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

In the matter of:
TECHNO INNOVATION MARKETING ENTERPRISE CORP.

SEC CDO Case No. 02-16-029

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.

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CEASE AND DESIST ORDER

This resolves the *Motion for Issuance of Cease and Desist Order*[1] filed on 19 February 2016 by the Enforcement and Investor Protection Department (**EIPD**) praying to enjoin TECHNO INNOVATION MARKETING ENTERPRISE CORP. (**Respondent**) from selling and/or offering for sale securities in the form of investment contracts until the requisite registration statement is duly filed with and approved by the Commission and the corresponding license to offer/sell is issued.

Respondent is a domestic corporation registered with the Commission on 28 August 2015 with Company Registration No. CS20151517301.[2] Its incorporators are MC Onell Estrito, Bernie R. Limpiada, Shiela T. Garet, Marc Johan Cheng, and Rosita B. Ortega.[3]. It has an authorized capital stock of One Million Pesos (Php 1,000,000.00). It is engaged in the business of buying and selling of all kinds of call cards, phone cards, internet cards, and prepaid loads, manage and operate loading stations[4].

Sometime in November 2015, EIPD received 18 complaints[5] from a group of individuals claiming that they were invited by a certain MC Onell Estrito (**Estrito**) to invest in a dealership program of a corporation with the name "TIME Corporation" (**TIME Corp**.). These complainants aver, under oath, that Estrito promised them that

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[1] Dated 16 February 2016.
[2] Annex "A" of the Motion.
[3] Annex "B" of the Motion.
[4] Ibid., Time Corp.'s primary purpose - *"To engage in, conduct and carry on the business of buying, acquiring, holding, selling, disposing, distributing, marketing at wholesale or retail insofar as may be permitted by law, all kinds of call cards, phone cards, internet cards and prepaid load whatsoever, such as but not limited to Globe, Sun, Smart and other products of the service provider; To operate, manage, and engage in the business of online loading station using online loading through existing telecommunication facilities; to enter into all kinds of contracts for purchase, acquisition, sale or wholesale or retail and other disposition for its own account as principal or representation capacity as subscriber's representative, broker, indentor, commission merchant, factors or agents, upon consignment of all kinds of prepaid load products without acting as broker or dealer in securities, government securities eligible dealer (GSED), investment adviser of an investment company, close-end or open-end investment company, investment house, transfer agent, commodity/financial futures exchange/broker/merchant, financial company and time shares/club, shares/membership certificates, issuers or selling agents, thereof nor engaging in investment solicitation nor investment taking activity."*
[5] Annexes "C" to "C-16" of the Motion.

for a minimum investment of Php 2,500.00, they can earn 40% return/profit or Php 1,000.00 within a period of 15 days. They also allege that they are entitled to other commissions which includes direct referral fee of Php 100.00, a gift certificate worth Php 200.00, and a chance to become an authorized dealer of all mobile/telephone loads. Because of Estrito's representations, these complainants placed money with TIME Corp.[6] However, they did not receive any return on their investment.

This prompted EIPD to conduct an investigation on TIME Corp.'s investment-taking activities. EIPD's investigation revealed that TIME Corp. is using a provisional receipt[7] carrying the name "TIME Corp." and a Dealership Registration Form[8] using the name "TECHNO INNOVATION MARKETING EXPERT CORPORATION". Upon verification with the Commission's records, it showed that there exists a corporation with the name "TECHNO INNOVATION MARKETING ENTERPRISE CORP." with principal office address at 2nd Floor, No. 33 Doña Apolonia Building, Kamias Street, Brgy. Pinyahan, Quezon City and Estrito as one of its incorporators.

EIPD secured *Certifications*[9] from the Commission's Market Securities and Regulations Department (MSRD) and Corporate Governance Finance Department CGFD) stating that TIME Corp. and/or Respondent even under its pseudonym "Expert" has no license to offer or sell securities.

Furthermore, the Commission's Company Registration and Monitoring Department (CRMD) issued a certification that Estrito is not affiliated with any entity registered with the Commission, and that he was not issued a Certificate of Registration as registered Associated Person, Compliance Officer, Salesman and/or Certified Investment Solicitor of a Broker Dealer in Securities, Investment House, Underwriter of Securities, Investment Company Adviser, and/or Mutual Fund Distributor, nor is there any pending application for issuance of said Certificate of Registration[10].

On 07 January 2016, an EIPD team conducted an ocular inspection and surveillance operation at Respondent's principal office. When the EIPD team arrived, they noticed a bold business signage "TIME" at the second floor of Doña Apolonia Building. They further noticed that TIME Corp.'s office was closed. Upon further inquiry, the team was able to talk to the building's caretaker. She said that TIME Corp. used to occupy one of their units for three (3) months. She also mentioned that prior to its closure, there were a lot of people visiting the said office and looking for its officers. She also said that their building's administrator is also looking for Estrito for payment of rental arrears[11]. She also confirmed that TIME Corp. is the acronym of Respondent's name "TECHNO INNOVATION MARKETING ENTERPRISE CORP.".

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[6] Paragraph 4 of the Motion.
[7] Annex "D" of the Motion.
[8] Annex "E" of the Motion.
[9] Annexes "F"; "F-1"; "G" and "G-1" of the Motion.
[10] CRMD Certification dated 02 May 2016.
[11] Annex "H-1" of the Motion.

EIPD received, on 11 January 2016, a letter-complaint[12] from a certain Virgilio O. Vargas which states that Respondent is also known as TIME Corp. Attached to the letter is a copy of Respondent's Articles of Incorporation (AOI). He also said that their group was invited by Estrito and Ms. Citie Nuna Magluyan to invest Php 2,500.00 per account/code and guaranteed a return of Php 1,000.00 (40%) within 2 weeks. Further, their group was promised that for every Php 2,500 worth of investment, they will be given a Php 200.00 "e-loading business[13]" and direct referral fee of Php 100.00. However, they were not able to receive any return on their investment.

On 14 January 2016, EIPD again received 10 other complaints[14] against TIME Corp. These complainants aver, under oath, that they were also invited by Estrito, to invest in TIME Corp.'s dealership program. Estrito also promised them a 40% return/profit from a minimum Php 2,500.00 investment within 15 days. However, they did not received any return/profit on their investment.

EIPD, on 01 February 2016, invited three (3) of Respondent's incorporators namely, MC Onell Estrito, Shiela Garet, and Rosita B. Ortega for a conference[15]. However, Estrito and Garet could no longer be located at the given address in Respondent's AOI. On the other hand, Ortega failed to appear before the Commission's Davao Extension Office (SEC-DEO). EIPD no longer invited the other directors, Bernie R. Limpiada[16] and Marc Johan Cheng[17], because they are also one of the complainants against Respondent. Thereafter, EIPD filed the instant motion.

Before we resolve the motion on the merits, it is necessary first to delve into the connection among Techno Innovation Marketing Enterprise Corporation, Techno Innovation Marketing Expert Corporation and TIME Corp.

EIPD's investigation reveals that TIME Corp. is an acronym of Techno Innovation Marketing Enterprise Corporation. This is confirmed in EIPD's surveillance operation at TIME Corp.'s principal office and the letter-complaint filed by Virgilio O. Vargas. Aside from that, complainants'[18] aver that TIME Corp.'s office address is located in Kamias, Quezon City, which is the same principal office address stated in Respondent's AOI. Moreover, it is clear in Respondent's AOI that Estrito is one of the incorporators of the said corporation. Likewise, the building administrator of Doña Apolinia Building (TIME Corp.'s office is located) also corroborates that Estrito is the President of said corporation. Undoubtedly, these 3 entities are operated by one and the same persons led by Estrito.

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[12] Annex "C-17" of the Motion.
[13] Electronic loading business (1 sim to all networks).
[14] Annexes "I" to "I-7" of the Motion.
[15] For Estrito and Garet – through personal service; for Ortega – through SEC Davao Extension Office.
[16] Annex "C-1" of the Motion.
[17] Annex "C-6" of the Motion.
[18] Annexes "C-5"; "C-8"; "C-9"; "C-12"; "C-13"; "C-14"; "C-15"; "I"; "I-3"; "I-6".

The foregoing considered, we now resolve the case on the merits based on the allegations and evidence presented in the *Motion*.

We find merit in the *Motion*.

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"[19] and includes an investment contract.[20] As a rule, Securities should not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission[21].

Securities have different forms and one of which are investment contracts[22]. 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**. An *investment* 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[23].

The concept of an investment contract in the Philippines is of American origin. It traces its roots from the US Supreme Court cases of *SEC v. W.J. Howey Co.*[24] and *SEC v. Glenn Turner Enterprises, Inc.* [25]. It has since been adopted in the Philippines, in the case of *Power Homes Unlimited Corporation v. Securities and Exchange Commission*[26], where the Supreme Court held that an investment contract in our jurisdiction, to be a security subject to regulation by the Commission, must have the following elements: **(1) an investment of money; (2) in a common enterprise; (3) with expectation of profits; and (4) primarily from efforts of others**.

Under the foregoing 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.[27]

In the instant case, EIPD was able to establish, through sworn statements of complainants, and documents (Provisional Receipts and Dealership Registration Form) issued by Respondent, the four (4) requisites of an investment contract, to wit:

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[19] Section 3.1., Securities Regulation Code (SRC).
[20] Section 3.1.(b), *Id.*
[21] Section 8.1. of the SRC.
[22] Section 8.1. (b) of the SRC.
[23] SRC Rule 3(1)(G), Amended Implementing Rules and Regulations (IRR) of the SRC.
[24] 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244, 163 A.L.R. 1043 (1946).
[25] 474 F. 2d 476, 414 U.S. 821, 94 (1973).
[26] G.R. No. 164182, 26 February 2008.
[27] *Investment Co. Institute v. Camp*, 274 F. Supp. 624 (D. D.C. 1967).

First, an investment of money occurs when an investor commits money to an enterprise or venture in a manner that subjects himself to financial loss.[28] In the case at bar, investors placed the minimum amount of Php 2,500.00 in Respondent, through Estrito, because the latter promised to give 40% profit within a period of 15 days[29].

Second, several tests have evolved to determine what constitutes "common enterprise".[30] One of these tests is the horizontal commonality approach. Under this test, the determination of whether a transaction satisfies the commonality element of the modified Howey test involves an inquiry into whether the said transaction involves the joint participation of more than one investor in (i) the investment of funds or (ii) the sharing of profits.[31] Furthermore, the 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.[32]

In the instant case, an investor, together with the others[33], placed Php 2,500.00 in Respondent's business in the hope of earning 40% of the paid amount. In one of the complainant's statements, she averred that "*Nagbigay po kami ng personal na pera naming at binahagi din po naming sa mga kamag-anak at friends naming yung business. Ang halaga po nang pera naming na nasa loob ay 152 Accts. (Php380,000) ang total sales ng grupo naming ay 3,216 Accts. (Php8,040,000)*[34]". In short, the common enterprise is the pooling of investors' money in the Respondent without a productive enterprise. Thus, the source of the promised returns is the monies invested by incoming investors/recruits.

Third, profits may be generated from either capital appreciation resulting from the development of the initial investment, or participation in earnings resulting from the use of investors' funds. In the Respondent's scheme, investors are "attracted primarily by the prospects of a return on his investment." The alleged returns or profits for the initial investment of Php 2,500.00 is 40% of the said amount within a period of 15 days. Aside from that, investors are given the opportunity to earn more when they recruit new investors. In which case, they receive Php 100.00 (Direct Referral Fee), and a chance to become an authorized dealer of all mobile/telephone loads[35].

Fourth, to be considered as an investment contract, the expectation of profits must depend primarily from the efforts of others. In *Turner*[36], the US Supreme Court adopted a more realistic test which is "whether the efforts made by those other than

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[28] *SEC v. International Mining Exchange, Inc.*, 515 F. Supp. 1062.
[29] Sworn statements of Complainants, Annexes "C" to "C-17" and "I" to "I-7".
[30] *In the Matter of Octopus Network, Inc.*, SEC-PED Case No. 98-2220, 22 May 1998.
[31] Note 27, citing 69 Am Jur 2d citing Stenger v. R.H. Love Galleries, Inc. 741 F2d 144.
[32] Note 27, citing Wasnowic v. Chicago Bd. of Trade 352 F Supp 1066.
[33] Note 26 Supra.
[34] Annex "I" of the Motion.
[35] Note 26, Supra.
[36] Note 28, Supra.

the investors are undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise".

In the case at bar, it is the Respondent, through Estrito, who develops, administers, maintains and promotes the investment scheme. It operates and maintains an office. It is Estrito, an incorporator, who promotes the said investment scheme. Investors do not sell any concrete product nor do they perform or accomplish any productive act. They simply place their monies in the Respondent's business and wait for the promised return after a period of 15 days. Evidently, investors primarily earn from the efforts of others.

Finding all the elements of an investment contract present, Respondent is found to be offering/selling investment contracts to the public.

As enunciated in *Power Homes Unlimited vs. Securities and Exchange Commission*[37], thus:

> "As an **investment contract that is security under R.A. No. 8799, it must be registered** with public respondent SEC, otherwise the SEC cannot protect the investing public from fraudulent securities. The strict regulation of securities is founded on the premise that the capital markets depend on the investing public's level of confidence in the system."

In the instant case, certifications from MSRD and CGFD show that Respondent is not authorized to offer/sell securities in the form of investment contracts to the public. Moreover, Estrito is also not license to offer/sell securities to the public as per CRMD certification.

In view of the above discussions, we see three (3) violations by Respondent and the persons acting for it.

First, the non-registration of securities. Under the SRC, unless what is involved are exempt securities or exempt transactions, which are not covered by the requirement of registration, 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.[38] 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.[39] As discussed above, TIME Corp., through Estrito, is engaged in the offering and/or selling of securities in the form of investment contracts which need prior registration with the Commission.

Second, the non-registration as broker, dealer, salesman, or associated person. The law provides that no person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an

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[37] Note 28 Supra.
[38] Section 8.1, SRC.
[39] *Id.*

associated person of any broker or dealer unless registered as such with the Commission.[40] In the instant case, Respondent, Estrito, and/or all persons acting for and on their behalf are acting as either broker or dealer without being registered as such.

Third, commission of *ultra vires* acts. No corporation shall possess or exercise any corporate powers except those conferred by the Corporation Code or by its Articles of Incorporation and except such as are necessary or incidental to the exercise of the powers so conferred.[41] In that instant case, Respondent's primary purpose is to engage in business of buying and selling of all kinds of call cards, phone cards, internet cards, and prepaid loads, manage and operate loading stations. Nowhere is it stated in Respondent's primary purpose that it can engage in the business of soliciting and accepting investments and money placements from the public.

It should be noted that 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**.

From the foregoing, there are two essential requisites before the Commission may issue a cease and desist order: **First**, there must be a proper investigation or verification[42]. In the instant case, EIPD conducted an ocular inspection as documented in its report. EIPD also presented sworn statements of complainants who invested in Respondent but were not able to receive any return or profit. It presented the provisional receipts issued by Respondent. It was able to sufficiently establish, through sworn statements and documentary evidence, that Respondent is offering/selling securities in the form of investment contracts without a license from the Commission.

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[43]. It should be noted that without a license from the Commission, Respondent's investment-taking activities cannot be regulated nor supervised. Thus, it would have a wide latitude in crafting and implementing its investment schemes, and if it remains unregulated or unsupervised, it would have the capacity to defraud the investing public. And in fact, it has already defrauded the complainants by enticing them to invest without any return/profit.

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[40] Section 28.1, SRC.
[41] Section 45, Corporation Code of the Philippines.
[42] Securities and Exchange Commission vs. Performance Foreign Exchange Corporation, GR No 154131, July 20, 2006.
[43] Ibid.

An analysis of Respondent's business model reveal that it is a classic "*Ponzi scheme*". A *Ponzi scheme* is a type of investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors. Its organizers often solicit new investors by promising to invest funds in opportunities claimed to generate high returns with little or no risk. In many Ponzi schemes, the perpetrators focus on attracting new money to make promised payments to earlier-stage investors to create the false appearance that investors are profiting from a legitimate business. It is not an investment strategy but a gullibility scheme, which works only as long as there is an ever increasing number of new investors joining the scheme[44].

To sum up, Respondent promises investors 40% return/profit for a minimum investment of Php 2,500.00 within 15 days without doing anything. Evidently, the payment to the investor comes from the payment of incoming investors since there is no actual trade, sale or investment in any business. As a result, complainants did not receive their return since the officers absconded. Respondent is already defrauding the investing public with this type of investment scheme. Its acts or practice have already cause or likely to caused grave or irreparable injury or prejudice to the investing public.

WHEREFORE, premises considered and pursuant to the authority vested in the Commission, **TECHNO INNOVATION MARKETING ENTERPRISE CORP.**, **TECHNO INNOVATION MARKETING EXPERT CORP.**, **TIME Corporation**, and **MC ONELL ESTRITO**, its partners, officers, directors, agents, representatives, conduits, assigns, and any and all persons claiming and acting for and in behalf and under their authority are hereby ordered to **IMMEDIATELY CEASE AND DESIST[45], UNDER PAIN OF CONTEMPT**, from engaging in activities of selling and/or offering for sale securities in the form of investment contracts or any others of the same nature until the requisite registration statement is duly filed with and approved by the Commission and the corresponding to offer/sell is issued.

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 in behalf of the subject corporations.

The **Enforcement and Investor Protection Department** is hereby **DIRECTED** to: 1) serve this *Order* to TECHNO INNOVATION MARKETING ENTERPRISE CORP., their President, General Manager, Corporate Secretary, Treasurer, In-House Counsel or partners; 2) post copies of the *Order* at the entrance of the main office and/or branches, if any, of TECHNO INNOVATION MARKETING ENTERPRISE CORP.

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[44] People of the Philippines vs. Palmy Tibayan and Rico Z. Puerto, G.R. No. 209655-60, January 14, 2015.

[45] Section 64.1, SRC, The Commission, after proper investigation or verification, *motu propio*, 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 fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

Let a copy of this *Order* be also posted in the Commission's website; 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 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 *Cease and Desist Order*.

In accordance with the provisions of Sec. 64.3[46] of SRC and Sec. 10-3 of the 2006 Rules of Procedure of the Commission, the parties subject of this *Cease and Desist Order* may file a request for the lifting thereof within five (5) days from receipt hereof.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Mandaluyong City, Philippines; 12 May 2016.

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

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[46] SRC, Section 64.3. Any person against whom a cease and desist order was issued may, within five (5) days from receipt of the order, file a formal request for a lifting thereof. Said request shall be set for hearing by the Commission not later than fifteen (15) days from its filing and the resolution thereof shall be made not later than ten (10) days from the termination of the hearing. If the Commission fails to resolve the request within the time herein prescribed, the cease and desist order shall automatically be lifted.