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

IN THE MATTER OF:
50K CLUB / 50K CLUBB ONLINE SHOP / COMMUNITY HELP COIN (CHC) / CRYPTOMARKETERS / CRYPTOMARKETERS WORLDWIDE

SEC CDO CASE NO. 01-24-107

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),

Movant.

x---x

27 May 2025

TO:

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G R E E T I N G S :

Please take notice that on 08 May 2025, a **RESOLUTION** was issued in the above-entitled case, the original of which is now on file with this office.

Makati City, Philippines.

By Authority of the Commission:

ARMANDO A. PAN, JR.
Commission Secretary

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

In the Matter of:
50K CLUB/50K CLUBB ONLINE SHOP/COMMUNITY HELP COIN (CHC)/CRYPTOMARKETERS/ CRYPTOMARKETERS WORLDWIDE

SEC CDO Case No. 01-24-107
Promulgated: 08 May 2025

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.

x-------------------------------------x

RESOLUTION

For consideration of the Commission En Banc (the "Commission") is the *Verified Motion to Lift C.D.O.* (the "Motion to Lift") filed by Michael C. Viola and 50K Clubb Online Shop on 21 February 2024, praying that the Cease and Desist Order dated 29 January 2024 (the "Assailed CDO") be lifted, or modified to exclude Michael C. Viola ("Mr. Viola") and the 50K Clubb Online shop (the "50k Clubb"). The dispositive portion of the Assailed CDO reads:

> **WHEREFORE**, premises considered, Respondents **50K CLUB / 50K CLUBB ONLINE SHOP / COMMUNITY HELP COIN (CHC) / CRYPTOMARKETERS / CRYPTOMARKETERS WORLDWIDE, MICHAEL VIOLA**, and their agents, salesmen, brokers, dealers, representatives, promoters, recruiters, uplines, influencers, endorsers, abettors and enablers and all persons, conduit entities and subsidiaries claiming and acting for and in its 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 requisite registration statement is duly filed with and approved by the Commission.

The records show that on 23 January 2023, the Enforcement and Investor Protection Department (EIPD) filed before the Commission, through the Office of the General Counsel, a Motion for Issuance of a Cease and Desist Order (the "Motion for CDO"), praying for the issuance of an order directing 50K CLUB / 50K CLUBB ONLINE SHOP / COMMUNITY HELP COIN (CHC) / CRYPTOMARKETERS /

CRYPTOMARKETERS WORLDWIDE, MICHAEL VIOLA (collectively referred to as the "CRYPTOMARKETERS") to cease and desist from offering, selling and/or dealing with securities for want of the requisite license.

On 25 January 2024, the Commission issued the Assailed CDO after finding that CRYPTOMARKETERS is engaged in the unauthorized sale and/or offer of unregistered securities in the form of investment contracts without the requisite license.

In their Motion to Lift, Mr. Viola and the 50k Clubb maintained that the Assailed CDO is fatally infirm as it was issued in violation of their right to due process, specifically for failure of the EIPD to (a) provide them with copies of the complaints filed against them, and (b) allow them to participate in the investigation, which prevented them from defending themselves intelligently.[1]

Respondents further maintained that the lifting of the Assailed CDO is warranted on the ground that: (a) they are allegedly not aware of any complainants who have suffered monetary loss, and to shut down their business without giving them the opportunity to refute the Commission's findings violates the tenets of fair play;[2] (b) they are not engaged in cryptocurrency investment activities as their business permit indicates that they are engaged in "*online networking seminar*" and "*learning center,*" where they merely teach/guide their clients to access different platforms which are not limited to CRYPTOMARKETERS, and the fact that they earn from referrals allegedly does not make their business illegal;[3] and (c) even if the transaction involves the offer/sale of securities, Respondents cannot be held liable because their participation in the scheme was allegedly not established.[4]

On 29 February 2024, the EIPD filed its Comment/Opposition praying that the Motion to Lift be denied for want of merit, and the CDO be made permanent. The EIPD maintained that Mr. Viola and the 50k Clubb were not denied of their right to due process, arguing that Section 64.2 of the Securities Regulation Code (SRC) specifically treats as confidential the investigation conducted by it, including the contents of the complaints subject thereof.[5]

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[1] Motion to Lift. page 3.
[2] Ibid. pages 4 and 5 (citing Secretary of Justice v. Lantion).
[3] Ibid. pages 9 to 11 (citing SEC v. Prosperity.com).
[4] Ibid. pages 12 to 13 (citing SEC v. Santos, Zapanta v. People and People v. Petralba).
[5] Comment/Opposition. Pars. 4 and 5.

The EIPD likewise refuted the claim of Mr. Viola and the 50k Clubb that they are not engaged in the offer/sale of unregistered securities by showing that: (a) CRYPTOMARKETERS, which are entities not registered as partnerships or corporations, are offering and selling unregistered securities in the form of investment contracts through its subscription packages, while some of its members/promoters publicly presented their unauthorized investment scheme;[6] (b) CRYPTOMARKETERS' investment subscription packages are securities in the form of investment contracts, designed to lure the public into participating in their income-generating recruitment activities, and passively earn in the continued sale of such investment packages;[7] and (c) CRYPTOMARKETERS are actually encouraging its members to entice/invite more investors to purchase the subscription packages, where actual transactions and investment of money and/or the buying of packages have been consummated in 50K Clubb, the office of Mr. Viola at Yacapin-Velez St., Cagayan de Oro City.[8]

On 04 March 2024, an Order was issued by the Commission directing the parties to file their respective position papers in lieu of the conduct of a clarificatory hearing.

On 15 March 2024 and 19 March 2024, Respondents Mr. Viola and the 50k Clubb, and the EIPD filed their Position Papers, where they essentially reiterated their arguments in their Motion to Lift and Comment/Opposition, respectively.

After a careful examination and due consideration of the allegations, arguments, and evidence presented in support of the Motion to Lift and the Comment/Opposition of the EIPD, the Commission hereby resolves to deny the Motion to Lift for want of merit.

Mr. Viola and the 50k Clubb were not denied of their right to due process.

In their Motion to Lift, Mr. Viola and the 50k Clubb bewailed the EIPD's denial of their request to be furnished with copies of the complaints and the documents used in support of the Motion for CDO. Citing Section 64.2 of the SRC, Mr. Viola and the 50k Clubb argued that while the investigation and all documents covered by the same, *i.e.,* the complaints filed and other documents obtained, are confidential prior to the issuance of a CDO, the mantle of confidentiality is lifted the moment a

[6] Ibid. pars. 7 and 8 (citing Power Homes Unlimited Corporation v. SEC).
[7] Ibid. pars. 10 to 16.
[8] Ibid. Pars. 24, 26 and 27.

CDO is issued. Mr. Viola and the 50k Clubb are in effect suggesting that after a CDO is issued, the investigation and all the documents upon which the same is based must be fully disclosed/shared to them as the confidential status thereof ceases. In other words, it is Mr. Viola and the 50k Clubb's position that the validity of a CDO can only be sustained if all relevant information relating to the conduct of the investigation, and all the documents upon which the same was based, are disclosed to the respondents who request for the same, otherwise, their right to due process is violated.

The Commission does not agree with Mr. Viola and the 50k Clubb.

Sec. 64.2 of the SRC expressly provides for the confidential nature of the investigation and the complaint filed, to wit:

> 64.2 Until the Commission issues a cease and desist order, the fact that an investigation has been initiated or that a complaint has been filed, including the contents of the complaint, shall be confidential. **Upon issuance of a cease and desist order, the Commission <u>shall make public such order and a copy thereof shall be immediately furnished to each person subject to the order</u>**. (Emphasis and underscoring supplied)

The afore-quoted provision states in no uncertain terms that (a) an investigation and the complaint, including the contents thereof, which triggered the same, are confidential; and (b) only the CDO will be made public, where a copy thereof is also furnished to all persons subject of the same. There is nothing in the said provision which provides for the modification of the status of the investigation and the complaint, *i.e.,* from confidential to non-confidential, after the issuance of the CDO, contrary to the assertions of the Respondents.

Relatedly, Section 2-4 Part II Rule II of the 2016 SEC Rules of Procedure (the "2016 Rules") is consistent in providing for the confidential nature of investigation proceedings, and any information obtained therefrom, to wit:

> Section 2-4. Confidentiality of Investigation Proceedings. **Any information, document or records obtained by the Commission in the course of any investigation or examination <u>shall be deemed non-public</u>**, unless otherwise required by any other pertinent law or by the Operating Department or the Commission En Banc. (Emphasis and underscoring supplied)

Had Congress intended the information/documents obtained during the conduct of the investigation to be made public after the issuance of a CDO, it would have expressly stated in Section 64.2 of the SRC. The fact that only the "order" was specifically mentioned as being made public, the contention of Mr. Viola and the 50k Clubb that complaint and all documents obtained during the investigation are stripped of their confidential status is clearly bereft of legal basis. This is consistent with the rule in statutory construction that what the law does not include, it excludes.[9]

Verily, Mr. Viola and the 50k Clubb cannot be said to have been denied of their right to due process when they were not given access to the requested documents, which are confidential in nature.

Moreover, emphasis should be made of the fact that the instant case partakes of the nature of an administrative action where the demands of due process is satisfied when the respondent is given the opportunity to be heard, either through oral arguments or pleadings, or to seek a reconsideration of the action or ruling complained of.[10] If the record shows that the relevant parties were accorded such opportunity, the allegation that there was a denial of procedural due process will cease to have a legal basis. This rule was affirmed by the Supreme Court in *Magcamit v. Internal Affairs Service-Philippine Drug Enforcement Agency*,[11] where it held that:

> Due process in administrative cases, in essence, is simply an opportunity to explain one's side or to seek a reconsideration of the action or ruling. For as long as the parties were given fair and reasonable opportunity to be heard before judgment was rendered, the demands of due process were sufficiently met.

The foregoing doctrine on administrative due process was reiterated in *Pefianco v. Moral*,[12] where the Supreme Court also affirmed the confidential nature of administrative investigations, categorically ruling that the right to due process is not violated if a party is not

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[9] "It is a settled rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim expressio unius est exclusio alterius. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned." (DBP v. COA, G.R. No. 221706, March 13, 2018 [Per J. Gesmundo, En Banc).

[10] Vivo v. Philippine Amusement and Gaming Corporation,G.R. No. 187854, November 12, 2013 [Per J. Bersamin, En Banc].

[11] G.R. No. 198140, January 25, 2016 [Per J. Brion, Second Division].

[12] G.R. 132248, January 19, 2000, [Per J. Bellosillo, Second Division].

informed of the findings and recommendations of the investigating committee, it being sufficient that he/she is informed of the findings in the decision and is given the opportunity to seek reconsideration, thus:

> Moreover, there is no law or rule which imposes a legal duty on petitioner to furnish respondent with a copy of the investigation report. On the contrary, we unequivocally held in *Ruiz v. Drilon* that **a respondent in an administrative case is not entitled to be informed of the findings and recommendations of any investigating committee created to inquire into charges filed against him. He is entitled only to the administrative decision based on substantial evidence made of record, and a reasonable opportunity to meet the charges and the evidence presented against her during the hearings of the investigation committee.** Respondent no doubt had been accorded these rights. (Emphasis supplied)

The objective of the law in classifying the investigation as confidential, and in excluding Mr. Viola and the 50k Clubb from any participation therein, is to ensure that the purpose and function of a CDO, which is to promptly curtail fraud and prevent injury to the investing public, is effectuated. The ruling of the Supreme Court in *Primanila Plans, Inc. v. SEC*[13] is instructive, to wit:

> 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 <u>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</u>.** (Emphasis and underscoring supplied)

In the instant case, a careful examination of the Assailed CDO reveals that the same has satisfied the requirements prescribed under Section 64.1 of the SRC relative to the conduct of an investigation, and a determination that the act/transaction subject thereof, unless restrained, will operate as a fraud on investors, or is likely to cause grave or irreparable injury or prejudice to the investing public. The Assailed CDO adequately contained and provided for the factual and legal bases to support its issuance, which effectively informed Mr. Viola and the 50k Clubb of the provisions of the SRC that were being violated; and allowed them to refute the findings of the EIPD. The instant Motion to Lift as well as the Position Paper filed by Mr. Viola and the 50k Clubb, both of which

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[13] Primanila Plans v. SEC, G.R. No. 193791, August 6, 2014 [Per J. Reyes, First Division].

were given due course by this Commission, in fact embody the defenses presented by them in support of their claim that they did not violate the relevant provisions of the SRC.

Verily, the twin requirements of administrative due process, i.e., notice, and the opportunity to be heard or to question the Assailed CDO have been met. The claim of Mr. Viola and the 50k Clubb that they were denied of due process has therefore no leg to stand on.

Mr. Viola and the 50k Clubb, nonetheless, vigorously insist that their inability to confront the actual complainants, to be informed of the manner of the commission of the violation, and their exact participation rendered the Assailed CDO void as it was issued in violation of their right to due process. In support thereof, Mr. Viola and the 50k Clubb, invoking the cases of *Cabahug v. People, People v. Petralba, SEC v. Santos and Zapanta v. People*, where the Supreme Court ruled that the participation of the accused in a conspiracy to deal with unregistered securities must be proved before such accused can be convicted, argued that the Assailed CDO should be lifted since their participation in the unauthorized investment-taking scheme was not established.

Respondents' argument is bereft of legal basis and merit.

The doctrines laid down in the cases cited by Mr. Viola and the 50k Clubb are not applicable in the instant case, which is administrative in nature and relates to the exercise by the Commission of its regulatory and quasi-judicial powers. Mr. Viola and the 50k Clubb's arguments disclose their inability to grasp the real nature of a CDO, and the purpose of the law in granting the Commission the authority to issue the same, which was explained by the Supreme Court in *SEC v. CJH Development Corporation*[14], to wit:

> In the present case, it is clear from the dispositive portion of the CDO that its issuance is based on the findings of the SEC that there exists *prima facie* evidence that respondents are engaged in the business of selling securities without the proper registration issued by the Commission. Prima facie means a fact presumed to be true unless disproved by some evidence to the contrary. Applied to the instant case, it means that the findings of the SEC, as contained in the assailed CDO, can still be refuted and disproved by contrary evidence. **This only means that the CDO is not final, is just provisional, and that the prohibition thereunder is merely temporary, subject to the determination of the parties' respective evidence in a subsequent**

[14] G.R. No. 210316, November 28, 2016 [Per J. Peralta, Third Division].

hearing. It is, therefore, clear that the subject CDO, being interlocutory, may not be the subject of an appeal. (Emphasis supplied)

Being provisional in nature, there is nothing in the Assailed CDO which made a determination or finding on the liability of Mr. Viola and the 50k Clubb. This matter is within the jurisdiction and authority of the regular courts to make in a proper criminal action, or civil action for recovery of investments and damages, where the accused/respondent is entitled as a matter of right, to confront the complainant and his/her witnesses.

As the national government agency tasked to implement the SRC, the Commission is duty-bound to issue a CDO, *motu proprio* or upon a complaint, if it finds or has a reason to believe, based on substantial evidence, that a person has committed, or is about to commit any act or practice that constitutes a violation of its provisions.[15] The purpose is essentially to protect investors and to prevent fraud/injury that they may possibly sustain. Necessarily, as long as the violation subsists or the threat/possibility that a violation will be committed, the CDO issued by the Commission should subsist and continue to have full force and effect; otherwise, the purpose of Sec. 64 of the SRC will be negated. This also explains why the law does not require proof of actual damage or actual complainants as conditions precedent for a valid issuance of a CDO. Thus, a CDO issued *motu proprio* will, by express provision of law, stand, if anchored on a determination supported by substantial evidence that the acts or transactions being restrained will likely defraud, prejudice, or damage the investing public.

Respondents are engaged in the unauthorized offer and/or sale of unregistered securities in the form of an investment contract, which justifies the issuance (and the making permanent) of the Assailed CDO.

In their Motion to Lift, Mr. Viola and the 50k Clubb maintained that they are not engaged in investment-taking activities as shown by their business permit, which allegedly provides that the services that they are

[15] See Sections 53.3 and 64 of the SRC on the concept of CDO.

authorized to provide are *"online networking seminar,"* and running a *"learning center."*[16] Under their business scheme, it is allegedly their clients who directly transact or trade with these different platforms,[17] as well as with their own platform.[18] Mr. Viola and the 50k Clubb nonetheless denied having solicited or accepted investments from the public, and maintained that the profits earned from referrals are not illegal, citing *SEC v. Prosperity.com.*[19]

Again, this Commission is not persuaded by the arguments of Mr. Viola and the 50k Clubb, which are not supported by the evidence on record.

At the outset, emphasis should be made on the fact that just like the securities acts of other jurisdictions, specifically the United States of America from which our securities laws are patterned, the SRC adopted a very broad definition of securities,[20] which is intended to be liberally construed in order to achieve the main purpose of its enactment--regulation of the issuance and sale of securities, the prevention of fraud and protection of the investing public.

Rule 26.3.5 of the Implementing Rules and Regulations of the SRC (SRC-IRR) defines an "investment contract," which is covered by the definition of securities, 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**. (Emphasis supplied)

The law considers investment contracts as securities because what the purported issuer is, or will be, using to further his/her business is money put in by the public who expects a return on their investment. Consistent with the broad definition of securities, the term investment contract should thus include and cover all forms and varieties thereof which are known or considered, or ought to be known or considered to be such, in the financial world. This finds support in the US case of *SEC v.*

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[16] Verified Motion to Lift CDO. Pages 8 and 9.
[17] Ibid.
[18] Ibid.
[19] Ibid. pages 10 and 11
[20] "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." (Section 3.1 of the SRC)

Joiner Leasing Corp.[21] (which has persuasive effect in our jurisdiction), where the US Supreme Court emphasized that it is not the nature of the assets behind a particular instrument which defines whether the same should be considered a security, and what is controlling is the attribution given in commerce based on the terms thereof, to wit:

> In applying acts of this general purpose, the courts have not been guided by the nature of the assets back of a particular document or offering. **The test, rather, is what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect**. In the enforcement of an act such as this, it is not inappropriate that promoters' offerings be judged as being what they were represented to be. (Emphasis supplied)

The afore-quoted doctrine was adopted by our Supreme Court in *Power Homes Unlimited Corporation v. Securities and Exchange Commission,*[22] which ruled that the term "investment contract" embodies a flexible principle that is intended to cover schemes devised by persons who seek to use the money of others on the promise of profits, to wit:

> The US Supreme Court, recognizing that the term "investment contract" was not defined by the Act or illumined by any legislative report, held that "Congress was using a term whose meaning had been crystallized" under the state's "blue sky" laws in existence prior to the adoption of the Securities Act. Thus, **it ruled that the use of the catch-all term "investment contract" indicated a congressional intent to cover a wide range of investment transactions**. It established a test to determine whether a transaction falls within the scope of an "investment contract." Known as the Howey Test, it requires a transaction, contract, or scheme whereby a person (1) makes an investment of money, (2) in a common enterprise, (3) with the expectation of profits, (4) to be derived solely from the efforts of others. **Although the proponents must establish all four elements, the US Supreme Court stressed that the Howey Test "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits**." Needless to state, any investment contract covered by the Howey Test must be registered under the Securities Act, regardless of whether its issuer was engaged in fraudulent practices. (Emphasis supplied)

Pursuant to the foregoing jurisprudential precepts, an investment contract is considered to exist once it is determined that the proponent

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[21] 320 U.S. 344 (1943) [https://supreme.justia.com/cases/federal/us/320/344/]
[22] G.R. No. 164182, February 26, 2008 [Per J. Puno, First Division].

is offering to the public an opportunity to contribute money and to share in the profits of the operations. From this perspective, the importance of a "common enterprise" managed by the proponent in furtherance of the business comes into play, considering that purchasers who are normally untrained in finance merely rely on the proponent's knowledge and expertise in carrying out the grand investment scheme.

More importantly, in our jurisdiction, a transaction or scheme where a person uses or intends to use money or property of others with a promise of profits **is presumed by law** to be an investment contract, which should be registered with the Commission prior to the offer/sale thereof.

The evidence submitted by the EIPD, which Mr. Viola and the 50k Clubb failed to controvert, shows that Mr. Viola and the 50k Clubb are indeed engaged in the unauthorized offer/sale of unregistered securities without the requisite license from the Commission, in violation of Sections 8 and 28 of the SRC. In particular, this Commission finds that all elements of the Howey Test are present, which necessitates and justifies sustaining the Assailed CDO for the protection of the investing public, to wit:

> *First*, an investigator of this Commission who transacted with Tina Guyo and May Labis, both of whom are members and promoters of CRYPTOMARKETERS, confirmed that the latter is offering investment packages ranging from US$100.00 to US$4,000.00 (equivalent to PhP6,000.00 to PhP240,000.00), with a potential yield of 240% to 300% of the amount invested depending on the package purchased within a period of sixty (60) to one hundred (100) days. The investigator, in fact, actually invested Php 6,000.00 with CRYPTOMARKETERS, where he was issued a temporary/written receipt as proof of such investment. This shows that under the business scheme of Respondents, members and/or potential investors makes (or are required to make) an investment of money.
>
> *Second*, the investment packages[23] which CRYPTOMARKETERS are offering/selling, and which essentially constitutes their core business, is the common enterprise that CRYPTOMARKETERS has established, and is currently maintaining. This common enterprise is being sustained by the investments which CRYPTOMARKETERS are receiving from the public who are made to believe that they will receive the guaranteed returns and benefits when the maturity date arrives. The marketing efforts, and the active promotion of the referral program where a member who brings-in new investors receives bonuses, are the

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[23] Basic (maximum share of 220%), Standard (maximum share of 240%), Premium (maximum share of 260%), Advance (maximum share of 280%), and Maximum (maximum share of 300%).

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tools used by CRYPTOMARKETERS to ensure their continued operations.[24]

Third, the presentation materials which the EIPD submitted in evidence equally shows that CRYPTOMARKETERS entices the investing public to invest their hard earned money because the same will yield huge returns. In particular, the presentation of May Labis showed/confirmed the investment scheme being offered/sold by CRYPTOMARKETERS where an investment ranging from US$100.00 to US$4,000.00 will have a yield ranging from 240% to 300% of the amount invested within a period of sixty (60) to one hundred (100) days. On top of this, CRYPTOMARKETERS also gives referral rewards, VIP bonuses, daily drip dividends, among others, to performing members. These, clearly creates an expectation on the part of the investors that they will receive the guaranteed returns and bonuses, which, in most, if not all, cases, is the sole reason for making such investment.

Fourth, the guaranteed returns/profits and bonuses which are promised to investors are generated primarily from the entrepreneurial and marketing efforts of Mr. Viola, the 50k Clubb and their cohorts, who make sure that the recruitment and rewards system are implemented to ensure continued inflow of investments. In this regard, the photos showing Ms. Guyo making the presentation on the investment scheme of Mr. Viola and the 50k Clubb in their very office (including a group photo of Ms. Guyo and poseur investor) affirm that the efforts of their members who actively market the unregistered securities sustain the common enterprise and enables Mr. Viola and the 50k Clubb to pay existing members. These photos constitute substantial evidence that Ms. Guyo is a member of and/or is under the employ of Mr. Viola and the 50k Clubb, contrary to the bare denials of the latter.

The records equally disclose that no less than Mr. Viola and the 50k Clubb themselves admitted that their investment packages, as well as the investment packages offered/sold by other platforms, are actually being traded online, and that it is their clients themselves who transact or trade in CRYPTOMARKETERS platforms, as well as in other platforms not owned by the latter, to wit:

> Respondents and their staff are techno-savvy and share their knowledge to persons who are interested to earn money from different trading platforms in the internet. <u>**Respondents merely provide**</u> **the service of teaching** <u>**their clients access to the different platforms and these are not limited to Cryptomarketers/Cryptomarketers Worldwide or the Community Help Coin**</u>. Respondents are not

[24] See Motion for Issuance of CDO. Annexes "A-4" (Mr. Viola publicly discloses his goal to recruit 20 people); "A-7" (Become a Promoter/Advertiser Program).

> owners of these online platforms nor are they agents or branches of the same.
>
> **The clients are the ones who transact or trade with these different platforms. They are the ones who download the platform and transact with it.** Their earnings come from their own business decisions. Respondents have no share in the income. There is no guarantee of a fixed income. They did not invest money with respondents.[25] (Emphasis and underscoring supplied)

Prescinding from the foregoing, this Commission finds and so holds that Mr. Viola and the 50k Clubb's unauthorized offer/sale of unregistered securities was established and proven by substantial evidence. This Commission equally takes cognizance of the absence in the records of any evidence that controverts this established fact, save for Mr. Viola and the 50k Clubb's bare allegations and denials, which are not equivalent to proof.[26]

Sections 8 and 28 of the Securities Regulation Code (SRC) is categorical in stating that "**[s]ecurities *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*"**, and **"[n]o *person shall engage in the business of buying or selling securities in the Philippines as a broker ore dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.*"** The reason for this requirement is that all transactions involving securities affect the general public and the national economy, and the State considers these transactions as being imbued with public interest, which is subject to regulation.[27]

In implementing the foregoing statutory provision, the Commission has consistently held that the registration requirements prescribed under the SRC are applicable if the issuer, or anybody acting for and on its behalf, intends a public offering or distribution of securities.[28] Whether a particular transaction involves a public offering depends on the attendant circumstances; the test is: "*[i]s there a sufficient subsisting connection between the company or the person making the offer and the persons to whom the offer is made as friends, customers, or co-adventurers, etc. or are the persons mere outsiders*? If they are mere

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[25] Position Paper dated 12 March 2024. Page 13.
[26] Rogelia Gatan and the Heirs of Bernardino Gatan v. Jesusa Vinarao and Spouses Cabauatan, G.R.No. 205912, 18 October 2017, citing Domingo v. Robles, 453 SCRA 812, 818 [2005] [Per J. Leonardo-De Castro, First Division].
[27] Abacus Securities Corporation v. Ampil, G.R. No. 160016, 27 February 2006 [Per J. Panganiban, First Division]
[28] SEC-OGC Opinion No. 04-09, Re: Registration of Securities, 16 February 2009.

outsiders the offer is made to the public; and in such case, the fact that the offer is made to a limited class, e.g., to members of a single company (not being the company offering its shares), or to members of a few companies, or to members of a particular profession, or to investors in a particular class of companies, does not make it less an offer to the public."[29]

It is by implementing and strictly enforcing the registration requirements in Sections 8 and 28 of the SRC that we support the development of the capital market and protect the investing public. Hence, the grant of authority to issue a CDO under Section 64 of the SRC does not require that there be actual fraud before the Commission can validly issue the same. It is sufficient that the Commission determines that an act or practice will operate as a fraud or is likely to cause grave or irreparable injury or prejudice to the investing public. In this regard, emphasis should be made of the fact that the power and authority granted to the Commission to issue a CDO on the basis of a determination that an act/transaction would cause grave or irreparable injury to the consumers, were recognized and retained by the Congress in recent legislation, *i.e.,* the FCPA. The reason for the foregoing was explained by the Supreme Court in *Primanila Plans, Inc. v. SEC,*[30] to wit:

> 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.**
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> xxx xxx xxx
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> **It is beyond dispute that Primanila plans were not registered with the SEC. Primanila was then barred from selling and offering for sale the said plan product. A continued sale by the company would operate as fraud to its investors, and would cause grave or irreparable injury or prejudice to the investing public, grounds which could justify the issuance of a cease and desist order under Section 64 of the SRC.** Furthermore, even prior to the issuance of the subject cease and desist order, Primanila was already enjoined by the SEC from selling and/or offering for sale pre-need products to the

[29] Ibid.
[30] G.R. No. 193791, August 6, 2014 [Per J. Reyes, First Division].

> public. The SEC Order dated April 9, 2008 declared that Primanila failed to renew its dealer's license for 2008, prompting the SEC's NTD to issue a letter dated January 3, 2008 addressed to Primanila's Chairman and Chief Executive Officer Eduardo S. Madrid, enjoining the company from selling and/or offering for sale pre-need plans to the public. It also had not obtained a secondary license to act as dealer or general agent for pre-need pension plans for 2008. (Emphasis supplied)

Considering that Mr. Viola and the 50k Clubb were not able to show any license issued by the Commission authorizing it to offer, sell, or deal with securities, its continued offer and sale of investment packages, which are unregistered securities, constitute a continuing violation of Sections 8 and 28 of the SRC. There is therefore no reason to lift the Assailed CDO.

Finally, this Commission finds Mr. Viola and the 50k Clubb's reliance in the case of *SEC v. Prosperity.Com Inc.*[31] to be misplaced as it involves the sale of a tangible product of some value to them, *i.e.,* an internet website of a 15 megabyte capacity, rather than an investment in an enterprise that could generate profits for them. Thus, the Supreme Court ruled that the clients therein do not make investments, but pay for the use of the website. These factual circumstances are not present in the instant case. Here, what Mr. Viola and the 50k Clubb are offering/selling are unregistered investment packages which are made available and distributed using their platforms. The investing public is enticed by the investment packages with guaranteed returns and bonuses through the platforms of the CRYPTOMARKETERS, and other distributors. What is being sold by Mr. Viola and the 50k Clubb is not a product which the investing public can utilize; Mr. Viola and the 50k Clubb are offering/selling to the public an opportunity to generate passive income on the condition that the latter entrusts their hard-earned money to Respondents. This is an offer/sale of securities which cannot be done without a license from the Commission.

Applying the foregoing rules and parameters entrenched in law and jurisprudence, this Commission finds no cogent reason to disturb the findings in the Assailed CDO. Accordingly, the Assailed CDO should be sustained and made permanent.

WHEREFORE, premises considered, the Motion to Lift the Cease and Desist Order dated filed by Respondent Mr. Viola, and 50K Clubb Online is hereby **DENIED** for lack of merit. The **CEASE AND DESIST ORDER** issued on 25 January 2024 is hereby made **PERMANENT**.

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[31] G.R. No. 164197, January 25, 2012 [Per J. Abad, Third Division].

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Let a copy of this Resolution be furnished to the Company Registration and Monitoring Department, Markets 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 units (s) for their information and appropriate action.

The **Enforcement and Investor Protection Department**, in coordination with other concerned departments, 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 Resolution.

SO ORDERED.
Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

ROGELIO V. QUEVEDO*
Commissioner

***On Official Business**