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

In the Matter of:

AA CASTRO CONSTRUCTION AND AGGREGATES TRADING/AA CASTRO HAULING CONSTRUCTION MANAGEMENT AND AGGREGATES TRADING OPC and APRIL GRACE CALLEJA CASTRO.

SEC CDO Case No. 08-22-092
Promulgated: 30 August 2022

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),
Movant.

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CEASE AND DESIST ORDER

This resolves the ***Motion for Issuance of a Cease and Desist Order*** (the "Motion") dated 03 August 2022, filed on 04 August 2022 by the Enforcement and Investor Protection Department **(EIPD)**, praying that an Order be issued directing Respondents **AA CASTRO CONSTRUCTION AND AGGREGATES TRADING/AA CASTRO HAULING CONSTRUCTION MANAGEMENT AND AGGREGATES TRADING OPC** and **APRIL GRACE CALLEJA CASTRO** ("Respondents"), and its operators, directors, officers, representatives, salesmen, agents, enablers, influencers 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 activities of selling, and/or offering for sale securities in the form of investment contracts, and cease its internet presence relating to its stated investment activities until the requisite registration statements are duly filed with and approved by the Commission and the corresponding permits to offer/sell securities are issued.

The EIPD also prays that Respondents or any of its officers, representatives, salesmen, and agents be prohibited from transacting any and all business involving the funds in its depository banks, and from transferring, disposing, or conveying in any other manner, any and all assets, properties, real or personal, including bank deposits, if any, of which the named persons herein may have any interest, claim or participation whatsoever, whether directly or indirectly, under their custody, immediately to forestall grave damage and prejudice to all concerned and to ensure the preservation of the assets for the benefit of the investors without authority from the Commission.[1]

PARTIES

The EIPD is one of the Commission's operating departments tasked, among others, to investigate and institute administrative actions against persons and entities engaged in the sale and/or offer of unregistered securities without the requisite secondary license.[2]

AA CASTRO CONSTRUCTION AND AGGREGATES TRADING ("ACCAT") is not registered with the Commission either as a corporation or as a partnership.

AA CASTRO HAULING CONSTRUCTION MANAGEMENT AND AGGREGATES TRADING OPC ("ACHCMATO") is a domestic corporation duly organized and existing by virtue of the laws of the Republic of the Philippines, having been issued a Certificate of Incorporation bearing Company Registration No. 2021110034068-02 on 29 November 2021. Its principal office is located at Blk 11 Lot 2 AA Castro Canary Pecsonville Tungkong Mangga, City of San Jose Del Monte, Bulacan.

Its primary purpose and secondary purposes as per its Articles of Incorporation (AOI)[3] are:

> "Primary: To engage in general construction, management and other allied activities, including the constructing, enlarging, repairing, removing, renovation, modification, developing or otherwise engaging in any work upon buildings, roads, highways, manufacturing plants, bridges, airfields, piers, docks, mines, shafts, waterworks, railroads, railway structures, all iron. Wood, masonry and earth constructions and to make, execute, bid for and take or receive any contracts or assignments of contract therefore, or in relation thereto, or connected therewith and to manufacture and furnish building materials and supplies connected therewith; and doing of any and all other activities and contracting incidental thereto or connected therewith, and the doing and performing of any and all acts and things necessary, proper or convenient for and incidental to the furtherance and/or implementation of the purposes therein mentioned.

[1] *Motion for Issuance of Cease and Desist Order* dated 03 August 2022.
[2] Section 2-2(c)(1-c), Rule II, Part I of the 2016 SEC Rules.
[3] *Motion* (n1), Annex "A."

> Secondary: To engage in trading and selling construction materials, aggregates and related products.
>
> Provided that the corporation **shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts.**"[4] (Emphasis supplied)

Its single stockholder/director/president as appearing in its AOI is as follows:

NAMES	ADDRESS	SUBSCRIBED AMOUNT	PAID-UP CAPITAL
April Grace Calleja Castro	Lot 7 Blk 12 San Pedro St. Guadanoville Barangay183 North Caloocan City, Third District, National Capital Region (NCR), 1400	P 3,000,000.00	P 3,000,000.00

RELEVANT FACTS

The instant case stemmed from the reports received by the Commission in form of email inquirers regarding the solicitation activities of ACCAT and ACHCMATO, collectively referred to as "AA CASTRO" for brevity, which were endorsed to the EIPD.

The EIPD received a *Letter-Complaint*[5] from Atty. Jilliane Joy M. Oria ("Atty. Oria") alleging that since 2019, AA CASTRO without legal personality, have soliciting investments from the public without the required secondary license from the Commission. The same AA CASTRO applied for a One Person Corporation (OPC) on 12 August 2021 under the name **AA CASTRO Capital OPC operating under the name AA CASTRO Project Tap On Business Investment Philippines.**[6] The said applicant is also using the names **"AA Castro Construction and Aggregates Trading"** and **"AA Castro Hauling Services".**

The *Letter-Complaint* requested the investigation and eventual issuance of an SEC Advisory and Cease-and-Desist Order against AA CASTRO. To substantiate the complaint, several affidavits from

[4] *Ibid*, Annex "B."
[5] *Ibid.*
[6] *Ibid*, Paragraph 5.

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individuals with personal knowledge of AA CASTRO's operations were attached, with proof of solicitation of investments committed by APRIL GRACE CALLEJA CASTRO ("April Castro"), FLORIE Y. RAMOS, and RUSSEL ESCALANTE, the Chief Executive Officer ("CEO"), the Vice President ("VP"), and the Bulacan Account Manager, of AA CASTRO, respectively.

Among the affidavits attached is a *Joint Affidavit of Spouses Fulay* dated 27 December 2021.[7] Spouses Rodrigo A. Fulay and Yomalyn L. Fulay ("Spouses Fulay") alleged therein that sometime in January 2020, April Castro borrowed money from them and subsequently became a tenant in their rental unit. April Castro enticed them to invest the amount of One Hundred Eighty Thousand Pesos (P 180,000) in her hauling and trucking business with a promise of a weekly payout and an interest of thirty percent (30%). April Castro represented to be the CEO, while Florie Y. Ramos represented to be the VP of ACCAT, the same company that allegedly offers and solicits investments with a minimum amount of Fifty Thousand Pesos (P 50,000.00) from the public by conducting public events, particularly in Okada, Manila, Facebook private groups, and through Youtube videos. A copy of the Investment Agreement executed with ACCAT, AA Castro Hauling Services/ AA Castro Project Tap on Business Investment was also attached by the Spouses Fulay.[8]

A second *Affidavit* dated 27 December 2021 by Micheal Quijote Caddarao was attached to the *Letter-Complaint*, alleging that the affiant is a neighbor of April Castro and Russel Escalante, and that the latter enticed him to invest Fifty Thousand Pesos (P50,000) on 23 October 2020, by promising a weekly payout for ten (10) years while the capital may be withdrawn anytime. After the first weekly payout of Four Thousand Seven Hundred Fifteen Pesos (P 4,715.00), the affiant was convinced to invest another One Hundred Fifty Thousand Pesos (P150,000.00). After receiving a weekly payout in the total amount of One Hundred Seventy-Three Thousand One Hundred Fifty Pesos (P 173,150.00), the weekly payouts stopped and their relationship as neighbors became hostile and affiant was removed from the private group chat maintained by ACCAT. In his quest to regain what he lost from investing, affiant stumbled upon other victims of the Respondents. As further proof of the investment, a Business Confidentiality Agreement was attached in the *Affidavit*.[9]

A third *Affidavit* dated 13 December 2021 by Vilma P. Tesalona was attached to the *Letter-Complaint*, alleging that she met April Castro, also known as Miah Tan, through an acquaintance. April Castro explained to

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[7] *Ibid*, attached as Annex "B" of Annex "A."
[8] *Motion* (n1) attached as Annex "B" of Annex "Aa."
[9] *Ibid*, attached as Annex "E."

her how she could earn and share profits through a hauling business, prompting her to invest a total amount of One Million and Eight Hundred One Thousand and Seven Hundred Thirty Pesos (P 1,801,730.00) without signing a written agreement. After the lapse of the fifty (50) day deadline, April Castro and Florie Ramos were nowhere to be found. Attached therein is a copy of the *Complaint-Affidavit* dated 21 January 2021, executed for the purpose of filing the appropriate criminal case against April Castro and Florie Ramos.

A fourth *Joint-Affidavit* dated 6 December 2021 is attached to the *Letter-Complaint*, executed by Jenelyn D. Rosendal and Ronniel Jimenez, alleging that April Castro borrowed money from them in the amount of Eight Hundred Fifty-Six Thousand Pesos (P 856,000.00) to be used as additional capital in the latter's business called **FMJ Collections Manufacturing Co., Hauling Services, and AA Castro-Malabanan Siphoning and General Services**. After releasing the said amount, April Castro was nowhere to be found. A Certificate to File an Action by Barangay 181, Zone 16, District 1 of Caloocan City, was issued on 29 May 2021 after April Castro twice failed to appear.

A fifth *Affidavit* dated 27 December 2021 is also attached in the *Letter-Complaint* by Victorio Ragsag Rea, alleging that he met April Castro, also known as Miah Tan, through an acquaintance, and being in a construction-related business, loaned her Fifty Thousand Pesos (P 50,000.00) payable within one (1) month. She further enticed affiant to create a partnership that required an initial capital of Two Million Pesos (P 2,000,000.00), each partner contributing 50-50. They then planned to open a joint account in Security Bank-Lagro Branch, however, while waiting in the bank, the affiant had to temporarily leave his bag containing One Million Pesos (P 1,000,000.00) with April Castro and one Luz Aldave, and the two sped off, claiming that they already deposited the amount in the joint account. The joint account was never actually created since the affiant had not yet signed any papers. Despite the affiant's insistence that his money be returned and that he is no longer interested in entering into a partnership, April Castro claimed that she had immediately used Five Hundred Thousand Pesos (P 500,000.00) in her hauling business and instead, issued twelve (12) postdated checks from Security Bank Lagro Branch.

On 19 April 2022, Atty. Oria submitted copies of *Investment Agreements* entered into by Rona A. Platon, Belen R. Dayrit, Leo Q. Cruzate, Cheryl A. Sapida, and Teodelin Q. Cruzate.[10] Under the *Investment Agreements*, ACCAT represented itself as a company organized and existing under the Laws of Caloocan North Metro Manila,

[10] *Ibid*, attached as Annex "D."

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and incorporated under "Philippine Business Corporate Act" with its head office located at Okada Pearl Wing Paranaque, Metro Manila, Philippines. Further stated is that AA Castro Project Tap on Business Investment is incorporated under the "Companies Act" and Registered in the Philippines with License No. SEC 210508 with a registered office at Narra Ave. Caloocan, North Metro Manila, Philippines, established by its CEO, April Castro.[11]

Included with the *Investment Agreements* were several *Sinumpaan Salaysay* that narrated how the investors got involved with April Castro. Each investor attended an orientation about the business of A. A. Castro Construction & Aggregate Trading in Okada, Paranaque, and thereafter invested the amount ranging from Fifty Thousand Pesos (P 50,000.00) up to One Million Pesos (P 1,000,000.00).

Also included in the *Motion*[12] is a *Complaint-Affidavit* dated 03 June 2022 of Mr. Manuel R. Gutierrez for Syndicated Estafa, filed before the Makati Office of the City Prosecutor. [13] The Respondents in the *Complaint-Affidavit* include April Castro, Florie Y. Ramos, and Russel R. Escalante, among others. According to Mr. Gutierrez, April Castro, and Florie Y. Ramos, offered to sell him 300 bottles of perfume products worth Thirty-Five Thousand Pesos (P 35,000.00) but they failed to deliver. In lieu thereof, April Castro offered him to enter into a new and bigger scale of hauling business, claiming that she was the owner of **AA Castro Hauling Services**, and was engaged as a contractor of Private to Public Partnership Projects. Mr. Gutierrez was enticed to invest Fifty-Thousand (Php 50,000.00) under the promise that he will be earning not less than Four Thousand (P 4,000.00) pesos but not exceeding Four Thousand Four Hundred Pesos (P 4,400.00) in a rate of Php 23.26 pesos per minimum of 189 cubic meters of aggregates to be hauled/delivered weekly in every Fifty Thousand Pesos (P 50,000.00) of investment.

In the course of its investigation, the EIPD was able to confirm and verify the veracity of the information provided in the Affidavits/Complaints describing the modus operandi of the AA Castro and April Castro which involves selling and/or offering securities to the general public in the form of investment contracts, with a guaranteed pure passive income derived from numerous fictitious general constructions, aggregates, and hauling business.

AA Castro through its officers deceived their victims by making them believe that it operated a legitimate general construction/hauling

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[11] *Ibid*, Page 3 of *Investment Agreement* attached as Annex "D"
[12] Dated 03 August 2022.
[13] *Motion* (n1), Annex "F."

company which generates profit worthy to invest on. Respondents lured its victims with a promise of great return of investment evidenced by written investment contracts.

AA Castro and April Castro represented and offered to the investing public a weekly income of Php4,400.00 but not exceeding Php4,700.00 weekly at a rate of Php23.26 pesos per minimum of 189 cubic meters of aggregates to be hauled and delivered weekly in every Php50,000.00 of investment or a promised interest of up to 30% - 40% a month; thus:

Amount of Investment		*Calax Project Island Cove Project*
>25,000	*=2,200.00*	*Not accepted*
>30,000	*=2,520/2,700*	*Not Accepted*
>50,000	*=4,400*	*=4,700*
>75,000	*=5,500*	*=5,875*
>100,000	*=7,300/8,800*	*=9,400*
>150,000	*=11,000*	*=14,100*
>200,000	*=14,600*	*=18,800*
>300,000		*=28,200*

The EIPD also discovered that Respondents advertised and promoted their investment schemes by conducting public events, particularly in Okada and Facebook private groups, as well as Youtube videos.[14]

On three separate occasions,[15] the EIPD conducted ocular inspection/surveillance at Okada Manila, Caloocan, and Bulacan, respectively, where AA Castro's Offices were allegedly located. The EIPD was able to locate one of the alleged offices of the Respondent Bulacan, however, the same was already vacated and closed. A neighbor narrated that it was raided by the National Bureau of Investigation (NBI) and is currently abandoned. [16]

On 26 July 2022, the Commission issued an Advisory warning the public that AA Castro headed by April Castro is not authorized to solicit, accept or take investments/placements from the public nor to issue investment contracts and other forms of securities as defined under the law as it does not have a secondary license from the Commission.[17]

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[14] *Ibid, Joint Affidavit of Spouses Fulay* dated 27 December 2021 attached as Annex "B."
[15] Conducted on 19 May 2022, 01 June 2022, and 9 June 2022.
[16] *Motion* (n1), *Summary Report on Field Investigation* attached as Annex "E."
[17] *Ibid*, Annex "H."

The EIPD secured certifications[18] from the Company Registration and Monitoring Department (CRMD), the Corporate Governance and Finance Department (CGFD), and the Markets and Securities Regulation Department (MSRD). The CRMD confirmed that ACCAT is not registered with the Commission. On the other hand, ACHCMATO is registered with the Commission with SEC Company Registration Number 2021110034068-02. However, based on the Negative Certifications issued by the MSRD and CGFD, both ACCAT and ACHCMATO have not been issued a secondary license to solicit investments from the public as prescribed under Sections 8 and 12 of the Securities Regulation Code.

Hence, the instant *Motion.*

ISSUE

Whether the issuance of a Cease and Desist Order against AA CASTRO and April Castro is warranted based on the findings and evidence presented by the EIPD.

RULING

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

The EIPD was able to establish by substantial evidence that AA CASTRO and April Castro are offering and/or selling securities to the public in the form of investment contracts which promised a passive income consisting of a weekly payout and an interest ranging from 30% to 40% interest a month. A transaction or scheme whereby an investor pays a determined amount set by Respondents to purchase an investment package and qualifies him/her to receive the guaranteed profits and benefits partakes of the nature of "securities" in the form of investment contract.

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:
>
> xxxx xxxx xxx
>
> xii. Investment contracts, certificates of interest or participation in a

[18] *Ibid.* Annexes "K," "L," and "M."

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profit-sharing agreement, certificates of deposit for a future subscription. (Underscoring supplied)

Rule 26.3.5 of the 2015 Implementing Rules and Regulations of the SRC defines an investment contract as follows:

> "An investment contract is a contract, transaction or scheme *(collectively "contract")* whereby a person invests his money in a common enterprise and is led to expect profits primarily through the efforts of others. An investment contract is presumed to exist whenever a person seeks to use the money or property of others 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)

In *SEC v. Howey Co.*, 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.[19] 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 of someone other than themselves.[20]

This concept of an investment contract has since been used in the Philippines as discussed in *Power Homes Unlimited Corp. v. Securities and Exchange Commission*[21] 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.[22]

Applying the *Howey Test* to the instant case, this Commission agrees with the finding of the EIPD which is supported by the evidence

[19] 328 U.S. 293 (1946)
[20] *Ibid.* Although the definition as stated in the Howey Case qualified that the earning of profit was expected to be solely through the efforts of another party, Rule 26.3 of the 2015 IRR of the SRC replaced the qualifier with *"primarily"*, acknowledging that an investment contract may still be present where the individual who placed the money exerted a small amount of effort in an attempt to earn the profits.
[21] G.R. No. 164182, February 26, 2008.
[22] Investment Co. Institute v. Camp, 274 F. Supp. 624 (D. D.C. 1967).

on record, and holds that Respondents are unlawfully engaged in the sale and/or offer of securities in the form of an investment contract.

First, there is an investment of money when an investor commits money to an enterprise or venture in a manner that subjects himself to financial loss.[23]

In the instant case, the Respondents actually received money from complainant investors in amounts ranging from Fifty Thousand Pesos (P50,000.00) to almost Two Million Pesos (P 2,000,000.00). The evidence on record shows that there was an actual investment of money by investors as alleged in the complaints/affidavits filed with the EIPD where investors were demanding the returns and/or reimbursement of investments;

Second, a common enterprise is deemed created when two (2) or more investors "pool" their resources. Thus, joint participation by investors in the same investment enterprise, achieved by pooling the invested funds for a common purpose, is required in order to satisfy the common enterprise element.[24]

In the instant case, there is a common enterprise consisting of Respondents' act of pooling the money invested by investors to maintain its fictitious general construction, aggregates trading, and hauling business, which they are selling to the public. Paragraph 5 of the *Investment Agreement*[25] provides:

> "5. PURPOSE OF SUBSCRIPTION MONIES
>
> The Company and the Executives undertake to the Investors that <u>the proceeds of the Investment will be applied by the Company for the purposes of the Business in accordance with the Business Plan, HAULING SERVICES and Aggregates Trading</u> and: other materials [and for the purpose of paying the costs incurred, in connection with the investment only as approved by the Investors]. [NB: AA-CASTRO TAP ON BUSINESS INVESTMENT FUNDS MUST NOT BE APPLIED TOWARDS FEES.]" (Emphasis supplied)

Third, there is an expectation of profit either through capital appreciation resulting from the development of the initial investment, or participation in earnings resulting from the use of investors' funds. In both cases, investors are "attracted primarily by the prospects of a return on their investment."[26]

[23] SEC v. International Mining Exchange, Inc., 515 F. Supp. 1062.
[24] Wasnowic v. Chicago Bd. of Trade 352 F Supp 1066.
[25] *Motion* (n1), Annex "D"
[26] Power Homes Unlimited Corporation v. Securities and Exchange Commission.

In the instant case, there is an expectation of profit on the part of investors of AA CASTRO who were promised guaranteed weekly payout and interest returns, ranging from twenty percent (20%)[27] to thirty percent (30%).[28] Other investors were promised a weekly return of investment of Four Thousand Seven Hundred Pesos (P 4,700.00) for one year[29], while others were promised returns of not less than Four Thousand (P 4,000.00) pesos but not exceeding Four Thousand Four Hundred Pesos (P 4,400.00) in a rate of Php 23.26 pesos per minimum of 189 cubic meters of aggregates to be hauled/delivered weekly in every Fifty Thousand Pesos (P 50,000.00) of investment.[30]

Fourth, investors expected to earn their guaranteed profits primarily from the efforts of others. Investors of AA CASTRO were not required to perform any act other than to part with their money and deposit the same with the Respondents.

In the *Affidavit* of Belen Dayrit dated 18 February 2022, after delivering a check worth One Million Pesos (P 1,000,000.00) to invest in AA Castro Construction & Aggregate, it was stated in her contract that after one (1) month from the date of processing, she will receive her pay-out. In addition to the words of inducement by April Castro, the following paragraphs of the Investment Agreement of AA Castro provides:

> "11 (Dividend Policy) Subject to the provisions of the Act and the Articles, [and insofar as it does not jeopardize any PTOBI relief available to the Investors], the Company shall and the Executives shall procure that the Company shall, **seek to distribute not less than 1.546 CBM Per Annum of its profits available for distribution in each financial year of the Company by way of dividend** unless otherwise agreed with the Investor Majority in advance and in writing.
>
> Xxx
>
> 15. **Earning Profit**
>
> 15. 1 At Completion, the Company will:
>
> 15.1.1. [**pay the negotiation Earning profit Based Rate of 8.754.48 per week, 35,017.92 per Mos. And 315.161.28 Pesos per Annum to the Investors** and Deliver it by Year Annum by Weekly Basis of 48 weeks equivalent by weekly Pay out Basis of 6.55.86 as of the year 2021 series [(earning varies on the rate of

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[27] *Motion* (n1) *Sinumpaang Salaysay* of Rona Platon dated 21 February 2022 attached as Annex "D"
[28] *Joint Affidavit* (n13).
[29] *Motion* (n1) Paragraph 16.
[30] *Ibid*, Paragraph 9 of *Complaint Affidavit* attached as Annex "F."

stocks yearly)]" (Emphasis supplied)

Moreover, the evidence presented by the EIPD also shows that ACCAT and ACHCMATO's investment scheme involves public offering of securities as defined Rule 3.1.17 of the 2015 IRR of the SRC, thus:

> "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:
>
> xxx xxx xxx
>
> 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; (Emphasis supplied)

The act of the Respondents AA Castro and April Castro, in publicly offering its unauthorized investment scheme through business presentations conducted in public events at Okada and Facebook private groups, as well as Youtube videos, inviting and enticing investors to part with their hard-earned money where they are promised to receive guaranteed returns, constitutes public offering of securities contemplated in the afore-quoted provision.

The SRC clearly provides that securities cannot be sold or offered to the public without a registration statement duly filed with and approved by the Commission. Section 8.1 of the SRC provides for the requirement of securing a duly approved registration statement before a security can be offered or sold to the public, 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 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 the context of the afore-quoted provision, it is clear that AA Castro and April Castro are not authorized to sell or offer investment contracts to the public without the requisite license from this

Commission. This undoubtedly warrants the issuance of a cease and desist order because the act of AA Castro and April Castro in selling/offering unregistered securities operates as a fraud to the public which, if unrestrained, will likely cause grave or irreparable injury or prejudice to the investing public.[31]

The foregoing finds support in the case of *Securities and Exchange Commission vs. CJH Development Corp.*[32] *(SEC vs CJH)*, where the Supreme Court emphasized the prompt issuance of a CDO after a finding by this Commission of a violation of the SRC that will likely defraud or cause grave or irreparable injury to the investing public, 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."

Relative thereto, Section 64 of the SRC provides that:

> "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)

The afore-quoted provision embodies two (2) essential requirements that must be met prior to the issuance of a cease and desist order: first, there must be a conduct of a proper investigation or verification; and second, there must be 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.[33]

As to the first requirement, the records show that a proper investigation was conducted by the EIPD as evidenced by its report and the various documents gathered and submitted in support of its *Motion* showing Respondents AA CASTRO and April Castro's unauthorized and fraudulent investment-taking activities. The EIPD was able to properly

[31] Section 64 of the Securities Regulation Code
[32] G.R. No. 210316, November 28, 2016
[33] Securities and Exchange Commission vs. Performance Foreign Exchange Corporation, G.R. No. 154131, July 20, 2006.

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verify the complaints filed by the investors who invested money and who were, in effect, defrauded by AA Castro and April Castro. The EIPD also presented the following evidence in support of its *Motion*:

(1) Negative certifications[34] issued by the CRMD, CGFD, and the MSRD to the effect that: (a) ACCAT is not registered with the Commission; and (b) ACHCMATO is registered with the Commission with SEC Company Registration Number 2021110034068-2. However, both respondent entities have not filed nor have any pending application for registration/permit to sell securities; and (b) have not been issued any license to offer and/or sell securities to the public and are not registered issuers of mutual funds, exchange of traded funds, and proprietary/non-proprietary shares or membership certificates or timeshares;

(2) Negative certification issued by the CRMD that ACCAT is not a registered corporation;

(3) Field Investigation Report as proof of the ocular inspection conducted of the offices of AA Castro;

(4) Complaint-Affidavit of investors with supporting investment contracts.

The second requirement is also present.

The AOI of ACHCMATO shows a capitalization of only Php 3,000,000.00. However, the investments involved huge amounts e.g. minimum investment amount of Php50,000.00, with a promise of guaranteed weekly payout between 30% to 40% of the invested amount. Clearly, Respondent's business model and capitalization cannot sustain the promised returns on investment, especially if no new investors will come in. Pay-outs for investors are financed from investments of new recruits/investors. This is a fraudulent scheme which will likely cause grave or irreparable injury or prejudice to the investing public.

Moreover, it bears emphasis that, as held in the case of *SEC vs. CJH*, fraud is attendant in the act of selling and/or offering securities without the requisite license, thus:

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[34] *Motion* (n1) Annexes "G" to G-2."

> "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 and underscoring supplied)

Without the registration statement duly filed with and approved by this Commission, AA Castro and April Castro's act of selling/offering investment contracts constitutes a clear violation of the Section 8 of the SRC. This warrant and justifies the immediate issuance of a cease and desist order.

WHEREFORE, premises considered, **AA CASTRO CONSTRUCTION AND AGGREGATES TRADING/AA CASTRO HAULIN'G CONSTRUCTION MANAGEMENT AND AGGREGATES TRADING OPC** and **APRIL GRACE CALLEJA CASTRO,** representatives, salesmen, solicitors, agents, uplines, enablers and influencers, and any and all persons claiming and acting for and in their 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, until the requisite registration statements are duly filed with and approved by the Commission, and the corresponding license and/or permit to offer/sell securities are issued.

AA CASTRO CONSTRUCTION AND AGGREGATES TRADING/AA CASTRO HAULING CONSTRUCTION MANAGEMENT AND AGGREGATES TRADING OPC and **APRIL GRACE CALLEJA CASTRO,** 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 AA CASTRO CONSTRUCTION AND AGGREGATES TRADING/AA CASTRO HAULING CONSTRUCTION MANAGEMENT AND AGGREGATES TRADING OPC** and **APRIL GRACE CALLEJA CASTRO,** its 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.

Let a copy of this Cease and Desist Order be posted on the Commission's website and furnished to all relevant operating departments/offices of the 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