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

IN THE MATTER OF:

LMB FOOTBALL

SEC CDO Case No. 03-22-086

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),

Movant.

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CEASE AND DESIST ORDER

This resolves the *Motion for Issuance of a Cease and Desist Order*[1] (the "Motion") filed by the Enforcement and Investor Protection Department (EIPD) praying that an order be issued (a) directing LMB Football, its officers, operators, administrators, promoters, representatives, salesmen, agents, investment team planners, mentors, enablers, influencers, assigns, conduit entities, subsidiaries (collectively referred to as "Agents"), and any and all persons claiming and/or acting for and in their behalf, to immediately cease and desist from further engaging in the sale and/or offer of unregistered securities, and to cease its internet presence relating to its investment activities until the requisite registration statements are filed with and approved by the Securities and Exchange Commission (the "Commission") and the license to offer/sell securities is issued; and (b) prohibiting LMB Football, its Agents, and any and all persons claiming and/or acting for and in their behalf, from selling, encumbering, conveying, or disposing any of its properties and/or assets without the prior written authority from the Commission.

PARTIES

The EIPD is one of the Commission's operating departments tasked, among others, to investigate and institute administrative actions against persons and entities engaged in the sale and/or offer of unregistered securities without the requisite secondary license.[2]

LMB Football is an entity that is not registered with the Commission either as a corporation or partnership, which operates an online investment-solicitation business, and is not authorized to solicit

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[1] Filed on 14 March 2022.
[2] Section 2-2(c)(1-c), Rule II, Part I of the 2016 SEC Rules.

investments from the public as it has not secured the requisite license from the Commission as prescribed under Section 8.1 of the Securities Regulation Code (SRC).[3] LMB Football however openly represents to be an entity registered with the Commission and the Department of Trade and Industry (DTI).[4]

RELEVANT FACTS

Acting on the numerous email reports and inquiries received from the public on the legitimacy of LMB Football, the EIPD conducted a formal investigation on the operations and activities of LMB Football carried out using the internet and its social media platform/accounts[5], for possible violation(s) of the SRC, the Revised Corporation Code (RCC), and other laws, rules and regulations administered and implemented by the Commission.

The EIPD presented evidence showing that in the conduct of its business operations, LMB Football uses and maintains a website, https://lmb9999.com and a Facebook page where it presents and promotes itself as a "reverse betting platform" for football match results which guarantees "zero loss".[6] The foregoing is allegedly attributed to LMB Football's recommended team plan which is a product/result of a 4-year historical data analysis conducted by LMB Football that assures 100% stability. Hence, LMB Football guarantees its investors a 100% compensation for all losses incurred relating to football matches that are purchased from it which is based on the recommended/available team plan.[7]

Using the tagline *"Invest and let your money work for you!"*, LMB Football entices the public to make a one time investment of as low as PhP300.00 which entitiles the investor to a 3% daily compounding interest (or 90% in 30 days) with full capital protection.[8] To convince the public that LMB Footbal is carrying out a legitimate betting operations, it represents to the public that the investment scheme involves actual football games which gives investors eighteen (18) score-betting options from 0-0 to 3-3, with a winning probability ratio of 17/18 or success rate of 95%. Moroever, LMB Football also offers investors the opportunity to receive 20% bonus upon joining and an additional commission to those who are able to recruit new investors. LMB Football is also offering First Deposit Bonus and VIP Privilege Super Benefits by promising an extra

[3] Company Registration and Monitoring Department's Certification dated 4 February 2022.
[4] Annex "I" of the Motion
[5] Annex "B" of the Motion.
[6] Par. 7 of the Motion; see also Annex "A" of the Motion
[7] Par. 9 of the Motion
[8] Annex "K-2" of the Motion

income ranging from one percent to eighty percent (1% - 80%) beginning at VIP 1 up to VIP10.[9]

LMB's investment plan,[10] as published in its website and in the social media platforms of its Agents are as follows:

Level	Quantity	Extra Income
VIP 1	₱300.00	1%
VIP 2	₱3,000.00	2%
VIP 3	₱10,000.00	4%
VIP 4	₱50,000.00	6%
VIP 5	₱200,000.00	8%
VIP 6	₱1,000,000.00	10%
VIP 7	₱3,000,000.00	20%
VIP 8	₱10,000,000.00	30%
VIP 9	₱50,000,000.00	40%
VIP 10	₱100,000,000.00	80%

LMB Football also made available in its website and in the social media platforms of its Agents, the sample computation of the compounding interests that investors will earn over a period of twelve (12) months given a minimum investment of PhP300.00,[11] to wit:

Time	**Start-up Capital (PhP)**	**Monthly Profit (PhP)**	**Accumulated Balance (PhP)**
1st month	300	428.18	728.18
2nd month	728.18	1,092.33	1,820.51
3rd month	1,820.51	2,344.68	4,165.18
4th month	4,165.18	6,248.11	10,413.30
5th month	10,413.30	14,862.51	25,275.80
6th month	25,275.80	37,915.74	63,191.54
7th month	63,191.54	90,190.91	153,382.45
8th month	153,382.45	230,086.00	383.468.45
9th month	383,468.45	575,233.48	958.701.92
10th month	958,701.92	1,368,319.28	2,327,021.20
11th month	2,327,021.20	3,490,718.77	5,817,739.97
12th month	5,817,739.97	3,303,441.93	14,121,181.90

EIPD then presented evidence showing that on the basis thereof, LMB Football publicly announced/claimed that its business is a success

[9] Annex "J-5" of the Motion.
[10] Ibid.
[11] Annex "K-2" of the Motion.

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with its membership exceeding 30,000,000. Relative thereto, LMB Football attributed such success to its act of revolutionizing betting and offering a tool for people to invest, by focusing on the financial management aspect of soccer game, rather than on gambling.[12]

In relation to the process of investing in LMB Football, the EIPD provided a summary thereof based on the information and documents that were gathered in the course of its investigation,[13] to wit:

a. The prospective investor will be given a link or referral code to gain access to LMB Football's website at https://lmb9999.com;

b. The investor shall then proceed to create an account and will be re-directed to the main dashboard;

c. The investor is thereafter required to deposit his chosen amount to LMB Football's UnionBank account using GCash; and

d. The investor uploads a screenshot of the payment as proof of deposit and submits the same to LMBF.

The EIPD also submitted evidence showing that LMB Football made and actually used a spurious SEC Certificate of Incorporation with number AS92037135 with a dry seal of the Department of Trade and Industry (DTI) stamped therein.[14]

On 3 February 2022, the Commission issued an Advisory[15] informing and warning the public that LMB Football is not authorized to solicit investments nor issue securities as defined under the law as it does not have a secondary license from the Commission. The public was also advised to exercise caution in dealing with individuals or group of persons soliciting investments or recruiting investors for and on behalf of LMBF.

As a consequence of the issuance of the Advisory, LMB Football rebranded itself as "LMB Charity" to make it appear to the public that the profits of its investment-solicitation activities are used to help people through charitable projects.[16]

[12] Par. 10 (Annex "D") of the Motion
[13] Annex "E" of the Motion.
[14] Annex "I" of the Motion.
[15] Annex "G" of the Motion.
[16] Page 8 of the Motion.

In support of its allegation that LMB Football is not a registered corporation or partnership, and has no license to sell/offer securities, the EIPD presented in evidence the Certifications[17] issued by the Company Registration and Monitoring Department (CRMD), the Corporate Governance and Finance Department (CGFD) and the Markets and Securities Regulation Department (MSRD) of the Commission showing that it has not applied for a primary franchise as a corporation or partnership, has not been issued any secondary license to operate as a broker/dealer of securities, and is not a registered issuer of any securities pursuant to Sections 8 and 12 of the SRC, or of mutual funds, including exchange traded funds, membership certificates, and time shares.

Notwithstanding the issuance of the Advisory, the EIPD found that LMBF continuously operates and conducts investment taking and solicitation activities.[18]

Hence, the instant Motion.

ISSUE

Whether the issuance of a cease and desist order against LMB Football is warranted based on the findings and evidence presented by the EIPD.

RULING

The Commission finds the *Motion* meritorious and hereby grants the same.

The EIPD's *Motion* which is supported by substantial evidence was able to establish that LMB Football, an entity that is not registered as a corporation, is offering and/or selling unregistered securities in the form of investment contracts to the public without the requisite license from the Commission, in violation of Section of the SRC and Rule 3.1.17 of the SRC-IRR.

Section 3 of the SRC defines "securities" as follows:

"SEC. 3. Definition of Terms. –

3.1. **"Securities"** are **shares, participation or interests** in a corporation or **in a commercial enterprise** or profit-making venture

[17] Annexes F to F-2 of the Motion.
[18] Annex "H" of the Motion.

and evidenced by a certificate, contract, instrument, whether written or electronic in character. It **includes:**

x x x

(b) **Investment contracts**, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription;" (Emphasis supplied)

An "investment contract" is defined 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.

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."[19] (Emphasis supplied)

In the case of *Power Homes Unlimited v. Securities and Exchange Commission,*[20] the Supreme Court ruled that investment contracts are securities that are required to be registered with the Commission for the protection of the investing public, to wit:

"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."

The concept of an investment contract in the Philippines is of American origin. It traces its roots from the US Supreme Court case *Securities and Exchange Commission v. W.J. Howey Co.*[21] where the Court stated that an investment contract is 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. Investment contracts have been used and adopted in various situations where individuals were led to invest money in a common enterprise with the expectation that they would earn

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[19] Rule 26.3.5 of the Implementing Rules and Regulations of the SRC.
[20] Note 24, *Supra.*
[21] 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244, 163 A.L.R. 1043 (1946).

a profit through the efforts of the promoter or of someone other than themselves.[22]

The concept of an investment contract was thereafter adopted and used in *Power Homes Unlimited Corporation v. Securities and Exchange Commission,*[23] where the Supreme Court ruled that an investment contract in our jurisdiction, to be a security subject to regulation by the Commission, must be proved to be *(1) an investment of money; (2) in a common enterprise; (3) with expectation of profits, (4) primarily from efforts of others.* Under this definition, whenever an investor relinquishes control over his or her funds and submits their control to another for the purpose of deriving profits from them, he or she is in fact investing in a security.[24]

Applying the foregoing to the instant case, this Commission finds that LMBF is unlawfully engaged in the sale and/or offer of securities in the form of investment contract, as it has no license to carry out the same.

> **First**, the 300 Million investors claimed by LMB Football handed to the latter their one-time investment of Three Hundred Pesos (₱300.00);
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> **Second**, LMB Football admitted that its investment scheme is a revolutionary tool that allows people to invest, by focusing on the financial management aspect of soccer game, rather than on gambling. This scheme obviously involves the pooling of resources consisting of the investors' moneys which is used to pay the guaranteed returns of its existing investors, and intended to ensure the continued operation of the entity. The sale of this investment scheme is the only means by which LMB Football will be able to sustain its operations and fulfill its promise to pay its investors the guaranteed returns.
>
> **Third**, LMB Football's investors expect to earn guaranteed returns in an amount ranging from 3%-8% daily or 90%-240% in 30 days plus commissions and bonuses.
>
> **Fourth**, LMB Football's investors are not expected to do anything after paying their one-time investment of

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[22] *Ibid.* Although the definition as stated in the Howey Case qualified that the earning of profit was expected to be solely through the efforts of another party, Rule 26.3 of the 2015 IRR of the SRC replaced the qualifier with *"primarily"*, acknowledging that an investment contract may still be present where the individual who placed the money exerted a small amount of effort in an attempt to earn the profits.

[23] G.R. No. 164182, 26 February 2008.

[24] Investment Co. Institute v. Camp, 274 F. Supp. 624 (D. D.C. 1967).

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PAGE 7 OF 12 PAGES
BY

PhP300.00. LMB Football and/or its Agents primarily carry out the sale and promotion of the investment plans to ensure its continuity. Consequently, the reverse betting platform that LMB Football claims to operate is a sham as its investors don't even need to submit their chosen team plan(s).

Relative thereto, Section 8.1 of the SRC categorically provides that securities cannot be sold or offered for sale within the Philippines if the same are not registered with the Commission in the form of an approved Registration Statement and a Permit to Offer/Sell issued in favor of the applicant, to wit:

> *"**SEC. 8. Requirement of Registration of Securities.** – 8.1* ***<u>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</u>****. Prior such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser."* (Emphasis and underscoring supplied)

Applying the foregoing to the instant case, this Commission finds that LMB Football is unlawfully engaged in the sale and/or offer of unregistered securities in the form of investment contract, because it has no license to carry out the same, aside from the fact it is not registered as a corporation with the Commission.

Moreover, the evidence presented by the EIPD also shows that LMB Football's investment scheme involves public offering of securities considering that its business operations and investment-taking activities are actually published online through the social media platforms sans the requisite license.

Public offering of securities is defined under Rule 3.1.17 of the 2015 IRR of the SRC as follows:

> "3.1.17. **Public offering is any offering of securities to the public or to anyone, whether solicited** or unsolicited. Any solicitation or presentation of securities for sale through any of the following modes shall be presumed to be a public offering:
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> x x x
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> 3.1.17.3 Advertisement or announcement in radio, television, telephone, **electronic communications, information communication technology or any other forms of communication;**"[25] (Emphasis supplied)

[25] Rule 3.1.17 of the Implementing Rules and Regulations of the SRC.

In this case, the evidence clearly shows that LMB Football and its Agents are using the website https://lmb9999.com and their respective Facebook accounts to publicly sell and/or offering unregistered securities, without the requisite license from the Commission. This act which clearly violates Rule 3.1.17 of the 2015 IRR of the SRC further justifies the issuance of a CDO.

Finally, relative to the requirements prescribed by law for a valid issuance of a CDO, Section 64 of the SRC provides, thus:

> "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.**" (Emphasis supplied)

Under the afore-quoted provision, there are two (2) essential requisites that must be complied with before a cease and desist order can be validly issued:

1) There must be a conduct of a proper investigation or verification; and

2) 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.[26]

Anent the first requisite, the records disclose that the EIPD conducted a proper investigation as evidenced by the Affidavit of the EIPD investigating officers and the documents gathered and submitted in support of its *Motion* showing the unauthorized investment solicitation activities of LMB Football.

The second requisite is likewise present as shown by LMB Football's (as well as its Agents) willful employment of fraud by making it appear to the public that it is a legitimate corporation authorized to sell, offer and deal with securities. The use by LMB Football of a falsified Certificate of Incorporation was purposely made to defraud the public, and calculated to instill in the minds of the investing public that it is carrying out a legitimate business.

[26] *Securities and Exchange Commission vs. Performance Foreign Exchange Corporation*, G.R. No. 154131, July 20, 2006.

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PAGE 9 OF 12 PAGES
BY

In *People of the Philippines vs. Mateo, et al.,*[27] the Supreme Court held that fraud is a generic term that covers any act calculated to deceive, thus:

> "**Fraud**, in its general sense, **is deemed to comprise anything calculated to deceive**, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or **by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth** and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. On the other hand, **deceit is the false representation of a matter of fact**, whether by words or conduct, **by false or misleading allegations**, or by concealment of that which should have been disclosed **which deceives or is intended to deceive another so that he shall act upon it to his legal injury.**" (Emphasis supplied)

Moreover, the act of LMBF in selling/offering unregistered securities operates as a fraud to the public which, if unrestrained, will likely cause grave or irreparable injury or prejudice to the investing public.[28] This finds support in the case of *Securities and Exchange Commission vs. CJH Development Corp.*[29] where the Supreme Court emphasized the need for a prompt issuance of a CDO after a finding of a violation of the SRC that will likely defraud or cause grave or irreparable injury to 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.**
>
> **The act of selling unregistered securities would necessarily operate as a fraud on investors as it deceives the investing public by making it appear that respondents have authority to deal on such securities.** Section 8.1 of the SRC clearly states that securities shall not be sold or offered for sale or distribution within the Philippines without a registration statement duly filed with and

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27 G.R. No. 210612, October 9, 2017.
28 Section 64 of the Securities Regulation Code.
29 (G.R. No. 210316, November 28, 2016)

approved by the SEC and that prior to such sale, information on the securities, in such form and with such substance as the SEC may prescribe, shall be made available to each prospective buyer." (Emphasis supplied)

On the basis of the foregoing disquisitions, this Commission finds and so holds that the issuance of a CDO is warranted and is in order.

WHEREFORE, premises considered, **LMB Football**, and its officers, operators, administrators, promoters, representatives, salesmen, agents, investment team planners, mentors, enablers, influencers, assigns, conduit entities, subsidiaries, and any and all persons claiming, acting, and operating for and in their 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.

LMB Football, its operators, directors, officers, representatives, salesmen, agents and any and all persons claiming and acting for and in their behalf are likewise directed to immediately **CEASE** their internet presence 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 in their behalf

Finally, the Commission hereby **PROHIBITS** LMB Football, its operators, directors, officers, representatives, salesmen, agents and any and all persons claiming and acting for and in their behalf from transacting any business involving the funds in its depository banks and/or in any non-bank financial institution, and from transferring, disposing, or conveying in any manner, any and all assets, properties, real or personal, including bank deposits, if any, of which the named persons herein may have interest, claim or participation, whether directly or indirectly, under their custody, to ensure the preservation of the assets of the investors

The **EIPD** of the Commission is hereby **DIRECTED** to cause (a) the posting of this Cease and Desist Order in the Commission's website, and (b) the publication of the same in a newspaper of general circulation as provided for under Section 4-2, Rule IV, Part I of the 2016 Rules of Procedure of the SEC.

The EIPD is **FURTHER DIRECTED** to submit a formal compliance report, by way of 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 furnished to the Company Registration and Monitoring Department, Market 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 unit(s) for their information and appropriate action.

In accordance with the provisions of Section 64.3 of the SRC and Part II, Rule IV, Section 4-3 of the 2016 Rules of Procedure of the SEC, the Respondent may file a verified ***Motion to Lift the CDO*** to the Commission En Banc thru the Office of the General Counsel, within five (5) days from receipt of this Order.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Pasay City, Philippines; 22 March 2022.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner