In the Matter of:

ALABEL MAASIM MINING CORP. (ALMAMICO), ALABEL-MAASIM SMALL SCALE MINING COOPERATIVE and/or ALABEL-MAASIM CREDIT COOPERATIVE (ALAMCCO)

SEC CDO Case No. 06-19-053

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,

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RESOLUTION

For consideration of the Commission En Banc is the *Motion Ex Abundanti Ad Cautelam To Lift Issued Cease and Desist Order* (Order) dated 7 July 2019 filed by the counsels of respondent ALAMCCO, Genita Law Office, Melliza Law Office and Clarin Law Office, personally before the Office of the General Counsel on 8 July 2019.

FACTS

On **3 June 2019**, the Enforcement and Investor Protection Department (EIPD) filed before the Commission En Banc through the Office of the General Counsel, a *Motion for Issuance of a Cease and Desist Order* (CDO) against respondents Alabel Maasim Small Scale Mining Cooperative (ALMAMICOOP), Alabel-Maasim Small Scale Mining Coporation (ALMAMICO) and Alabel Maasim Credit Cooperative (ALAMCCO) on the following grounds:

a) That ALMAMICOOP represents itself as a valid cooperative despite not being duly registered with the Cooperative Development Authority (CDA) and solicits investments to the public without the proper registration and permits from this Commission;

b) That ALMAMICO was engaged in soliciting investments from the public without proper registration and without securing the necessary license from this Commission; and

c) That ALAMCCO was found soliciting investments from persons which are not members of its cooperative and is thus offering/selling securities to the public without the proper registration and permits from this Commission.

On **4 June 2019**, the Commission En Banc found sufficient basis in issuing a CDO against respondents ALMAMICOOP, ALMAMICO and ALAMCCO. Said CDO expressly stated that: "In accordance with the provisions of Sec. 64.3 of SRC and Sec. 4-3 of the 2016 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."

On **2 July 2019,** the EIPD, as alleged in their Compliance dated 8 July 2019, sent through registered mail copies of the CDO to respondents herein.

On **3 July 2019**, the EIPD, with the assistance of the National Bureau of Investigation, proceeded to the business address of respondents at Purok Maharlika, Poblacion (Alabel), Saranggani Province and posted said CDO in the latter's premises.[1]

On **4 July 2019,** the Commission received, through private courier, a Status Quo Ante Order dated 1 July 2019 from Branch 59 of the Regional Trial Court of General Santos City in Spl. Civil Case No. 19-809.

On **8 July 2019,** the counsels of ALAMCCO filed a *Motion Ex Abundanti Ad Cautelam To Lift Issued Cease and Desist Order* dated 7 July 2019 via registered mail. On the same date, this Commission issued an order setting the initial hearing of this case on 17 July 2019.

On **10 July 2019**, the EIPD filed their *Compliance* dated 8 July 2019 regarding the posting of the CDO within respondents' business premises.

On **12 July 2019**, counsels of ALAMCCO filed a *Motion for Cancellation of Hearing and Resetting* dated the same date on the ground that they had to attend another hearing on 17 July 2019. Said Motion was granted by the Commission in an Order dated 17 July 2019. Thus, the hearing was reset to 25 July 2019.

[1] Compliance dated 8 July 2019.

On **25 July 2019**, the parties appeared before the Office of the General Counsel for the hearing of the *Motion Ex Abundanti Ad Cautelam To Lift Issued Cease and Desist Order*. During said hearing, counsels of respondent ALAMCCO manifested that they were only representing ALAMCCO and not ALMAMICO. Afterwards, the parties were ordered to file their respective Memoranda within fifteen (15) days from hearing or until 9 August 2019.

On **9 August 2019**, the EIPD filed its Memorandum while respondent ALAMCCO filed its Memorandum via registered mail, which was received by this Commission on 14 and 20 August 2019, respectively.

On **6 September 2019**, the Commission issued an Order submitting the case for resolution.

ISSUES

Upon careful consideration of the submissions of the parties herein, this Commission finds that the following are the relevant issues:

1. Whether or not the Securities and Exchange Commission has jurisdiction over the respondent ALAMCCO?

2. Whether or not respondent ALAMCCO is engaged in soliciting investments/securities from the public in violation of R.A. 8799?

3. Whether or not the issuance of the subject CDO by the SEC was in violation of the 1 July 2019 Status Quo Ante Order issued by RTC Branch 59 of General Santos City in Spl. Civil Case No. 19-809 when the same was served with this Commission on 4 July 2019?

DISCUSSIONS

I. The SEC has jurisdiction over respondent ALAMCCO.

In their *Motion Ex Abundanti Ad Cautelam To Lift Issued Cease and Desist Order* and *Memorandum*, respondent ALAMCCO argues that the SEC has no jurisdiction over it since it is a duly registered cooperative and therefore, it is the Cooperative Development Authority which has the rightful jurisdiction.

The EIPD, in its *Memorandum*, refuted ALAMCCO's argument on jurisdiction by invoking Section 5(d) and (n) of the SRC[2].

This Commission rules for the EIPD.

Firstly, the Supreme Court in the case of *Glynna Foronda-Crystal vs Aniana Lawas Son, G.R. No. 221815, 29 November 2017* ruled that "[j]urisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. **It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law** and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists."

Further, Section 4 of the Securities Regulation Code (SRC) states that "the Securities and Exchange Commission (SEC) shall be the primary agency tasked to administer and implement the provisions of the SRC." Further, Section 5(d) of the SRC also provides that one of the primary powers of the SEC is "**the power to regulate, investigate or supervise the activities** of persons to ensure compliance of the provisions of the SRC." Finally, Section **5(i) of the SRC also grants the SEC "the power to issue cease and desist orders to prevent fraud or injury to the public."**

Based on the foregoing doctrine and provisions, **the jurisdiction of the SEC pursuant to the SRC is over the investment-taking activities regardless of the nature of the entity engaged in the same.** The SRC did

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[2] Section 5 of the Securities Regulation Code states that:

> "SEC. 5. *Powers and Functions of the Commission.* – 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the followings powers and functionsL
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> (d) Regulate, investigate or supervise the activities of persons to ensure compliance;
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> (n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws."

not provide for any distinction as to which entities engaged in investment-taking activities are covered by the law. The same goes for its power to issue cease and desist orders as long as it is issued to prevent fraud or injury to the public. In fact, this Commission has already issued, on several instances, Cease and Desist Orders[3] against entities engaged in investment-taking activities that are not corporations, partnerships and associations registered with the Commission, which remains unquestioned by the Supreme Court as this date. Clearly, the SEC has the authority to regulate any entity offering investments to the public and to issue cease and desist orders against it.

Moreover, respondent ALAMCCO's active participation in this case belies its argument that this Commission has no jurisdiction over respondents herein. In the case of ***Ma. Hazelina A. Tujan-Militante vs Ana Kari Carmencita Nustad, G.R. No. 209518, 19 June*** 2017 the Supreme Court ruled that "by seeking affirmative reliefs from the trial court, the individual has deemed to have voluntarily submitted to the jurisdiction of the court. A party cannot invoke the jurisdiction of the court to secure the affirmative relief against his opponent and after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction." Said doctrine may be applied by analogy to the proceedings before this Commission considering that the latter is in the exercise of its quasi-judicial powers when it took cognizance of this case.

Here, respondent ALAMCCO prayed before this Commission for the lifting of the CDO issued against them, which is in the nature of an affirmative relief. Respondent ALAMCCO even filed for a *Motion for Cancellation of Hearing and Resetting* dated 12 July 2019 since they are unable to attend the 17 July hearing of this case, which this Commission granted. Lastly, respondent ALAMCCO appeared before this Commission for the hearing of their Motion and subsequently filed its *Memorandum*. By praying for said reliefs and actively participating in the proceedings, respondent ALAMCCO acceded to the jurisdiction of this Commission notwithstanding the fact that the Motion they filed was titled "*Ex Abundanti Ad Cautelam*".

The factual antecedents of this case are even similar to the case of ***Hong Kong and Shanghai Banking Corporation Limited vs Cecilia Diez Catalan, G.R. No. 159590, 18 October 2004,*** where the petitioner assailed the jurisdiction of the court and applied for several affirmative reliefs with the latter by way of "*Ad Cautelam*". In said case, the Supreme Court held that:

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[3] In the Matter of: Ada Farm Agri Ventures (SEC CDO Case No. 06-19-049); In the Matter of: Ever Arm Any Marketing (SEC CDO Case No. 06-19-050); Seven Star Merchandise (SEC CDO Case No. 09-16-034); In the Matter of Satarah Wellness Marketing, Satarah Investment Group, Inc., and Satarah Wellness International (SEC CDO Case No. 05-15-018) and In the Matter of: Jacama Sales and Marketing and Janus Carlo D. Manalang (SEC CDO Case No. 03-16-030_.

> "It must be noted that HSBANK initially filed a Motion for Extension of Time to File Answer or Motion to Dismiss. HSBANK already invoked the RTC's jurisdiction over it by praying that its motion for extension of time to file answer or a motion to dismiss be granted. The Court has held that the filing of motions seeking affirmative relief, such as, to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, are considered voluntary submission to the jurisdiction of the court. **Consequently, HSBANK's expressed reservation in its Answer ad cautelam that it filed the same "as a mere precaution against being declared in default, and without prejudice to the Petition for Certiorari and/or Prohibition xxx now pending before the Court of Appeals" to assail the jurisdiction of the RTC over it is of no moment. Having earlier invoked the jurisdiction of the RTC to secure affirmative relief in its motion for additional time to file answer or motion to dismiss, HSBANK, effectively submitted voluntarily to the jurisdiction of the RTC and is thereby estopped from asserting otherwise, even before this Court**." (Emphasis supplied)

Based on the foregoing, respondent ALAMCCO already submitted itself to the jurisdiction of the Commission when it sought affirmative reliefs and actively participated in this proceedings. Thus, it is estopped from assailing this Commission's jurisdiction.

II. Respondents are offering securities to the public in the form of investment contracts without securing the proper permits from the SEC, in violation of Sec. 8 and 12 of the SRC.

In its *Motion for Issuance of CDO* against the respondents, the EIPD proffered screenshots of the *i-Message* electronic mails[4] reporting the solicitation activities of one "ALMAMICO Cooperative" from the public in exchange for a 35% monthly return as long as the cooperative operates, as well as its minimum and maximum investments. Further, the EIPD, with the assistance of the SEC Davao Extension Office, submitted several screenshots[5] pertaining to Facebook pages of "ALMAMICO/ALAMCCO Digos City", "ALMAMICO/ALAMCCO Alabel", "ALMAMICO Cooperative ADMIN" and "ALMAMICO Mindanao", which showed the investment matrix of

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[4] Motion for Issuance of a Cease and Desist Order, Annexes "D". "G" to "G-1", and "I" to "I-1".
[5] *Id.*, Annex "J" to "J-21".

respondents herein and the various members/investors promoting the same, as well as videos showing the long line of people waiting for their payout and the investment schemes of herein respondents. Finally, the EIPD presented Certifications from the Market Securities and Regulation Department and the Corporate Governance and Finance Department stating that respondent ALMAMICOOP and ALMAMICO have not registered any of its securities and that they have not been issued any permit to offer and sell securities to the public.

Subsequently in its *Memorandum*, the EIPD attached the CDA Advisory issued against respondent ALAMCCO, along with the CDA Cease and Desist Orders issued against ALMAMICOOP and ALAMCCO. Said Advisory[6] and CDO[7] was issued by the CDA against ALAMCCO on the ground that it was found to be soliciting investments from non-members, which is in violation of their Articles of Cooperation and the Philippine Cooperative Code of 2008. As for the CDO[8] against ALMAMICO Cooperative, the same was issued by reason of its misrepresentation that it is a legitimate cooperative in order to solicit investments from the public, when it fact, it was not registered with the CDA.

Respondent ALAMCCO, in its *Motion Ex Abundanti Ad Cautelam To Lift Issued Cease and Desist Order* and *Memorandum,* merely denied the accusation of soliciting investments from non-members and averred that the investments are the very contributions of its members.

After a careful consideration of the submissions of the parties herein, this Commission finds substantial evidence that respondents are engaged in offering/selling securities to the public in the form of investment contracts.

Securities are defined in **Section 3.1 of the SRC, viz:**

> **Section 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:
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> Xxxxx
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> (b) **<u>Investment contracts</u>**, certificates of interest or participation in a profit sharing agreement, certificates of deposit for future subscription;

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[6] Memorandum of EIPD dated 9 August 2019, Annex "C".
[7] *Id.,* Annex "D".
[8] *Id.,* Annex "B".

Xxxxx"

Further, **Sections 8 and 12 of the SRC** provide that:

> "**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 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.
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> **12.1** All securities required to be registered under Subsection 8.1 shall be registered through the filing by the issuer in the main office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and document as the Commission prescribe."

Section 26.3 of the 2015 Implementing Rules and Regulation of the SRC further provides for prohibited representations, dealings and solicitations, to wit:

> "26.3. Prohibited Representations, Dealings and Solicitations
> It shall by unlawful for any:
> xxx.
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> 26.3.5. Person, whether as principal or agent, to buy, sell or deal in securities or solicit investment in securities and other investment contracts, unless he is a registered broker, dealer or licensed salesman of a broker dealer and the securities are registered under the Code or exempt from registration pursuant to Sections 9 and 10 thereof.
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> **Dealing in securities** includes making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to acquiring, disposing or, subscribing for securities.
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> **Solicitation** is the act of seeking or asking for business or information which includes **the act of proving information about a security or investment product being offered for sale with the view of making another person a client or closing or bringing in a sale or purchase of security or investment product.** The solicitor need not be a signatory to any contract relative to such offer or sale of the security.
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> **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.**
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> **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)

Finally, the Supreme Court in the case of ***Power Homes Unlimited Corporation vs Securities and Exchange Commission and Noel Manero, G.R. No. 164182, 26 February 2008*** applied the *Howey Test* as pronounced in the American Case "*SEC vs W.J. Howey Co.*", which provides for the elements of an investment contract, to wit:

> "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."

Applying the *Howey Test* in this case, the investment scheme of respondents herein wherein investors are promised a monthly return of thirty-five percent (35%) is within the definition of an investment contract, which are securities under the SRC to wit:

- **Investment of Money -**
  Any person may invest as low as Php 5,000.00 to become an Investor-Partner of herein respondents as evidenced by their Certificates of Agreement for Money-Back Guarantee and/or Certificate of Deposits[9], which is in the nature of an investment contract.

- **Common Enterprise -**
  There is investment of money to ALMAMICOOP, which is not registered with the CDA, ALMAMICO, with SEC Registration No. CS201951230[10] and ALAMCCO, with CDA Registration No. 9520-1012000000044923[11], which for all intents and purposes, is the **SAME ENTITY** due to the following reasons:

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[9] Motion for Issuance of a Cease and Desist Order, Annexes "J-6" and "J-7".
[10] Motion for Issuance of a Cease and Desist Order, Annex "A".
[11] Memorandum of ALAMCCO, Exhibit "1".

1) They all operate in the same business address at Purok Maharlika, Poblacion (Alabel), Saranggani Province.
2) ALMAMICO Corporation share the same directors and cooperators as ALAMCCO, as shown by their registration documents.
3) All three entities use the same catchphrase of "Alabel-Maasim" and business scheme of offering investments to the public, as shown by the Facebook screenshots and videos presented by the EIPD.
4) Finally, the Facebook screenshots of the EIPD also shows that respondents interchangeably use the name ALMAMICO and ALAMCCO to its members and investors.

- **Expectation of Profits -**

The investor-partners of respondents herein part with their money with the expectation of a monthly return of thirty-five percent (35%).

- **Primarily from the Efforts of Others -**

The investor-partners of respondents herein earn a monthly return of thirty-five percent (35%) without any effort but solely from the managerial and entrepreneurial efforts of herein respondents.

With all the elements of an investment contract under the *Howey Test* present in this case, respondents cannot now deny that they are engaged in offering/selling securities in the form of investment contracts. **Further, the presence of herein respondents in Facebook and Youtube as evinced by the screenshots and videos presented by the EIPD shows that they are also using social media as a medium to advertise their investment scheme to the public and not just to their own members. Said acts are already considered solicitation and public offering of securities.[12]** This is

[12] Section 3.1.17 of the 2015 Implementing Rules and Regulation of the Securities Regulation Code which states that:

> "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:
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> 3.1.17.1. Publication in any newspaper, magazine or printed reading material which is distributed within the Philippines;
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> 3.1.17.2. Presentation in any public or commercial place;

strengthened by the fact the CDA found respondents ALMAMICO Cooperative and ALAMCCO offering said investment to non-members in violation of their Articles of Cooperation and the Philippine Cooperative Code of 2008 and thus, the issuance of an Advisory against ALAMCCO and subsequently, a CDO against both ALMAMICO Cooperative and ALAMCCO.

Finally, respondents' failure to register said investment contracts and to secure a *Permit to Offer/Sell Securities to the Public* from this Commission as evinced by the Negative Certification presented by the EIPD places them in direct violation of Sec. 8, 12 and 26 of the SRC, which warrants the issuance of a CDO against them.

III. The issuance of the subject CDO by the SEC is not in violation of the 1 July 2019 Status Quo Ante Order issued by RTC Branch 59 of General Santos City in Spl. Civil Case No. 19-809.

In its *Motion Ex Abundanti Ad Cautelam To Lift Issued Cease and Desist Order* and *Memorandum,* respondent ALAMCCO alleges that the issuance of the CDO against them was in violation of the Status Quo Ante Order dated 1 July 2019, which was issued by the Branch 59 of the RTC-General Santos in Spl. Civil Case No. 19-809.

This Commission disagrees.

Section 5 of Rule 58 of the Rules of Court states that:

> **"Section 5.** *Preliminary injunction not granted without notice; exception.* — No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which

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> 3.1.17.3. Advertisement or announcement on radio, television, telephone, electronic communications, information communication technology or any other forms of communication; or

3.1.17.4. 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."

> the application for preliminary injunction was made, may issue a temporary restraining order to be **effective only for a period of twenty (20) days from service on the party or person sought to be enjoined**, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order. (Bar Matter No. 803, 17 February 1998)
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> However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single sala court may issue *ex parte* a temporary restraining order effective for **only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith.** Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.
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> However, if issued by the Court of Appeals or a member thereof, the temporary restraining **order shall be effective for sixty (60) days from service on the party or person sought to be enjoined**. A restraining, order issued by the Supreme Court or a member thereof shall be effective until further orders." (Emphasis supplied)

Further, the Supreme Court in the case of ***Rosario E. Cahambing vs Victor Espinosa and Juana Ang, G.R. No. 215807, 25 January 2017*** ruled "that the sole object of a preliminary injunction is to maintain the *status quo* until the merits can be heard."

Based on the foregoing provision and doctrine, injunction orders, cease and desist orders and temporary restraining orders are issued to direct the person to refrain from continuing the acts being restrained. **As such, the same is prospective in nature and does not undo the acts that have already been done previous to its issuance**. Further, said orders only bind the person and entity sought to be enjoined only upon the actual service of said order to the latter.

With respect to Status Quo Ante Orders, the Supreme Court has already ruled that the same are in the nature of temporary restraining orders, which has a life span of not more than twenty (20) days in case the court does not issue a writ of preliminary injunction.[13] Thus, Status Quo Ante Orders are also governed by rules under Rule 58 of the Rules of Court.

Applying the foregoing doctrines in this case, this Commission emphasizes on the fact that the Cease and Desist Order against respondents were issued by this Commission on **4 June 2019**. Further, the same was posted and served to respondents on **3 July 2019**. During said dates, the Commission has not been served with any Status Quo Ante Order issued against it. In fact, it was only on **4 July 2019** when this Commission received, through private courier, the Status Quo Ante Order dated 1 July 2019 of Branch 59 of the Regional Trial Court of General Santos City in Spl. Civil Case No. 19-809.[14]

Since the issuance of the CDO and its subsequent implementation preceded the receipt of said Status Quo Ante Order, there is nothing for this Commission to undo or unwind but rather it is duty-bound to maintain the CDO against herein respondents.

And further considering that respondents now seek affirmative relief from this Commission, it is constrained to resolve this case, as follows.

CONCLUSION

Taking into consideration all the foregoing circumstances, this Commission finds herein respondents offering securities to the public in the form of investment contracts without securing a permit from this Commission, in violation of Sections 8 and 12 of the SRC. Finally, respondents failed to

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[13] Nilo L. Dojillo vs Comelec, G.R. No. 166542, 25 July 2006.

[14] Re: Complaint against Justice Elvi John S. Asuncion of the Court of Appeals., A.M. No. 06-6-8-CA, 20 March 2007 where the Supreme Court ruled that:

> "Technically, status quo is "defined as the last actual, peaceful and uncontested status that precedes the actual controversy, that which is existing at the time of the filing of the case"[1] **However, the Supreme Court has ruled that a status quo ante order has "the nature of a temporary restraining order".** Thus, the decretal portion of the resolution of July 24, 2001, specifically ordered that the public respondent is 'temporarily enjoined' from implementing the assailed writ of execution. Respondent justice must be playing with words. When a judge or justice uses technical or legal terms with a well-defined meaning, such as a temporary restraining order or a status quo order, he must have intended those meaning; he cannot impute a "directory" meaning to confuse the parties. x x x **On the other hand, he ought to know that a temporary restraining order cannot exist indefinitely; it has a lifetime of a non-extendible period of sixty days and automatically expired on the sixtieth day. No judicial declaration that it has expired is necessary, and, the lower courts, including the Court of Appeals, have no discretion to extend the same**. A second TRO by the Court of Appeals after the expiration of the sixty -ay period is a patent nullity.(Emphasis supplied)

show any proof to warrant the lifting of the CDO issued against them. As such, herein respondents must be immediately restrained in order to protect the investing public from being defrauded and gravely damaged.

WHEREFORE, premises considered, the *Motion Ex Abundanti Ad Cautelam To Lift Issued Cease and Desist Order* of respondent ALAMCCO is hereby **DENIED** for lack of merit. The CDO dated 4 June 2019 issued against **Alabel Maasim Small Scale Mining Cooperative, Alabel Maasim Small Scale Mining Corporation** and **Alabel Maasim Credit Cooperative** is **MADE PERMANENT.**

SO ORDERED.

Pasay City, 17 September 2019.

***EMILIO B. AQUINO**
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

***JAVEY PAUL D. FRANCISCO**
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

*On Official Business