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

IN THE MATTER OF:

BF FOOTBALL/B&F METROSPORT/ BF FOOTBALL INVESTMENT PLATFORM/BF FOOTBALL HEDGE FUND INVESTMENT PLATFORM

SEC CDO CASE No. 03-22-087

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.

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CEASE AND DESIST ORDER

This resolves the *Motion for Issuance of a Cease and Desist Order*[1] (the "Motion"), filed by the Enforcement and Investor Protection Department (EIPD), praying that an order be issued: (a) directing BF Football/B&F Metrosport/BF Football Investment Platform/BF Football Hedge Fund Investment Platform (collectively "BF Football"), its officers, operators, administrators, promoters, representatives, salesmen, agents, investment team planners, mentors, enablers, influencers, assigns, conduit entities, subsidiaries (collectively referred to as "Agents"), and any and all persons claiming, and/or acting for and in their behalf, to immediately cease and desist, from further engaging in the sale, and/or offer of unregistered securities, and to cease its internet presence relating to its investment activities until the required registration statements are filed with, and approved by the Securities and Exchange Commission (the "Commission"), and the license to offer/sell securities is issued; and (b) prohibiting BF Football, its Agents, and any and all persons claiming, and/or acting for and in their behalf, from selling, encumbering, conveying, or disposing any of its properties, and/or assets, without the prior written authority from the Commission.

PARTIES

The EIPD is one of the Commission's operating departments tasked, among others, to investigate, and to institute administrative

[1] Filed on 21 March 2022.

actions against persons, and entities, engaged in the sale, and/or offer of unregistered securities without the requisite secondary license.[2]

BF Football is an entity that is not registered with the Commission, either as a corporation or partnership,[3] which operates an online-investment solicitation business, and is not authorized to solicit investments from the public, as it has not secured the required license from the Commission, as prescribed under Section 8.1 of the Securities Regulation Code (SRC).[4]

RELEVANT FACTS

On the basis of numerous public reports and inquiries,[5] filed with the EIPD, relating to the legitimacy of the business operations of BF Football, the EIPD conducted an investigation on the activities, and operations of BF Football, particularly done on social media platforms for possible violations of the SRC, the Revised Corporation Code (RCC), and other laws, rules, and regulations, implemented by the Commission.[6]

The investigation revealed that BF Football openly, and publicly, presents itself to be the "*world's largest sports investment company since 2011*",[7] operating a "*reverse betting platform*" for football match results, which recommends bets on the scores of actual football games where even a wrong bet realizes a profit on the part of the investor. BF Football promises its investors of a "zero loss" on their investments.[8]

The evidence presented by the EIPD shows that BF Football entices the public to make a one time investment, of as low as ₱500.00, which entitiles the investor to a guaranteed return of investment at the rate of 3% to 5% daily. To convince the public that LMB Footbal is carrying out a legitimate betting operations, it represents to the public that the investment scheme involves actual football games, which gives investors eighteen (18) betting options of 0-0 to 3-3, with a probability winning ratio of 17/18 or 96%, with no loss or zero risk.

BF Football's investment scheme, as published in its social media account (Facebook), shows that a one-time investment of Five Hundred Pesos (₱500.00) will yield a profit of Five Hundred Forty-Eight Pesos & Seventy Centavos (₱548.78), within a period of thirty (30) days, computed as follows:

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[2] Section 2-2(c)(1-c), Rule II, Part I of the 2016 SEC Rules.
[3] Annex "G-3", Motion.
[4] Annexes "G" to "G-2", Motion.
[5] Annex "I", Motion.
[6] Annex "C", Motion.
[7] Paragraph 4, Motion.
[8] Paragraph 8 of the Motion.

Day	Principal	Interest 2.5%	Total Capital & Interest	Net Profit
1	₱500.00	₱12.50	₱512.50	₱12.50
2	₱512.50	₱12.81	₱525.31	₱25.31
3	₱525.31	₱13.13	₱538.45	₱38.45
4	₱538.45	₱13.46	₱551.91	₱51.91
5	₱551.91	₱13.80	₱565.70	₱65.70
6	₱565.70	₱14.14	₱579.85	₱79.85
7	₱579.85	₱14.50	₱594.34	₱94.34
8	₱594.34	₱14.86	₱609.20	₱109.20
9	₱609.20	₱15.23	₱624.43	₱124.43
10	₱624.43	₱15.61	₱640.04	₱140.04
11	₱640.04	₱16.00	₱656.04	₱156.04
12	₱656.04	₱16.40	₱672.44	₱172.44
13	₱672.44	₱16.81	₱689.26	₱189.26
14	₱689.26	₱17.23	₱706.49	₱206.49
15	₱706.49	₱17.66	₱724.15	₱224.15
16	₱724.15	₱18.10	₱742.25	₱242.25
17	₱742.25	₱18.56	₱760.81	₱260.81
18	₱760.81	₱19.02	₱779.83	₱279.83
19	₱779.83	₱19.50	₱799.33	₱299.33
20	₱799.33	₱19.98	₱819.31	₱319.31
21	₱819.31	₱20.48	₱839.79	₱339.79
22	₱839.79	₱20.99	₱860.79	₱360.79
23	₱860.79	₱21.52	₱882.31	₱382.31
24	₱882.31	₱22.06	₱904.36	₱404.36
25	₱904.36	₱22.61	₱926.97	₱426.97
26	₱926.97	₱23.17	₱950.15	₱450.15
27	₱950.15	₱23.75	₱973.90	₱473.90
28	₱973.90	₱24.35	₱998.25	₱498.25
29	₱998.25	₱24.96	₱1,023.20	₱523.20
30	₱1,023.20	₱25.58	₱1,048.78	₱548.78

In addition to the guaranteed monthly return, the screenshots of the online posts of BF Football, which were submitted in evidence, show that investors are also promised a commission of either 10%, 5%, or 3% every time they are able to successfully invite new investors,[9] gift bonus, VIP Birthday Celebrant Bonus, instant reward, and BF Original Agent Promotion Bonus Rebate.

BF Football's monthly and annual investment plans with their respective yields,[10] as published in its website, and in the social media platforms of its Agents, are as follows:

[9] Paragraph 9 of the Motion (See Annexes "D" and "H")
[10] Annex "L", Motion.

Subscription Plan[11]	Per Month	Per Year
3,000 Plan	3,067	34,958
5,000 Plan	5,111	58,263
10,000 Plan	10,222	116,527
50,000 Plan	51,108	582,636

In relation to the process of investing in FB Football, the EIPD submitted in evidence a screenshot of the entity's dashboard which shows the registration process that an investor must comply with, to wit:

A. Choosing the country;
B. Entering one's preferred account name which may be a combination of letters and numbers;
C. Entering one's password consisting of six (6) to sixteen (16) digits;
D. Entering the promotional code which can be obtained from the Agent;
E. Entering a mobile number which must be a G-Cash verified number for easier transaction;
F. Get the verification code and then proceed to click "REGISTER"; and
G. Wait for the confirmation of one's registration.

The EIPD submitted evidence showing that BF Football, purportedly operating under the name "B&F Metrosport", used a falsified SEC Certificate of Incorporation with number CN201736987.[12] In support thereof, the EIPD submitted the Certification[13] issued by the CRMD, stating that B&F Metrosport is neither registered as a corporation or partnership.

Evidence was also submitted showing that BF football's agents represented that it has an office at Regus Eco Tower Building, 32nd street, 9th Avenue, Bonifacio Global City (BGC), Taguig City.[14] However, for lack of the required proof of registration, the lessor terminated the lease immediately, and informed the EIPD through an email dated 7 March 2022, that BF Football is no longer using the leased offices.

In support of its allegation that BF Football is not a registered corporation or partnership, and has no license to sell/offer securities, the EIPD presented in evidence the Certifications[15] issued by the Company Registration and Monitoring Department (CRMD), the Corporate Governance and Finance Department (CGFD), and the

[11] For subordinates.
[12] Annex "J", Motion
[13] Annex "K", Motion.
[14] Annex "I", Motion
[15] Annexes "F" to "F-2", Motion.

Markets and Securities Regulation Department (MSRD) of the Commission, showing that it has not applied for a primary franchise as a corporation or partnership, and has not been issued of any secondary license, to operate as a broker/dealer of securities, and is not a registered issuer of any securities, pursuant to Sections 8 and 12 of the SRC, or of mutual funds, including exchange traded funds, membership certificates, and time shares.

The EIPD likewise obtained a certification from the Philippine Amusement and Games Corporation (PAGCOR),[16] stating that BF Football has not been issued a license, and/or accreditation, to operate as an online sports betting; neither does it have any pending application.

During the course of its investigation, the EIPD received a report that BF Football was able to entice over a hundred people in Bacoor, Cavite, through its leaders Gabi Caburnay, Michael Q. Alcaraz a.k.a MB, or Mike Baba, and Kenneth Vista, who were allegedly putting pressure on their subordinates to recruit more investors in order to take advantage of the additional incentives.[17]

On 20 January 2022, the Commission issued an Advisory,[18] informing, and warning the public, that BF Football is not authorized to solicit investments, nor to issue securities, as defined under the SRC, as it has not secured the required license from the Commission. The public was also warned that BF Football is not registered, either as a crowdfunding intermediary, or a funding portal. Hence, the public was advised to exercise caution in dealing with individuals, or group of persons soliciting investments, or recruiting investors for and on behalf of BF Football.

Notwithstanding the issuance of the Advisory, BF Football continuously operates, and conducts investment-taking, and solicitation activities.[19]

Hence, the instant *Motion*

ISSUE

Whether the issuance of a cease and desist order against BF Football is warranted based on the findings and evidence presented by the EIPD.

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[16] Annex "A", Motion.
[17] Paragraph 14 of the Motion (see Annex "I")
[18] Annex "H", Motion.
[19] Annex "I" of the Motion.

RULING

The *Motion* is impressed with merit.

The EIPD's *Motion,* supported by substantial evidence, sufficiently established that BF Football, an entity that is not registered as a corporation, is offering, and/or selling unregistered securities in the form of investment contracts to the public, without the required license from the Commission, in violation of Section 3 of the SRC and Rule 3.1.17 of the SRC-IRR.

Section 3 of the SRC defines "securities" as follows:

> "SEC. 3. Definition of Terms. –
>
> 3.1. "**Securities**" are **shares, participation or interests** in a corporation or **in a commercial enterprise** or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character. It **includes**:
>
> x
>
> (b) **Investment contracts**, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription;" (Emphasis supplied)
>
> An "investment contract" is defined as follows:
>
> **"An investment contract means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others**. It 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."[20] (Emphasis supplied)

In the case of *Power Homes Unlimited v. Securities and Exchange Commission,*[21] the Supreme Court ruled that investment contracts are securities that are required to be registered with the Commission for the protection of the investing public, to wit:

> "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."

[20] Rule 26.3.5 of the Implementing Rules and Regulations of the SRC.
[21] Note 24, *Supra.*

The concept of an investment contract in the Philippines is of American origin. It traces its roots from the US Supreme Court case *Securities and Exchange Commission v. W.J. Howey Co.,*[22] where the Court stated that an investment contract is 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. 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.[23]

The concept of an investment contract was thereafter adopted, and used in *Power Homes Unlimited Corporation v. Securities and Exchange Commission,*[24] where the Supreme Court ruled that an investment contract in our jurisdiction, to be a security subject to regulation by the Commission, must be proved to be: *(1) an investment of money; (2) in a common enterprise; (3) with expectation of profits, (4) primarily from efforts of others.* Under this 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.[25]

Based on the foregoing, the Commission finds that BF Football is unlawfully engaged in the sale, and/or offer for sale of securities in the form of investment contract, as it has no license to carry out the same.

> **First,** BF Football has already enticed more than a hundred investors to invest the minimum amount of ₱500.00;
>
> **Second,** BF Football's investment scheme allows people to invest by focusing on the financial aspect of the soccer game rather than the betting/gambling. This scheme obviously involves the pooling of resources consisting of the investors' moneys which is used to pay the guaranteed returns of its existing investors, and intended to ensure the continued operation of the entity. The sale of this investment scheme is the only means by which BF Football

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[22] 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244, 163 A.L.R. 1043 (1946).
[23] *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.
[24] G.R. No. 164182, 26 February 2008.
[25] Investment Co. Institute v. Camp, 274 F. Supp. 624 (D. D.C. 1967).

will be able to sustain its operations, and fulfill its promise to pay its investors the guaranteed returns;

Third, BF Football's investors expect to earn a guaranteed return of their investment in an amount equivalent to 2% to 5% daily, or 60% to 90% monthly; and

Fourth, BF Football's investors are not expected to do anything after paying their one-time investment of ₱500.00. It is BF Football and/or agents, who primarily carry out the promotion of BF Football's investment plan, to ensure its continuity. BF Football even recommends the bets that investors placed on actual football games.

Relative thereto, Section 8.1 of the SRC categorically provides that securities cannot be sold, or offered for sale within the Philippines, if the same are not registered with the Commission in the form of an approved Registration Statement, and a Permit to Offer/Sell issued in favor of the applicant, 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 and underscoring supplied)

Applying the foregoing to the instant case, this Commission finds that BF Football is unlawfully engaged in the sale, and/or offer of unregistered securities in the form of investment contract, because it has no license to carry out the same, aside from the fact, that it is not registered as a corporation with the Commission.

Moreover, the evidence presented by the EIPD also shows that BF Football's investment scheme involves public offering of securities, considering that its business operations, and investment-taking activities are published online, through social media platforms, sans the required license.

Public offering of securities is defined under Rule 3.1.17 of the 2015 Implementing Rules and Regulations ("2015 IRR") of the SRC, as follows:

> "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:
>
> x x x

3.1.17.3 Advertisement or announcement in radio, television, telephone, **electronic communications, information communication technology or any other forms of communication**;"[26] (Emphasis supplied)

In this case, the evidence clearly shows that BF Football, and its Agents, are using their social media accounts to publicly sell, and/or offer for sale unregistered securities, without the required license from the Commission. This act clearly violates Rule 3.1.17 of the 2015 IRR of the SRC, which further justifies the issuance of a CDO.

Finally, relative to the requirements prescribed by law for a valid issuance of a CDO, Section 64 of the SRC provides, thus:

> "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 requisites that must be complied with before a cease and desist order can be validly issued:

1) There must be a conduct of a proper investigation or verification; and

2) 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.[27]

Anent the first requisite, the records disclose that the EIPD conducted a proper investigation as evidenced by the Affidavit of the EIPD investigating officer. The EIPD also provided documentary evidence gathered, and submitted in support of its *Motion,* showing the unauthorized investment solicitation activities of BF Football.

The second requisite is likewise present, as shown by BF Football's (as well as its Agents) willful employment of fraud, by making it appear to the public that it is a legitimate corporation authorized to sell, offer, and deal with securities. The use of a falsified Certificate of Incorporation, and a registered office address, was intended to defraud

[26] Rule 3.1.17 of the Implementing Rules and Regulations of the SRC.
[27] *Securities and Exchange Commission vs. Performance Foreign Exchange Corporation*, G.R. No. 154131, July 20, 2006.

the public, and make it appear that it is a registered entity, carrying out a legitimate business.

In *People of the Philippines vs. Mateo, et al.,*[28] the Supreme Court held that fraud is a generic term that covers any act calculated to deceive, thus:

> "**Fraud**, in its general sense, **is deemed to comprise anything calculated to deceive**, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or **by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth** and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. On the other hand, **deceit is the false representation of a matter of fact**, whether by words or conduct, **by false or misleading allegations**, or by concealment of that which should have been disclosed **which deceives or is intended to deceive another so that he shall act upon it to his legal injury.**" (Emphasis supplied)

Moreover, the act of BF Football in selling/offering unregistered securities, operates as a fraud to the public which, if unrestrained, will likely cause a grave, or irreparable injury, or prejudice to the investing public.[29] This finds support in the case of *Securities and Exchange Commission vs. CJH Development Corp.,*[30] where the Supreme Court emphasized the need for a prompt issuance of a CDO, after a finding of a violation of the SRC, that will likely defraud, or cause a 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.**
>
> **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

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[28] G.R. No. 210612, October 9, 2017.
[29] Section 64 of the Securities Regulation Code.
[30] (G.R. No. 210316, November 28, 2016)

securities, in such form and with such substance as the SEC may prescribe, shall be made available to each prospective buyer." (Emphasis supplied)

On the basis of the foregoing disquisitions, this Commission finds, and so holds, that the issuance of a CDO is warranted and is in order.

WHEREFORE, premises considered, directing **BF Football/B&F Metrosport/BF Football Investment Platform/BF Football Hedge Fund Investment Platform**, and its officers, operators, administrators, promoters, representatives, salesmen, agents, investment team planners, mentors, enablers, influencers, assigns, conduit entities, subsidiaries, and any and all persons claiming, acting, and operating for and in their behalf, are hereby ordered to **IMMEDIATELY CEASE AND DESIST** from engaging in the unlawful/unauthorized solicitation, offer and/or sale of securities in the form of investment contracts, and/or any other similar or related acts, until the required registration statement is duly filed with, and approved by the Commission.

BF Football/B&F Metrosport/BF Football Investment Platform/BF Football Hedge Fund Investment Platform, its operators, directors, officers, representatives, salesmen, agents, and any and all persons claiming, and acting for and in their behalf, are likewise directed to immediately **CEASE** their internet presence relating to the transactions, and investment scheme, covered by this *Cease and Desist Order.* 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 their behalf

Finally, the Commission hereby **PROHIBITS** BF Football/B&F Metrosport/BF Football Investment Platform/BF Football Hedge Fund Investment Platform, its operators, directors, officers, representatives, salesmen, agents, and any and all persons claiming, and acting for and in their behalf, from transacting any business involving the funds in its depository banks, and/or in any non-bank financial institution, and from transferring, disposing, or conveying in any manner, any and all assets, properties, real or personal, including bank deposits, if any, of which the named persons therein may have interest, claim, or participation, whether directly or indirectly, under their custody, to ensure the preservation of the assets of the investors

The **EIPD** of the Commission is hereby **DIRECTED** to cause (a) the posting of this Cease and Desist Order in the Commission's website, and (b) the publication of the same in a newspaper of general circulation, as provided for under Section 4-2, Rule IV, Part I of the 2016 Rules of Procedure of the SEC.

The EIPD is **FURTHER DIRECTED** to submit a formal compliance report, by way of pleading, to the Commission *En Banc* WITHIN TEN (10) DAYS from receipt of this ***Cease and Desist Order***.

Let a copy of this Order be furnished to the Company Registration and Monitoring Department, Market and Securities Regulation 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, the Department of Information and Communications Technology, and the relevant local government unit(s), for their information, and appropriate action.

In accordance with the provisions of Section 64.3 of the SRC, and Part II, Rule IV, Section 4-3 of the 2016 Rules of Procedure of the SEC, the Respondent may file a verified ***Motion to Lift the CDO*** to the Commission En Banc, thru the Office of the General Counsel, within five (5) days from receipt of this Order.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Pasay City, Philippines; 5 April 2022.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDE
Commissioner

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