Republic of the Philippines
Department of Finance
Securities and Exchange Commission
EC Building, EDSA, Greenhills, Mandaluyong City

In the Matter of:

GRAND ALLIANCE OF BUSINESS LEADERS ASSOCIATION, INC.

SEC-CDO Case No. 11-14-014

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Petitioner.

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ORDER

Pending consideration by the Commission *En Banc* is an *Ex-Parte Motion for Issuance of Temporary Cease and Desist Order* (CDO) dated 10 November 2014 filed on even date by the Enforcement and Investor Protection Department (EIPD) of this Commission against **GRAND ALLIANCE OF BUSINESS LEADERS ASSOCIATION, INC.** (hereinafter **GABAI**).

Respondent **GABAI** is a non-stock, non-profit corporation registered with the SEC on 08 January 2010[1] under SEC Registration No. CN201020246[2] with its primary purpose stated in its Articles of Incorporation[3] as follows:

- To promote and foster a healthy and harmonious relationship among the business leaders.
- To represents (sic) the members in all aspects which may directly or indirectly affect their business interest.
- to (sic) bind the members together to promote the (sic) friendly competition and to maintain among the members the spirit of friendship, unity and cooperation.

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[1] *Ex-Parte Motion For Issuance of Cease and Desist Order,* Annex "B" and "C".
[2] *Id.*, Annex "B".
[3] *Id.*, Annex "C".

- To work for the advancement of the general welfare of the business leaders through the adherence to responsible citizenship, particularly in the effective implementation of socio-economic projects specially (sic) in the field of entrepreneurship and economic enterprises.
- To acquire through donations, or grants or any conveyance permitted by law, financial support or materials relevant to the realization of the objectives of the association.
- To do and perform all other acts and deeds for the accomplishment of the foregoing purposes. [4]

Records of the Commission show that the principal office of GABAI is located at 28 Edano Street, Barangay 9, Lucena City.

According to the factual antecedents as presented by the EIPD in its *Ex-Parte Motion*, the Commission launched an investigation into the operations of GABAI pursuant to its power to "regulate, investigate or supervise the activities of persons to ensure compliance" as provided in Section 5(d) of the Securities Regulation Code (SRC)[5].

The EIPD attached a photocopy of a newspaper article from the Philippine Daily Inquirer dated 27 October 2014[6] entitled "Lucena dads warn public against investment scheme" wherein the Mayor of the City of Lucena, Roderick Alcala, stated that "the public should exercise extreme caution before they invest their hard-earned money" in relation to investments schemes promising high returns. The article featured GABAI as a high-yielding investment scheme and illustrated the mechanics for investors to profit through a minimum investment of Three Hundred and Fifty Pesos (Php350.00) and a maximum of Thirty Five Thousand Pesos (Php35,000.00). The maximum investment yields Fifteen Thousand Pesos (Php15,000.00) every week as long as the principal remains with GABAI.

The EIPD Investigative Team (Team) headed to Lucena City on 06 November 2014 to conduct a surveillance operation on the GABAI principal office as well as to gather more information about the GABAI investment scheme.

Through an interview with the City Administrator of Lucena City, Mr. Anacleto C. Alcala (CA Alcala), and his staff, the Team discovered that GABAI started its operations as early as 2010 but only gained notoriety within the recent months. According to them, GABAI is allegedly operating under the umbrella of the Southern Luzon Multipurpose Cooperative (SLMC).[7] Based on the reports gathered by CA Alcala and his staff from several investors of GABAI, the scheme consists of the following steps:

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[4] *Id.*, Annex "C".
[5] Republic Act No. 8799 (2000).
[6] *Id.*, Annex "A".
[7] *id.*, Annex "D".

1. GABAI gives the investor the option to invest from Three Hundred Fifty Pesos (Php350.00) to Thirty Five Thousand Pesos (Php35,000.00) per day.

2. Upon payment of the investment option chosen, a passbook is issued to the investor with a hand written record of the latter's investment.

3. Every week, the investor would then earn 40% return on his investment. Hence, an investment of Thirty Five Thousand Pesos (Php35,000.) would yield Fifteen Thousand Pesos (Php15,000)[8].

4. Further, the investment with GABAI is categorized into accounts equivalent to points which are convertible to goods ranging from food items, furniture and appliances and even vehicles, redeemable also with GABAI. (e.g. Three Hundred Fifty Pesos (Php350.00) = One (1) account = One (1) point).[9]

The Team was also provided a copy of a television interview of Mr. Luzardo Lucido, President of GABAI, and Mr. Renato Naynes, an investor of GABAI, in a local television show called "Pag-usapan Natin" hosted by Mr. Arnel Avila, the Executive Assistant of the Mayor and concurrent head of the Public Information Office of Lucena City.[10]

In the said interview, Mr. Lucido stated that GABAI is not accepting investments from the public. Instead, Mr. Lucido said that GABAI is only into normal merchandising. Mr. Naynes, on the other hand, offered his experiences as a satisfied investor of SLMC/GABAI and declared that for the Thirty Five Thousand Pesos (Php35,000.00) which he had put in the SLMC/GABAI for two (2) weeks, he has received 100 points (which he exchanged for 4 sacks of rice) as part of the "Balik Tangkilik" Program of SLMC/GABAI, and Twenty Eight Thousand Pesos (Php28,000.00). Mr. Naynes also mentioned that his transactions are written in a passbook issued by SLMC/GABAI to investors where it is stipulated that "investors will receive a 40% rebate or return on investment every week". Mr. Naynes also stated that at the time of the weekly payout, SLMC/GABAI inquires if the investor is withdrawing, pertaining to the principal amount put into SLMC/GABAI.[11]

In the same interview, Mr. Lucido took exception to the characterization of the amount paid to SLMC/GABAI as "investment" and kept pertaining to the said amounts as "pay ins." He also took exception to the 40% return on investment mentioned during the above interview and said that the returns may vary in percentage. However, when pressed as to where SLMC/GABAI will be sourcing the amounts to be returned to the investors, Mr. Lucido was vague. Mr. Lucido, when asked about the compliance of SLMC/GABAI with different government agencies, particularly the Cooperative Development Authority (CDA) and the Bureau of Internal Revenue (BIR), said that he was not prepared for the influx of funds and is

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[8] Please refer to Footnote 6.
[9] Supra, Note 7.
[10] *Ex-Parte Motion*, p. 3.
[11] *Id.*, CD of the televised interview conducted by Mr. Arnel Avila in the show "Pag-usapan Natin" with Mr. Luzardo Lucido and Mr. Renato Naynes.

now doing his best to comply with all the necessary registration and reporting necessary in relation to SLMC's and GABAI's operations.[12]

When the Team inquired about making possible investments with the security guard on duty in the principal office of GABAI, they were informed that there were no officers of GABAI present at that time and that there have been no officers present since 05 November 2014. Further, there has been no advice as to when business operations would resume.[13]

The Team, during their inspection of the principal office of GABAI, which is also the residential address of Mr. Lucido, observed a considerable number of people waiting in line. Upon inquiry with those in line, they found out they were investors of GABAI awaiting the release of their pay-outs from their investments and that some of them have been waiting since 03 November 2014. The said investors provided the Team with Application Forms for membership to the SLMC[14] and to GABAI[15], The Kasunduan[16] with the SLMC, and a document for the "Balik-Tangklilik Program"[17] of SLMC-GABAI containing the point system for the accounts of the investors and the items redeemable. Further, many of the people in line were from neighboring cities who ventured to the GABAI office with the intention of investing their money for the opportunity to earn 40% return on their investment.[18]

The Team continued their inspection of the premises of GABAI, took photographs of several posters showing items which the investors may redeem from their accumulated accounts.[19]

Upon request of the EIPD, the Corporation Governance and Finance Department (CGFD) of the Commission issued a Certificate dated 07 February 2012 to the effect that GABAI is not a registered issuer of securities under Section 8 and 12 of the SRC.[20]

Pursuant to Section 3.1(b) of the SRC, the term "securities" is defined as follows:

"SEC. 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. It includes:

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[12] *Ibid.* for Supra, Note 12.
[13] *Ex-Parte Motion*, p. 3, par. 7.
[14] *Id.*, Annex "E".
[15] *Id.*, Annex "F".
[16] *Id.*, Annex "G".
[17] *Id.*, Annex "H".
[18] *Id.*, Annex "D".
[19] *Id.*, Annex "I".
[20] *Id.*, Annex "J".

(b) Investment contracts, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription;

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In this connection, an "investment contract" has been defined in Rule 3.1(G) of the *Implementing Rules and Regulations* of the SRC in this wise:

"G. An investment contract means a contract, transaction or scheme (collectively "contract") whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others.

1. An investment contract is presumed to exist whenever a person seeks to use the money or property of others on the promise of profits.

2. 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."

In the case of *"Power Homes Unlimited Corporation v. Securities and Exchange Commission,"*[21], the Supreme Court held that an investment contract in our jurisdiction must be proved to be **(1) an investment of money, (2) in a common enterprise, (3) with expectation of profits, (4) primarily from efforts of others** in order to be considered as a security properly subject to the registration under and regulation of the SEC.

The above circumstances surrounding the operations of GABAI show the presence of all the above-mentioned elements. Firstly, the investors entered into an agreement with GABAI which involves investment of money. The investors are then given an option as to the amount they want to invest with GABAI ranging from Three Hundred Fifty Pesos (Php350.00) to Thirty Five Thousand Pesos (Php35,000.00) with a promise of a 40% return on their investment every week as long as the principal amount of investment remains with GABAI. There is a weekly pay-out of profits which the investors claim in the GABAI principal office.[22] From the television interview with Mr. Naynes, he stated that the passbook issued by GABAI to those who give a "paid-in amount" not only contains a record of the paid-in amount but a stipulation to the effect that investors will receive 40% rebate or return on investment. The relations between the investors and GABAI recognize that mutual obligations arose for the parties concerned after the membership to GABAI and the payment of the amount corresponding to the member's investment, proving the existence of a contract, transaction or scheme to satisfy the first element.

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

[22] Annex "A" and "D" of the *Ex-Parte Motion* and CD of the televised interview conducted by Mr. Arnel Avila in the show "Pag-usapan Natin" with Mr. Luzardo Lucido and Mr. Renato Naynes.

Secondly, there is investment in a common enterprise as all the amounts that are deposited by the investors are pooled together under the control of GABAI, specifically for the expansion and promotion of the corporation to attract new investors.

Thirdly, as to the element of expectation of profits, the investors, for the amounts invested with GABAI, were promised a return of investment ranging from 20%-40% thereof as is apparent from: a) the television interview with Mr. Naynes, a satisfied investor, b) interviews conducted by the EIPD with the investors waiting in line at the GABAI principal office for their weekly pay-out, and c) reports gathered by CA Alcala and his staff.

Lastly, with respect to the fourth element, the profits arise solely from the efforts of GABAI without the investors having to participate in the business operations after making their investment. The investors merely have to deposit with GABAI the amounts they have decided to invest and need not do anything to earn a profit from the investments made. The investors have no participation in the management of their remittances and deposits.

Accordingly, the foregoing are indications that the investment scheme of GABAI agreed to by the investors are investment contracts which are therefore securities required to be registered with SEC.

The SRC is explicit that securities must be registered with the SEC before being offered or sold to the public in order to afford the latter protection from investing in worthless securities as is provided in Section 8 of the said law.[23]

WHEREFORE, premises considered, there being a *prima facie* evidence that respondent **GRAND ALLIANCE OF BUSINESS LEADERS ASSOCIATION, INC.** is engaged in the business of selling securities without the proper registration issued by this Commission in violation Section 8 of the SRC, the respondent, their respective officers, directors, representatives, salesmen, agents and any and all persons and entities claiming and acting for and in THE respondent's behalf, are hereby ordered to immediately **CEASE and DESIST**[24] from further engaging in the business of selling securities until the respondent has complied with the requirements of law and its implementing rules and regulations.

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[23] "Sec. 8 – *Requirements 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**. x x x" (emphasis ours)

[24] **SRC 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.

Let the Cooperative Development Authority be furnished a copy of this Decision for information and appropriate action.

Further, let copies of this Order be posted at the entrance of the main office and/or branches, if any, of **GABAI**, published in a newspaper of general circulation and posted in the Commission's internet website.

In accordance with the provisions of Section 64.3 of Republic Act 8799, otherwise known as the Securities Regulation Code and Section 10-3 of the 2006 Rules of Procedure of the Commission, the parties subject of this Cease and Desist Order may file a motion for the lifting thereof within five (5) days from receipt hereof, otherwise the same shall be made permanent.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Mandaluyong City, 20 November 2014.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE *
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G.VITERBO *
Commissioner

*On Official Business