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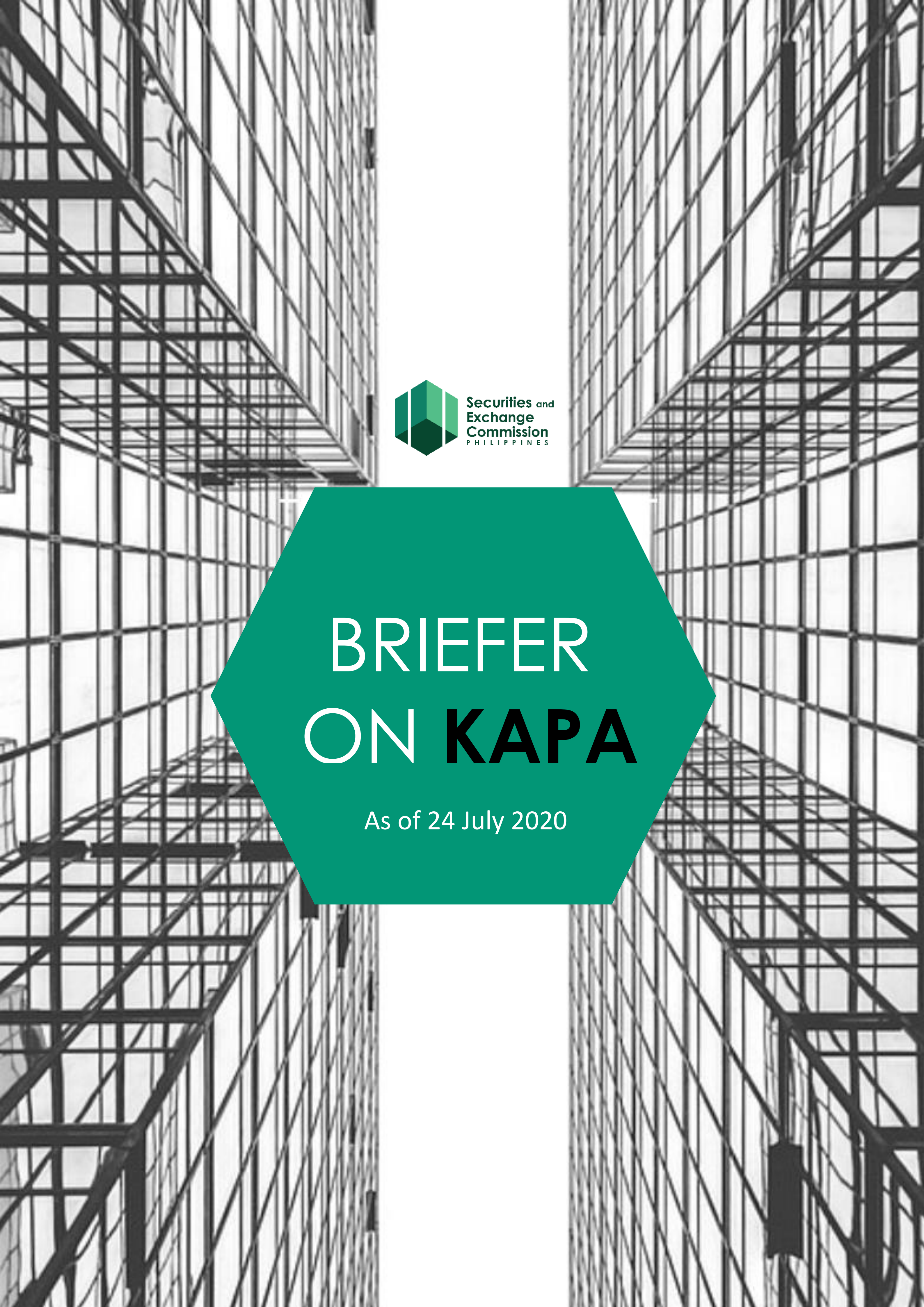

BRIEFER ON **KAPA**

As of 24 July 2020

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I. KAPA: QUICK FACTS

- **Kapa-Community Ministry International, Inc. (KAPA)** was registered with the Securities and Exchange Commission (SEC) as **a domestic nonstock corporation** on March 3, 2017.

- KAPA also operates as **KAPA Kabus Padatuon (Enrich the Poor), KAPA/KAPPA (Kabus Padutoon), KAPA-Co Convenience Store and General Merchandise** and **KAPA Worldwide Ministry**.

- KAPA was co-founded by **Joel A. Apolinario**, who serves as the nonstock corporation's president and more popularly as pastor.

- The **primary purpose** of KAPA, as stated in its Articles of Incorporation, is to **administer its affairs, properties and temporalities as a religious corporation**.

- The Certificate of Incorporation granted to KAPA expressly states that it is **not authorized to undertake business requiring secondary license** from the SEC such as soliciting investments in the form of securities.
  KAPA has **not filed any registration statement nor has it been issued any secondary license** to offer or sell securities to the public as required under Sections 8 and 12 of the Securities Regulation Code.

- KAPA was established as a nonstock corporation-religious society with only **P8,000.00 in contributions** from eight officers and members

- In its financial statements filed in October 2018, KAPA reported **total assets** of **P465,000.00** for 2017. It booked **P425,000.00** in **revenues**, of which **P250,000.00** came from **membership fees**, in the same year. The **excess of revenues over expenses** amounted to **P5,784.00** at the end of the year.

The SEC issued **advisories** against KAPA as early as March 2017, subsequently a **cease and desist order** in February 2019 and ultimately an **order of revocation** of its certificate of incorporation in April 2019.

KAPA was found to have been **soliciting investments from the public without the necessary license** from the SEC, when it enticed the public to "donate" in exchange for monthly "blessings" equivalent to 30% of their donation for life.

KAPA violated **Republic Act No. 8799, or the Securities Regulation Code**, which requires the registration of securities before they can be offered for sale to the public.

The investment scheme of KAPA is **within the definition of "securities"** under Section 3.1 of the Securities Regulation Code 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.

The arrangement between KAPA and its members partakes of an **investment contract**, in particular, whereby a person invests his money in a common enterprise and is led to expect profits from the effort of others.

The investment scheme of KAPA resembles a **Ponzi scheme**, an investment program that offers impossibly high returns and pays these returns to early investors out of the capital contributed by later investors.

The investment scheme of KAPA also qualifies as **affinity fraud** where a spiritual leader uses his undue influence in duping his flock and hides behind the freedom of religion.

II. DISSECTING KAPA's INVESTMENT SCHEME

A. KAPA'S SCHEME IS AN INVESTMENT CONTRACT

An **Investment Contract** is a **contract, transaction or scheme** whereby a person **invests money** in **a common enterprise** and is led to **expect profits** from the **effort of others**.

The arrangement between KAPA and its members partakes of an investment contract, satisfying the four elements laid down in the decision of the Supreme Court in the case of Power Homes Unlimited Corporation vs. Securities and Exchange Commission (G.R. No. 164182, 28 February 2008):

a) Money is invested;

b) The money invested is placed in a common enterprise;

c) There is expectation of profit;

d) The profit is derived primarily from the efforts of others.

Under Section 3 (b) of Republic act No. 8799, or the Securities Regulation Code, **investment contracts are securities**, defined as 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.

Section 8 of the Securities Regulation Code provides: "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

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HOW KAPA'S INVESTMENT SCHEME SATISFIES THE ELEMENTS OF AN INVESTMENT CONTRACT

THE HOWEY TEST

KAPA INVESTMENT SCHEME

1. INVESTMENT OF MONEY

- In Kapa's scheme, the money invested is the "**DONATION**" worth at least P10,000.

2. IN A COMMON ENTERPRISE

- The common enterprise is **KAPA-COMMUNITY MINISTRY INTERNATIONAL**, previously registered as a religious corporation.

3. EXPECTATION OF PROFIT

- The member-donor expects a "**BLESSING**" equivalent to 30% of the amount "donated" every month for life.

4. PRIMARILY FROM EFFORTS OF OTHERS

- The member-donor **NEED NOT DO ANYTHING** other than invest and wait for the day of the monthly payout.

B. KAPA'S SCHEME IS A PONZI SCHEME

A **Ponzi Scheme** is an investment program that offers **impossibly high returns** and pays these returns to early investors out of the **capital contributed by later investors.**

In KAPA, members are enticed to make "donations" with a promise of "blessings" equivalent to 30% of their donations to be paid out every month and for life. Yet, KAPA does not have any concrete and stable business or source of income.

The investment scheme is doomed to fail. KAPA cannot possibly sustain paying out a 30% monthly interest without recruiting new members and soliciting more money from the public.

To illustrate, KAPA would need at least P15 billion monthly to pay 5 million members who have invested at least P10,000 each, as shown below. Without new members or additional investments coming in, the pooled funds would have been diminished by the third month.

Number of Members	5,000,000
Minimum Investment	P10,000.00
Pooled Funds	**P50,000,000,000.00**
Monthly Return	30%
Contract Term	∞
Monthly Payout	**P15,000,000,000.00**

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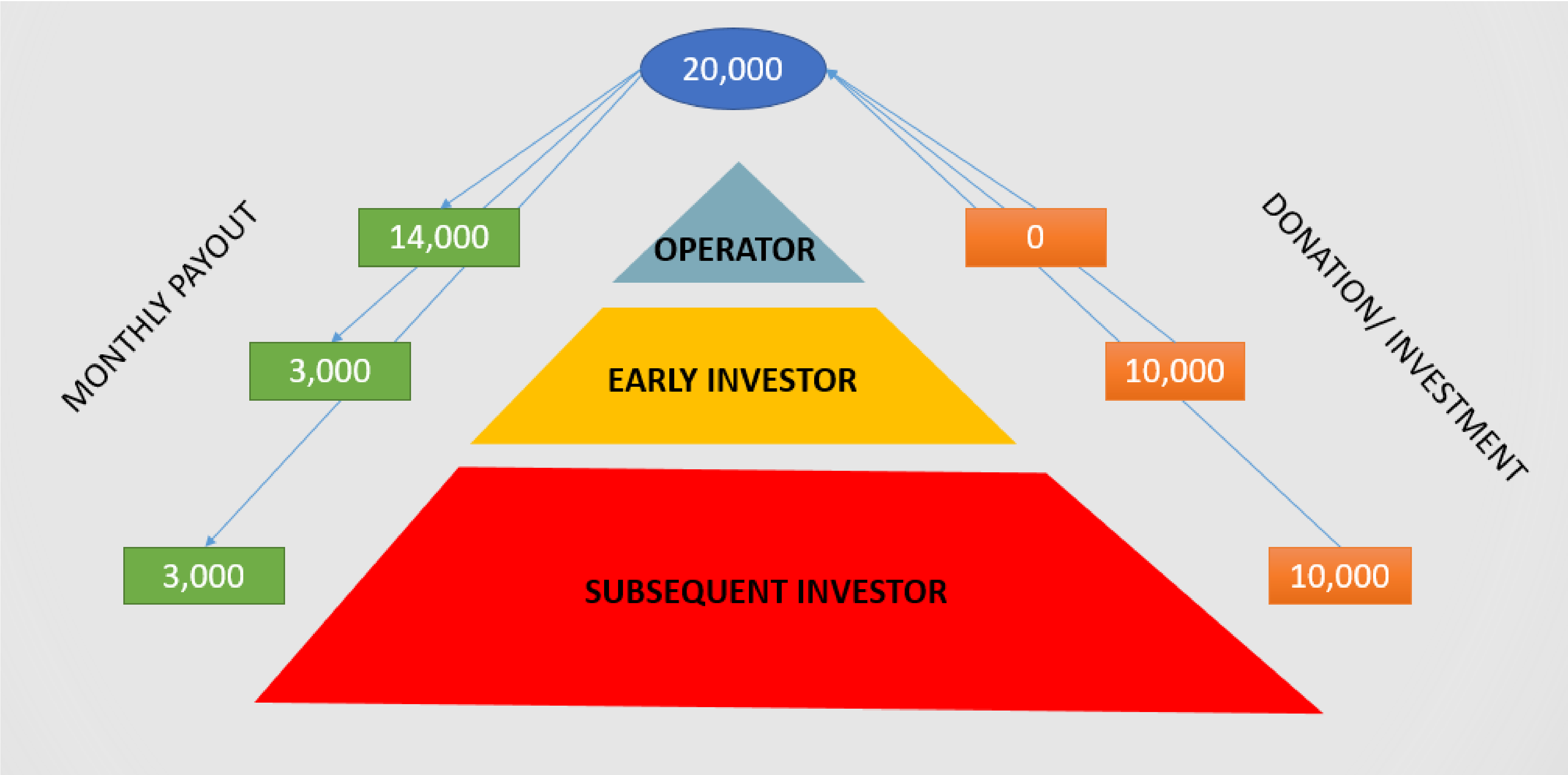
THE FLOW OF MONEY IN KAPA'S INVESTMENT SCHEME



C. KAPA'S SCHEME IS AN AFFINITY FRAUD

Affinity Fraud refers to investment scams where offenders take advantage of their likeness to identifiable groups such as religious organizations or pretend to belong to the same group to earn the trust of their victims and prey upon them.[1] Many affinity scams involve "Ponzi" or pyramiding schemes.

A "church" makes an effective breeding ground for affinity fraud because an offender can easily pitch investment scheme to a large group of people.[2]

In the case of KAPA, founder and president Joel A. Apolinario exploits his position and influence as pastor of a religious ministry to dupe members in investing their hard-earned money in KAPA in the guise of a donation.

D. KAPA'S SCHEME IS AN ULTRA VIRES ACT

An Ultra Vires Act is an **exercise of a corporate power other than those conferred** by Republic Act No. 11232, or the Revised Corporation Code of the Philippines, and by the corporation's articles of incorporation. [3]

In offering and selling securities, **KAPA committed an ultra vires act**, exceeding the privilege granted to it and misrepresenting itself to the public by concealing its investment scheme in the guise of a donation to entice the public to donating when in truth and in fact they are investing.

[1] https://www.sec.gov/investor/pubs/affinity.pdf
[2] Ibid
[3] Section 44 of the Revised Corporation Code (Republic Act No. 11232)

III. CHRONOLOGY OF EVENTS INVOLVING KAPA

DATE	EVENTS

03 March 2017

- Registered as a Nonstock, Independent Religious Corporation under SEC Registration No. CN201707724 "for the administration of its affairs, properties and temporalities"

- Headquartered in Garay Arcade, Barreda Street, Caramcam District, Mangagoy, Bislig City, Surigao Del Sur

- Incorporators and trustees:

Ptr. Joel A. Apolinario	Union Site, Mangagoy, Bislig City
Nonita S. Urbano	P-1 Cumawas, Bislig City
Junnie G. Apolinario	P-1 Cumawas, Bislig City
Nelia V. Niño	P-2 Calubian, Tabon, Bislig City
Maria Pella B. Sevilla	Sanyat, Sta. Cruz, Bislig City
Jouelyn A. Del Castillo	Scaling, San Roque, Bislig City
Cristobal R. Barabad	Espiritu St. Mangagoy, Bislig City
Joji A. Jusay	Espiritu St. Mangagoy, Bislig City

- Officers and trustee:

Ptr. Joel A. Apolinario	President
Reyna L. Apolinario	Corporate Secretary
Modie S. Dagala	Chief Financial Officer
Benigno D. Tepan, Jr.	Trustee
Marnilyn M. Maturan	Trustee
Ricky A. Taer	Trustee
Joji A. Jusay	Trustee
Margie A. Danao	Trustee

22 March 2017	➢ The SEC issued an Advisory against KAPA
04 October 2017	➢ An email with attachments were forwarded by the Office of the SEC Chairperson to the Enforcement and Investor Protection Department (EIPD) for investigation ➢ Sender suspected that KAPA COMMUNITY and KAPPA PADATOON were one and the same, having similar "modus" of recruiting and offering "10k for 3k" monthly ➢ Attached also was a copy of a Deed of Donation
October 2017	➢ Negative certifications were issued by the Markets and Securities Regulation Department (MSRD) and Corporate Governance and Finance Department (CGFD) that KAPA has not registered any securities and has not been issued permits to offer and sell securities
25 October 2017	➢ The SEC-Cagayan De Oro Extension Office engaged in a dialogue with the Department of Trade and Industry (DTI) and the Philippine National Police (PNP) about KAPA's operations in Bislig City and for the gathering of evidence against KAPA

October 2017 – September 2018	➢ Emails, letters, complaints and phone queries from the public were received ➢ The EIPD referred the reports and complaints to SEC Davao and SEC Cagayan de Oro for investigation
16 August 2018	➢ SEC Cagayan De Oro held a conference with KAPA, whose counsels denied that KAPA promised a 30% return on investment per month, as the SEC apprised them that such arrangement constituted public offering of securities and required prior registration
11 September 2018	➢ The EIPD received from SEC Davao a memorandum with documents from the National Bureau of Investigation (NBI) - Caraga Regional Office XIII: 1. Copies of "Certificate of Membership with Deed of Donation" 2. KAPA Policy and Benefits 3. NBI Investigation Report 4. Endorsement of the NBI of its findings (for estafa) to the Office of the City Prosecutor (Bislig City) 5. Copies of 12 warrants of arrest issued against Joel Apolinario, et. al. 6. Order of Release issued by the Municipal Trial Circuit Court in Bislig City by reason of posting of a bail bond by Joel Apolinario

September 2018	➢ The EIPD received from SEC Cagayan de Oro a memorandum with the certified true copies of documents furnished by the Bislig City Police Station ➢ Included criminal action for estafa filed by some investors against KAPA and Joel Apolinario ➢ Also included warrants of arrest issued against Joel Apolinario
28 September 2018	➢ The CGFD issued certification that KAPA was not a registered issuer of mutual funds, exchange traded funds and proprietary/non-proprietary shares or membership certificates and timeshares
01 October 2018	➢ The MSRD issued a certification that KAPA had not registered any securities; the MSRD has not issued a Permit to Sell Securities; and KAPA has not filed any application for registration/ permit to sell securities
04 October 2018	➢ The SEC issued another Advisory against KAPA
05 October 2018	➢ SEC Cagayan De Oro conducted investigation and surveillance at KAPA Branch in Surigao City ➢ Similar operations were conducted in Bayugan City

	➢ The EIPD continued to receive reports from the public through SEC i-Message Mo and email that KAPA had intensified its recruitment and solicitation activities through different social media networks (Facebook and YouTube) since January 2018 to January 2019
10 October 2018	➢ The EIPD received a Memorandum from SEC Cagayan de Oro with attached affidavits from its personnel who conducted investigation of the activities of KAPA in Surigao City, Surigao del Norte and Bayugan City, Agusan del Sur on 4 to 5 October 2018
22 October 2018	➢ The SEC received a letter from Ricky Collado, Area Manager for Mindanao, BomboRadyo Philippines, addressed to Commissioner Javey Paul Francisco, reporting activities of KAPA
24 January 2019	➢ The SEC procured the certified true copies of complaint affidavits, resolutions and other relevant documents of 102 cases of swindling and syndicated swindling filed against KAPA and Joel Apolinario
12 February 2019	➢ The EIPD filed a Petition for Revocation of Corporate Registration with prayer for the issuance of a Cease and Desist Order (CDO) against KAPA

14 February 2019	➢ The SEC issued a CDO against KAPA ➢ The SEC served the CDO on 21 February 2019
28 February 2019	➢ KAPA, through SEDA Law, filed a Manifestation that it has filed on 26 February 2019 an Urgent Omnibus Motion to (1) Lift the Cease and Desist Order dated 14 February 2019; and (2) To Revoke and Remove SEC Advisory dated 03 October 2018
February 2019	➢ KAPA, as represented by Joel Apolinario, filed with the Regional Trial Court (RTC) of General Santos City a Petition for Injunction with Application for Issuance of a 72-hour Restraining Order, Temporary Restraining Order (TRO) and/or a Writ of Preliminary Injunction
01 March 2019	➢ KAPA, through SEDA Law, filed a Manifestation withdrawing the "Urgent Omnibus Motion to (1) Lift the Cease and Desist Order; and (2) To Revoke and Remove SEC advisory dated 03 October 2018 which it filed on 26 February 2019" as it supposedly did not receive its official copy of the CDO ➢ RTC- General Santos City Branch 58 DENIED the prayer for issuance of a 72-hour TRO filed by KAPA

07 March 2019	➢ The SEC issued an Order to File a Verified Answer on the Petition for the Revocation of Corporate Registration (within 15 days) addressed to KAPA
11 March 2019	➢ The SEC issued an Advisory to the Public pertaining to the reports that there is a circulating YouTube Video featuring the alleged news that KAPA has obtained a TRO against the CDO issued by SEC against KAPA, when in fact, said TRO was DENIED by the RTC on 01 March 2019
12 March 2019	➢ SEC Cagayan De Oro sent copies of the CDO and the Commission's Resolution deputizing law enforcement bodies to all provincial offices of PNP, NBI, Department of the Interior and Local Government (DILG) and Local Government Units (LGUs) within Region X and XIII for implementation
14 March 2019	➢ The SEC resolved KAPA's Manifestations, ruling that KAPA was properly served with the copy of the CDO and since it did not file any motion to lift CDO, the CDO became permanent
21 March 2019	➢ KAPA, through SEDA Law, filed a Motion for Extension of Time to File its Verified Answer

27 March 2019	➢ The EIPD filed its Comment on the Motion for Extension of Time arguing that said motion is a prohibited pleading under the SEC Rules of Procedure
03 April 2019	➢ The SEC issued a Decision Revoking the Certificate of Registration of KAPA
04 April 2019	➢ KAPA filed a petition for preliminary injunction on the CDO issued by the SEC before the RTC- General Santos City Branch 35
10 April 2019	➢ RTC- General Santos City Branch 35 issued a Writ of Preliminary Injunction against the SEC with regard to the CDO it issued
23 May 2019	➢ The NBI- North Eastern Mindanao Regional Office 10 visited SEC Cagayan De Oro to discuss application for a search warrant in line with the implementation of the CDO
04 June 2019	➢ Court of Appeals issued a Freeze Order on bank accounts and other assets linked to KAPA

07 June 2019	➢ RTC- Manila Branch 20 issued 12 Search Warrants covering the offices of KAPA in Alabel, General Santos City, Tagum City, Quezon City, Taytay, Nueva Vizcaya, Tacloban City, Cebu City, Bukidnon and Misamis Oriental and the house of Pastor Joel Apolinario in General Santos City
08 June 2019	➢ President Rodrigo R. Duterte ordered the National Bureau of Investigation (NBI) and the PNP-Criminal Investigation and Detection Group (CIDG) to shut down KAPA's operations
10 June 2019	➢ The combined forces of the SEC, NBI and PNP-CIDG implemented the search warrants against KAPA, finding voluminous evidence on the illegal activities of KAPA
13 June 2019	➢ President Duterte described KAPA's operations as continuing crime and, accordingly, ordered the NBI and PNP to arrest the people behind the investment scam, as he reiterated his call on the public to avoid KAPA
17 June 2019	➢ The RTC-General Santos City Branch 35 dismissed the petition of KAPA for injunction against the SEC, after taking judicial notice of the issue over KAPA's trading of securities

18 June 2019	➢ The SEC filed a criminal complaint against KAPA before the Department of Justice (DOJ) for violations of the Securities Regulation Code
1 July 2019	➢ The RTC-Davao City issued a precautionary hold departure order against Joel Apolinario, Margie Danao, Reyna Apolinario, Catherine Evangelsta, Rene Catubigan, Marisol Diaz, Adelfa Fernandico and Moises Mopia
25 September 2019	➢ State prosecutors at the DOJ issued a resolution recommending the filing of criminal charges against KAPA, the Apolinarios and Danao for violations of Sections 8 and, 26.1 and 28 of the Securities Regulation Code ➢ The resolution also recommended criminal charges against Diaz, Fernandico, Mopia and Catubigan for promoting and participating in the unlawful public offering and/or selling of securities by KAPA ➢ The DOJ would proceed with the filing of Informations against the accused with the RTC-Bislig City Branch 29, RTC-Antipolo and RTC-Quezon City Branch 93
02 December 2019	➢ The RTC-Quezon City issued a warrant of arrest against Fernandico

11 February 2020	➢ The RTC-Bislig City Branch 29 issued warrants of arrest against the Apolinarios, Danao, Fernandico, Mopia and Catubigan in connection with the fraud charges initiated by the SEC
18 February 2020	➢ The RTC-Cagayan de Oro City Branch 21 issued a warrant of arrest against Apolinario, along with eight other people connected to KAPA, for the non-bailable offense of syndicated estafa
21 May 2020	➢ The SEC issued an advisory debunking claims that the criminal charges against KAPA have been dismissed and that the cease and desist order issued by the SEC has been effectively lifted.

21 July 2020	➢ Apolinario was arrested in a joint operation by the PNP, National Intelligence Coordinating Council, Philippine Army and Philippine Coast Guard in an isolated resort in Lingig, Surigao del Sur ➢ The operation was based on a search warrant issued by the Cantilan, Surigao Del Sur Regional Trial Court Branch 41 for violations of Republic Act No. 10591, or the Comprehensive Law on Firearms and Ammunition, and Republic Act No. 9516, the law on illegal/unlawful possession of explosives ➢ The operation also carried out the warrant of arrest issued by the RTC-Cagayan de Oro City Branch 21 for the syndicated estafa case filed against Apolinario ➢ Apolinario and 25 others were arrested following an encounter between the law enforcers and Apolinario's private army, where a member of the latter was killed ➢ High-powered firearms were seized during the operation

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