

## SEC warns against investment-taking entities Gemini Trust and Seven Co

THE Securities and Exchange Commission (SEC) has warned the public against putting money in two more investment-taking entities, which have not secured a license to offer shares.

In separate warnings, the regulatory body identified the entities as Gemini Trust Co., LLC and Seven Co.

The advisory reported that Gemini Trust has been enticing

the public through its website by offering its product “Gemini Derivative.”

According to the SEC, derivatives are a form of securities defined under Section 3 of the Securities Regulation Code (SRC).

“[The company’s] lack of prior registration with the commission makes their activities of offering and/or selling securities in

the form of derivatives illegal in violation of the provisions of the SRC,” the regulator said.

The entity was also charged by the USSEC due to its unregistered investment scheme through the entity’s Gemini Earn programs, which constitute an offer and sale of securities that require prior registration.

Additionally, it was also sued by the US Commodity Futures

Trading Commission for “allegedly deceiving regulators by providing false information about the exchange and futures contracts during meetings with the regulators as part of an attempt to secure approval for Bitcoin futures in 2017.”

Gemini Trust is a US-based cryptocurrency platform founded by Facebook co-origina-tors Tyler and Cameron Winklevoss.

Meanwhile, the commission also warned against Seven Co, which is enticing the public through social media under the investment schemes “Seven Co Investments & Online Paluwagan” and “Seven Co Profit Sharing & Online Paluwagan.”

The entity promises investors a 20% interest rate on investment for 10 days and 30% for 15 days.

The SEC said that the tactic has the characteristics of a Ponzi scheme where money from new investors is used in paying “fake profits” to prior investors and is designed mainly to favor its top recruiters and prior risk takers.

In its review, the commission stated that both entities are not authorized to solicit investments from the public. — **Adrian H. Halili**

## SC: Maynilad, Manila Water are public utilities

By **John Victor D. Ordoñez**  
Reporter

THE SUPREME COURT (SC) has declared Maynilad Water Services, Inc. and Manila Water Co., Inc. as public utilities, barring them from recovering their corporate income tax as operating expenses.

In a 102-page decision, the High Court said allowing the water companies to include their corporate income taxes in their rates would force consumers to pay for an item that would not directly benefit them, which it said was unjust.

“Certainly allowing Maynilad to include its corporate income taxes in the rates chargeable to water consumers... will result not only in unjust but also inequitable rates,” SC Associate Justice Marvic M.V.F. Leonen said in the ruling, a copy of which was sent to *BusinessWorld* by the Bayan Muna party-list on Sunday.

Former Bayan Muna Representatives. Neri J. Colmenares and Carlos Isagani T. Zarate, who filed the petition, received a copy

of the High Court’s decision dated Dec. 7, 2021, on May 17.

A representative of Maynilad said the company’s income tax has been excluded from its expenses after the High Court ruled that both water concessionaires are prohibited from recovering income taxes as operating expenses.

Nestor Jeric T. Sevilla, Jr., Manila Water corporate communications affairs group director, could not be immediately reached by phone call for comment.

The former lawmakers, who filed the petition in 2015, sought to void the arbitration clause in the 1997 concession agreements between the water companies and the Metropolitan Waterworks and Sewerage System (MWSS).

The petitioners claimed the arbitration of disputes between MWSS and the concessionaires removes governmental oversight over water pricing, which is linked to public welfare.

The MWSS is mandated under law to periodically fix water rates and sewerage service fees to remain fair and equitable.

Under Republic Act No. 6234 or the law establishing the MWSS,

the water concessionaires and the MWSS are allowed a rate of net return not exceeding 12% of a rate base of its assets in operation.

Under the concession agreements, the water companies must pay MWSS “concession fees” in exchange for the exclusive rights to operate waterworks and sewerage operations in the east and west service areas of Metro Manila.

Through the provision in the agreements, the water companies are allowed to bill water consumers above “standard rates,” which would also be subject to the 12% rate limit.

The former Bayan Muna representatives claimed Manila Water and Maynilad had been including these corporate income taxes in their recoverable operating expenses, which led to an increase in the price of water through the years.

The provision that the plaintiffs were challenging allowed Maynilad and Manila Water to recover their income taxes as incurred operating expenses.

Maynilad argued that it is not a public utility whose rates may be reviewed by the National Water Resources Board. It added the law-

makers did not have legal standing to file the lawsuit since they had not sustained any direct injury from the concession agreements.

The tribunal gave way to the petition saying there were “actual facts alleged, giving rise to an actual controversy,” which gave the court jurisdiction to rule on the issues raised.

“As legislators, they have been allowed to file cases against official action that infringes on their prerogatives as legislators,” it said.

“They raise an issue of transcendental importance, water being the most basic of all human necessities.”

Despite this, the tribunal upheld the validity of the concession agreements, other than the said provision allowing the water firms to recover income tax as an operating expense. It said the agreements were above-board as they were executive in line with the National Water Crisis Act of 1995.

It declared Manila Water and Maynilad as public utilities since they are businesses or services “engaged in regularly supplying the public with some commodity

or service of public consequence such as electricity, gas, water, transportation, telephone or telegraph service.”

“They are privately owned and operated business entities engaged in regularly supplying water — the most basic of all necessities for human survival,” according to the court.

Citing a 2002 SC jurisprudence, the high tribunal said public utilities are prohibited from including income taxes as operating expenses for purposes of computing the rates chargeable to consumers.

Maynilad and Manila Water cannot argue that they are not public utilities since they do not hold legislative franchises to operate MWSS’ facilities, it added, citing the National Water Crisis Act of 1995.

“The ruling is good in the sense that henceforth, none of them including the [MWSS] can impose corporate taxes on us,” Mr. Colmenares told *BusinessWorld* in a Viber message.

“Of course, we still need to continue the call for a refund of our previous payments of their corporate income tax.”

### NO REFUND

Meanwhile, Jennifer C. Rufo, Maynilad’s head of corporate communications, said that the west zone water concessionaire has already received a copy of the SC ruling.

“Prior income taxes have been taken out already. Nothing to refund,” she said in a Viber message to *BusinessWorld* on Sunday.

“The new RCA (revised concession agreement), as well as the last two rate rebasing exercises, already excluded income taxes from our tariff,” Ms. Rufo added.

In May, the MWSS and the water distributors signed the revised concession deal governing the supply of water in Metro Manila.

Maynilad and Manila Water announced in separate disclosures on May 11 that the amended agreements were signed on May 10 to retroactively take effect on July 1, 2022.

The amended RCA includes the provision to prohibit the two concessionaires from charging their corporate income tax to consumers. — with **Ashley Erika O. Jose**

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