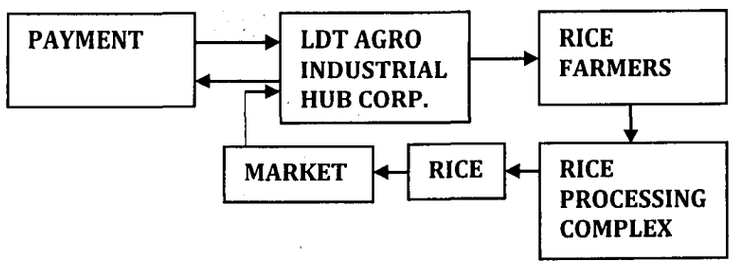
Tara na, let us #Connect-#Cultivate-#Collaborate!

Join na!
Be a Client!
NOW NA!

Message us, and we will reply in no time.[4]

Join US! Be a CLIENT

This is how WE do it!



[3] Page 4 of the Motion
[4] Page 5 of the Motion

> **BUSINESS + ADVOCACY = POSSIBILITY**
> Easy lang yan mga beshie!
> Buy High Quality and Organically Produced RICE from us.
> WE receive the Payment in advance (Purchase Agreement ang panghahawakan mo).
> WE provide the Farm Inputs to Rice Farmers.
> The FARMERS will produce the RICE.
> We pay the Farmers equitably for the Palay. And you will have your RICE... QUALITY RICE AT A VERY LOW PRICE!
> WAIT... there's MORE! Your money will earn 100% interest as REWARD.
> BUT WAIT... there's even MORE! A lot of freebies awaits YOU as our valued Client![5]

On **10 April 2019,** the EIPD through a dummy account, contacted LDT AGRO through its THE BNP CLIENT PROJECT Facebook page and inquired on how to join.

LDT AGRO replied, viz.

> Thank you for your interest the BNP CLIENT Project. Please see the attached documents for your reference. Should you have further questions, please do not hesitate to ask. We will surely reply in no time.
>
> Thank you and God bless po.[6]

Attached to LDT AGRO's reply were a **Purchase Agreement**[7] and a **Brochure**.[8]

LDT AGRO'S PURCHASE AGREEMENT

LDT AGRO is indicated as the signatory to the Purchase Agreement.

The Purchase Agreement stipulates the following: (1) an initial **investment of Php 10,000 to Php 1,000,000**; (2) a **term of 5 years**; and (3) a return of 10% increasing by 5% each succeeding year, until it reaches 30% on the 5th and final year of the contract, viz.

> 3.) The Client agrees with the following conditions:
> a) The amount paid will be locked-in for a five-year commitment with corresponding incentive;
> b) The amount paid will receive **10%** interest on its **1st year** as incentive;

[5] Id.
[6] Id.
[7] Annex D of the Motion
[8] Annex E of the Motion

> c) The amount paid will receive **15%** interest on its **2nd year** as incentive;
> d) The amount paid will receive **20%** interest on its **3rd year** as incentive;
> e) The amount paid will receive **25%** interest on its **4th year** as incentive;
> f) The amount paid will receive **30%** interest on its **5th year** as incentive.[9]

The Purchase Agreement also includes an "Attachment A" which clarifies that there are three options available to LDT AGRO's clients:

- Option A: ALL-RICE (No Cash-back)
- Option B: RICE + CASH REWARD
- **Option C: ALL CASH (Monetized Reward)**[10]

LDT AGRO further explained Option C in Attachment A, viz.

> **OPTION C: ALL CASH (Monetized Reward)**
>
> Note: This is a locked-in program for a 5-year Commitment. Note further that, **this Option arose from the scenario that certain individuals are NOT interested with having RICE, yet wishes to participate in the ADVOCACY. These individuals are what we commonly called [sic] as Angel Investors.** So, the supposedly "Purchased Rice" will be marketed by the company and return [sic] to the creditor the amount together with its interest.[11]

In Option C, the rice will allegedly be sold by LDT AGRO and only the proceeds will be given to the investor. *In other words, the investor never even sees the rice; it is money-in, money-out.* To use LDT AGRO's catchphrase, it will **"Double Your Money in 5 Years."**

During the course of investigation, EIPD found out that LDT AGRO's president, Armando Gabriel, is a member of NMPC, now VCM-NW Corporation. NMPC and VCM-NW Corporation have the same incorporators who sit as its directors. The EIPD also found out that the Cooperative Development Authority (CDA) issued an Order of Dissolution against NMPC on 3 December 2018 due to willful violations of the Philippine Cooperative Code and its by-laws despite notice from the CDA. The CDA also issued 10 Cease and Desist Orders (CDOs) against NMPC. In one particular CDO, NMPC was ordered to return the investments of its members who availed of the unauthorized savings program and double your money schemes.[12] The

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[9] Annex D of the Motion.
[10] Id.
[11] Id.
[12] Annex F of the Motion

EIPD likewise found out that LDT AGRO is operating BIONUTRIGREEN Leisure and Wellness, a business promoted by NMPC, now VCM-NW Corporation.

CERTIFICATIONS FROM CGFD, MSRD, AND CRMD

On **16 April 2019**, the Corporate Governance and Finance Department (CGFD) certified that LDT AGRO is not a registered issuer of mutual funds, exchange-traded funds, proprietary/non-proprietary shares or membership certificates, or timeshares.

Also on **16 April 2019**, the Markets and Securities Regulation Department (MSRD) certified that LDT AGRO has not registered any securities under Sections 8 and 12 of the Securities Regulation Code (SRC) nor does it have a permit to sell securities, and has no pending application to sell securities.

On **24 May 2019**, the Company Registration and Monitoring Department (CRMD) certified that LDT AGRO is registered with the SEC.[13] However, records of the Commission reveal that LDT AGRO has not been issued with a secondary license as a lending company, broker, and/or dealer of securities, investment adviser of an investment company, investment house and transfer agent nor does it have any pending application for a secondary license.

SEC ADVISORY AGAINST LDT AGRO

On **16 May 2019**, the En Banc approved the posting of a SEC Advisory,[14] which essentially states that **"LDT AGRO INDUSTRIAL HUB CORPORATION xxx [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."**

The EIPD moves that a Cease and Desist Order be issued to prevent the continued selling of investment contracts by LDT AGRO.

Hence this Motion.

DISCUSSION

[13] SEC Registration No. CS201820040
[14] Annex I of the Motion

LDT AGRO'S INVESTMENT CONTRACTS ARE SECURITIES

There is ***substantial evidence*** that LDT AGRO is selling or offering for sale **securities** in the form of **investment contracts**, without the necessary license from the Commission.

Securities are defined in **Section 3.1 of the SRC**, viz.

> ***Section 3. Definition of terms.*** – **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 (underscoring supplied).

The Supreme Court held that "the term **'securities'** embodies a flexible rather than static principle, one that is capable of adaptation to meet the countless and variables schemes devised by those who seek to use the money of others on the promise of profits."[15]

LDT AGRO's **securities**, in the form of **investment contracts**, satisfy **Section 3.1 of the SRC** because they constitute *participation* in a *profit-making venture* (THE BNP CLIENT PROJECT), evidenced by *instruments* in *written* (Purchase Agreement) *or electronic form.*

Moreover, LDT AGRO's investment contracts satisfy the four (4) elements of the ***Howey Test***[16] as laid down in the case of *Power Homes Unlimited Corporation v. SEC*,[17] viz.

(1) **Investment of Money** – LDT AGRO's investors contribute an initial sum, ranging from **Php 10,000 to Php 1,000,000**. Supposedly, this sum will be used to produce rice.

(2) **Common Enterprise** – LDT AGRO will pool the investments into a profit-making venture, THE BNP CLIENT PROJECT.

(3) **Expectation of Profit** – LDT AGRO's investors expect to be paid back at increasing rates of return: 10% on the first year; 15% on the second

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[15] Gabionza, et. al. v. CA, G.R. No. 161057, 12 September 2008 (citing 69 Am Jur 2d, p. 604)
[16] Originally pronounced in the U.S. Supreme Court case of SEC v. Howey Co. (66 S.Ct.1100, 27 May 1946), as modified by SEC v. Glenn Turner Enterprises, Inc. (474 F.2d 476, 1 February 1973).
[17] G.R. No. 164182, 26 February 2008.

year; 20% on the third year; 25% on the fourth year; and 30% on the 5th year.[18] ***Investors are expecting to double their money in 5 years.***

(4) Primarily from the Efforts of Others – LDT AGRO will exert all the effort in producing rice and later selling it at a profit, while investors do nothing other than invest their money.

Therefore, LDT AGRO's investment contracts satisfy both Section 3.1 of the SRC and the Howey Test and are clearly **"securities"** within the regulatory power of the Commission.

LDT AGRO IS OFFERING SECURITIES FOR SALE

As a general rule, securities cannot be sold or offered for sale within the Philippines without a **Registration Statement duly filed with and approved by the Commission** pursuant to Sections 8 and 12 of the SRC.

The registration of securities is provided in **Section 8.1 of the SRC**, viz.

> ***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 and underscoring supplied).

In this regard, **Rule 3.1.17 of the 2015 Implementing Rules and Regulations of the SRC** defines "Public Offering" as:

> [A]ny 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:
>
> 1. Publication in any newspaper, magazine or printed reading material which is distributed within the Philippines;
>
> 2. Presentation in any public or commercial place;

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[18] "Double Your Money in 5 Years" implies that the rates are only applied to the principal and not compounded [10% + 15% + 20% + 25% + 30% = 100% of the principal, or "Double Your Money"]

> 3. Advertisement or announcement on radio, television, telephone, electronic communications, information communication technology or other forms of communication; or
>
> 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. (underscoring supplied)

LDT AGRO's act of offering securities in the form of investment contracts constitutes **public offering** as defined under SRC Rule 3.1.17. As such, it is subject to the strict registration requirements under **Sections 8 and 12 of the SRC** before being offered or sold to the public.

The Negative Certifications issued by the Commission's **CGFD, MSRD, and CRMD** show that LDT AGRO **does not possess** the requisite secondary license to sell or offer to sell securities to the public. Moreover, there is no record that LDT AGRO has ever applied for a secondary license. ***Therefore, the unregistered public offering of investment contracts by LDT AGRO violates Sections 8 and 12 of the SRC.***

LIABILITY OF PARTICIPANTS IN THE OFFER OR SALE

In the case of ***Securities and Exchange Commission vs. Oudine Santos***,[19] the Supreme Court held that even "information providers" may be held liable for "solicitation" in relation to the selling or offering for sale of unregistered securities, viz.

> **Solicitation** is the act of seeking or asking for business or information; it is not a commitment to an agreement.
>
> Santos, by the very nature of her function as what she now unaffectedly calls an **information provider**, brought about the sale of securities made by PIPC Corporation and/or PIPC-BVI to certain individuals, specifically private complainants Sy and Lorenzo by **providing information on the investment products** of PIPC Corporation and/or PIPC-BVI **with the end in view** of PIPC Corporation **closing a sale**.
>
> While Santos was not a signatory to the contracts on Sy's or Lorenzo's investments, Santos procured the sale of these unregistered securities to the two (2) complainants by **providing information** on the investment products being

[19] G.R. No. 195542, March 19, 2014.

> offered for sale by PIPC Corporation and/or PIPC-BVI and convincing them to invest therein.
>
> No matter Santos' strenuous objections, it is apparent that **she connected the probable investors**, Sy and Lorenzo, to PIPC Corporation and/or PIPC-BVI, **acting as an ostensible agent** of the latter on the viability of PIPC Corporation as an investment company. At each point of Sy's and Lorenzo's investment, Santos' participation thereon, even if not shown strictly on paper, was prima facie established.[20] (underscoring and emphasis supplied)

The ruling applies to any person providing information about LDT AGRO and THE BNP CLIENT PROJECT, with respect to their investment-taking activities.

LDT AGRO and those persons acting for and its behalf cannot engage in the selling of securities as a ***broker***, ***dealer***, ***salesman,*** or ***associated person*** without first complying with **Section 28.1 of the SRC.** It provides that "no person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as salesmen, or an associated person or any broker or dealer unless registered to act as such with the Commission." Hence, persons who engage in the selling of securities as brokers and dealers without the necessary license can be held liable for violating Section 28.1 of the SRC.

THE CDO IS URGENT AND MAY BE ISSUED EX PARTE

Section 64.1 of the SRC provides that a CDO may be issued without necessity of a prior hearing if the act to be restrained will likely cause grave and irreparable injury to the investing public, viz:

> **SEC. 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 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.

The SRC is explicit that, as a general rule, securities should be registered with the Commission before being offered or sold to the public in order to protect the investing public from worthless securities, which, if

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[20] Id.

unchecked, **are likely to cause grave and irreparable damage** and injury to the investors and the public in general.

The continued public offering and sale of investment contracts by **LDT AGRO and THE BNP CLIENT PROJECT** without the required license from the Commission makes the public offering and selling a **continuing illegal act** thereby making it imperative and necessary that a CDO be immediately issued.

WHEREFORE, premises considered, **LDT AGRO INDUSTRIAL HUB CORPORATION and THE BNP CLIENT PROJECT**, and their officers, directors, agents, representatives, conduits, assigns, AND ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND ON ITS BEHALF are hereby ordered to **IMMEDIATELY CEASE AND DESIST,**[21] **UNDER PAIN OF CONTEMPT**, from engaging in activities of selling and/or offering for sale securities in the form of **investment contracts** or any others of the same nature as discussed in this *Order*, until the requisite registration statement is duly filed with and approved by the Commission and the corresponding permit to offer/sell is issued.

LDT AGRO INDUSTRIAL HUB CORPORATION and THE BNP CLIENT PROJECT are directed to **cease their internet presence** relating to the above-stated investment activities.

Moreover, to forestall grave damage and prejudice to all concerned, and to ensure the preservation of the assets for the benefit of investors, **LDT AGRO INDUSTRIAL HUB CORPORATION and THE BNP CLIENT PROJECT or any of their representatives, or any person/s acting for and in their behalf**, and such other persons directing or controlling the activities of such corporation, officers, representatives, salesmen, and agents, **are all ENJOINED from (a) transacting any and all business involving the funds in its depositary banks, and (b) transferring, disposing, or conveying in any other manner any and all assets and properties, real or personal, including bank deposits, if any, under their custody,** of which the named persons herein may have any interest, claim, or participation whatsoever, whether directly or indirectly, **immediately upon receipt of this Order, until further orders from this Commission.**

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

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[21] **Section 64.1 of the SRC** – 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 fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

in behalf of **LDT AGRO INDUSTRIAL HUB CORPORATION and THE BNP CLIENT PROJECT**.

The **EIPD** is hereby **DIRECTED** to:

[A] Serve this *Order* upon **LDT AGRO INDUSTRIAL HUB CORPORATION and THE BNP CLIENT PROJECT**, and their President, General Manager, Corporate Secretary, Treasurer, In-House Counsel, or Partners; and

[B] Post copies of the *Order* at the entrance of the main office and/or branches, if any, of **LDT AGRO INDUSTRIAL HUB CORPORATION and THE BNP CLIENT PROJECT**.

The **EIPD** is further directed to submit a **Compliance Report** to the Commission En Banc **within five (5) days** from receipt of this *Cease and Desist Order.*

In accordance with the provisions of **Section 64.3**[22] **of the SRC** and **Section 4-3 of the 2016 Rules of Procedure** of the Commission, the respondents may file a **Motion to Lift the CDO within five (5) days** from receipt of this *Cease and Desist Order*. The Motion to Lift the CDO must be filed with the Commission En Banc through the Office of the General Counsel.

SO ORDERED.
Pasay City, Philippines; 6 August 2019.

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

[22] **Section 64.3 of the SRC** – Any person against whom a cease and desist order was issued may, within five (5) days from receipt of the order, file a formal request for a lifting thereof. xxx

* On Leave