In the Matter of:

ONE LIGHTNING CORPORATION

SEC-CDO CASE NO. 03-15-015
FOR: Lifting of Cease and Desist Order

x--x

RESOLUTION

This refers to the *Motion to Lift Cease and Desist Order dated 19 March 2015* (Motion to Lift CDO)[1] filed on 25 March 2015 by One Lightning Corporation (One Lightning) praying that the Commission *En Banc* issue an order lifting the Cease and Desist Order (CDO) issued by the latter.[2]

In the assailed CDO, the Commission found One Lightning to be engaged in the sale or offering for the sale or distribution within the Philippines of securities, i.e., investment contracts, without a registration statement duly filed with and approved by the Commission in violation of Secs. 8.1 and 12 of the SRC. One Lightning was found to be offering and selling "memberships" or investment packages in the guise of health products based on the statements made by Cristina Pascual, who is the latter's representative, as well as those made in its POWER POINT presentation and FACEBOOK account.

One Lightning, thereafter, filed the instant *Motion to Lift CDO* stating the following: (i) the product packages One Lightning offers are not securities; (ii) the 3rd element of the Howey Test (i.e., expectation of profits) is absent; (iii) the Commission dismissed the idea that the purchasers of One Lightning buy its products due to the said products "efficacy and/or desirability"; (iv) the amount "forked over" by its purchasers are for the purchase of its products in varying quantities; and (v) the mode of distribution of One Lightning products is through direct selling, or otherwise known as network marketing or multi-level marketing, citing the case of Prosperity.com.[3]

During the hearing on the Motion to Lift CDO held on 31 March 2015, the counsel for One Lightning stated the following: (i) he intends to submit additional evidence as to its products and prices in order to prove that they are selling actual products; (ii) he intends to gather more information from One Lightning and will file a supplement to the Motion for CDO; and (iii) he will present the affidavit of Jake Oprecio, who is the vice-president of One Lightning, which will describe the program of One Lightning as well as its business model. Thus, One Lightning was given fifteen (15) days to file its position paper stating the foregoing matters.[4]

---

[1] Motion to Lift CDO dated 20 March 2015.
[2] CDO dated 19 March 2015.
[3] Motion for CDO, pars. 10, 11, 14 and 15.
[4] Transcript on the Hearing on the Motion to Lift CDO held on 31 March 2015, pp. 5, 7 and 9.

On 13 April 2015, the EIPD filed its *Opposition (to Respondent's Motion to Lift [CDO]* (Opposition) stating the following: (i) the products offered by One Lightning are a device employed to make it appear that there are legitimate products being distributed, when it is clear from the profit sharing scheme that the focus is not on selling the product but on enticing buyer investors to invest and earn a share in the company profits; (ii) the company profits are derived by the recruitment of investors; (iii) the investment scheme is clear from One Lightning's business presentations which emphasizes on earning profits through the recruitment of new investors, and is similar to a Ponzi scheme; (iv) the factual setting in this case is different from the case of Properity.com since the first time buyers earn commissions and not earn share of profits earned by the company; (v) the scheme adopted by One Lightning is thus different from the traditional multi-level marketing scheme wherein products are sold, and commissions (which are part of the cost of goods sold) are being earned by those who resell the products to their downlines (who earn commissions from selling the product to their own downlines). Thus, the EIPD prays that the Motion to Lift CDO be denied and the CDO be made permanent.[5]

On 15 April 2015, One Lightning filed a *Motion for Extension of Time to File Respondent's Position Paper with Attached Judicial Affidavit* (Motion for Extension)[6] requesting for additional time to file its Position Paper. In response, the Commission granted One Lightning an additional period of fifteen (15) days from receipt to file such Position Paper.[7]

On 9 December 2015, Theodore Yuji Ito, who is the president of One Lightning, and the counsel for One Lightning appeared before a conference with the investigators of the EIPD. During the conference, Mr. Ito stated, among others, that "[One Lightning] offered to pay those who purchase their products a 30 percent bonus when the company makes a profit. [One Lightning] likewise offers to return the purchase price in addition to the 30% bonus depending on product sales."[8]

On 10 March 2016, the counsel for One Lightning and the counsels for the EIPD appeared at the continuation of the hearing on the Motion to Lift CDO. During the hearing, the hearing officer gave One Lightning one last opportunity to present its position paper with the Commission *En Banc*, including its income generating business model, affidavits of witnesses and any other documentary evidence in support of the latter's Motion to Lift CDO. Thus, One Lightning was directed to file its position paper with the Commission *En Banc* on 25 March 2016.[9]

On 23 March 2016, One Lightning filed its *Position Paper* attaching its business model,[10] and argued that it is engaged in the business of selling beauty and health

---

[5] Opposition dated 7 April 2015, pars. 5 – 8.
[6] Motion for Extension dated 14 April 2015
[7] Order dated 20 April 2015.
[8] Comment dated 29 March 2016, par. 5 and Annex "D" (Summary of the Minutes of the Conference held on 9 December 2015).
[9] Transcript on the Continuation Hearing on the Motion to Lift CDO held on 10 March 2016, pp. 6 and 10.
[10] Position Paper, Annex "3" (Business Model).

products. In support of this allegation, One Lightning claims the following: (i) it secured a license from Food and Drug Administration (FDA); (ii) its products have also been registered with the Intellectual Property Office (IPO); (iii) its products are stored in a warehouse; (iv) its products are accredited by Superbrand, and it is authorized to use the latter's logo in all its advertisements; (v) the product package ranges from Php 3,500.00 to Php 892,500.00; and (vi) it pays a tax rate of twelve percent (12%) with the Bureau of Internal Revenue (BIR).[11]

Next, One Lightning states that its buyers receive commissions when they market its products to third parties. The commissions, however, are not guaranteed but only dependent on the volume of sales. Further, One Lightning mentions that its Distributor Agreement states that the member should be "fully aware that the [One Lightning] system of *profit sharing* is highly dependent on sales".[12]

Moreover, One Lightning argues that it is not engaged in the sale of securities, and states that the 3rd element (i.e., expectation of profits) and 4th element (i.e., primarily from the efforts of others) for the presence of an investment contract are lacking; although, it must be noted One Lightning has not argued that the 1st (i.e., investment of money) and 2nd (i.e., common enterprise) elements are lacking.

As to the *3rd element*, One Lightning states that "although [One Lightning's] buyers *invest* their money in a common enterprise, they receive tangible products in return". One Lightning further states that there is no expectation of profits on their end since profits are only earned when the buyers "voluntarily sell" the products to third parties.[13]

As to the *4th element*, One Lightning argues that the efforts of the buyers to earn a profit "rest primarily on their own and not on [One Lightning] or other persons' efforts". Further, One Lightning argues that "the receipt of incentives by [One Lightning's] buyers are dependent on volume of [their] sales". In support of its arguments, One Lightning avers that its business model is very similar to that of a multi-level marketing that is adopted around the world. Thus, One Lightning prays that the Commission set aside the CDO.[14]

On 1 April 2016, the EIPD filed a *Comment (to the Position Paper of Respondent One Lightning)* (Comment) claiming that its witnesses, who were primarily attracted to the profit scheme of One Lightning, invested their money with the company, and were made to believe that they would get back their capital investment and earn a profit of 30%.[15] The EIPD then rebutted the argument of One Lightning that the 3rd element (i.e., expectation of profits) is lacking, by stating that the offer of One Lightning creates an expectation of profits of those who invest or purchase its product packages. Next, the EIPD rebutted the argument of One Lightning that the 4th element (i.e., primarily from

[11] *Id.*, pars. 26, 27, 34, 35 and 36.
[12] *Id.*, pars. 31, 32 and 33.
[13] *Id.*, par. 44.
[14] *Id.*, par. 45.
[15] Comment dated 29 March 2016, par. 4, and Annexes "A", "B" and "C" (Affidavits of EIPD witnesses).

the efforts of others) is lacking, by stating that the company that controls and manages the investments, and sustains the recruitment of more investors through the offer of its get rich scheme. Lastly, the EIPD states that the packages offered by One Lightning are securities in the form of investment contracts. Thus, the EIPD prays that the CDO issued on 19 March 2015 be made permanent.[16]

On 25 July 2016, the Commission issued an Order terminating the proceedings and submitting the case for immediate resolution.

The issue to be resolved is whether the CDO issued on 19 March 2015 against One Lightning should be lifted based on its argument that the 3rd element (i.e. expectation of profits) and 4th element (i.e., primarily through the efforts of others) are wanting in this case.

To recall, the Supreme Court, in the case of in *Power Homes Unlimited Corporation v. Securities and Exchange Commission*, stated that the elements of an investment contract are the following: (1) an investment of money, (2) in a common enterprise, (3) with expectation of profits, (4) primarily from efforts of others.[17]

As to the *3rd element* (i.e. expectation of profits), One Lightning argues that such element is lacking since the product packages it offers are not securities but health and beauty products. One Lightning claims that its members buy and receive tangible products "although there is an investment of money". It further claims that its members purchase its products due to its "efficacy and/or desirability". Furthermore, One Lighting claims that its members do not expect profits from One Lightning and that the profits they earn is when they "voluntarily sell" the products to third parties.

However, the argument of One Lightning is misplaced. In *Power Homes Unlimited Corporation* the Court stated, with respect to the 3rd element, that the investors are "attracted primarily by the prospects of a return on his investment." The Court further stated that self-improvement contracts, for example, which primarily offer the buyer the opportunity of earning commissions on the sale of contracts to others are "investment contracts". This is regardless of the fact that the buyers, in addition to investing money needed to purchase the contract, were obliged to contribute their own efforts in finding prospects and bringing them to sales meetings. The Court held that the purchaser is really buying the possibility of deriving money from the sale of the plans. Once an individual has purchased a plan, he turns his efforts toward bringing others into the organization, for which he will receive a part of what they pay.

In this case, the members of One Lightning likewise purchase the potential of earning commissions from the company, even though they may receive tangible products, as in the case of subsequent witnesses who submitted their affidavits with the EIPD in July and August of 2015.[18] Further, as stated in the CDO,[19] the business

---

[16] *Id.*, pars. 7 and 13.
[17] G.R. No. 164182, 26 February 2008.
[18] Comment dated 29 March 2016, par. 4, and Annexes "A", "B" and "C" (Affidavits of EIPD witnesses).
[19] CDO, pp. 2-6 and 9.

presentations of One Lightning made in its Power Point and its FACEBOOK account, as well as the statements made by Cristina Pascual, emphasize on the opportunity of earning a large commission rather than the sale of individual products offered by it. Furthermore, Theodore Yuji Ito, who is the president of One Lightning, admitted during the conference before the EIPD that it "offered to pay those who purchase their products a 30 percent bonus when the company makes a profit. [One Lightning] likewise offers to return the purchase price in addition to the 30% bonus depending on product sales."[20] In other words, Mr. Ito admits that those who purchase such products are expected to receive a 30% bonus after One Lightning earns a profit.

Lastly, it must be noted that, in the Supreme Court case entitled "*Securities and Exchange Commission v. Prosperity.com, Inc.*",[21] the Supreme Court stated that the clients of the company buy a product (i.e., an internet website) that has a value to them. However, this is not the case with the members of One Lightning since its members are attracted to the prospects of a return or the possibility of deriving money from the purchase of products packages rather than the product itself considering that the company emphasizes on earning a large commission.[22] Clearly, the 3rd element of an investment contract is present.

As to the *4th element* (i.e., primarily from the efforts of others), One Lightning argues that such element is lacking since the efforts of the buyers to earn a profit "rest primarily on their own and not on [One Lightning] or other persons' efforts". Further, One Lightning argues that "the receipt of incentives by [One Lightning's] buyers are dependent on volume of [their] sales".

However, the argument of One Lightning is misplaced. All the significant operations and management of the business rests upon One Lightning, and the efforts contributed by its members is minimal compared with such operations or management thereof. Further, the members only participate in the investment scheme of One Lightning by recruiting new members. Clearly, the 4th element is present in this case.

Lastly, One Lightning argues that the mode of distribution of its products is through direct selling, or otherwise known as network marketing or multi-level marketing. However, again, the argument of One Lightning is misplaced.

In *Klikmart Shopping Club Corp. v. EIPD*[23], the Commission En Banc held that:

> "It should be emphasized that on numerous occasions the concept of MLM is exploited to disguise pyramiding schemes. Thus, in the *US Case of FTC vs. Koscot Interplanetary Inc.*, a four (4) part test was formulated to determine whether an MLM business is a pyramid scheme. This is known as the "Koscot test" which comprises of the following: 1.) payment of money to the company; 2.) the participant receives the right to sell a product [or service]; 3.) the participant

---

[20] Comment dated 29 March 2016, par. 5 and Annex "D" (Summary of the Minutes of the Conference held on 9 December 2015).
[21] G.R. No. 164197, 25 January 2012.
[22] Notes 18, 19 and 20, Supra.
[23] SEC CDO Case No. 09-15-023, April 5, 2016.

receives compensation for recruiting others into the program; 4.) the compensation is unrelated to the sale of products [or services] to the ultimate user.

In the instant case, Respondents' business model satisfies the Koscot test. They require their new members to place the amount of Php 1,500.00 to Php 15,000.00 to gain entry in their business scheme. After placement, a new member receives the right to sell their products. In fact, Respondents admit this scheme when they claim to be a MLM company, which awarded rebates or bonuses based on sales of their members. Further, members receive additional compensation when they recruit new investors, through the rewards system [Infinite Direct Referrals or Customer Finder Fee, Unilevel Bonus (Power of Piso) and Royalty Raffle Bonus (Balato)]. Finally, rewards system for recruitment is completely unrelated to the sales of Respondents' products.

Thus, Respondents offer more rewards/benefits from recruitment rather than from selling of their products. Stated otherwise, the rewards emphasize on recruitment over retail sales."

The instant case is similar to the business scheme of Klikmart, hence, the Koscot Test should be applied in this case.

As stated in the Position Paper of One Lightning, "[One Lightning's] buyers invest their money in a common enterprise"; and, as can be seen above, there is a pyramid scheme that exists in the company whereby profits are derived from the recruitment of more investors down the line. The health and beauty products are a mere device to make it appear there are legitimate products being distributed but it is clear from the profit sharing scheme that the focus is not on selling but on enticing buyer investors to invest and earn commissions derived from the referral or recruitment of investors. Thus, the CDO issued on 19 March 2015 is hereby made PERMANENT.

WHEREFORE, premises considered, the *Motion to Lift Cease and Desist Order* filed by ONE LIGHTING CORPORATION is hereby **DENIED** for lack of merit. The CEASE AND DESIST ORDER issued against the subject corporation, its officers, directors, agents, representatives, conduits, assigns, and any and all persons claiming and acting for and in behalf and under its authority, is hereby **MADE PERMANENT**.

The Enforcement and Investor Protection Department is hereby **DIRECTED** to: (a) serve this *Resolution* to the President, General Manager, Corporate Secretary, Treasurer or In-House Counsel of ONE LIGHTING CORPORATION; and (b) post copies of the *Resolution* at the entrance of the main office and/or branches, if any, of ONE LIGHTING CORPORATION.

Let a copy of this Order be also posted in the Commission's website; published in a national newspaper of general circulation and furnished to all the operating departments of the Commission for their information and appropriate action.

The **Enforcement and Investor Protection Department of the Commission** is hereby **FURTHER DIRECTED** to submit a FORMAL COMPLIANCE REPORT, by way of a pleading, to the Commission *En Banc* WITHIN FIVE (5) DAYS from receipt of this *Order.*

SO ORDERED.

Mandaluyong City; 26 July 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE*
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO*
Commissioner

*On Official Business