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

In the matter of:

PAYASIAN PTE. LTD CORPORATION

SEC CDO Case No. 03-20-062

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),
Movant.

x -- x

CEASE AND DESIST ORDER

This resolves the *Motion for Issuance of a Cease and Desist Order* (Motion) filed on 04 March 2020 by the Enforcement and Investor Protection Department ("EIPD" for brevity), praying to immediately enjoin **PAYASIAN PTE. LTD CORPORATION** (**"PAYASIAN"** for brevity), its operators, directors, officers, representatives, salesmen, agents, and any persons, conduit entities and subsidiaries claiming and acting for and/or on its behalf, (1) from engaging in activities of selling and/or offering for sale securities in the form of investment contracts until the required registration statements are duly filed with, approved by, and corresponding permits to offer and/or sell securities are issued by the Securities and Exchange Commission ("Commission" for brevity); (2) from transacting all business involving the funds in its depository banks; and (3) from transferring, disposing and/or conveying in any other manner any of its assets, real and/or personal properties, bank deposits, if any, without the authority of the Commission.

FACTS

On 09 November 2019, the EIPD discovered the internet postings of Payasian on its web pages and social media sites relative to its investment taking activity. Based on its online postings, Payasian promises a guaranteed return of investment by offering two (2) options under its investment compensation plan, thus:

> ***"1. Buy, Hold and Earn Option –** an investor's option to buy PAYA Coins and hold them for six (6) months in which they will receive thirty percent (30%) additional PAYA Rewards after Fund Blocking. In other words, be a PAYA Holder and leave to them everything, you will earn even though you don't do anything; and*
>
> ***2. Referral Reward Option –** an investor's option to earn from referring others."*

On 11 November 2019, the EIPD requested a certification from (1) the Company Registration and Monitoring Department (CRMD) on whether Payasian has applied for a primary franchise either as a corporation or partnership; (2) the Markets and Securities Regulation Department (MSRD) on whether Payasian has applied and/or obtained a secondary license to offer or issue securities to the public pursuant to Sections 8 and 12 of Securities Regulation Code (SRC)[1]; and (3) the Corporate Governance and Finance Department (CGFD) on whether Payasian is a registered issuer of mutual funds including exchange traded funds, membership certificates, and time shares.

On 12 November 2019, the CRMD issued a certification confirming the registration of Payasian with the Commission as a corporation on 09 August 2019 under SEC Registration No. CS201913401. Meanwhile, MSRD and CGFD certified that Payasian has not registered and/or applied for registration and permit to sell any securities, and is not a registered issuer of securities, mutual funds, exchange traded funds and proprietary/non-proprietary shares or membership certificates and timeshares pursuant to Sections 8 and 12 of the SRC.

On 14 November 2019, the Commission issued an Advisory which provides in part that:

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

On 14 February 2020, the EIPD conducted a team surveillance operation by attending an orientation at the hub office of Payasian. Upon arrival, the surveillance team noticed that Payasian has no signage outside of the building where its office is located. A certain Mr. Dexter Rivarez Abalain ("Mr. Abalain" for brevity) was contacted and thereafter escorted the surveillance team to Payasian's hub office. The surveillance team was

[1] Republic Act No. 8799.

introduced by Mr. Abalain to Ms. Hyacinth Caibiran, Chief Financial Officer of Payasian; Mr. Jariclyde Virgo Coloma ("Mr. Coloma" for brevity) and Ms. Florence Canabuan, downlines of Mr. Abalain; and to an alleged lawyer who was said to be responsible with the legal affairs of Payasian.

The surveillance team informed Mr. Abalain that they are interested in investing in Payasian and asked for the investment benefits. Mr. Abalain, thereafter, presented Payasian's company profile and background, and explained the advantages of using Digital Currency instead of the Fiat Money, and the two (2) options under the company's compensation plan. Mr. Abalain also presented and explained the surveillance team the different packages they are offering, which they called **"Sharer Packages"**, thus:

> ***"1. S1** = P8,145 equivalent to 1,040 Paya tokens with a maximum commission of P500/day;*
> ***2. S2** = P58,095 equivalent to 7,145 Paya tokens with a maximum commission of P1,000/day;*
> ***3. S3** = P290,058 equivalent to 37,045 Paya tokens with a maximum commission of P2,000/day;*
> ***4. S4** = P580,058 equivalent to 74,082 Paya tokens with a maximum commission of P4,000/day*
> ***5. S5** = P1,450,058 equivalent to 185,193 Paya tokens with a maximum commission of P8,000/day; and*
> ***6. S6** = P5,800,058 equivalent to 740,749 Paya tokens with a maximum commission of P10,000/day."*

Mr. Coloma, a member and downline of Mr. Abalain, emphasized that members preferred the referral option particularly the **"Pairing Bonus"** mode because a member can recruit as many investors in his/her downline to earn more commission which results in the increase in the value of his/her PAYA tokens. Mr. Abalain emphasized that the Payasian is now focused on recruiting more investors as this will increase the value of their PAYA tokens. Mr. Abalain, thereafter, informed the surveillance team that Payasian will hold a soft-launching on 15 February 2020 which will be attended by officials from the Bangko Sentral ng Pilipinas (BSP) and the Securities and Exchange Commission to prove that Payasian business activities are legitimate and has complied with all the legal requirements.

One of the member of the surveillance team asked Mr. Abalain if he could attend the said soft-launching, to which Mr. Abalain answered in the negative as the soft-launching was only available to existing members of Payasian.

On 15 February 2020, the EIPD surveillance team conducted another ocular inspection and managed to attended the soft-launching of Payasian. The event was attended by officers and members of Payasian Philippines, including Ms. Kellya Kenya, Chief Executive Officer (CEO) of Payasian, and Mr. Albert Pasicolan ("Mr. Pasicolan" for brevity), Chief Operating Officer

(COO) of Payasian who introduced the company's latest promo dubbed as ***"Super Promo 2020"*** with the following mechanics, to wit:

> *"1. Any new package purchased from Payasian Philippines Management Office is entitled to the corresponding number of raffle tickets:*

Packages	***Number of Raffle Tickets***	***Raffle Ticket Price***
S1 (maximum of 1000 PAYA tokens)	*1*	*220 PAYA*
S2	*4*	*880 PAYA*
S3	*9*	*1980 PAYA*
S4	*16*	*3520 PAYA*
S5	*25*	*5500 PAYA*
S6	*36*	*7920 PAYA*

> *2. All new packages purchased must be put into a guaranteed fund before purchase of raffle ticket as follows:*
>
> *a. Buyer will send payment to management account thru Cash/Bank Transfer or Bitcoin;*
> *b. Management will send PAYA Tokens thru "Paya Guarantee" to Buyers account provided username;*
> *c. Buyer will send 220 PAYA Tokens for each raffle ticket to management Payasian Account (username: superpromo2020); and*
> *d. Management will issue raffle ticket/s number to buyer.*
>
> *3. Raffle draw will be done every end of the month at specific time and date which will be announced.*
>
> *4. Minimum number of tickets to be raffled every month is 880 entries. If the minimum tickets to be raffled doubled, the number of prizes will also be doubled.*
>
> *5. Everyone can purchase multiple raffle ticket entries but must compliment items to be raffled.*
>
> *6. Multiple ticket holders are only eligible to win 1 consolation prize and 1 major prize.*
>
> *7. Consolation and major prizes will be given to winners during the raffle draw."*

Mr. Pasicolan also announced during the soft-launching that in line with the ongoing ***"Super Promo 2020"***, Payasian is also launching another sales promotion aimed to support the centralization of Pay-ins and Pay-outs in the Philippine Market under its ***"100% Guarantee bonus Liquidation"*** with the following promo mechanics:

"1. Purchase minimum S1 (with 1000 PAYA) from the management and send it to guarantee fund. The 30% Guarantee Bonus will be monetized 100% by the management immediately if the purchaser opts to liquidate.

2. The Direct Referral Bonus (excluding Binary Bonus) of the sponsor/upline can also liquidate it to the management for 100% monetization."

Mr. Pasicolan encouraged the members to double their effort in recruiting members so they could easily close the company's current "fund block" and move to the succeeding one as a way to increase the value of Paya Tokens.

ISSUE

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

RULING

We find the Motion to be impressed with merit and hereby grants the same.

Payasian is a corporation registered with the Commission on 09 August 2019 under Company Registration No. CS201913401 with the following purpose, thus:

"To engage in, conduct and carry on the business of buying, selling, distributing, marketing, retail and wholesale insofar as may be permitted by law, goods and merchandise; to enter into all kinds of contracts for the export and import, purchase and acquisition, sale and wholesale and other disposition for its own account as principal or representative capacity as manufacturer's representative, merchandise broker, indentor, commission merchants, factors or agents upon consignment of goods and products whether artificial or natural ***without acting as broker or dealer in securities, government securities eligible dealer (GSED), investment house, transfer agent, commodity/financial futures exchange/broker/merchant, financing company, time shares/club shares/membership certificates issuers or selling agents thereof, nor engage in investment solicitation nor investment taking activity from public investor, render management services*** *except management of funds, securities and portfolios of managed*

entities. Provided, 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 Registration to Payasian 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.

A careful review of the evidence submitted by EIPD, however, reveals that Payasian is engaged in sale and/or offer of unregistered securities in the form of investment contracts without the requisite license.

Section 3 of the SRC provides:

*"**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:*

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)

The 2015 Implementing Rules and Regulations (IRR) of the SRC further define securities in Rule 3(3.1), thus:

*"**Rule 3 – Definition of Terms***

3.1. *As used in these Rule, unless the context provides otherwise:*

xxxx xxxx xxxx

3.1.20. Securities shall include*: (a) Shares of stock, bonds, government securities, commercial papers, debentures, notes, evidences of indebtedness, asset-backed securities; (b)* ***Investment contracts****, certificates of interest or participation in a profit-sharing agreement, certificates of deposit for a future subscription; (c) Fractional undivided interests in oil, gas or other mineral rights; (d) Derivatives like option and warrants; (e) Certificates of assignments, certificates of participation, trust certificates, voting trust certificates or similar instruments; (f) Proprietary or non-proprietary membership certificates* ***in***

corporations*; and (g) Other instruments as may in the future be determined by the Commission." (Emphasis supplied)*

Section 26.3 of the SRC-IRR (Prohibited Representations, Dealings and Solicitations) 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.*, 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.[2] Investment contracts have been used 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.[3]

It was in the context of the foregoing that the U.S. Supreme Court came up with and adopted the *Howey Test*[4] in determining if an investment scheme, regardless of the legal terminology used, partakes of the nature of an investment contract. In 2008, the Philippine Supreme Court had the occasion to apply and discuss the *Howey Test*, 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. 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*

[2] 328 U.S. 293 (1946).
[3] *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.
[4] *Ibid.*

> *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. 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." 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.*"[5] (Emphasis ours)

In the case of *Virata vs. Ng Wee*[6], the Supreme Court ruled that:

> "*In this jurisdiction, the Court employs the Howey test, named after the landmark case of Securities and Exchange Commission v. W.J. Howey Co., to determine whether or not the security being offered takes the form of an investment contract. The case served as the foundation for the domestic definition of the said security. Under the Howey test, the following must concur for an investment contract to exist: (1) a contract, transaction, or scheme; (2) an investment of money; (3) investment is made in a common enterprise; (4) expectation of profits; and (5) profits arising primarily from the efforts of others. Indubitably, all of the elements are present in the extant case*."

Applying the *Howey Test* to the instant case, this Commission agrees with the EIPD, and holds that Payasian is engaged in the sale and/or offer of securities in the form of investment contracts.

First, Payasian sold and/or offered "Sharer Packages" to the investing public, a transaction/scheme where Payasian agreed to issue Paya Tokens and pay guaranteed returns in return for the investments made by the public;

Second, Payasian's members invested money in exchange for *Paya Tokens* and a guaranteed return of their investment;

Third, Payasian's members invested in a common enterprise consisting in the operation and maintenance of the "Sharer Packages" and the "Fund

[5] Power Homes Unlimited Corp. v. Securities and Exchange Commission, G.R. No. 164182, February 26, 2008.
[6] G.R. Nos. 220926, 221058, 221109, 221135 & 221218, [July 5, 2017].

Blocking and Paya Token Mining" scheme which is designed to increase the value of the Paya Tokens;

Fourth, Payasian's members expects to receive the guaranteed return of their investments which is as high as 6.1% per day or 184.2% per month; and

Fifth, the member investors expect to earn profits from the entrepreneurial and managerial efforts of others i.e. the member-investor waits for their respective downlines to recruit other members; this entire scheme is facilitated by Payasian.

Records disclosed that the foregoing investment scheme was confirmed and admitted by Mr. Abalain and Mr. Coloma during their discussion with the EIPD Surveillance Team. Mr. Abalain and Mr. Coloma emphasized that an investor does not need to exert any effort other than to pay the subscription fees in order to earn. It is thus clear that Payasian's offer and solicitation of investments from the public through its "Sharer Packages", with a promise of a guaranteed return, constitutes sale/offer for sale of securities in the form of investment contracts, as it actively entices the public to invest their hard-earned money with the expectation of receiving passive income from the pool of investments gathered from all member-subscribers and Paya token mining, while earning active income from recruitment bonuses.

Moreover, the act of Payasian in publishing and making actual presentations of its investment scheme through Facebook and its web page, and inviting investors to invest with them, constitutes public offering as defined under Rule 3.1.17 of the 2015 IRR of the SRC, to wit:

> *"**Rule 3.1.17** – Public Offering is any offering of securities to the public or to anyone who will buy, 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:*
>
> *i. Publication in a newspaper, magazine or printed reading material which is distributed within the Philippines or any part thereof;*
> *ii. Presentation in public or commercial place;*
> *iii. **Advertisement or announcement in any radio, telephone, electronic communications, information communication technology or any other forms of communication**; or*
> *iv. Distribution and/or making available flyers, brochures or any offering material in a public or commercial place, or to prospective purchasers through the postal system, information communication technology and other means of information distribution."* (Emphasis supplied)

The SRC clearly provides that securities cannot be sold or offered to the public without a registration statement duly filed with and approved by the Commission.

Section 8(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 Payasian is not authorized to sell or offer the "Sharer Packages" to the public because they are securities in the form of investment contracts, and Payasian does not have the requisite license from the Commission. This undoubtedly warrants the issuance of a cease and desist order because the act of Payasian 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.[7]

The foregoing finds support in the case of *Securities and Exchange Commission vs. CJH Development Corp.*[8] (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*."

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:

[7] Section 64 of the Securities Regulation Code.
[8] G.R. No. 210316, November 28, 2016.

> "*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.*"

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

WHEREFORE, premises considered, **PAYASIAN PTE. LTD CORPORATION**, its partners, operators, directors, officers, salesmen agents, representatives, promoters, and all persons, conduit entities and subsidiaries claiming and acting for and on its behalf, are hereby directed to **IMMEDIATELY CEASE AND DESIST UNDER PAIN OF CONTEMPT** 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** Payasian, 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 the Commission's website; (b) published in two (2) newspapers of general circulation; and (c) 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 the lifting of the Enhanced Community Quarantine (ECQ).

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Pasay City, Philippines, 20 March 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner