



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

In the matter of:

**MARIA FRANCESCA TAN (MFT)
GROUP OF COMPANIES, INC. DOING
BUSINESS UNDER THE NAMES AND
STYLES OF MFT GROUP AND MFT
GROUP OF COMPANIES, FOUNDRY
VENTURES I INC., MARIA FRANCESCA
F. TAN, a.k.a. "MICA TAN," FLORITA F.
TAN, CHARLES EDWARD F. TAN,
CHRISTIAN KONSTANTIN "CK" P.
AGBAYANI, RONALDO G. NERY,
PARKER R. ONG, CHIQUI T. TAN, JD B.
MONTELIBANO, ROMARICO "RICO" S.
RUIZ, ARLENE M. NAVARRO, BEATRIZ
R. TOMAS, MARY RUTH A. OQUENDO,
JOANNE A. CABAERO, THUY NGUYEN,
ROXANNE G. AGBAYANI, LUIS
GABRIEL R. CANCIO, JR., NOEL M.
OLAN, JR HERNANDEZ, CHRISTIAN
OLAN, TITO COSEJO, JR. and
CHRISTIAN "KENCHI" DE VERA,**

**SEC CDO Case No. 01-24-106
Promulgated: 01 April 2024**

**ENFORCEMENT AND INVESTOR
PROTECTION DEPARTMENT,**

Movant.

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RESOLUTION

For consideration of the Commission *En Banc* (the "Commission") are the: (a) *Motion to Lift Cease and Desist Order with Motion for Clarification* dated 23 January 2024 (the "Motion to Lift"), filed on 24 January 2024 by Respondents Maria Francesca Tan (MFT) Group of

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Companies, Inc., (the “MFT Group”), Foundry Ventures I, Inc. (the “Foundry”) [the MFT Group and the Foundry are hereinafter collectively referred to as the “Respondent Corporations”], Maria Francesca F. Tan a.k.a. “Mica Tan”, Florita F. Tan, Charles Edward F. Tan, Christian Konstantin “CK” P. Agbayani, Ronaldo G. Nery, Parker R. Ong, Chiqui T. Tan, JD B. Montelibano, Romarico “Rico” S. Ruiz, Arlene M. Navarro, Beatriz R. Tomas, Mary Ruth A. Oquendo, Joanne A. Cabaero, Thuy Nguyen, Roxanne G. Agbayani, Luis Gabriel R. Cancio, Jr., Noel M. Olan, Jr. Hernandez, Christian Olan, Tito Cosejo, Jr. , and Christian “Kenchi” De Vera, (collectively referred to as the “Individual Respondents”); and (b) the *Omnibus Motion* filed on 08 March 2024 filed by the Withdrawn Respondents as defined below, praying for the lifting and/or the declaration of the automatic lifting of the *Cease and Desist Order* dated 16 January 2024 (the “Assailed CDO”), the dispositive portion of which, in part, reads:

“WHEREFORE, premises considered, Respondents MARIA FRANCESCA TAN (MFT) GROUP OF COMPANIES, INC. DOING BUSINESS UNDER THE NAME AND STYLES OF MFT GROUP AND MFT GROUP OF COMPANIES, FOUNDRY VENTURES I, INC., MARIA FRANCESCA F. TAN a.k.a. “MICA TAN”, FLORITA F. TAN, CHARLES EDWARD F. TAN, CHRISTIAN KONSTANTIN “CK” P. AGBAYANI, RONALDO G. NERY, PARKER R. ONG, CHIQUI T. TAN, JD B. MONTELIBANO, ROMARICO “RICO” S. RUIZ, ARLENE M. NAVARRO, BEATRIZ R. TOMAS, MARY RUTH A. OQUENDO, JOANNE A. CABAERO, THUY NGUYEN, ROXANNE G. AGBAYANI, LUIS GABRIEL R. CANCIO, JR., NOEL M. OLAN, JR. HERNANDEZ, CHRISTIAN OLAN, TITO COSEJO, JR., and CHRISTIAN “KENCHI” DE VERA representatives, salesmen, solicitors, agents, uplines, enablers and influencers, and any and all persons claiming and acting for and in their behalf, are hereby directed to **IMMEDIATELY CEASE AND DESIST** from further engaging in, promoting and facilitating selling and/or offering for sale securities in the form of evidence of indebtedness and/or other activities/transactions relative thereto, until the requisite registration statements are duly filed with and approved by the Commission, and the corresponding license and/or permit to offer/sell securities are issued.

Respondents **MARIA FRANCESCA TAN (MFT) GROUP OF COMPANIES, INC. DOING BUSINESS UNDER THE NAME**

AND STYLES OF MFT GROUP AND MFT GROUP OF COMPANIES, FOUNDRY VENTURES I, INC., MARIA FRANCESCA F. TAN a.k.a. "MICA TAN", FLORITA F. TAN, CHARLES EDWARD F. TAN, CHRISTIAN KONSTANTIN "CK" P. AGBAYANI, RONALDO G. NERY, PARKER R. ONG, CHIQUI T. TAN, JD B. MONTELIBANO, ROMARICO "RICO" S. RUIZ, ARLENE M. NAVARRO, BEATRIZ R. TOMAS, MARY RUTH A. OQUENDO, JOANNE A. CABAERO, THUY NGUYEN, ROXANNE G. AGBAYANI, LUIS GABRIEL R. CANCIO, JR., NOEL M. OLAN, JR. HERNANDEZ, CHRISTIAN OLAN, TITO COSEJO, JR., and CHRISTIAN "KENCHI" DE VERA representatives, salesmen, solicitors, agents, uplines, enablers and influencers, and any and all persons claiming and acting for and in their behalf, are likewise directed to **CEASE** their solicitations relating to the transactions and investment scheme covered by this Cease and Desist Order. The Commission will institute the appropriate administrative and criminal action against any persons or entities found to act as solicitors, information providers, salesmen, agents, brokers, dealers or the like for and on their behalf.

Finally, the Commission hereby **PROHIBITS MARIA FRANCESCA TAN (MFT) GROUP OF COMPANIES, INC. DOING BUSINESS UNDER THE NAME AND STYLES OF MFT GROUP AND MFT GROUP OF COMPANIES, FOUNDRY VENTURES I, INC., MARIA FRANCESCA F. TAN a.k.a. "MICA TAN", FLORITA F. TAN, CHARLES EDWARD F. TAN, CHRISTIAN KONSTANTIN "CK" P. AGBAYANI, RONALDO G. NERY, PARKER R. ONG, CHIQUI T. TAN, JD B. MONTELIBANO, ROMARICO "RICO" S. RUIZ, ARLENE M. NAVARRO, BEATRIZ R. TOMAS, MARY RUTH A. OQUENDO, JOANNE A. CABAERO, THUY NGUYEN, ROXANNE G. AGBAYANI, LUIS GABRIEL R. CANCIO, JR., NOEL M. OLAN, JR. HERNANDEZ, CHRISTIAN OLAN, TITO COSEJO, JR., and CHRISTIAN "KENCHI" DE VERA** their partners, operators, directors, officers, salesmen agents, representatives, promoters, and all persons, conduit entities and subsidiaries claiming and acting for and on its behalf from transacting any business involving the funds covered by this CDO in its depository banks, and from transferring, disposing, or conveying in any manner, all assets, properties, real or personal, including but not limited to bank deposits,

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of which the named persons herein may have any interest, claim or participation whatsoever, directly or indirectly, under its/their custody, to ensure the preservation of the assets for the benefit of the investors.”

The records bear out the following antecedents:

On 11 January 2024, the Enforcement and Investor Protection Department (“EIPD”) filed before the Commission a *Petition for Issuance of a Cease and Desist Order*¹ (the “Petition”) seeking to stop Respondent Corporations and Individual Respondents from carrying out their unauthorized offer or sale of unregistered securities.

On 16 January 2024, the Commission issued the Assailed CDO after finding that Respondent Corporations and the Individual Respondents are selling or offering unregistered securities in the form of investment contracts and/or evidences of indebtedness without the requisite license, in violation of Section 8 of the Securities Regulation Code (SRC), in relation to Sec. 3.1.17.2 of the 2015 Implementing Rules and Regulations of the SRC (the “2015 SRC-IRR”). In particular, the Commission found that the investment solicitation scheme of the Respondent Corporations and Individual Respondents which promises high returns are securities in the form of investment contracts as all the elements of the Howey Test are present. The Commission also found that the loan agreements and promissory notes that are being executed and issued are securities in the form of evidences of indebtedness inasmuch as they were executed in exchange for a considerably big number of individual non-personalized loans obtained or solicited from the public which are used to fund the operations of their alleged subsidiaries.

In the instant *Motion to Lift*,² the Respondent Corporations and Individual Respondents prayed for the lifting of the Assailed CDO, essentially arguing that the loan agreements that were issued are not securities, either in the form of an investment contract or as evidence of indebtedness. They further argued that the Assailed CDO is infirm because the requirements prescribed for its issuance were not complied with by the Commission.

On 07 February 2024, the MFT Group, Maria Francesca F. Tan A.K.A. “Mica Tan,” Ronald G. Nery, Halmond Parker R. Ong, Maricris T. Tan, Jose Donnie B. Montelibano, Arlene C. Mauricio, Maria Beatriz

¹ *Petition for Issuance of a Cease and Desist Order* dated 11 January 2024.

² *Motion to Lift* dated 23 January 2024.

Dolores R. Tomas, and Mary Ruth A. Oquendo (the “Withdrawn Respondents”) filed a *Notice to Withdraw with Entry of Appearance* dated 5 February 2024 (the “Notice to Withdraw”), informing the Commission of their decision to withdraw as Movants in the *Motion to Lift*, and to file with the appellate court a *Petition for Certiorari* under Rule 65 of the *Rules of Court* which, according to them, is the proper remedy given the alleged urgency to address the blatant disregard and violation of their constitutional rights.

On 08 February 2024, the Commission was furnished with a copy of a *Petition for Certiorari with Extremely Urgent Application for the Issuance of TRO and/or Writ of Preliminary Injunction and Urgent Motion for Special Raffle* (the “Petition for Certiorari”) filed by the Withdrawn Respondents with the Court of Appeals (CA).

On 19 February 2024, the Withdrawn Respondents filed a *Motion to Suspend* proceedings arguing that the principle of judicial courtesy, as well as the issues raised in the Petition for Certiorari which pose a prejudicial question to the instant case, warrants the grant of the same.

On 22 February 2024, the Commission issued a Resolution noting the *Notice of Withdrawal* and declaring the Withdrawn Respondents to have been removed as movants in the *Motion to Lift*.

On 23 February 2024, the CA issued a Resolution denying the prayer of the Withdrawn Respondents for the issuance of a TRO and/or Writ of Preliminary Injunction.

On 29 February 2024, the EIPD filed a *Comment/Opposition to the Motion to Lift*³ (“*Comment/Opposition*”) which prayed for the denial of the Motion to Lift, maintaining its position that the loan agreements and Promissory Notes executed by the Respondent Corporations and Individual Respondents are securities in the form of investment contracts which were being offered or sold without the requisite license from the Commission. The EIPD also maintained that the Assailed CDO was validly issued as all the requirements prescribed by law were complied with.

The EIPD further maintained that the Respondent Corporations and Individual Respondents should not be allowed to dispose of the assets and funds generated from unauthorized public offering or sale of unregistered securities as the same would cause grave or irreparable

³ 29 February 2024.

injury or prejudice to their investors. Relative thereto, the EIPD pointed out that the Audited Financial Statements (AFS) of the Respondent Corporations revealed that the monies received were not even recognized either as part of equity or liabilities in the books of the Respondent Corporations, which means that they can conveniently be disposed of by the Respondent Corporations and Individual Respondents.

On 01 March 2024, a *Motion for Exclusion as One of the Respondents (In the SEC Cease and Desist Order Dated 16 January 2024)*⁴ was filed by Respondent Christian “Kenchi” De Vera (“Respondent De Vera”). Respondent De Vera, who claimed to have never been a stockholder or a member of the Board of the Respondent Corporations, argued that he should be excluded as a respondent in the Assailed CDO since he already resigned from the MFT Group last 07 June 2020.

On 08 March 2024, an *Omnibus Motion* was filed by the Withdrawn Respondents praying for: (1) the striking out of the EIPD’s Comment/Opposition from the records for being belatedly filed; and (2) the automatic lifting of the Assailed CDO. The Withdrawn Respondents claimed that the Assailed CDO should be declared automatically lifted for the failure to resolve the Motion to Lift within the period prescribed in the 2016 Rules.

1. The Assailed CDO is not automatically lifted; the proceedings on the Assailed CDO is not yet terminated.

In the *Omnibus Motion*, the Withdrawn Respondents invoked Sec. 64.3 of the SRC as basis for their position that the Assailed CDO was automatically lifted. They maintained that the failure of the Commission to set a hearing after the *Motion to Lift* was filed, and to actually resolve the same resulted in the automatic lifting of the assailed CDO after the lapse of the 10-day period provided in the said provision.

The Withdrawn Respondents are wrong.

This Commission has consistently held that a correct and proper interpretation of the provisions of the SRC and the SRC-IRR must always be anchored on the declared State policies embodied in Sec. 2 of the SRC which underlie the very purpose for which the law was enacted, thus:

⁴ *Motion for Exclusion* dated 27 February 2024.

“The State shall establish a socially conscious, free market that regulates itself, encourage the widest participation of ownership in enterprises, enhance the democratization of wealth, promote the development of the capital market, protect investors, ensure full and fair disclosure about securities, minimize if not totally eliminate insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market. To achieve these ends, this Securities Regulation Code is hereby enacted.” (Emphasis supplied)

The afore-quoted provision embodies the raison d’être of the SRC and the SRC-IRR from which we can derive the intent and purpose for which the law was enacted. Thus, the interpretation and implementation of its provisions should be carried out in a manner that will actualize and pursue intent of the Congress to protect the investing public and promote the integrity of the capital markets.

In the case of *Palanca IV v. RCBC Securities, Inc.*,⁵ the Supreme Court emphasized that Section 2 of the SRC which embodies the core principles of the securities laws of the country should be considered in interpreting its provisions to ensure that they are effectively carried out, thus:

“It has been observed that the afore-quoted provision lays down seven core principles of our securities regulation laws: self-regulation, encouragement of the widest participation of ownership in enterprises, enhancement of the democratization of wealth, promotion of capital market development, protection of investors, ensuring full and fair disclosure about securities, and minimization, if not total elimination, of insider trading and other fraudulent or manipulative devices and practices that create distortions in the free market, with the unifying principle being the protection of investors. These core principles animate the whole of the SRC; and as such, any doubt or conflict in the interpretation of the SRC and its implementing rules must be resolved in a manner that will carry out the foregoing principles. We therefore resolve the issues before Us with these principles in mind, giving particular attention to the principles of full disclosure, investor protection, and the elimination of fraudulent or manipulative devices and practices.” (Emphasis supplied)

⁵ G.R. No. 241905, [March 11, 2020].

Guided by the afore-quoted doctrine, the various provisions of the SRC, including Sec. 64 which is at issue in the instant case, should thus be interpreted in a way that will promote and ensure the protection of investors, being the central and unifying principle of the securities laws in our jurisdiction. In this regard, the Supreme Court, in *Securities and Exchange Commission v. Interport Resources Corporation*,⁶ emphasized that in implementing a statute, the Commission is mandated to effectuate its general policies, to wit:

“It is well established that administrative authorities have the power to promulgate rules and regulations to implement a given statute and to effectuate its policies, provided such rules and regulations conform to the terms and standards prescribed by the statute as well as purport to carry into effect its general policies. Nevertheless, it is undisputable that the rules and regulations cannot assert for themselves a more extensive prerogative or deviate from the mandate of the statute.”
(Emphasis supplied)

The power of the Commission to issue a CDO must therefore be seen and exercised with a view of implementing the core principles in our securities laws—the most of important of which is the protection of investors. Only from such perspective can Sec. 64 of the SRC truly have a meaningful and impactful implementation that is consistent with the intent of the law. The foregoing finds support in *Primanila Plans Inc. vs Securities and Exchange Commission*,⁷ where the Supreme Court emphasized that the purpose of a CDO to curtail fraud and prevent injury upon the investing public, thus:

“The law is clear on the point that a cease and desist order may be issued by the SEC *motu proprio*, it being unnecessary that it results from a verified complaint from an aggrieved party. A prior hearing is also not required whenever the Commission finds it appropriate to issue a cease and desist order that aims to curtail fraud or grave or irreparable injury to investors. There is good reason for this provision, as any delay in the restraint of acts that yield such results can only generate further injury to the public that the SEC is obliged to protect.” (Emphasis supplied)

⁶ SEC v. Interport Resources Corporation (G.R. No. 135808. October 6, 2008)

⁷ G.R. No. 193791. August 6, 2014.

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 the SRC and/or the SRC-IRR.⁸ The purpose is essentially to protect investors and to prevent fraud or injury that they may possibly sustain. Necessarily, as long as the violation subsists or 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. A contrary view will incentivize scheming fraudsters and con artists who can conveniently take advantage of an automatic lifting of a CDO by a mere lapse of time, even if the proceedings on the same are not yet terminated, as what happened in the instant case. Such is clearly not the intent of the law. 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, the Commission holds that a CDO issued *motu proprio* will, by express provision of law, stand and continue to have full force and effect 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. The same rule applies in cases where the proceedings on the CDO is not yet terminated.

In the instant case, the records disclose that after the Motion to Lift was filed on 23 January 2024, the parties continued to file their respective pleadings where they presented additional arguments in support of their positions and sought new reliefs from the Commission. Specifically, subsequent to the Motion to Lift, the following pleadings were filed: (1) Notice to Withdraw on 7 February 2024; (2) Comment/Opposition of the EIPD on 29 February 2024; (3) Motion for Exclusion as one of the Respondents on 1 March 2024; and (4) Omnibus Motion to Declare Automatic Lifting of CDO on 8 March 2024. These show and confirm that the proceeding on the Motion to Lift was not yet terminated. In other words, the continued filing by the parties of their respective pleadings effectively prevented the Commission from fully resolving the Motion to Lift.

More importantly, the fact that the investing public continues to be exposed to the risk of being prejudiced and/or defrauded by the unauthorized sale or offer of unregistered securities by the Respondent Corporations and the Individual Respondents militates against the automatic lifting of the Assailed CDO which the latter is advancing.

⁸ See Sections 53.3 and 64 of the SRC on the concept of CDO.

Respondent Corporations and the Individual Respondents' position are clearly repugnant to the intent and purpose of Section 64 of the SRC. In fact, Sec. 4-3(d), Part II, Rule IV of the 2016 Rules is emphatic in stating that a CDO may only be lifted by the Commission, at its discretion, "*upon a finding that the grounds for the issuance of the same no longer exist, or the objective of the CDO of protecting the public from harm or fraud has already been accomplished.*"

We also find the claim of the Respondent Corporations and Individual Respondents that the Commission failed to conduct a hearing to be devoid of basis. The concept of a hearing under Sec. 64 of the SRC vis-à-vis Sec. 4-3 Rule V Part II of the Rules is broad enough to cover the entire proceeding covering a CDO issued by the Commission in the sense that it affords parties the opportunity to present their defenses, considering that the law specifically excluded their involvement or participation in the investigation proceedings. This is consistent with required liberal construction of the provisions of the SRC,⁹ as well as the established rule in administrative proceedings that technical rules of procedure are not strictly applied.¹⁰ In the case of *Perez vs. Philippine Telegraph and Telephone Company*,¹¹ the Supreme Court ruled that in administrative proceedings, the term "hearing" is used in a general sense to cover an entire proceeding instead of a single rigid proceeding, to wit:

"The standard for the hearing requirement, ample opportunity, is couched in general language revealing the legislative intent to give some degree of flexibility or adaptability to meet the peculiarities of a given situation. To confine it to a single rigid proceeding such as a formal hearing will defeat its spirit.

A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the controversy. **"To be heard" does not**

⁹ "These Rules shall be liberally construed and administered to promote public interest, to secure a just, prompt, expeditious, and inexpensive determination of every action and proceeding before the Commission and to carry out the objectives of the laws it is mandated to implement."

¹⁰ "Administrative tribunals exercising quasi-judicial powers are unfettered by the rigidity of certain procedural requirements, subject to the observance of fundamental and essential requirements of due process in justiciable cases presented before them. In administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense." (*Samalio vs Court of Appeals*. G.R. No. 140079, March 31, 2005).

¹¹ G.R. No. 152048. April 7, 2009

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mean verbal argumentation alone inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings.” (Emphasis supplied)

On account thereof, this Commission finds and so holds that the Respondent Corporations and the Individual Respondents’ reliance on Sec. 64.3 of the SRC is clearly misplaced as the hearing on the *Assailed CDO* was not yet terminated. The fact that the proceeding involving the Assailed CDO was not yet submitted for resolution necessarily precludes the automatic lifting thereof precisely because it is the resolution which the Commission will issue that will determine if the Assailed CDO will be lifted or will be made permanent.

The foregoing notwithstanding, We find and so hold that the Notice of Withdrawal which this Commission noted and acted favorably, operated to effectively withdraw the Motion to Lift, as if the same was never filed at all. This resulted in the Assailed CDO becoming permanent for failure of the Withdrawn Respondents to file a Motion to Lift within the reglementary period. The doctrine in the case of *Central Luzon Drug Corporation vs. Commissioner of Internal Revenue*,¹² which is applicable by analogy, is instructive, thus:

“When an appeal is withdrawn, the assailed decision becomes final and executory.

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However, we agree with the OSG that the dismissal of the instant case should be with prejudice. By withdrawing the appeal, petitioner is deemed to have accepted the decision of the CTA. And since the CTA had already denied petitioner’s request for the issuance of a tax credit certificate in the amount of ₱32,170,409 for insufficiency of evidence, it may no longer be included in petitioner’s future claims. Petitioner cannot be allowed to circumvent the denial of its request for a tax credit by abandoning its appeal and filing a new claim. To reiterate, “an appellant who withdraws his appeal x x x must face the consequence of his withdrawal, such as the decision of the court a quo becoming final and executory.”

¹² G.R. No. 181371. March 2, 2011.

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In the instant case, the Withdrawn Respondents decided to withdraw and abandon their Motion to Lift after they determined that the proper remedy is the filing of a Petition for Certiorari under Rule 65 with the CA. Their conscious and deliberate withdrawal of the Motion to Lift can be considered as an express waiver on their part to avail of the remedy under Sec. 4-3(c), Part II, Rule IV of the 2016 Rules which provides for the lifting of a CDO based on a verified motion to lift. Consequently, the Assailed CDO became permanent as to the Withdrawn Respondents, by virtue of Sec. 4-3(d), Part II, Rule IV of the 2016 Rules.

More importantly, the withdrawal of the Motion to Lift mooted the issue on alleged failure of the Commission to set the same for hearing which was already addressed earlier. In the case of *SEC vs. CJH Development Corporation*¹³ (the “CJH Case”), the Supreme Court emphasized that since a CDO is essentially an interlocutory order, the prima facie finding of violation of Sec. 8 of the SRC made by the Commission may still be overcome in the hearing, thus:

“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 hearing. It is, therefore, clear that the subject CDO, being interlocutory, may not be the subject of an appeal.

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Hence, as cited above, instead of filing an appeal with the CA, respondents should have filed a motion to lift the assailed CDO. **Since the law and the SEC Rules require that this motion be heard by the SEC, it is during this hearing that respondents could have presented evidence in support**

¹³ G.R. No. 210316. November 28, 2016.

of their contentions. However, they chose not to file the said motion.” (Emphasis and underscoring supplied)

With their withdrawal of the Motion to Lift, the Withdrawn Respondents clearly opted not to refute the *prima facie* finding of the Commission and to present contrary evidence in a hearing on the main issue. The withdrawal of the Motion to Lift precluded the conduct of any hearing, and mooted any issue which they presented relating thereto. The Withdrawn Respondents cannot therefore say that the Commission failed to conduct a hearing because as to them, it was legally impossible to do so. Moreover, the principle of estoppel and the rule on judicial admission prohibit the Withdrawn Respondents from refuting the *prima facie* finding made by this Commission in the Assailed CDO, after they willfully and deliberately decided to avail of the remedy under Rule 65 of the Rules of Procedure.

The Loan Agreements are securities in the form of investment contracts and/or evidence of indebtedness

Notwithstanding the withdrawal of the Motion to Lift by the Withdrawn Respondents, this Commission finds it important to reiterate its findings in the Assailed CDO which sufficiently justifies not only its issuance, but also the permanency thereof. The following disquisitions will show that the Assailed CDO should be made permanent not only because of the failure of the Withdrawn Respondents to file a verified motion to lift, but because their unauthorized investment scheme will prejudice and defraud the investing public, and compromise the integrity of the capital markets.

At the outset, emphasis should be made of the fact that just like the securities acts of other jurisdictions, specifically the United States of America, the SRC adopted a very broad definition of securities,¹⁴ which is intended to be liberally construed in order to achieve the main purpose of its enactment, i.e., regulation of the issuance and sale of securities and prevention of fraud to protect investors.

Rule 26.3.5 of the SRC-IRR defines an “investment contract,” which is considered a security under the SRC, as follows:

¹⁴ “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)

“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 and underscoring supplied)

The law considers investment contracts as securities because what the purported issuer is, or will be using to further his business is money put in by the public who expects a return of their investment. Consistent with the broad definition of securities, the term investment contract should 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.

Moreover, the sad experiences of people around the world who have been duped by scamsters and con artists has led the Supreme Court to adopt the doctrine in the United States (US) case of *SEC v. W.J. Howey Co.*, and held in *Gabionza v. Court of Appeals*¹⁵ (the “Gabionza Case”) that the term “securities” embodies a flexible rather than static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek to use the money of others on the promise of profits.¹⁶

In the US case of *SEC v. Joiner Leasing Corp.*,¹⁷ 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. 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

¹⁵ G.R. No. 161057, 12 September 2008.

¹⁶ In the US case of *Reves et al vs. Ernst & Young* the US Supreme Court stated that the US Congress enacted a definition of “security” sufficiently broad to encompass virtually any instrument that might be sold as an investment. Because the US Securities Acts define “security” to include “any note,” **the presumption is that every note is a security** and that presumption may be rebutted **only by a showing that the note bears a strong resemblance to the one of the enumerated categories of instrument that does not fall under the securities category**. *Reves et al. vs. Ernst & Young*, 494 U.S. 56, 21 February 1990.

¹⁷ 320 U.S. 344 (1943) [<https://supreme.justia.com/cases/federal/us/320/344/>]

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." (Underscoring supplied)

Thus, in *State v. Silberberg*,¹⁸ the Ohio Court explained that in determining whether an interest is an investment contract or an interest in real estate, it is the individual control which the purchaser has over the property or venture in which he acquired an interest that should be examined. **Generally, if the purchaser is to partake of the gross proceeds or net profits of enterprises managed by those disposing of the interest, the instrument involved is held to be an investment contract.** On the other hand, if the purchaser of real property is to occupy the premises and conduct the enterprise with others, the instrument involved is generally not an investment contract or a security.¹⁹

Although foreign case law is merely persuasive authority and our adjudicatory bodies are not bound by legal perspective expounded in the aforementioned case, said case provides a useful framework in our own examination of the scope of the term securities.

On the other hand, a certificate or evidence of indebtedness is *a written representation of debt securities or obligations of corporations* such as long term commercial and short-term commercial papers.²⁰ A certificate of indebtedness pertains to certificates for the creation and maintenance of a permanent improvement revolving fund, similar to a "bond." Being equivalent to a bond, it is properly understood as acknowledgement of an obligation to pay a fixed sum of money. It is usually used for the purpose of long-term loans.²¹

In the Gabionza Case, the Supreme Court ruled that commercial papers evidencing indebtedness, which certainly include loan agreements and checks, can be regarded as shares of stocks if issued pursuant to a scheme that enables the lenders to participate in the profits of the corporation (and actually expects a return on their investments), thus:

¹⁸ 166 Ohio St. 101, 139 N.E. 2d 342 (1956).

¹⁹ Leslie J. Crocker, 1966, Investment Contracts under Federal and State Law, Case Western Reserve Law Review, Volume 17, Issue 4, page 15.

²⁰ Decasa, Lucia M., *Securities Regulations Code Annotated with Implementing Rules and Regulations*, 2004, 1st ed., p.7.

²¹ G.R. No. 93397, Traders Royal Bank vs. Court of Appeals, 3 March 1997.

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"This analysis is highly myopic and ignorant of the bigger picture. **It is one thing for a corporation to issue checks to satisfy isolated individual obligations, and another for a corporation to execute an elaborate scheme where it would comport itself to the public as a pseudo-investment house and issue postdated checks instead of stocks or traditional securities to evidence the investments of its patrons.** The Revised Securities Act was geared towards maintaining the stability of the national investment market against activities such as those apparently engaged in by ASBHI. As the DOJ Resolution noted, ASBHI adopted this scheme in an attempt to circumvent the Revised Securities Act, which requires a prior license to sell or deal in securities. After all, if ASBHI's activities were actually regulated by the SEC, it is hardly likely that the design it chose to employ would have been permitted at all.

But was ASBHI able to successfully evade the requirements under the Revised Securities Act? As found by the DOJ, there is ultimately a prima facie case that can at the very least sustain prosecution of private respondents under that law. The DOJ Resolution is persuasive in citing American authorities which countenance a flexible definition of securities. Moreover, **it bears pointing out that the definition of "securities" set forth in Section 2 of the Revised Securities Act includes "commercial papers evidencing indebtedness of any person, financial or non-financial entity, irrespective of maturity, issued, endorsed, sold, transferred or in any manner conveyed to another." A check is a commercial paper evidencing indebtedness of any person, financial or non-financial entity. Since the checks in this case were generally rolled over to augment the creditor's existing investment with ASBHI, they most definitely take on the attributes of traditional stocks.**" (Emphasis supplied)

Under the SRC, evidences of indebtedness are considered securities and must be registered with the Commission unless the issuer shows that the same are exempt from registration. Subsection 8.1 of the SRC is categorical in stating 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."** The reason for this is that stock market transactions affect the general public and the national

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economy. The rise and fall of stock market indices reflect, to a considerable degree, the state of the economy. Trends in stock prices tend to herald changes in business conditions. Consequently, **securities transactions are impressed with public interest, and are thus subject to public regulation.**²² In the CJH Case, the Supreme Court emphasized that the purpose of requiring the registration of securities is to afford the public protection from investing in worthless securities.

Relative thereto, the Commission has consistently held²³ that the registration requirements prescribed under the SRC are applicable if the registrant, or someone acting for it, intends a public offering or distribution of the registrant's securities.²⁴ Whether a particular transaction involves a public offering depends on all the surrounding circumstances; the test is: *"Is 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 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 the members of a single company (not being the company offering its shares), or to the members of a few companies, or to the members of a particular profession, or to the investors in a particular class of companies, does not make it less an offer to the public."*²⁵

In the instant case, the evidence on record shows and affirms the finding of this Commission that the unauthorized investment scheme of Respondents which made use of loan agreements and checks constituted an offer or sale of unregistered securities in the form of investment contracts and/or evidences of indebtedness.

The loan agreements which the Respondents were executing in exchange for the investments of its client-investors were investment contracts as all the elements of the Howey Test were present. First, the complaints which were filed with the Commission by some of their investors showed that there was actual investment of money ranging from Fifty Thousand Pesos (Php 50,000.00) to Eight Million Pesos (Php 8,000,000.00).²⁶ Second, the monies collected from their investors were pooled to finance "sure projects" of its subsidiaries, i.e., 32nd Street Prime

²² G.R. No. 160016, Abacus Securities Corporation vs. Ampil, 27 February 2006.

²³ See (a) In the Matter of ALPHANETWORLD CORPORATION doing business under the name and style of NWORLD [SEC CDO Case No. 02-22-081]; (b) In the Matter of Astrazion Noble Task Community Foundation Et. Al. [SEC CDO Case No. 05-22-090]; (c) In the matter of Superbreakthrough Enterprises Corp. [[SEC CDO Case No. 11-23-104]

²⁴ SEC-OGC Opinion No. 04-09, Re: Registration of Securities, 16 February 2009.

²⁵ *Ibid*

²⁶ *Motion for CDO. Annexes "O" and "Q"*

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Diner, Inc., Mondial Medical Technologies, Inc., Mr. Angel Credit Corporation, Asianinvest Consultants, Inc., Meihao Corporation, Accentik, Inc. Saladstop Spain.²⁷ This is the common enterprise which Respondents were operating to sustain their unauthorized investment scheme. Third, their investors expected a return on their investment at the rate of 1%-2% per month (12-24% per annum) which the Respondents guaranteed. Fourth, the returns on investments were made possible primarily from the efforts of the Respondent Corporations and the Individual Respondents.

In the same manner, the loan agreements and checks executed and issued by the Respondent Corporations and the Individual Respondents, insofar as they were used to obtain funds from the public, are securities in the form of evidences of indebtedness considering that they clearly took on the attributes of traditional stocks. By using the loan agreements and checks, the Respondent Corporations and the Individual Respondents were using the investments made by the public to carry out their business operation. However, since these documents are not registered as Respondent Corporations and the Individual Respondents appear to have deliberately circumvented the SRC, there is no way to protect the investing public through the regulatory requirements and mechanisms governing registered issuers. Thus, until Respondent Corporations and the Individual Respondents secure the required registration statement duly approved by the Commission, the need to keep the Assailed CDO in full force and effect subsists. A contrary position will encourage circumvention of the SRC through the use of commercial documents, transactions and arrangements at the expense of the investing public. The unauthorized investment scheme being perpetrated by Respondent Corporations and the Individual Respondents is the activity the SRC seeks to regulate; the sale or offer of unregistered securities in whatever form is the evil that the law seeks to avoid for the protection of the investing public. This is the very reason why the Commission was expressly granted by law the power to issue a CDO.

Finally, the effective implementation of the Assailed CDO, or any CDO for that matter, requires that any and all corporations, entities and/or persons subject thereof should be equally restrained from using, disposing of, and/or dealing in any manner with the proceeds or assets generated from the unauthorized investment activities. The purpose is to preserve such assets for the benefit of the investors who have been defrauded and/or misled into the belief that persons engaged in the unauthorized investment-taking activities are licensed to offer or sell

²⁷ Motion for CDO (n1), Par. 47.

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securities when such is not the case. Without this directive, persons carrying out an unauthorized investment-taking activities can conveniently abscond with the investors' hard earned money, leaving them holding on to an empty bag.

The seriousness, gravity and repugnant nature of offering/selling unregistered securities without the required license is in fact highlighted by the Congressional act of specifically considering it as an investment fraud as defined under Sec. 3(f) of R.A. No. 11765, otherwise known as the Financial Products and Services Consumer Protection Act, to wit:

“(f) *Investment fraud* refers to any form of deceptive solicitation of investments from the public. This includes Ponzi schemes and such other schemes involving the promise or offer of profits or returns which are sourced from the investments or contributions made by the investors themselves, boiler room operations, and the offering or selling of investment schemes to the public without the license or permit from the SEC, unless such offering or selling involves exempt securities or are considered as exempt transactions as provided for under existing laws;”
(Emphasis supplied)

While investment fraud is specifically characterized as a criminal act, the Congress is nonetheless fully aware that criminal prosecution may take time, and there is an urgent need in the interim to protect consumers/investors' assets which are in the hands/custody of the perpetrators. This explains the inclusion in the Financial Products and Services Consumer Protection Act of the State policy granting financial consumers the right to protection of their assets against fraud and misuse.²⁸ With this new legislation, we see a crystallization of the intent of the Congress as regards the interpretation and implementation of securities laws, which is to provide an effective mechanism that fully, adequately and relevantly protect the investors and their investments.

The Financial Products and Services Consumer Protection Act now embodies the Congressional fiat granting the Commission, among others, the authority to issue a CDO that will effectively protect investors' assets against fraud and misuse. This addresses and puts to rest what Professor Davis have called the fundamental problem of administrative law²⁹, by

²⁸ Sec. 2

²⁹ Davis. *Ombudsmen in America: Officers to Criticize Administrative Action*, 109 U. PA. L. Rev. 1057, 1062 (1961).

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sanctioning a prohibition that, to the mind of the Congress, will protect and preserve the assets of investors. In other words, the prohibition to use and dispose of the investments/assets obtained from the unauthorized investment-taking activities was justified under the SRC, albeit impliedly, as a necessary imperative to effectively protect investors and their investments. Under the Financial Products and Services Consumer Protection Act, the Congress itself has made the express declaration that such prohibition will protect investors' assets against fraud and misuse, hence, should be included in the CDO.

The foregoing therefore justifies the inclusion in the Assailed CDO of a prohibition directed against the Respondent Corporations and the Individual Respondents from *"transacting any business involving the funds covered by the Assailed CDO in its depository banks, and from transferring, disposing, or conveying in any manner, all assets, properties, real or personal, including but not limited to bank deposits, of which the named persons herein may have any interest, claim or participation whatsoever, directly or indirectly, under its/their custody, to ensure the preservation of the assets for the benefit of the investors."* Together with the prohibition from offering/selling unregistered securities which will effectively prevent more investors from being defrauded, the afore-quoted prohibition on the disposition of the assets obtained from the unauthorized offer/sale of unregistered securities will ensure that the hard-earned money which the Respondent Corporations and the Individual Respondents' have received from their existing investors will be preserved for the benefit of the latter.

The prohibition becomes even more significant and imperative in the instant case where the evidence shows that the monies invested in the Respondent Corporations were neither entered nor reflected in their books, whether as equity or liability. This clearly indicates that the monies are in the possession and control of the Individual Respondents which may easily be disposed of.

WHEREFORE, premises considered, the (a) *Motion to Lift Cease and Desist Order* dated 23 January 2023, filed by Respondents Foundry Ventures I, Inc. Florita F. Tan, Charles Edward Tan, Christian Konstantin "CK" P. Agbayani, Chiqui Tan, Romarico Rico S. Ruiz, Arlene M. Navarro, Joanne A. Cabaero, Thủy Nguyễn, Roxanne Agbayani, Luis Gabriel R. Cancio, Noel M. Olan, JR Hernandez, Christian Olan, Tito Cosejo Jr., and Christian "Kenchi" De Vera; and (b) the *Omnibus Motion* filed by Maria Francesca Tan (MFT) Group of Companies, Inc. Doing Business Under the Name and Styles of MFT Group and MFT Group of Companies, and Maria Francesca

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F. Tan a.k.a. "Mica Tan," Ronaldo G. Nery, Halmond Parker R. Ong, Maricris T. Tan, Jose Donnie B. Montelibano, Arlene C. Mauricio, Maria Beatriz Dolores R. Tomas, and Mary Ruth A. Oquendo are hereby **DENIED** for lack of merit. The *Cease and Desist Order* dated 16 January 2024 is hereby made **PERMANENT** as to the remaining Movants who did not withdraw.

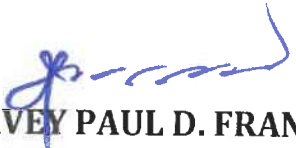
Let a copy of this **RESOLUTION** be (a) posted in the Commission's website; and (b) be furnished to the Company Registration and Monitoring Department, Corporate Governance and Finance Department, and the Information and Communications Technology Department of this Commission, the Bangko Sentral ng Pilipinas, the Department of Trade and Industry, the National Privacy Commission, and the Department of Information and Communications Technology, and the relevant local government unit(s) for their information and appropriate action.

The EIPD, 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