ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT

In the Matter of:

For: Revocation of Certificate of Incorporation/Registration

YELLOWDOT TRANSPORT TERMINAL INC.
SEC Registration No. CS201606447
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ORDER OF REVOCATION

YELLOWDOT TRANSPORT TERMINAL INC. ("YELLOWDOT") was registered with the Securities and Exchange Commission (SEC) on 30 March 2016 under Company Registration No. CS201606447. Its principal office address is at the 2nd Floor, Unit 208 Guerdon Commercial Center, Katipunan Street, corner Rainbow Street, Barangay Concepcion Dos, Marikina CIty, Philippines (amended on 1 February 2019). Its primary purpose is:

> *"to engage in business of developing and providing transportation solutions and technologies, operating land transportation terminals as well as providing transportation services for all kinds of goods, cargoes and passengers (as amended on 1 February 2019)."*

The instant case stemmed from numerous emails received by the Commission where the senders provided information regarding the solicitation activities of the abovementioned entity.

Based on reports, **YELLOWDOT TRANSPORT TERMINAL INC**. is engaged in fleet management business with a concept of "You Avail, We Manage, You Earn." The company offers investment to the public with an initial payment of Two Hundred Fifty Thousand Pesos (Php250,000.00) and monthly amortization of Thirty Thousand Pesos (Php30,000.00) to acquire a public utility vehicle known as "millennial jeepney."

Further, part of the enticement of the subject entity in its investment-taking activity is a promise of unusually high profits or returns amounting to Fifty-five Thousand Pesos (Php55,000.00) to Eighty-five Thousand Pesos (Php85,000.00) per month. This was confirmed by the Land Transportation Franchising and Regulatory Board (LTFRB) in its Notice to the Public.

Records of the Commission show that **YELLOWDOT TRANSPORT TERMINAL, INC.** is registered as a corporation, however, it has not secured registration and/or secondary licenses from the Commission's operating departments namely: Company Registration and Monitoring Department (CRMD); Markets and Securities Regulation Department (MSRD) and Corporate Governance and Finance Department (CGFD).

Consequently, on 7 August 2019, the Commission issued a SEC Advisory informing the public that **YELLOWDOT TRANSPORT TERMINAL, INC**.:

The public is hereby informed that the subject entity is registered with the Commission as a corporation, however, it is NOT authorized to solicit investments from the public, not having secured prior registration and/or license to sell securities or solicit investments as prescribed under Section 8 of the Securities Regulation Code (SRC).

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In view thereof, the public is advised to STOP INVESTING in the investment scheme being offered by the said entity.

On 14 August 2019, a ***Show Cause Order*** was issued against **YELLOWDOT TRANSPORT TERMINAL, INC.,** addressed to the company's registered principal office address, and to its stockholders-directors-incorporators, namely; Jerry C. Castillo, Clarible C. Lincod, Guadylynne C. Bauto and Rodel Bauto, ***directing the company to show cause why its Certificate of Incorporation should not be revoked for serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public and for committing fraud in the procurement of its Certificate of Incorporation and to show cause why no administrative sanction and/or criminal charges should be filed against*** **YELLOWDOT TRANSPORT TERMINAL, INC.,** ***and/or its incorporators, directors and officers for violation of the Securities and Regulation Code***.

On 1 September 2020, Yellowdot filed its answer to the Show Cause Order and they wrote:

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YELLOWDOT's ARTICLES OF INCORPORATION CLEARLY PROHIBITS THE COMPANY FROM <u>OFFERING OR SELLING INVESTMENTS TO THE PUBLIC</u>.

Under its Articles of Incorporation, Yellowdot is primarily engaged in the business of "providing transportation services for all kinds of goods, cargoes, and passengers", and does not in any way, form or manner, solicit, offer or take investments from the public. This is further supported by the last paragraph of Article II of its Articles of Incorporation. Yellowdot merely sells modernized jeepneys, under the government's PUV Modernization Program, albeit with unique management features, which does not necessarily mean, however, that the same is an investment contract/agreement, warranting registration with the Securities and Exchange Commission (SEC).

THE MEMORANDUM OF AGREEMENT BETWEEN YELLOWDOT AND THE PUBLIC IS NOT, AND COULD NOT BE, <u>CONSIDERED AN INVESTMENT CONTRACT.</u>

A mere perusal of the Memorandum of Agreement entered into by Yellowdot with its customers, which is more of a purchase agreement with unique management features, applying Howey Test, readily *shows that it is not an investment contract, to wit:*

> *a) The intended third-party customer does not invest in Yellowdot, but rather, purchases a modern jeepney, for and in consideration of One Million Nine Hundred Fifty Thousand Pesos (Php1,950,000.00), with an initial down payment of Two Hundred Fifty Thousand Pesos (Php250,000.00) followed by regular monthly payments of Thirty Thousand Pesos (Php30,000.00);*
> *b) Upon full payment of the purchase price, within a period of seven (7) years, the intended third party-customer will own the modern jeepney;*
> *c) The down payment given by the intended third-party customer is not pooled to finance a business or scheme but is strictly applied as down payment for the unit sold, with an undertaking on the part of the Yellowdot to transfer absolute ownership over the same seven (7) years and completion of amortizations;*
> *d) There is no guaranteed income or returns to be given the intended third-party customer. The release of income, if any, would be contingent upon the net monthly income after deducting the monthly expenses and amortization for the unit. In fact, the intended third-party customer may not even derive income as the latter is entirely dependent on the operations of the jeepney unit purchased; and*
> *e) Whatever income or profit the intended third-party customer may gain is not depended on the efforts of others, but on the performance of the jeepney purchased. If at all, the relationship between Yellowdot and the intended third-party customer can be classified as a partnership, with Yellowdot encouraging the intended third-party customer to coordinate, consult and be active in the management of the unit.*

On 27 July 2020, a Supplemental Response to the Show Cause Order with Settlement Offer was submitted to Enforcement and Investor Protection Department (EIPD) in the amount of SIX HUNDRED THIRTY THOUSAND PESOS (Php630,000.00), invoking Section 55 of the Securities Regulation Code (SRC) in consideration for the lifting of the ADVISORY and they wrote:

> *This Supplemental Response to the Show Cause Order aims to reinforce Yellowdot's well-founded assertion that it is not engaged in offering investment contracts to the public in violation of the Securities Regulation Code and its Implementing Rules and Regulations. In addition, YELLOWDOT herein posits that it had not engaged in "serious misrepresentation as to what it can do or is doing to the great prejudice of or damage to the general public".*

The Memorandum of Agreement readily shows that it is a sale and purchase agreement with an integrated management service agreement. In fact, a closer scrutiny of the economic substance behind the Yellowdot's contractual agreement with its Third-Party Customers would reveal characteristics which are different from and, even contrary to, investment contracts.

YELLOWDOT reiterates that it made no promise, vow, commitment, guarantee nor assurance that profits or returns will be paid to our Third-Party Customers. What the company offered was the opportunity to earn based on the operations of Modern Public Utility Vehicles purchased by Third-Party Customers, with YELLOWDOT providing mere ancillary services.

YELLOWDOT is not engaged in fraudulent activities, nor was it designed to fail. The company's contractual arrangement and business offerings are not investment contracts within the ambit of the SRC and that the company had not engaged in any misrepresentation.

SETTLEMENT OFFER

At present, the company has One Hundred Twenty-six (126) subsisting contracts. Following SEC Memorandum Circular No. 04-01, the fine for each contract is Ten Thousand Pesos (Php10,000.00). Thus, the total imposable penalty is One Million Two Hundred Sixty Thousand Pesos (Php1,260,000.00). As such YELLOWDOT is proposing the amount of SIX HUNDRED THIRTY THOUSAND PESOS (Php630,000.00) as an offer of settlement.

Thus YELLOWDOT prayed that the Settlement Offer be accepted by the Commission and that the Advisory be lifted and the Management and Board of YELLOWDOT commits to cease solicitation of new contracts, to allow its premises, books and records to be inspected, and to register contracts once the new rules on the registration of investment contracts has been approved and issued by the Commission.

On 28 August 2020, a reply letter was sent to YELLOWDOT reiterating that based on information gathered by the Enforcement and Investor Protection Department (EIPD), the company publicly offered a scheme with the representation that those who invest would be able to obtain huge profits.

Further, YELLOWDOT was informed that the Department was not inclined to favorably recommend for the approval of the offer of settlement. Further, the Department requested documents such as the names of the investors and the total amount of money invested, the company's audited financial statements, and copies of all contracts or agreements entered into by the company with investors, as well as an action plan for the return of the money to investors plus interest.

On 15 October 2020, a reply letter was received from YELLOWDOT, in response to the letter of the EIPD dated 28 August 2020 as well as the documents the Department requested the company to submit. In the said letter, it was stated that:

> *while the EIPD letter clearly premised its reply "based on information gathered," it is likewise clear that EIPD has yet to evaluate the merits, contentions, legal bases, documents and information contained on their supplemental response. It is likewise stated that EIPDs understanding of the company's scheme has yet to evolve notwithstanding their detailed explanation of their business model, process, commitments to third-party customers and legal nuances surrounding the Howey Test and the different standards of commonality under Common Enterprise element.*
>
> *The company has done all it could to address the complaints and looking forward to proving the Commission that most, if not all, of the complaints have been settled to the satisfaction of all parties.*

On 22 December 2022, the EIPD sent a communication to Atty. John Paul R. Ganalon – counsel for Yellowdot, inviting him for a conference meeting on 12 January 2021, to discuss issues pertaining to the above matter. The Department likewise requested him to bring the documents the company failed to submit.

During the meeting, Atty. Ganalon, emphasized that YELLOWDOT is whole-heartedly admitting their shortcomings and they are willing to comply with the directives of the Commission. Before the meeting ended, it was agreed upon that YELLOWDOT shall submit, in addition to the previous documents required of it to submit, the amended list of investors, report on income of investors and if any, cases pending against the company.

On 18 May 2021, an Order was sent via email to YELLOWDOT and its representatives, reminding them of the documents that they undertook to submit during in the meeting. YELLOWDOT was directed within fifteen (15) days to submit all the documents required of it to submit with a warning that failure to comply with such directive shall constitute as a waiver of their rights to present additional evidence and the Commission shall resolve the issue based on the available evidence. In this case, their failure to present the required documents shall constitute a denial of their offer of settlement and the revocation of their Certificate of Registration.

On 1 June 2021, EIPD received a formal entry of appearance and a motion for additional time to submit documentary requirements from Atty. Ineandro Pedro P. Tolentino.

On 21 June 2021, EIPD issued an order granting the request of YELLOWDOT to submit documentary requirements on or before 2 July 2021, non-extendible. However, the company still failed to comply.

On 9 July 2021, this Department issued a denial of the offer of settlement to wit:

> *"After a careful evaluation of the above arguments, the EIPD submits that nothing has been presented by* ***YELLOWDOT*** *that will justify the acceptance of the Offer of Settlement and/or the lifting of the Advisories against the said entity.*
>
> *Considering that your company's non-compliance with the condition set forth by the EIPD, your proposal to enter into a compromise or settlement offer is hereby* ***DENIED".***

Hence, we now resolve the instant proceedings on the basis of available evidence.

Section 8 paragraph 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 Commission."

Based on the evidence gathered, respondent YELLOWDOT is engaged in offering, solicitation and sale of securities to the public without the required registration statement duly filed and approved by the SEC.

In the instant case, the investment scheme of respondent YELLOWDOT is that an investor shall pay a down payment of Two Hundred Fifty Thousand Pesos (Php250,000.00) and monthly amortization of Thirty Thousand Pesos (Php30,000.00) to acquire a public utility vehicle known as "millennial jeepney". However, as part of their enticement, the company promise a high profits or returns amounting to Fifty-five Thousand Pesos (Php55,000.00) to Eighty-five Thousand Pesos (Php85,000.00).

Section 3.1 of the Securities Regulation Code (SRC) defines securities as shares, participation or interest 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:

(a) Shares of stocks, bonds, 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; Page 10 of 14

(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.

An investment contract on the other hand, is defined under SRC Rule 26.3.5 of the 2015 Implementing Rules and Regulations of the Securities Regulation Code (2015 SRC IRR) 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.
>
> 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."

Further, the elements of an investment contract were enumerated in the case of *Power Homes Unlimited Corporation vs. SEC* (G.R. No. 164182 February 26, 2008) traced from the case of *SEC vs. Howey Co.* (66 S.Ct.1100 May 27, 1946) and was later modified in the case of *SEC vs. Glenn W. Turner Enterprises, Inc.* (474 F.2d476 February 1, 1973), as follows:

- A contract, transaction or scheme
- An investment of money
- A common enterprise
- Expectation of profits
- Profits arises primarily from the entrepreneurial and managerial efforts of others.

Section 8, in relation to Section 12 of the SRC provides that:

> "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 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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> "SEC. 12. Procedure for Registration of Securities. – 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 Page 11 of 14 registration statement with respect to such securities, in such form and containing such information and documents as the Commission shall prescribe. The registration statement shall include any prospectus required or permitted to be delivered under Subsections 8.2, 8.3 and 8.4."

Securities such as investment contract as defined by the SRC and in relation to SRC Rule 26.3.5 of the 2015 SRC IRR must be registered with the Commission pursuant to Sections 8 and 12 of the SRC before the same can be offered or sold for distribution.

> Rule 3.1.17 of the 2015 SRC IRR defined Public Offering as "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:
>
> 3.1.17.1 Publication in any newspaper, magazine or printed reading material which is distributed within the Philippines or any part thereof;
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> 3.1.17.2 Presentation in any public or commercial place;
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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
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> 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." (Emphasis supplied)

On the other hand, a "Broker" is defined under Section 3.3. of the SRC as a person engaged in the business of buying and selling securities for the account of others. "Salesman" is defined under 3.13 of the SRC as a natural person, employed as such or as an agent, by a dealer, issuer or broker to buy and sell securities.

Consequently, Section 28 of the SRC provides that:

> "SEC. 28. Registration of Brokers, Dealers, Salesman and Associated Persons. – 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission."

Thus, any person, without proper registration or license from the Commission who acts as brokers or agents of a company selling or convincing people to invest in the investment scheme including solicitations or recruitment through the internet may likewise be prosecuted and held criminally liable under Section 28 of the SRC and penalized with a maximum fine of Five Million pesos (P5,000,000.00) or penalty of Twenty-One (21) years imprisonment or both pursuant to Section 73 of the SRC.

In this particular case, the Department carefully examined the characteristics of the investments offered by YELLOWDOT to determine if they satisfy the elements of an investment contract. In our evaluation, indeed, the elements of investment contracts are manifested in the investments being offered by YELLOWDOT which are as follows:

- By investing in the company, **the investor enters into a contract**;
- There is a **placement of money** from the public as they are enticed to invest in the company that represented to be engaged in a lucrative business;
- The money invested is placed in a **common enterprise**;
- The **investors expect to derive profits** as they are primarily attracted to join YELLOWDOT for a promise of getting an estimate from Fifty-Five Thousand Pesos (Php55,000.00) to Eighty-Five Thousand Pesos (Php85,000.00) a month;
- The investors expect to earn profits derived primarily form the efforts of others.

Further, it is important to emphasize that YELLOWDOT, as a juridical person, is only allowed to exercise powers inherent to its corporate existence as provided in the Revised Corporation Code of the Philippines and those conferred in its Articles of Incorporation (AOI). In other words, what a corporation can do is necessarily circumscribed by its primary purpose clause in its AOI.

In YELLOWDOT's Articles of Incorporation as approved by the Commission, it is clearly provided that the business of the subject company is:

> "*to engage in business of developing and providing transportation solutions and technologies, operating land transportation terminals as well as providing transportation services for all kinds of goods, cargoes and passengers (as amended on 1 February 2019).*"

Nonetheless, the purpose stated in the Articles of Incorporation need not set out with particularity the multitude of activities in which the corporation may engage. The effect of broad purposes or objects is to confer wide discretionary authority upon the directors and management of the corporation as to the kinds of business in which it may engage. However, dealings which are entirely irrelevant to the purposes are unauthorized and called ***ultra vires.*** The purpose clause of the articles of incorporation indicates the extent as well as the limitations of the powers which a corporation may exercise. In fact, the purpose in YELLOWDOT's Articles of Incorporation expressly prohibits it to operate an investment-taking scheme.

Considering that nowhere is it stated in the primary purpose of YELLOWDOT that it is authorized to engage in investment-solicitation activities through the offering or selling for public sale securities in the form of investment contracts, the activities of YELLOWDOT of offering or selling unregistered securities to the public and without the corresponding registration or license as a securities broker is considered an *ultra vires act* and therefore, constitutes serious misrepresentation as to what the corporation can do to the great prejudice or damage to the general public which is a ground for the revocation of a corporation's primary franchise or certificate of registration/ incorporation under PD 902-A.

WHEREFORE, for violation of Section 44 of the Revised Corporation Code (R.A. No. 11232)] in relation to Sections 8.1 and 28.1 of the Securities Regulation Code and Section 6 (i)(2) of P.D. 902-A, the corporate registration or Certificate of Incorporation/Registration of **YELLOWDOT TRANSPORT TERMINAL, INC** is hereby **REVOKED.**

Accordingly, let this Order be attached by the Corporate Filing and Records Division of the Company Registration and Monitoring Department (CRMD) to the records of the corporation on file with the Commission. Further, the Information and Communications Technology Department (ICTD) of the Commission is likewise requested to enter the *"revoked"* status of the subject corporation in the online database of the Commission.

SO ORDERED

Pasay City, 09 August 2021.

OLIVER O. LEONARDO
Officer-in-Charge