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

IN THE MATTER OF:

BUILDING OUR SUCCESS STORIES NETWORK, INC. ("BOSS Network")

SEC CDO Case No. 05-20-067

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.

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RESOLUTION

For consideration is the *Manifestation with Motion to Lift the Cease and Desist Order* (*"Motion to Lift"* for brevity*)*[1] filed by Respondent BUILDING OUR SUCCESS STORIES NETWORK, INC. ("BOSS Network") through counsel, praying that the Commission lifts the Cease and Desist Order (*"Assailed CDO"*) dated 18 June 2020, the dispositive portion of which reads:

> "WHEREFORE, premises considered, BOSS Network, its directors and officers namely: ROMMEL Q. TABANIAG, RAQUEL G. ARGOTE, RAMON C. TABANIAG, JOJIE O. SERVAN and AILYN MARIGH F. LIM, representatives, salesmen, agents AND ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND IN THEIR BEHALF, including BOSS ULTIMATE PROGRAM ("BOSS UP") and 101UPPER CLASS CORPORATION ("UPPERCLASS") are hereby ORDERED to immediately CEASE AND DESIST, UNDER PAIN OF CONTEMPT, from further engaging in activities of selling and/or offering for sale of securities or any others of the same nature as discussed in the *Order*, until the requisite registration statement is duly filed with and approved by the Commission and the corresponding permit to offer/sell is issued.
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> Furthermore, to forestall grave damage and prejudice to all concerned, and to ensure the preservation of assets for the benefit of investors, BOSS NETWORK, BOSS UP and UPPERCLASS and/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, 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,**

[1] Dated 3 October 2019 which was received by the Commission on 4 October 2019.

> **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*.
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> Finally, BOSS NETWORK, BOSS UP and UPPERCLASS, the above named directors and officers, salesmen, agents, representatives and any and all persons claiming and acting for and in their behalf, are directed to immediately **CEASE AND DESIST** from conducting their investment-taking activities using the internet and/or any social media platforms. The Commission will institute appropriate administrative and/or criminal action against any person/s or entities found to act as solicitors, information providers, salesmen, agents, brokers, dealers or the like for and in behalf of respondent BOSS NETWORK, BOSS UP and UPPERCLASS."

RELEVANT FACTS

BOSS Network is a corporation organized and existing under Philippine laws having been issued a Certificate of Incorporation bearing No. CS201803195 on 14 March 2018 by the Commission. Its registered office, as stated on its amended Articles of Incorporation (AoI)[2], is located at Unit 3 Garden Deck, Pacific Center Condominium, #33 San Miguel Avenue, Ortigas, Pasig City. Its primary purpose is, to wit:

> "*To engage in direct selling of goods and merchandise to consumers*."

On 27 May 2020, the EIPD filed before the Commission *En Banc*, through the Office of the General Counsel, the *Motion for Issuance of Cease and Desist Order* (*"Motion for CDO"*) against BOSS Network.

On 18 June 2020, the Commission *En Banc* issued the *Assailed CDO* after finding sufficient basis that BOSS Network is engaged in the sale and/or offer for sale of securities, in the form of investment contract, without the requisite registration statement duly issued and approved by the Commission.

On 19 August 2020, BOSS Network filed the *Motion to Lift* alleging that it officially received the copy of the CDO only on 13 August 2020, when it was received by its president, and not from the time it was received by the security guard of the building premises. BOSS Network averred that to show its good faith, it temporarily suspended its operations effective 18 August 2020, in compliance with the *Assailed CDO*. In its *Motion to Lift,* BOSS Network averred that: (a) it was not given a chance to refute the EIPD's findings in violation of due process, contending that it should have been furnished a copy of the *Motion for CDO* before its issuance; (b) it is not involved in the sale of securities, in the form of investment contracts, but is engaged solely in the direct selling of goods and merchandise to consumers; (c) the allegation on investor complaints was not substantiated by any evidence

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[2] Approved dated 28 March 2019.

as BOSS Network has not received any complaints; and (d) none of the elements of the *Howey Test* are present.

In its Comment/Opposition,[3] the EIPD argued that BOSS Network's claim of denial of due process when it was not afforded the opportunity to refute EIPD's finding is untenable. As the investigative arm of the Commission, the EIPD is under no obligation to furnish, BOSS Network and other erring companies, the results of its investigation. They maintained that the Commission may *motu proprio* issue a CDO, after proper investigation and verification without necessity of a prior hearing on the ground that the act if not restrained, will operate as a fraud upon investors or is likely to cause grave and irreparable injury or prejudice to the investing public.[4]

Further, the EIPD also disputed the allegation that BOSS Network did not make any confirmation that it is offering investment scheme to the public by presenting the Minutes of the Proceedings[5] conducted on 29 August 2018, showing the signature of the latter's authorized representatives, with their counsel, affirming the schemes mentioned in the Advisory.

On the allegation of unsubstantiated evidence, the EIPD claimed that it was able to establish, after investigation and verification, through the conduct of both onsite inspection and validation of various online posts and video presentation, that BOSS Network is engaged in the offering and selling of securities in the form of investment contracts under various investment packages.

ISSUE

Whether the allegations in the *Motion to Lift* warrant the issuance of an order lifting the CDO.

DISCUSSION

The Commission finds the *Motion to Lift* unmeritorious and hereby decides to deny the same.

First, BOSS Network's argument that it was denied of due process because it was allegedly not afforded the opportunity to refute the EIPD's findings is not supported by law and jurisprudence. We agree with the EIPD that the Commission has the power and authority to issue a CDO *motu proprio* without the necessity of a hearing if the act sought to be restrained is fraudulent or will operate to defraud the investing public. In *Primanila Plans,*

[3] Filed dated 7 September 2020.
[4] Section 64.1 of the Securities and Regulation Code
[5] Annex "A" of the Comment/Opposition.

Inc. vs. SEC[6], the Supreme Court ruled that:

> "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." (Emphasis supplied).

The records show that the EIPD conducted a proper investigation and verification on the unauthorized investment taking activities of BOSS Network. The investigation report of the EIPD which was submitted to the Commission in support of its *Motion for CDO*, and which not overcome by BOSS Network, became the basis for the Commission in issuing the CDO. The issuance of the CDO, *motu proprio*, was thus made after the Commission fully complied with the requirements prescribed by law.

Moreover, the claim of BOSS Network that it was denied of due process is also negated by the records which show that a conference was conducted by the EIPD on 29 August 2018[7] and BOSS Network, represented by their counsel, appeared and actively participated therein to explain and confirm its investment scheme relative to the Advisory issued by the Commission.

Second, BOSS Network's insistence that it is not engaged in the sale of securities in the form of investment contract, and its claim that it is solely engaged in the direct selling of goods and merchandise, unsupported by any evidence is not sufficient to justify the lifting of the CDO, considering that the EIPD was able to show by substantial evidence the contrary.

The issuance of the CDO was based on the investigation report of the EIPD, the findings of which were presented in its *Motion for CDO*. A review of the *Motion to Lift* shows that BOSS Network failed to controvert the findings of the EIPD, as it simply made a general denial, without providing evidence to support the same, that it is not engaged in the sale of investment contracts but solely in direct selling of goods. BOSS Network's general denial cannot overcome the finding of EIPD that it violated the SRC as the same was supported by evidence.

It is well-settled that denial, if unsubstantiated by clear and convincing evidence is a negative self-serving assertion that deserves no weight in law.[8]

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[6] G.R. No. 193791, August 6, 2014.
[7] *Ibid*.
[8] *In People vs. Bagaua*, G.R. No. 147943, December 12, 2002, 442 PHIL 245-257.

Third, BOSS Network's argument that the EIPD's findings on the complaints filed is unsubstantiated on the ground that it did not receive the same complaints is bereft of merit.

Records show that in support of its *Motion for CDO*, the EIPD verified the email complaints it received from *I-Message Mo* facility; verified BOSS Network's status from the CRMD, MSRD, and CGFD; gathered all relevant information available in the internet which BOSS Network was using as a platform to carry out its operations; the Facebook accounts of its directors, officers, members and agents; and conducted an ocular inspection and surveillance operations.

The allegation of BOSS Network that it did not receive any complaint from its investors does not negate the fact that complaints were indeed filed with the EIPD because the same are found in the records of the case. There is nothing in the SRC that prohibits the Commission from accepting written complaints directly filed with it by investors, and not with the concerned company. Considering that the various email complaints received by the EIPD from the public were made by persons who claimed to have actually invested in BOSS Network but were denied of the guaranteed profits that were promised to them,[9] the action of the EIPD on the same which led to the issuance of the CDO was warranted as it is consistent with the general supervisory powers of the Commission over corporations.[10]

Fourth, BOSS Network's argument that the Commission erred in finding that it is engaged in the sale of securities in the form of investment contract because none of the elements of the *Howey Test* are present is likewise bereft of merit.

The CDO discussed in detail the presence of all the elements of the *Howey Test* based on the evidence presented by the EIPD. Except for the academic discussion that was presented by BOSS Network in support of its position that it is not engaged in the sale of securities in the form of investment contract, the *Motion to Lift* did not present any evidence in support thereof. The Commission thus finds no cogent reason to disturb its earlier findings.

Fifth, BOSS Network claimed that it is not engaged in the sale of investment contracts as its operations are limited to direct selling of consumer products, and that it is only by reselling its products that a member is able to make profit, which is the difference in the amount paid for the product and its selling price based on its retail/market value. This argument is also devoid of merit.

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[9] Annex B and C of the Motion to Lift, 27 May 2020.
[10] Section 5(a) (i) of the SRC.

In direct selling of consumer products, also known as multi-level or network marketing (MLM), individuals sell products to the public — often by word of mouth and direct sales. Typically, distributors earn commissions, not only for their own sales, but also for sales made by the people they recruit.[11] Assuming that BOSS Network is a multi-level company, this does not rebut EIPD's findings that investment-taking is still present in their business scheme. This is because members earn guaranteed profits without the need for selling products.

On numerous occasions, entities utilized and exploited the concept of MLM to disguise a pyramiding scheme[12] employed by them. Thus, in the US case of *FTC vs. Koscot Interplanetary, Inc.*[13], a four (4) part test was formulated to determine whether an MLM business is a pyramid scheme. This is known as the *"Koscot Test"* which comprises the following elements: (1) payment of money to the company; (2) the participant receives the right to sell a product [or service]; (3) the participant receives compensation for recruiting others into the program; and (4) the compensation is unrelated to the sale of products [or services] to the ultimate user.

In the instant case, BOSS Network's business model satisfies the *Koscot Test*. Notably, in order to participate and earn through the BOSS Network's investment scheme, one has to invest or place his/her money by purchasing an investment package which consist of compensation plans that derive profits not from the sale of its products for use or consumption but from the income generated by member-investor through network referral or investor-recruitment activities as shown on the table below:

Package	**Price**	**UBP Shares**	**Points Value**	**Maximum Earning from UBP**	**Maximum Pairing Income per Day**	**Products Included**
Bronze	Php1,500.00	1	15	Php2,250.00	Php3,000.00	2 perfumes plus 1 Gluta soap and 1 Kojic soap
Silver	Php4,500.00	3	45	Php6,975.00	Php6,000.00	6 perfumes plus 3 Gluta Soap and 3 Kojic Soap
Gold	Php10,500.00	7	105	Php16,800.00	Php10,500.00	14 perfumes plus 7 Gluta Soap and 7 Kojic Soap
Platinum	Php22,500.00	15	225	Php37,125.00	Php15,500.00	30 perfumes plus 15 Gluta Soap

[11] *https://www.ftc.gov/tips-advice/business-center/guidance/multilevel-marketing*, last accessed on 26 January 2016
[12] *People v. Balasa*, G.R. Nos. 108601-2 (1998), in citing the Consumer Act of the Philippines (RA 7394), defines a pyramid scheme as a sales device whereby a person, upon condition that he makes an investment, is granted by the manufacturer or his representative a right to recruit for profit one or more additional persons who will also be granted such right to recruit upon condition of making similar investments: *Provided*, That, the profits of the person employing such a plan are derived primarily from the recruitment of other persons into the plan rather than from the sale of consumer products, services and credit; *Provided, further*, That the limitation on the number of participants does not change the nature of the plan.
[13] 86 F.T.C. 11106 (1975).

						and 15 Kojic Soap
Sapphire	Php46,500.00	31	465	Php79,050.00	Php19,500.00	62 perfumes plus 31 Gluta Soap and 31 Kojic Soap
Ruby	Php94,500.00	63	945	Php165,375.00	Php24,000.00	126 perfumes plus 63 Gluta Soap and 63 Kojic Soap
Emerald	Php190,500.00	127	1905	Php342,900.00	Php28,500.00	245 perfumes plus 127 Gluta Soap and 127 Kojic Soap
Diamond	Php382,500.00	255	3825	Php707,625.00	Php33,000.00	510 perfumes plus 255 Gluta Soap and 255 Kojic Soap

Members receive additional compensation when they recruit new investors, through the rewards program (Universal Bonus Pool, Direct Referral Bonus, Pairing Bonus, Unilevel Income and Infinity Bonus).

The rewards system for recruitment is completely unrelated to the sales of BOSS Network's products. BOSS Network offers more rewards/benefits from its recruitment/referral program rather than from the sale of its products. Stated otherwise, BOSS Network's investment scheme is all about sale of securities in the form of investment contracts and recruitment of new member-investors, and not on the sale of products.

A pyramid scheme exists in BOSS Network's investment program whereby profits are derived primarily from the recruitment of more investors down the line. The products are mere devices used by BOSS Network to make it appear that there are legitimate products being distributed but it is clear from the profit-sharing scheme that the focus is not on the selling of consumer products but on enticing buyer investors to invest and earn commissions derived from the referral or recruitment of new member-investors.

Sixth, BOSS Network violated significant legal requirements including the misrepresentation on its principal business address and the submission of an invalid Tax Identification Number (TIN) of some of its incorporators. Records reveal that contrary to its representation in its AoI, BOSS Network does not hold business in its principal address, a fact that was confirmed by the building administrator. Further, the submission of an invalid TIN by two (2) of its incorporators namely: Ramon C. Tabaniag, its President and CEO, and Jojie C. Servan, as certified by the Bureau of Internal Revenue[14] constitutes fraud in the procurement of Certificate of Registration which can be a valid ground for revocation of its corporate franchise. Section 6(l)(1) of Presidential Decree No. 902-A, as amended, is explicit on this matter thus:

[14] Annex "N" of the Motion for CDO.

> **Section 6**. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
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> xxx.
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> l) To suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law, including the following:
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> 1. Fraud in procuring its certificate of registration;
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> xxx.

On account of the foregoing, the Commission hereby denies the *Motion to Lift* of respondent BOSS Network for lack of merit.

WHEREFORE, premises considered, the *Manifestation and Motion to Lift the Cease and Desist Order* dated 19 August 2020 filed by BUILDING OUR SUCCESS STORIES NETWORK, INC. is hereby **DENIED** for lack of merit. The CEASE AND DESIST ORDER dated 18 June 2020 issued against the subject corporation, its officers, directors, agents, representatives, conduits, assigns, and any and all persons/entities claiming and acting for and in behalf and under their authority, is hereby **MADE PERMANENT.**

The Enforcement and Investor Protection Department is hereby DIRECTED to: (a) serve this *Resolution* to the President, General Manager, Corporate Secretary, Treasurer or In-House Counsel of BUILDING OUR SUCCESS STORIES NETWORK, INC. and (b) post copies of the said *Resolution* at the entrance of the main offices and/or branches, if any, of BUILDING OUR SUCCESS STORIES NETWORK, INC.

Let a copy of this *Resolution* be also posted in the Commission's website; and published in a national newspaper of general circulation and furnished to all operating departments and offices of the Commission for their information and appropriate action.

EIPD, in coordination with other concerned departments, is FURTHER DIRECTED to submit a formal compliance report, by way of a pleading, to the Commission *En Banc* WITHIN TEN (10) DAYS from receipt of this *Resolution.*

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SO ORDERED.

Pasay City, Philippines; 06 October 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG *Commissioner*	**JAVEY PAUL D. FRANCISCO** *Commissioner*
KELVIN LESTER K. LEE *Commissioner*	**KARLO S. BELLO** *Commissioner*