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

IN THE MATTER OF:

LOKAL.PLATE CORPORATION
SEC Company Reg. No. CS202005888

SEC CDO Case No. 03-21-070

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* (Motion)[1] filed on 04 March 2021 by the Enforcement and Investor Protection Department ("EIPD"), with the Commission En Banc through the Office of the General Counsel ("OGC")[2] praying that an order be issued directing LOKAL.PLATE CORPORATION ("Lokal.Plate"), its owner and CEO BRIAN DY SO ("Brian So"), directors, stockholders and officers, CMO SIMON MIGUEL C. DAVID ("Simon David"), COO LINUS EMMANUEL V. TAA ("Linus Taa"), CFO CHRISTIAN NATHANIEL C. MAGUNDAYAO ("Christian Magundayao"), Chairman RALPH NATHANIEL P. RILE ("Ralph Rile") and NINAY P. RILE ("Ninay Rile"), representatives, salesmen, solicitors, agents, uplines, enablers, influencers, such as SHAIRA SILVESTRE, and any and all persons, conduit entities and subsidiaries claiming and acting for and/or on its behalf, to immediately cease and desist (1) from further engaging in activities of selling and/or offering for sale securities and to remove or take down its online posts and offerings until the required registration statement is filed with and approved by the Securities and Exchange Commission (the "Commission") and the corresponding license to offer/sell securities is issued; (2) from transacting any and all business involving the funds in its depository banks; and (3) from transferring, disposing and/or conveying in any other manner any and all of its assets, real and/or personal properties, bank deposits, if any, of which the named persons herein may have any interest, claim or participation

[1] Dated 03 March 2021
[2] In accordance with Part II, Rule IV, Section 4-1 of the 2016 SEC Rules of Procedure

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.

PARTIES

The EIPD is one of the Commission's operating departments tasked 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.[3]

Lokal.Plate is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines having been issued a Certificate of Incorporation[4] bearing Company Registration No. CS202005888 on 07 August 2021. Its principal office is located at 2nd Floor TDL Bldg., Marlim Blvd. Ext., Pulung Maragul, Angeles City, Pampanga, Region III, Philippines, 2009.[5] Its primary purpose[6] per its Articles of Incorporation (AOI) is as follows:

> *"To engage in online selling of food, and promote, advertise such food products thru online.*
>
> ***Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts."*** *(Emphasis supplied)*

Its Certificate of Incorporation explicitly provides, to wit:

> *This Certificate grants juridical personality to the corporation* ***but does not authorize it to issue, sell or offer for sale to the public, securities*** *such as but not limited to, shares of stock,* ***investment contracts****, debt instruments and virtual currencies without prior Registration Statement approved by the Securities and Exchange Commission nor to undertake business activities requiring a Secondary License from this Commission such as but not limited to 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, financing/lending company, and time shares/membership certificate issuers or selling agents thereof; nor to operate a fiat money to virtual currency exchange. Neither does this Certificate constitute a permit to undertake activities for which other government agencies require a license or permit. (Emphasis supplied)*

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[3] Section 2-2(c)(1-c), Rule II, Part I of the 2016 SEC Rules of Procedure
[4] Annex "A" of the Motion
[5] Paragraph 2 of the Motion
[6] Annex "A-1" of the Motion

Lokal.Plate's Incorporators and first directors as appearing in its AOI[7] are as follows:

NAMES	ADDRESS	SUBSCRIBED CAPITAL	PAID-UP CAPITAL
Christian Nathaniel C. Magundayao	Blk 5 Lot 30 Montalban Heights San Jose RODRIGUEZ (MONTALBAN), Rizal, REGION IV-A, Philippines, 1860	P2,500.00	P2,500.00
Linus Emmanuel V. Taa	Unit 10B Mirasol St. 15th Avenue Pinagkaisahan QUEZON CITY, SECOND DISTRICT, NCR, Philippines, IIII	P2,500.00	P2,500.00
Simon Miguel C. David	#05 San Angelo Subd San Jose Santo Domingo ANGELES CITY, PAMPANGA, REGION III, Philippines, 2009	P2,500.00	P2,500.00
Brian James D. So	Blk 23, 25, 27 Marquee Place Madison Drive Pulung Maragul, ANGELES CITY, PAMPANGA, REGION III, Philippines, 2009	P120,000.00	P120,000.00
Ninay P. Rile	150 Regala Park Tower P. Tuazon Socorro QUEZON CITY, SECOND DISTRICT, NRC, Philippines, 2009	P2,500.00	P2,500.00
Ralph Nathaniel P. Rile	75B 8TH AVENUE Socorro QUEZON CITY, SECOND DISTRICT, NCR, Philippines, 1109	P120,000.00	P120,000.00

On 11 November 2020, Lokal.Plate's amended Articles of Incorporation[8] which provided for the following Secondary Purposes was approved, to wit:

1. *To make, enter into, execute, ratify, confirm, sign, undertake and perform contracts, join venture agreements, franchise agreements, all kinds of agreements or any and all kinds and descriptions with any person, firm or corporation, whether governmental, public or private, without limit as to amount and conditions, including but not by way of limitation, contracts creating rights, encumbrances, liens, easements, servitudes and other privileges respecting any other property of any kind owned by the corporation.*

2. *To apply for, obtain, register, lease, purchase or otherwise acquire, and to hold, use, own, operate, sell, assign, or otherwise dispose of any trade mark, trade names, trade secrets, formulate, patents, inventions, copyrights, improvements, and processes used in connection with or secured under letters, patents, or copyrights, locally and domestic.*

RELEVANT FACTS

Sometime in November 2020, the EIPD started receiving emails[9] relating to the alleged investment-taking activities, solicitation and networking scheme of Lokal.Plate. The emails alleged that Lokal.Plate entices people who are invited to attend its zoom meetings to be a

[7] Annex "B" of the Motion
[8] Annex "B" of the Motion
[9] Annexes "C" to "C-12" and "D" to "D-8" of the Motion

member of the corporation by investing the amount of P12,888.00 (a one-time payment), with the promise of a monthly return of an amount ranging from P40,000.00 to 80,000.00, a commission of P3,000.00 for every referral, and an extra P10,000.00 for every ten (10) referrals made. What made the scheme more attractive is that the investors are guaranteed to receive the return of their investment without doing any act except to part with their money. On the basis of these reports, the EIPD conducted an investigation for possible violations of the Securities Regulation Code ("SRC")[10] and its implementing rules and regulations.

During its investigation, the EIPD investigating team ("Team") was able to confirm the veracity of the information provided in the email complaints about the business operations and the investment scheme of Lokal.Plate. The EIPD also checked Lokal.Plate's online presence and was able to confirm based on the contents therein that it offers an "online franchise" amounting to P12,888.00, where a "franchisee" may earn between P40,000.00 to P80,000.00 monthly, with the following package inclusions:[11]

"Package Inclusions:
- **15-20% Profit in Every Purchase**
- **Processing, Packaging, & Distribution**
- **Mobile Application (Soon)**
- **Personal Shop Link**

- **Php 12,000 Worth Marketing Fee (FREE)**
- **No Royalty Fee**
- **One-time Payment**
- **Free Training**
- **Fast ROI (Return of Investment)**

On 09 November 2020, the Team conducted an ocular inspection/investigation at Lokal.Plate's principal office address where they met and was accommodated by Lokal.Plate's Marketing Head, Ms. Shaira Silvestre ("Ms. Silvestre"). Ms. Silvestre confirmed that Lokal.Plate is offering a franchising program which is sold to the public at the amount of P12,888.00 and which will entitle a franchisee to earn a monthly return ranging from P40,000.00 to P80,000.00. During the meeting, Ms. Silvestre explained to the Team that under the franchising program, a franchisee-member would only need to post in his/her Facebook account his/her designated referral link where a prospective buyer of Lokal.Plate's "affiliated" restaurants/merchants may click on to order food. Ms. Silvestre disclosed to the Team that a franchisee-member receives 10% of the value of the food ordered from Lokal.Plate's "affiliated" restaurants/merchants. The franchisees

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[10] Republic Act No. 8799
[11] Paragraph 9 of the Motion

immediately receive the commission of 10% which is automatically credited to their account after the buyer's order is confirmed, while Lokal.Plate does all the work from the preparation to the delivery of the food ordered. Ms. Silvestre also informed the Team that a franchisee-member is also entitled to a referral commission of P3,000.00 for every direct recruit he/she makes. Ms. Silvestre then encouraged the Team to attend Lokal.Plate's zoom business presentation where the details of the franchising program of the company is fully explained.[12]

On 24 November 2020, the Commission issued and posted in its website an Advisory[13] which provides in part that:

> *"The public is advised **NOT TO INVEST** or **STOP INVESTING** in any investing scheme being offered by any individual or group of persons allegedly for or on behalf of **LOKAL.PLATE CORPORATION** and to exercise caution in dealing with any individuals or group of persons soliciting investments for and on behalf of it."*

To ensure widest dissemination of information relating to the investment taking activity of Lokal.Plate, and to warn the general public of the risks in investing with it, the EIPD accepted and appeared in media interviews[14] on several occasions where it discussed and explained investment scams and online franchising. The records show that Lokal.Plate completely ignored the Advisory issued by the Commission and continued with its investment taking activities.[15]

On 16 December 2020, two members of the Team joined Lokal.Plate's business presentation meeting via video-conferencing platform Zoom. The attendees confirmed that during the presentation,[16] Lokal.Plate offered its "promotion package" worth P3,000.00 which entitles the franchisee-member to the following:

> ***"Php 3,000 Inclusions***
>
> - *Authorized dealer of all Lokal.Plate's merchants*
> - *10% Profit in Every Purchase*
> - *Processing, Packaging, & Distribution*
> - *Php 3,000 Worth of Initial Stock*
> - *Php 12,000 Worth of Marketing Fee Lifetime Free*
> - *Mobile Application (Soon)*
> - *Personal ShopLink*

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[12] Paragraph 11 of the Motion
[13] Annex "N" of the Motion.
[14] Paragraph 14(a), (b), (c), (d), and (e) of the Motion
[15] Paragraph 15 of the Motion
[16] Annex "I" of the Motion.

The attendees further confirmed that during the presentation, Lokal.Plate explained that a franchisee-member needs only to share his/her unique referral link through his/her social media account in order for the buyer to make an online food order. Once an order is placed/confirmed, Lokal.Plate will then process, pack, and distribute the ordered foods to the client-buyer.[17]

On 01 December 2021, the EIPD sent a letter to the Food and Drug Administration ("FDA") requesting for details or validation of the registration of Lokal.Plate, if any, as a company engaged in the business of food franchising or in the business of online selling of food.[18]

On 07 January 2021, the FDA issued a Certification[19] attesting that based on the records of its Center for Food Regulation and Research ("CFRR") and Information and Communication Technology Management Division, no company with the name Lokal.Plate has been issued a License to Operate ("LTO") and no application from the same company is pending with it.

To further support the allegations in its *Motion*, the EIPD submitted Certifications[20] issued by the Company Registration and Monitoring Department ("CRMD"), the Corporate Governance and Finance Department ("CGFD") and the Markets and Securities Regulation Department ("MSRD") of the Commission[21] which show that Lokal.Plate, while registered as corporation, has no secondary license to operate as a broker/dealer, is not a registered issuer of mutual funds, ETFs and proprietary/non-proprietary shares, and has not registered any securities pursuant to Sections 8 and 12 of the SRC.[22]

On 17 February 2021, the Team procured a recorded Zoom business presentation[23] of Lokal.Plate presented by Ms. Silvestre. In the business presentation video, Lokal.Plate provided a number of options to become a franchisee-member, specifically emphasizing on the discounted/reduced franchise fees of Php 9,888.00 (franchise package) or Php 4,888.00 (reseller package), and the corresponding benefits thereof, to wit:

"Php 9,888 Inclusions

- *Authorized dealer of all Lokal.Plate's merchants*
- *20-25% Profit in Every Purchase*

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[17] Annex "C" of the Motion
[18] Annex "D" of the Motion
[19] Annex "F" of the Motion
[20] Annxes "G", "I", and "J" of the Motion
[21] Annex "M", Annex "N" and Annex "O" of the Motion.
[22] Annexes "E", "F", and "G" of the Motion.
[23] Annex "K" of the Motion.

- *Processing, Packaging, & Distribution*
- *Php 3,000-Worth of Franchise Initial Stock*
- *Php 1,500 Franchise Referral Income*
- *Php 12,000-Worth of Marketing Fee Lifetime Free*
- *Mobile Application (Soon)*
- *Personal ShopLink*
- *3-7 Delivery Days (Wed-Sun)*

Note: Monthly Maintenance (1,500 worth of food)

"Php 4,888 Inclusions

- *Authorized dealer of all Lokal.Plate's merchants*
- *10% Profit in Every Purchase*
- *Processing, Packaging, & Distribution*
- *Php 3,000-Worth of Franchise Initial Stock*
- *Php 300 Rseller Referral Income*
- *Php 12,000-Worth of Marketing Fee Lifetime Free*
- *Mobile Application (Soon)*
- *Personal ShopLink*
- *3-7 Delivery Days (Wed-Sun)*

Note: Monthly Maintenance (1,500 worth of food)

The presentation also showcased Lokal.Plate's franchising program, originally priced at Php192,000.00 which was reduced to Php 9,888.00 with the following inclusions:

a. Php12,000.00 worth of Marketing Fee (FREE);
b. No Royalty Fee;
c. One Time Payment;
d. Free Training;
e. Processing, Packaging & Distribution;
f. Mobile Application (SOON); and
g. Personal Shop Link.

The business model presented by Lokal.Plate disclosed the following information:

1. A franchisee-member who avails of Lokal.Plate's offering shall be entitled to franchise initial stock of P3,000.00 from its partner merchants, referral income of P1,500.00, and a profit of 20-25% of the value of the food ordered;

2. The processing, packaging, and distribution of the food ordered by the prospective buyer shall be done by Lokalplate.

3. Lokal.Plate has a tie-up with mangan.ph and Bizaare Business Solutions.[24] Mangan.ph is tasked to deliver the confirmed food orders while Bizarre Business Solutions[25] is allegedly an e-commerce platform.

4. Lokal.Plate has more than 50 partner-merchants that customers may choose from to secure their food requirement.

At the end of the presentation, Lokal.Plate enticed the attendees to join and become members since they only have limited slots remaining.

On 29 January 2021, the Commission issued and posted an Investor Alert (in Filipino language) on its official Facebook account to warn the public about the investment scheme of Lokal.Plate. Despite the issuance of the Advisory and Investor Alert, the EIPD continuously received reports and complaints from the public on Lokal.Plate's continued investment taking activities in the internet.

On 24 February 2021, the EIPD received a Letter[26] dated 04 February 2021 from the National Bureau of Investigation (NBI) informing the Commission that its Cybercrime Division received an intelligence report concerning the illegal online activities of Lokal.Plate which continuously sells/offers investment packages to the public. The NBI requested the assistance of the Commission in filing the necessary complaint on behalf of the investors/victims pursuant to the SRC.

On 01 March 2021, the EIPD received another Letter[27] dated 25 February 2021 from the NBI endorsing the case pertaining to the reports received by its Cybercrime Division concerning the online investment taking activities of Lokal.Plate for appropriate action.

Hence, the instant *Motion*.

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[24] A registered corporation under Company Reg. No. CS201953634 under the name BIZARRE BUSINESS SOLUTIONS CORPORATION Doing Business under the name and style of Bibiso (Formerly: Bizarre.Business.Solutions Corporation) with the same registered principal office as that of Lokalplate where Brian James So (Lokalplate's CEO) owned a total of 92% capital shares. Copy of its Certificate of Incorporation

[25] A registered corporation under Company Reg. No. CS201953634 under the name BIZARRE BUSINESS SOLUTIONS CORPORATION Doing Business under the name and style of Bibiso (Formerly: Bizarre.Business.Solutions Corporation) with the same registered principal office as that of Lokalplate where Brian James So (Lokalplate's CEO) owned a total of 92% capital shares. Copy of its Certificate of Incorporation, Articles of Incorporation are attached as Annex "M" and "M-1"

[26] Annex "L" of the Motion

[27] Annex "M" of the Motion

ISSUE

Whether or not the issuance of CDO against Lokal.Plate is warranted based on the findings and evidence presented by the EIPD.

RULING

After a careful review of the instant *Motion* and the evidence submitted by the EIPD in support of the allegations therein, the Commission finds merit to and hereby grants the same.

Lokal.Plate is a corporation registered with the Commission on 07 August 2020 under Company Registration No. CS202005888 with the following purpose provided in Article Second of its AOI, thus:

> *"To engage in online selling of food, and promote, advertise such food products thru online.*
>
> ***Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts."*** (Emphasis supplied)

It bears emphasis that the grant of juridical personality with the issuance of the Certificate of Incorporation to Lokal.Plate did not include the grant of authority to sell or offer securities to the public as the same requires a secondary license from this Commission. This is very clear in the afore-quoted provision of Lokal.Plate's AOI .

In the instant case, the EIPD was able to establish by substantial evidence that Lokal.Plate is selling and/or offering securities to the public in the form of investment contract which promised a monthly pure passive income in the amount ranging from P40,000.00 to P80,000.00. A transaction or scheme whereby an investor pays a determined amount set by Lokal.Plate to purchase a franchise/investment package offered by the latter which makes the investor a franchisee-member 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, <u>participation or interests in a</u> corporation or in a <u>commercial enterprise</u> or profit-making venture and evidenced by a*

> *certificate, contract, instrument, whether written or electronic in character. It includes:*
>
> *xxxx xxxx xxxx*
>
> *(b) Investment contracts. Certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription."* (Emphasis supplied)

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

> *"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 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 supplied)

In the case of *SEC vs. Howey Co*[28]., 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. 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.[29]

It is in the context of the foregoing that the U.S. Supreme Court came up with and adopted the *Howey Test*[30] in determining if an investment scheme, regardless of the legal terminology used, partakes of the nature of an investment contract. In *Power Homes Unlimited Corporation vs. SEC*[31], the Philippine Supreme Court (the "Court") applied the Howey Test in holding that petitioner was engaged in the sale of investment contracts, thus:

> *"It behooves us to trace the history of the concept of an investment contract under R.A. No. 8799. Our definition of an investment contract traces its roots from the 1946 United States (US) case of SEC v. W.J.*

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[28] 328 U.S. 293 (1946).

[29] *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.

[30] *Ibid.*

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

> *Howey Co. In this case, the US Supreme Court was confronted with the issue of whether the Howey transaction constituted an "investment contract" under the Securities Act's definition of "security." The US Supreme Court, recognizing that the term "investment contract" was not defined by the Act or illumined by any legislative report, held that "Congress was using a term whose meaning had been crystallized" under the state's "blue sky" laws in existence prior to the adoption of the Securities Act. Thus, it ruled that the use of the catch-all term "investment contract" indicated a congressional intent to cover a wide range of investment transactions. It established a test to determine whether a transaction falls within the scope of an "investment contract." Known as the Howey Test, it requires a transaction, contract, or scheme whereby a person (1) makes an investment of money, (2) in a common enterprise, (3) with the expectation of profits, (4) to be derived solely from the efforts of others. <u>Although the proponents must establish all four elements, the US Supreme Court stressed that the Howey Test "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits."</u> Needless to state, any investment contract covered by the Howey Test must be registered under the Securities Act, regardless of whether its issuer was engaged in fraudulent practices."*[32] (Emphasis ours)

Applying the *Howey Test* to the instant case, this Commission agrees with the finding of the EIPD which is supported by the evidence on record, and holds that Lokal.Plate is engaged in the sale and/or offer of securities in the form of investment contracts.

First, there is an **investment of money** from the public. Lokal.Plate actually received money from the public who were enticed to invest in the company that represented to be engaged in a "franchising business."

Second, there is a **common enterprise** consisting of Lokal.Plate's act of pooling the money invested by investors to maintain its franchising program, a profit-making venture, which it is selling to the public.

Third, there is an **expectation of profits** on the part of its investors who were promised a guaranteed monthly return in the amount ranging from Php40,000.00 to Php80,000.00, and the commissions for successful referrals made.

Fourth, the member-investors expect to earn profits **primarily from the efforts of Lokal.Plate and/or its directors, officers, agents or representatives,** which allegedly takes care of the "processing," "packaging," and "distributing" of the food ordered through the referral link of member-investors. All that is required on investors is to part

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[32] Power Homes Unlimited Corp. v. Securities and Exchange Commission, G.R. No. 164182, February 26, 2008.

with their money which makes them franchisees of Lokal.Plate, and entitles them to the guaranteed monthly return and other benefits after they post/share Lokal.Plate's shop referral link.

Moreover, the evidence presented by the EIPD also shows that Lokal.Plate's investment scheme involves public offering of securities as defined under Rule 3.1.17 of the Implementing Rules and Regulations of the SRC, to wit:

> "3.1.17. **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
>
> 3.1.17.3 Advertisement or announcement in radio, television, telephone, **electronic communications, information communication technology or any other forms of communication**; or"[33] (Emphasis supplied)

The act of Lokal.Plate in publishing and making actual presentations of its investment scheme through Facebook, online advertisements, promotional videos, social media platforms and its web page, and inviting investors to invest their money with them, constitutes public offering contemplated in the afore-quoted provision.

The Securities Regulation Code 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 supplied)

In the context of the afore-quoted provision, it is clear that Lokal.Plate is not authorized to sell or offer the franchising program/packages to the public because they are securities in the form of investment contracts, and Lokal.Plate does not have the requisite license from this Commission. This undoubtedly warrants the issuance

[33] Rule 3.1.17 of the 2015 IRR of the SRC

of a cease and desist order because the act of Lokal.Plate 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.[34]

The foregoing finds support in the case of *Securities and Exchange Commission vs. CJH Development Corp.*[35] (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)

Under the afore-quoted provision, there are two (2) essential requirements that must be complied with before a cease and desist order can be validly issued, *i.e., First,* a proper investigation or verification was conducted; 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.[36]

In relation to the first requirement, the records show that the EIPD conducted an investigation and verification of the complaints it received from the public. The EIPD also presented the following evidence in support of its Motion: (1) Certifications from the Commission's MSRD, CGFD, and CRMD certifying

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

that Lokal.Plate is not licensed to offer/sell securities; (2) Certification from the FDA attesting that Lokal.Plate has not been issued a License to Operate; (3) NBI letters informing the Commission of the findings of its Cybercrime Division involving the illegal online activities of Lokal.Plate and endorsing the filing of the necessary complaint on; (4) Investigator's affidavit which attested to the online search conducted using Facebook and YouTube; and (5) Screenshots of the Zoom video presentation and relevant online posts of Lokal.Plate in social media.

As to the second requirement, the AOI shows that Lokal.Plate's capitalization is only Php 250,000.00. However, it promises investors a guaranteed monthly return of between 300-600% of the invested amount. Clearly, Lokal.Plate'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:

> "*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 supplied)

Without the registration statement duly filed with and approved by this Commission, Lokal.Plate's act of selling/offering franchising program/package which are securities in the form of investment contracts constitutes a clear violation of Section 8 of the SRC. This warrants and justifies the immediate issuance of a cease and desist order.

WHEREFORE, premises considered, **LOKAL.PLATE CORPORATION**, its owner and CEO BRIAN DY SO, directors, stockholders and officers, CMO SIMON MIGUEL C. DAVID, COO LINUS EMMANUEL V. TAA, CFO CHRISTIAN NATHANIEL C. MAGUNDAYAO, Chairman RALPH NATHANIEL P. RILE and NINAY P. RILE, representatives, salesmen, solicitors, agents, uplines, enablers, influencers, such as SHAIRA SILVESTRE, and any and all persons, conduit entities and subsidiaries claiming and acting for and/or on its behalf, to immediately cease and desist, 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 on investment contracts and/or other activities/transactions, until the requisite registration statements are duly filed with and approved by this Commission, and the corresponding license and/or permit to offer/sell securities are issued.

Finally, the Commission hereby **PROHIBITS** Lokal.Plate, 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 forestall grave damage and prejudice to all concerned and to ensure the preservation of the assets for the benefit of the investors.

Let a copy of this Order be (a) posted in Lokal.Plate's principal office; (b) posted in the Commission's website; (c) published in a newspaper of general circulation; and (d) be furnished to the Company Registration and Monitoring Department, Corporate Governance and Finance Department, and the Information and Communications Technology Department of this 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 Section 4-3(b), Rule IV of the 2016 Rules of Procedure of the SEC, the parties subject of this Cease and Desist Order (CDO) may file a verified motion to lift the CDO within five (5) days from receipt thereof.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Pasay City, Philippines, 05 February 2021.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner