SEVEN STAR GENERAL MERCHANDISE (DTI Registered); VICTORINO CARTAJINAS MUSICO, JR. (President), LEO M. OCAMPO (Co-Founder), IAN TELLE ROXAS (Vice-President), SARAH T. MUSICO (Vice-President for Budget and Finance), EDUARDO TORRES (Vice-President for Operations), LILET BARANDA Y HERNANDEZ (Executive Assistant to the President), GENELYN SUPAS (Head Cashier), JAN FRANCIS PONTINO (General Manager), JENIEMEEL REQUINTINA (Assistant General Manager), MELANIE CABICO (Purchaser), NOREEN LOZADA (Asst. Purchaser), ARLIN MUSICO (Asst. Budget Officer), LEO LOBO (Public Information Officer), NINO MADEJA (Head of I.T. and Communications), JOSEPH VIENNA (Head of Northern Office), DANIEL MAGBANUA (Head of Northern Office), PAUL LABRADOR (Head of Island Office), and other John and Jane Does,

SEC CDO Case No. 09-16-034

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,

Movant.

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CEASE AND DESIST ORDER

This resolves the *Motion for Issuance of Cease and Desist Order* (**Motion**), dated 05 September 2016, filed by the Enforcement and Investor Protection Department (**EIPD**) praying to enjoin SEVEN START GENERAL MERCHANDISE (**SSGM**), its officers, partners, representatives, assigns, agents, and any and all persons acting for and/or in its behalf from further selling or offering for sale or distribution of securities in the form of investment contracts until the requisite registration statement is duly filed with and approved by the Commission and the corresponding license to offer/sell is issued.

SSGM is an unincorporated entity[1] and is registered with the Department of Trade and Industry under Certificate No. 03880842 issued in favor of Victorino Cartajinas Musico, Jr. [2] (**Mr. Musico, Jr.**), one of the respondents herein, with business address at Room 202, 2nd Floor, Mariners Plaza, Dacanay St., Brgy. San Pedro, Puerto Princesa City, Palawan.[3] The other respondents: LEO M. OCAMPO, IAN TELLE ROXAS, SARAH T. MUSICO, EDUARDO TORRES, LILET BARANDA Y HERNANDEZ, GENELYN SUPAS, JAN FRANCIS PONTINO, JENIEMEEL REQUINTINA, MELANIE CABICO, NOREEN LOZADA, ARLIN MUSICO, LEO LOBO, NINO MADEJA, JOSEPH VIENNA, DANIEL MAGBANUA, PAUL LABRADOR, and other John and Jane Does are claimed to be officers of SSGM.[4]

On 11 July 2016, EIPD received letters from the Department of Trade and Industry-Palawan[5] (**DTI-Palawan**) and the National Bureau of Investigation-Puerto Princesa District Office[6] (**NBI-PUERDO**). In its letter, dated 06 July 2016, DTI-Palawan referred for appropriate action the activities of SSGM, and three (3) others, which include: (i) where one is enticed/solicited to invest an amount of money, with promised return of double/triple or even much of the amount invested, upon payout exit; (ii) pursuing investment taking activities that seemed under the guise of the sale of its packages including recruiting, referring, or sponsoring prospective members/downlines; (iii) soliciting, accepting or receiving from others money for the purpose of trading and/or investment contracts; and (iv) holding business presentations for the purpose of pursuing investment taking activities. On the other hand, the NBI-PUERDO, in its letter, dated 05 July 2016, inquired as to any prior registration and/or license to solicit investments from the public which is issued by the Commission to SSGM and three (3) other entities.

Consequently, on 01 August 2016, the Commission posted on its website (www.sec.gov.ph) a *SEC Advisory*[7] warning the public that SSGM, among others, is not authorized to solicit investments from the public as it did not secure the necessary permit from the Commission as required under Sections 8 and 28 of the Securities Regulation Code.

On 9-12 August 2016, a team from EIPD conducted investment scams investigations in Puerto Princesa and El Nido, Palawan and was able to receive multitudinous complaints concerning the activities of SSGM and eight (8) other entities.[8] From the complaints, EIPD avers to have found out that in order to earn from the scheme of SSGM, a person must invest in at least one account in the amount of P350.00 to receive P1,000.00 at the end of 45 days. A person, however, can invest up to 300 accounts per day. Furthermore, investors were

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[1] 05 September 2016 Motion for Issuance of Cease and Desist Order, Annex "**L**".
[2] Id., Annex "**A**".
[3] Id., Annex "**A-1**".
[4] Id., Paragraph 6.
[5] Id., Annex "**B**", dated 06 July 2016.
[6] Id., Annex "**B-1**", dated 05 July 2016.
[7] Id., Annex "**C**".
[8] Id., Annex "**D**".

also invited to avail of SSGM's pension plan in the amount of P15,500.00, and after 28 days, an investor will receive P14,000.00 for the first two months and P21,000.00 for the third month. This three-month cycle of payment will continue until the investor receives a total amount of P1,000,000.00. Investors were then issued receipts, which indicated the amount of money invested, the number of accounts bought, and the date on which they can claim the promised interests. And on 01 July 2016, SSGM's office was closed, and the investors were not able to receive the promised interests.[9]

We find merit in the *Motion*.

The four elements of an investment contract, which is a form of security, are present in the instant case. Hence, a registration statement must be filed and approved by the Commission before it can be sold or offered for sale to the public.

Section 8.1 of Republic Act No. 8799, otherwise known as the Securities Regulation Code (SRC), mandates that no securities shall be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission save those securities and transactions under Sections 9[10] and 10[11] of the SRC. Securities are shares,

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[9] Id., Paragraph 11(b), (d), and (e).

[10] **Section 9.** *Exempt Securities*. – 9.1. The requirement of registration under Subsection 8.1 shall not as a general rule apply to any of the following classes of securities:

(a) Any security issued or guaranteed by the Government of the Philippines, or by any political subdivision or agency thereof, or by any person controlled or supervised by, and acting as an instrumentality of said Government.

(b) Any security issued or guaranteed by the government of any country with which the Philippines maintains diplomatic relations, or by any state, province or political subdivision thereof on the basis of reciprocity: Provided, That the Commission may require compliance with the form and content for disclosures the Commission may prescribe.

(c) Certificates issued by a receiver or by a trustee in bankruptcy duly approved by the proper adjudicatory body.

(d) Any security or its derivatives the sale or transfer of which, by law, is under the supervision and regulation of the Office of the Insurance Commission, Housing and Land Use Rule Regulatory Board, or the Bureau of Internal Revenue.

(e) Any security issued by a bank except its own shares of stock.

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[11] **Section 10.** *Exempt Transactions*. – 10.1. The requirement of registration under Subsection 8.1 shall not apply to the sale of any security in any of the following transactions:

(a) At any judicial sale, or sale by an executor, administrator, guardian or receiver or trustee in insolvency or bankruptcy.

(b) By or for the account of a pledge holder, or mortgagee or any of a pledge lien holder selling of offering for sale or delivery in the ordinary course of business and not for the purpose of avoiding the provision of this Code, to liquidate a *bonafide* debt, a security pledged in good faith as security for such debt.

(c) An isolated transaction in which any security is sold, offered for sale, subscription or delivery by the owner therefore, or by his representative for the owner's account, such sale or offer for sale or offer for sale, subscription or delivery not being made in the course of repeated and 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[12] and include an investment contract.[13]

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.**

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successive transaction of a like character by such owner, or on his account by such representative and such owner or representative not being the underwriter of such security.
(d) The distribution by a corporation actively engaged in the business authorized by its articles of incorporation, of securities to its stockholders or other security holders as a stock dividend or other distribution out of surplus.
(e) The sale of capital stock of a corporation to its own stockholders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with the sale of such capital stock.
(f) The issuance of bonds or notes secured by mortgage upon real estate or tangible personal property, when the entire mortgage together with all the bonds or notes secured thereby are sold to a single purchaser at a single sale.
(g) The issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security surrendered in exchange to make such conversion: *Provided*, That the security so surrendered has been registered under this Code or was, when sold, exempt from the provision of this Code, and that the security issued and delivered in exchange, if sold at the conversion price, would at the time of such conversion fall within the class of securities entitled to registration under this Code. Upon such conversion the par value of the security surrendered in such exchange shall be deemed the price at which the securities issued and delivered in such exchange are sold.
(h) Broker's transaction, executed upon customer's orders, on any registered Exchange or other trading market.
(i) Subscriptions for shares of the capitals stocks of a corporation prior to the incorporation thereof or in pursuance of an increase in its authorized capital stocks under the Corporation Code, when no expense is incurred, or no commission, compensation or remuneration is paid or given in connection with the sale or disposition of such securities, and only when the purpose for soliciting, giving or taking of such subscription is to comply with the requirements of such law as to the percentage of the capital stock of a corporation which should be subscribed before it can be registered and duly incorporated, or its authorized, capital increase.
(j) The exchange of securities by the issuer with the existing security holders exclusively, where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange.
(k) The sale of securities by an issuer to fewer than twenty (20) persons in the Philippines during any twelve-month period.
(l) The sale of securities to any number of the following qualified buyers:
(i) Bank;
(ii) Registered investment house;
(iii) Insurance company;
(iv) Pension fund or retirement plan maintained by the Government of the Philippines or any political subdivision thereof or manage by a bank or other persons authorized by the Bangko Sentral to engage in trust functions;
(v) Investment company or;
(vi) Such other person as the Commission may rule by determine as qualified buyers, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial and business matters, or amount of assets under management. xxx

[12] SRC, Section 3.1.
[13] SRC, Section 3.1.(b).

An *investment* is presumed to exist whenever a person seeks to use the money or property of others on the promise of profits.[14]

The concept of an investment contract in the Philippines is of American origin. It traces its roots from the US Supreme Court cases of *SEC v. W.J. Howey Co.*[15] and *SEC v. Glenn Turner Enterprises, Inc.* [16] It has since been adopted in the Philippines in the case of *Power Homes Unlimited Corporation v. Securities and Exchange Commission,*[17] where the Supreme Court held that an investment contract in our jurisdiction, to be a security subject to regulation by the Commission, must have the following elements: **(1) an investment of money; (2) in a common enterprise; (3) with expectation of profits; and (4) primarily from efforts of others.**

A careful examination of the records indicate that the aforesaid elements are present in this case. First, investors must pay a minimum amount of P350.00 for an account up to a maximum amount of P105,000.00 for 300 accounts, or P15,500.00 for a pension plan to SSGM. In fact, receipts[18] were issued as proof of such investments. It is settled that an investment of money occurs when an investor commits money to an enterprise or venture in a manner that subjects himself to financial loss.[19] Second, there is also a common enterprise. 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] Here, three investors[21] executed sworn statements attesting to the fact of their investments to SSGM. Third, investors parted with their money with the expectation that at the end of 45 days, they will receive a minimum of P1,000.00 for the P350-investment up to P300,000.00 for the P105,000.00-investment. Stated differently, an investor expects to receive a 285% return of investment after 45 days. As regards the pension plan, an investor expects to receive a total amount of P1,000,000.00 with his/her P15,500-investment. And fourth, an investor merely places his money to SSGM, and thereafter wait for the promised returns for a period of 45 days, or 28 days for pension plan. It must be noted that none of the exemptions from registration is applicable to the instant case.

Clearly, the scheme of SSGM is an investment contract which must be registered and approved by the Commission.

Issuance of a Cease and Desist Order is warranted under the prevailing facts and circumstances.

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[14] 2015 SRC Rules, Section 26.3.5.
[15] 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244, 163 A.L.R. 1043 (1946).
[16] 474 F. 2d 476, 414 U.S. 821, 94 (1973).
[17] G.R. No. 164182, 26 February 2008.
[18] Note 1, supra, Sub-annexes of Annexes "H" and "I".
[19] SEC v. International Mining Exchange, Inc., 515 F. Supp. 1062.
[20] Note 14, supra.
[21] Note 1, supra, Annexes "**G**", "**H**", and "**I**".

Section 64 of the SRC which provides:

> 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.**[22]

In the case of *SEC vs. Performance Foreign Exchange Corporation*,[23] the Supreme Court held that under the aforesaid provision, two essential requirements must be complied with by the SEC before it may issue a cease and desist order: **First**, it must conduct proper investigation or verification; and **Second**, there must be a finding that the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

Here, the two requisites are present. First, a team from EIPD conducted an investigation in Puerto Princesa and El Nido, Palawan. They interviewed victims of SSGM's investment scheme. As a matter of fact, three victims have executed their sworn statements[24] attaching therewith receipts as proof of their investments. Second, the certifications[25] issued by the Corporate Governance and Finance Department and Markets and Securities Regulation Department of the Commission show that SSGM is not authorized to offer/sell securities in the form of investment contracts to the public, and neither the investment contract, itself, is registered. In *Power Homes*,[26] the Supreme Court emphasized the importance of registration of any security, thus:

> "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."[27]

It cannot be overemphasized that SSGM's business model is a classic "*Ponzi Scheme.*" A *Ponzi scheme* is a type of investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors. Its organizers often solicit new investors by promising to invest funds in opportunities claimed to generate high returns with little or no risk. In many Ponzi schemes, the perpetrators focus on attracting new money to make

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[22] Emphasis supplied.
[23] G.R. No. 154131, July 20, 2006.
[24] Note 21, supra.
[25] Note 1, supra, Annexes "**J**" and "**K**".
[26] Note 17, supra.
[27] Emphasis and underscoring supplied.

promised payments to earlier-stage investors to create the false appearance that investors are profiting from a legitimate business. It is not an investment strategy but a gullibility scheme, which works only as long as there is an ever increasing number of new investors joining the scheme.[28] In fact, a perusal of the records would show that one of the complainants has claimed to have received pensions and pay-outs until the closure of SSGM's office in Puerto Princesa, Palawan.[29]

Certainly, without a license from the Commission, SSGM's investment-taking activities cannot be regulated nor supervised, and if it remains unregulated or unsupervised, would further defraud the investing public.

As a final word, we emphasize that a sole proprietorship registered with the DTI has no separated personality from the owner thereof.[30] Thus, the personality of any business registered by Mr. Musico, Jr. with the DTI is simply Mr. Musico, Jr. himself. Nonetheless, the Commission has jurisdiction over the investment-taking activities of SSGM and/or Mr. Musico, Jr. considering that the Commission is empowered to enforce and administer the SRC. Further, the Commission has the bounden duty to protect investors and the investing public from acts that would operate as fraud upon investors or are likely to cause grave or irreparable injury or prejudice to the investing public. Thus, notwithstanding the closure of SSGM's office in Puerto Princesa, Palawan, a cease and desist order is still proper for the protection of the investing public in general.

WHEREFORE, premises considered and pursuant to the authority vested in the Commission, **SEVEN STAR GENERAL MERCHANDISE AND VICTORINO CARTAJINAS MUSICO, JR.**, their partners, agents, representatives, conduits, assigns, and any and all persons claiming and acting for and in behalf and under their authority are hereby ordered to **IMMEDIATELY CEASE AND DESIST,**[31] **UNDER PAIN OF CONTEMPT**, from further engaging, reviving, or surreptitiously continuing the act of selling and/or offering for sale securities in the form of investment contracts or any others of the same nature until the requisite registration statement is duly filed with and approved by the Commission and the corresponding license to offer/sell is issued.

The Commission will institute the appropriate administrative and criminal action against any persons or entities found to act as solicitors,

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[28] People of the Philippines vs. Palmy Tibayan and Rico Z. Puerto, G.R. No. 209655-60, January 14, 2015.

[29] Note 1, supra, Annex "**I**".

[30] Excellent Quality Apparel, Inc. vs. Win Multi Rich Builders, Inc., G.R. No. 175048, February 10, 2009.

[31] Section 64.1, SRC, The Commission, after proper investigation or verification, *motu propio,* 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 fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

information providers, salesmen, agents, brokers, dealers or the like for and in behalf of the subject entity.

The **Enforcement and Investor Protection Department** is hereby **DIRECTED** to: 1) serve this *Order* to SEVEN STAR GENERAL MERCHANDISE and person/s, entities, representatives and assigns acting in its behalf, wherever they be found; and 2) post copies of the *Order* at the entrance of the main office and/or branches, if any, of SEVEN STAR GENERAL MERCHANDISE.

EIPD is **FURTHER DIRECTED** to submit a formal compliance report, by way of a 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: 1.) posted in the Commission's website; 2.) published in a national newspaper of general circulation; 3.) furnished to all the Commission's departments for their information and appropriate action.

In accordance with the provisions of Sec. 64.3[32] of SRC and Sec. 10-3 of the 2006 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.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Pasay City, Philippines, 22 September 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE *
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

*On Officila Business

[32] SRC, Section 64.3. Any person against whom a cease and desist order was issued may, within five (5) days from receipt of the order, file a formal request for a lifting thereof. Said request shall be set for hearing by the Commission not later than fifteen (15) days from its filing and the resolution thereof shall be made not later than ten (10) days from the termination of the hearing. If the Commission fails to resolve the request within the time herein prescribed, the cease and desist order shall automatically be lifted.