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

In the matter of:

CASA INFINI BUILDERS AND REALTY CO. LTD.; CASA INFINI REALTY MANAGEMENT CO. LTD.; RAY EDUCATION DIRECTORS CONSULTANCY SERVICES; RAY INTERNATIONAL PHILIPPINES CORPORATION DOING BUSINESS UNDER THE NAME/S AND STYLE/S OF RAY EDUCATION DIRECTIONS CONSULTANCY SERVICES, BE UNRIVALED PRODUCTIONS AND SINE CORDILLERA; CASA INFINI PROPERTIES AND DEVELOPMENT CORP., JENNYLYN GALLETES DE LOS SANTOS FLORESCA, RAFFY PALANGDAN FLORESCA, JOVIELYN MALONZO MINA, JINKY DELOS SANTOS LONTOC, JACQUELINE COREL MELCHOR, PETER OMAWENG WASING, ERIC M. PINEDA, JERICK BAMBI SADERNAS, and KENJIE MILLAR,
Respondents,

SEC CDO Case No. 06-23-102
Promulgated: 31 October 2023

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.

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RESOLUTION

For resolution of the Commission En Banc is the Verified Motion to Lift (Re: Cease and Desist Order dated 8 June 2023) dated 14 June 2023 (the "Motion to Lift") filed on 21 June 2023 by Respondents CASA INFINI BUILDERS AND REALTY CO. LTD. ("CI Builders"), CASA INFINI REALTY MANAGEMENT CO. LTD. ("CI Realty"), RAY EDUCATION DIRECTIONS

CONSULTANCY SERVICES ("Ray Education"), RAY INTERNATIONAL PHILIPPINES CORPORATION DOING BUSINESS UNDER THE NAME/S AND STYLE/S OF RAY EDUCATION DIRECTIONS CONSULTANCY SERVICES, BE UNRIVALED PRODUCTIONS AND SINE CORDILLERA ("Ray International"), CASA INFINI PROPERTIES AND DEVELOPMENT CORP. ("CI Properties") [collectively referred to as the "Respondents"], FLORESCA, JOVIELYN MALONZO MINA, JINKY DELOS SANTOS LONTOC, JACQUELINE COREL MELCHOR, PETER OMAWENG WASING, ERIC M. PINEDA, JERICK BAMBI SADERNAS, and KENJIE MILLAR (collectively referred to as the "Individual Respondents"), praying for the lifting of the Cease and Desist Order dated 08 June 2023 (the "Assailed CDO"), the dispositive portion of which, in part, reads:

> "WHEREFORE, premises considered, **CASA INFINI BUILDERS AND REALTY CO. LTD., CASA INFINI REALTY MANAGEMENT CO. LTD., RAY EDUCATION DIRECTORS CONSULTANCY SERVICES, RAY INTERNATIONAL PHILIPPINES CORPORATION DOING BUSINESS UNDER THE NAME/S AND STYLE/S OF RAY EDUCATION DIRECTIONS CONSULTANCY SERVICES, BE UNRIVALED PRODUCTIONS AND SINE CORDILLERA, CASA INFINI PROPERTIES AND DEVELOPMENT CORP., JENNYLYN GALLETES DE LOS SANTOS FLORESCA, RAFFY PALANGDAN FLORESCA, JOVIELYN MALONZO MINA, JINKY DELOS SANTOS LONTOC, JACQUELINE COREL MELCHOR, PETER OMAWENG WASING, ERIC M. PINEDA, JERICK BAMBI SADERNAS**, and **KENJIE MILLAR**, 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 investment contracts and/or other activities/transactions, 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.
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> **CASA INFINI BUILDERS AND REALTY CO. LTD., CASA INFINI REALTY MANAGEMENT CO. LTD., RAY EDUCATION DIRECTORS CONSULTANCY SERVICES, RAY INTERNATIONAL PHILIPPINES CORPORATION DOING BUSINESS UNDER THE NAME/S AND STYLE/S OF RAY EDUCATION DIRECTIONS CONSULTANCY SERVICES, BE**

> **UNRIVALED PRODUCTIONS AND SINE CORDILLERA, CASA INFINI PROPERTIES AND DEVELOPMENT CORP., JENNYLYN GALLETES DE LOS SANTOS FLORESCA, RAFFY PALANGDAN FLORESCA, JOVIELYN MALONZO MINA, JINKY DELOS SANTOS LONTOC, JACQUELINE COREL MELCHOR, PETER OMAWENG WASING, ERIC M. PINEDA, JERICK BAMBI SADERNAS,** and **KENJIE MILLAR,** 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 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 on their behalf."

On 05 June 2023, the Enforcement and Investor Protection Department ("EIPD") filed with the Commission *En Banc,* through the Office of the General Counsel, a Motion for Issuance of a Cease and Desist Order[1] against the Respondents and Individual Respondents.

On 08 June 2023, the Commission *En Banc* issued the Assailed CDO after finding that Respondents and the Individual Respondents were selling and/or offering unregistered securities in the form of investment contracts without the requisite license from the Commission.

In the instant Motion to Lift, the Respondents and Individual Respondents prayed for the lifting of the *Assailed CDO* on the following grounds:

(1) CI Realty, CI Properties, Ray Education Ray International and/or its partners and/or incorporators were erroneously included in the CDO. In support of such argument, Respondents and Individual Respondent maintain that CI Realty, CI Properties, Ray Education Ray International and/or its partners and/or incorporators are not parties to the Real Estate Financial Literacy Education Program Partnership Agreement (the "Agreement")[2] which CI Builders is selling/offering to the public.

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[1] *Motion for Issuance of a Cease and Desist Order* dated 05 June 2023.
[2] *Verified Motion to Lift.* Par. 15

(2) The issuance of the Assailed CDO against CI Builders on the basis of the third program alone i.e. "Passive Investor as a Partner Financier Program, disregarding its other programs, was not justified since the same is not an investment contract. Thus, no license was needed.[3] They claim that the economic provisions of the Agreement reveal characteristics of loan which negates the existence of a loan contract.[4] Respondents equally claim that the loan features of the Agreement does not make it an evidence of indebtedness which requires prior registration from the Commission, since there are other obligations contained therein.[5]

(3) The Agreement is not a scam since the Project subject thereof is supported by a license issued by DHSUD, and is allegedly underway.[6]

(4) The Agreement is not a Ponzi scheme, arguing that the referral fee is one that is paid and incurred not by the investments of new partners but by CI Builders itself because of the acknowledged benefit that the program will have for the business.[7]

In its *Comment/Opposition [To the Verified Motion to Lift Re: Cease and Desist Order dated 8 June 2023]*[8] the EIPD maintained its position that CI Realty, CI Properties and Ray Education, and Ray International were properly included in the *Assailed CDO* on the ground that (a) they are under the control of Jennylyn Galletes Delos Santos Floresca[9] (Ms. Floresca"); (b) Ms. Jacqueline Melchor expressly represented during the Real Estea Talk Seminar that the Raycasa Group of Companies is composed of RNJ Cosmetic Product Trading, Benguet Fitness Center, Baguio Benguet Autodeals, Ray Education Directions Philippines, Be Unrivaled Productions, Sine Cordillera, RNJ Wellness Centern and Casa Infini Properties and Development Corporation (the "Reycasa Group")[10]; and (c) presented evidence showing that the Reycasa Group, which is under the control of Ms. Floresca, is actively involved in the unauthorized investment taking activities subject of the Assailed CDO, by providing logistics and materials relating to the conduct of seminars where

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[3] *Ibid.* Pars. 19, and 27-32
[4] *Id.* Pars. 33, 36, and 39
[5] *Id.* Par. 40
[6] *Id.* Par. 56, 58
[7] *Id.* Pars. 69 and 45(sic)
[8] 12 July 2023
[9] *Comment/Opposition.* Par. 4
[10] *Ibid.* Par. 4

unregistered securities are offered/sold.[11] The EIPD equally maintained that the "Property Saver or Buyer-Investor Program" which are being sold/offered to the public are investment contracts as evidence presented by the EIPD, and the admissions of Respondents and Individual Respondents' show that all the elements established in jurisprudence are present.[12]

In their *Reply (Re: Comment/Opposition dated 12 July 2023)*[13], the Respondents and Individual Respondents reiterated their prayer for the lifting of the Assailed CDO, essentially arguing that *Comment/Opposition* dated 12 July 2023, had been rendered moot and academic with the *Assailed CDO* having been deemed lifted pursuant to Section 53.3 and 64.3 of the Securities Regulation Code (SRC) as well as Section 4-3, Rule IV of the 2016 SEC Rules of Procedure (2016 Rules), due to the failure of the Commission to resolve the *Motion to Lift* filed by the Respondents. Respondents also reiterated their allegations and arguments in the Motion to Lift.

After a careful consideration of the arguments and the pieces of evidence presented by the parties, the Commission finds no cogent reason to disturb or reconsider the *Assailed CDO*.

I. The Commission did not commit reversible error in including Respondents and Individual Respondents in the Assailed CDO.

Respondents maintain that the Commission committed reversible error in including the Reycasa Group and the Individual Respondents in the coverage of the CDO, arguing that the sale of securities was limited only to the Agreement, of which they are not parties. Hence, there is no basis in holding that they are also engaged in the unauthorized sale/offer of unregistered securities.[14] Relatedly, Respondents equally maintain that the Reycasa Group cannot be held liable on the basis of the finding that they are under the control of Ms. Floresca, arguing that the principle of "the act of one is the act of all" is applicable only in criminal proceedings.[15]

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[11] *Ibid.* Pars. 6 to 11
[12] *Ibid.* Pars. 20 to 26
[13] Filed 7 August 2023
[14] *Reply.* Par. 12
[15] *Ibid.* Par. 18

The Commission is not convinced.

It should be made clear at the outset that the instant case is administrative in nature, where the rules of, and principles on administrative procedure apply. In this regard, the 2016 Rules of Procedure of the Securities and Exchange Commission (the "2016 Rules") expressly mandates that its provisions "*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*".[16]

It is established in jurisprudence that in terms of evidentiary requirement, substantial evidence suffices to support a decision[17]; while the demands of due process are satisfied if the party is afforded the opportunity to seek reconsideration of the action complained of.[18] Relative thereto, the Supreme Court affirmed the confidential nature of administrative investigations, and categorically ruled that the right to due process is not violated if a party is not informed of the findings and recommendations of the investigating committee, it being sufficient that he/she is informed of the findings in the decision and is given the opportunity to seek reconsideration, thus:

> "Moreover, there is no law or rule which imposes a legal duty on petitioner to furnish respondent with a copy of the investigation report. On the contrary, we unequivocally held in *Ruiz v. Drilon*[8]that a respondent in an administrative case is not entitled to be informed of the findings and recommendations of any investigating committee created to

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[16] Sec. 1-4 Rule I, Part I

[17] "In administrative cases, the quantum of proof needed to adjudge a respondent guilty is substantial evidence. In *Miro v. Mendoza*, we held that substantial evidence is defined as such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion.

It is more than a mere scintilla of evidence. The standard of substantial evidence is satisfied when there is reasonable ground to believe, based on the evidence submitted, that the respondent is responsible for the misconduct complained of. It need not be overwhelming or preponderant, as is required in an ordinary civil case, or evidence beyond reasonable doubt, as is required in a criminal case, but the evidence must be enough for a reasonable mind to support a conclusion." (*Office of the Ombudsman vs Manalastas*. G.R. No. 208264. July 27, 2016)

[18] "The essence of due process is that a party be afforded a reasonable opportunity to be heard and to present any evidence he may have in support of his defense or simply an opportunity to be heard; or as applied to administrative proceedings, an opportunity to seek a reconsideration of the action of ruling complained of. One may be heard, not solely by verbal presentation but also, and perhaps even many times more creditably than oral argument, through pleadings. Technical rules of procedure and evidence are not even strictly applied to administrative proceedings, and administrative due process cannot be fully equated to due process in its strict judicial sense." (Velasquez vs Hernandez. G.R. No. 150732. August 31, 2004)

> inquire into charges filed against him. *He is entitled only to the administrative decision* based on substantial evidence made of record, and a reasonable opportunity to meet the charges and the evidence presented against her during the hearings of the investigation committee. Respondent no doubt had been accorded these rights."[19]

Prescinding from the foregoing procedural and jurisprudential rules and principles, this Commission holds that Respondents failed to trounce the evidence presented by the EIPD showing that the Reycasa Group and the Individual Respondents participated in, and were involved in carrying out the unauthorized investment, taking scheme which is the subject of the Assailed CDO. In particular, Respondents' argument that neither the Reycasa Group nor the Individual Respondents were signatories to the Agreement does not and will not operate to remove them from the coverage of the Assailed CDO considering that on record, there is substantial evidence showing that the individual entities were positively identified by Ms. Melchor as members of the Reycasa Group[20], which participated in carrying out the unauthorized investment-taking activity spearheaded by Ms. Floresca and CI Builders, by contributing needed materials and services[21], and allowing their bank accounts to be used.[22] Taken together, these pieces of evidence will readily and clearly show that the Reycasa Group and the Individual Respondents are active participants in this unauthorized investment-taking scheme led by CI Builders and Ms. Floresca.

The fact that the Reycasa Group and/or the Individual Respondents are not signatories to the Agreement is of no moment because what is being restrained is the act of selling/offering securities without the requisite license which the Respondents and Individual Respondents have been shown to be carrying out, in violation of Sec. 8 of the SRC. Thus, without ruling on its validity (a function which is proper to the regular courts), if the Agreement is not sold/offered and/or executed/implemented, there will be nothing to restrain as there will be no violation of the SRC. Conversely, even without an agreement, the Commission is duty-bound to stop or restrain an act/scheme that is shown by substantial evidence to constitute a sale/offer of unregistered securities for the protection of the investing public.

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[19] *Pefianco vs Moral.* G.R. 134428, January 19, 2000
[20] *The Investigation Report (SEC Special Order No. 133 dated 16 March 2023) substantiated and affirmed the allegations in Pars. 10 to 16 of the Motion for Issuance of a Cease and Desist Order*
[21] *Comment/Opposition.* Pars. 6, 8,9,10 and 11 (see also the Affidavits and screenshots which validated the respective allegations);
[22] *Motion for Issuance of a Cease and Desist Order.* Par. 16

In the instant case, the Agreement is only one of the many pieces evidence on record which show that Respondents and Individual Respondents are selling/offering unregistered securities. The Agreement, together with the other pieces of evidence i.e., the investment package, scheme, and solicitation, the bank accounts, and the testimonials, to name a few, which were obtained during the conduct of the investigation affirm and validate the finding of violation of Sec. 8 of the SRC by Respondents and Individual Respondents. In particular, the information on the bank details of the Reycasa Group which were provided to the public constitutes a representation, and sends out a clear message that they are part of the grand scheme, such that payments made to those accounts will be recognized and honored by CI Builders and/or Ms. Floresca. This discloses a partnership/collaboration between and among the Reycasa Group, the Individual Respondents, and Ms. Floresca to carry out the unauthorized investment scheme.

Thus, the argument of Respondents that the Agreement is the sole and exclusive basis for the inclusion of the Reycasa Group and the Individual Respondents in the coverage of the Assailed CDO is therefore bereft of any basis. Even without the Agreement, the other pieces of evidence sufficiently established such violation which warranted and justified the issuance of the Assailed CDO.

Moreover, the analogy presented by the Respondents that the photographer, videographer, makeup artist or a wedding coordinator in a wedding of a person engaged in the sale of securities cannot be considered as engaged in the same undertaking by indispensable participation is misplaced, and reveals their inability or failure to grasp the real nature of the act(s) that is being restrained, of which they are all participants. In the instant case, the main actors i.e. CI Builders and Ms. Floresca are not on equal footing with the person(s) being wed in the image portrayed by Respondents. CI Builders and Ms. Floresca are, together with the Reycasa Group and Individual Respondents are the team that offers/sells a complete wedding service where each of them plays an important/indispensable role for the provision thereof. The persons being wed are the investors to whom they are offering their services. As disclosed by the evidence on record, the unauthorized investment scheme is carried out and made possible by the participation and performance of the specific tasks/roles played by Respondents, where Ms. Floresca presents to investors the investment scheme and entices them to purchase the unregistered securities; CI Builders executes the Agreement with the investors; the Reycasa Group collects the investments through their bank accounts and provides other logistical support; while the Individual Respondents advertises the investment scheme in their respective social media accounts to entice more investors to part with their hard earned money by promising them guaranteed returns. In fact, the attendance/participation by the Reycasa Group at the March Real Estea Talk of CI Builders which was admitted by Respondents[23] supports their involvement in the whole unauthorized investment-taking activities. This fact, together with the other pieces of evidence showing their participation, cannot be negated by Respondents' bare argument that such presence does not by itself prove that the Reycasa Group were being used to defeat public convenience or to perpetuate fraud. Basic is the rule that mere allegation is not evidence and is not equivalent to proof.[24]

Thus, the analogy presented by Respondents cannot operate to exclude the Reycasa Group and Individual Respondents from the coverage of the Assailed CDO as the same is entirely different from the investment scheme which the evidence on record has disclosed, where they are all active participants therein.

More importantly, in the absence of any controverting evidence negating the participation of the Reycasa Group and Individual Respondents, which there is none on record, there is no legal and valid justification to lift the Assailed CDO and disregard the substantial evidence extant in the records of the case which proves that they are in violation of Sec. 8 of the SRC.

II. CI Builders, together with Respondents and Individual Respondents are selling/offering unregistered securities without the required license.

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[23] "The foregoing transcript of the preliminary conference indubitably shows that counsel for petitioners made a judicial admission and failed to refute that admission during the said proceedings despite the opportunity to do so. **A judicial admission is an admission, verbal or written, made by a party in the course of the proceedings in the same case, which dispenses with the need for proof with respect to the matter or fact admitted.** It may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made." (Emphasis supplied) [*Agbayani vs Lupa Realty Holding Corporation*. G.R. No. 201193. June 10, 2019)

[24] "In the case at bar, the RTC, as affirmed by the CA, granted PGAI's motion for execution pending appeal on the ground that the impending sanctions against it by foreign underwriters/reinsurers constitute good reasons therefor. It must, however, be observed that PGAI has not proffered any evidence to substantiate its claim, as it merely presented bare allegations thereon. **It is hornbook doctrine that mere allegations do not constitute proof. As held in Real v. Belo, "it is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.**" Hence, without any sufficient basis to support the existence of its alleged "good reasons," it cannot be said that the second requisite to allow an execution pending appeal exists. (Emphasis supplied) [*GSIS vs Prudential Guarantee and Assurance, Inc.*, G.R. No. 165585. November 20, 2013)

Respondents and Individual Respondents also maintained that CI Builders, its partners and/or employees are not in violation of Sec. 8 of the SRC, arguing that the Agreement which encapsulates the Passive Investor is not an investment contract since the elements of the Howey Test are not present.[25] They equally maintained that the Assailed CDO should be lifted as there is no evidence of damage on the part of any of the partners, which only shows that the returns were delivered to them.[26] Respondents and Individual Respondents are in effect telling the Commission that a CDO is not proper as long as the investment-takers continue to pay the guaranteed returns and no actual damage befalls on the investing public.

Respondents and Individual Respondents' argument has no legal basis.

At the outset, emphasis should be made on the fact that just like the securities acts of other jurisdictions, specifically the United States of America, the SRC adopted a very broad definition of securities[27], with the intent of adopting a liberal construction of its provisions, in order to achieve the purposes for which the law was enacted, among which is the regulation of the sale/offer of securities and prevention of fraud to protect investors.

Rule 26.3.5 of the Implementing Rules and Regulations of the SRC (SRC-IRR) defines an "investment contract" 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."

The law considers investment contract 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 on their investments. Consistent with the broad definition of securities, the term investment contract should include and cover all forms and varieties thereof which are known

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[25] *Motion to Lift*. Pars. 27-32
[26] Reply dated 7 August 2023. Par. 55.4
[27] "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)

or considered, or ought to be known or considered to be such, in the financial world.

The Commission has thus consistently held that **all shares, participation, or interests in a corporation, or in a commercial enterprise or profit-making venture and evidence by a certificate, contract, instrument, whether written or electronic in character within the Philippines are securities or presumed to be securities.**

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

In *State v Silberberg*[28] 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.[29]

Moreover, cognizant of the fact borne by the sad experiences of people around the globe that have been duped by scamsters and con artists, the Supreme Court, adopting the doctrine in the United States (US) case of *SEC v. W.J. Howey Co.*, held in *Power Homes Unlimited Corporation vs Securities and Exchange Commission*[30] (the "Power Homes Case"), held that the term "investment contract" embodies a flexible principle that is intended to cover schemes devised by persons who seek to use the money of others on the promise of profits, thus:

> "It behooves us to trace the history of the concept of an investment contract under R.A. No. 8799. Our definition of an investment contract traces its roots from the 1946 United States (US) case of *SEC v. W.J. Howey Co.* In this case, the US

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[28] 166 Ohio St. 101, 139 N.E.2d 342 (1956).

[29] Leslie J. Crocker, 1966, *Investment Contracts under Federal and State Law*, Case Western Reserve Law Review, Volume 17, Issue 4, page 1115.

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

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

In the *US case of SEC vs Joiner Leasing Corp.*[31], the US Supreme Court stressed 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 plan of distribution, and the economic inducements held out to the prospect. In the enforcement of an act such as this,

[31] 320 U.S. 344 (1943) [https://supreme.justia.com/cases/federal/us/320/344/]

it is not inappropriate that promoters' offerings be judged as being what they were represented to be."

Under the foregoing legal precepts and parameters, an investment contract is considered to exist once it is determined/shown that the **proponent is offering to the purchasers an opportunity to contribute money and to share in the profits of the operations**. In this regard, the importance of a "common enterprise" managed by the proponent in furtherance of the business comes into play considering that purchasers who are normally untrained in finance merely rely on the proponent's knowledge and expertise in carrying out the grand investment scheme.

In the instant case, We maintain our finding and so hold that the Passive Investor as a Partner Financier Program and the Property Saver or Buyer Investor Program are securities in the form of investment contracts as the elements of the Howey Test are present in both.

The bare allegations and denials proffered by Respondents in support of their claim that the elements of the Howey Test are not present, failed to overturn or negate the evidence submitted by the EIPD which showed that:

(a) Partner-investors actually parted with their money; and in this regard, it is immaterial if the Agreement provides for the return of the same as what is required is simply a showing that there is an investment in money;

(b) Respondents expressly represented that the investments obtained from partner-investors are used to finance the undeveloped real estate projects "*so that they can eventually be sold at a premium*"[32]. As admitted by Respondents, these investments "*will be used in precisely the development of these undeveloped real estate projects in order that they can eventually be sold at a premium.*"[33]

This is the common enterprise that is being sustained by the investments made by the public; and one that is used to pay of the guaranteed returns promised to partner-investors;

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[32] Motion to Lift. Par. 61
[33] *Ibid.*

What is worse and alarming is that a review of the evidence on record shows that Respondents and Individual Respondents are clearly defrauding its partner-investors. While the Agreement exacts from the partner-investor the obligation to complete (of fully pay) the minimum amount of consideration[34] which, during the Real Estea Talk gave them the option to either (a) invest in the Saleng Spa project where they pay monthly amortization and receive guaranteed income under the Property Saver or Buyer-Investor Program, or (b) invest PhP300,000.00 to Php10,000,000.00 with 3% to 4.8% return under the Passive Investor as Partner Financier Program, Respondents and Individual Respondents admitted that partner-investors "have no stake in any of the real estate projects of respondent CI Builders", and "they will receive full consideration of the monthly amortized returns, regardless of any appreciation or depreciation of the value of the properties."[35] This admission necessarily means that if the project does not fly or earn income, Respondents and Individual Respondents will still be able to pay its partner-investors their guaranteed return for as long as new partner-investors continue to pour in their hard earn money.

(c) In the context of the returns that Respondents and Individual Respondents promised its partner-investors i.e. 3% to 4.8% per month for investments ranging from PhP300,000.00 to PhP10,000,000.00, they expressly guarantee a failproof receipt of the same, thus:

"You are not really participating in the projects, so you earn monthly 3% to 4.8% monthly.....yan ang income mo...for 12 months.....walang palya, walang drama......waley tayong drama dito.....wala payla tayo dito kase we have a failproof system.....failproof system.....so nakita ko na lahat ng basis....na cover ko na lahat ng basis na mag-fafail....so na-check out ko na lahat yun...kaya fail proof tayo....okay....kaya walang palya....walang drama. xxx."[36]

The foregoing naturally and necessarily generates and engenders from an ordinary investor, especially those that are not financially literate, an expectation of profit;

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[34] *Ibid.* See Annex "A" (Clause VII of the Agreement)
[35] Reply dated 7 August 2023. Par. 45
[36] Motion to Lift. Par. 29

(d) Finally, as pointed out in the Assailed CDO, the evidence presented by the EIPD shows that the collaboration and the performance by CI Builders, Ms. Floresca, the Respondents, and Individual Respondents of their respective roles make possible the efficient and effective implementation of the unauthorized investment-taking scheme. Hence, after partner-investors part with their money, all they need to do is wait for 20 months then they will start receiving their pension, thus:

> *"pag buyer investor, parang passive yan, mag-iintay ka lang ng 20 months bago makuha yung pension.....so after 20 months, pension ka na tapos tumaas yung pera...ganun lang utak niyo sa buyer-investor para hindi kayo na-iistress....sa mga numbers.....19,500 tapos after 21 months you will receive 23,850.00..."*[37]

On the basis of the foregoing, this Commission finds no cogent reason to disturb its earlier finding. The Assailed CDO should be, as it is hereby, sustained.

III. The Comment/Opposition filed by the EIPD was not mooted; the Assailed CDO was not automatically lifted.

In their Motion to Lift, Respondents and Individual Respondents maintained and argued that the alleged failure of the Commission to resolve the same within the period prescribed in Sections 53.3 and 64.3 of the SRC, as well as Section 4-3, Rule IV of the 2016 Rules, resulted in the automatic lifting of the Assailed CDO. This, according to Respondents and Individual Respondents, rendered the *Comment/Opposition* dated 12 July 2023 filed by the EIPD moot and academic.

We do not agree with Respondents.

For a correct and proper interpretation of the provisions of the SRC and the SRC-IRR, it is imperative to ALWAYS go back to the declared State policies embodied in Sec. 2 of the SRC which underlie the very purpose for which the law was enacted, thus:

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[37] *Ibid.*

> "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 which should always be used as a guide and reference point in all actions made relating to the interpretation and implementation of its provisions, as they encapsulate the spirit, intent and purpose for which the law was enacted. In other words, the interpretation and implementation of the provisions of the SRC should be made in a manner that will ensure compliance therewith, consistent with the intent of Congress in affording ample protection to the investing public and in promoting the integrity of the capital markets.

In the case of *Palanca IV v. RCBC Securities, Inc.*[38], 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**

[38] G.R. No. 241905, [March 11, 2020].

> **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)

Bearing in mind that under the afore-quoted doctrine, investor protection was specifically identified and emphasized by the High Court as the unifying principle, the various provisions of the SRC, specifically Sec. 64 which is the subject of, or at issue in the instant case, should thus be interpreted in a way that will promote and achieve such purpose. This principle finds support in the case of *Securities and Exchange Commission v. Interport Resources Corporation*[39], where the Honorable Supreme Court pointed out 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 and the purpose thereof must therefore be anchored on the unifying principle of the SRC which has for its goal the protection of investors. Only from such a perspective can Sec. 64 of the SRC truly have meaning and significance; and only from such perspective can the Commission be truly considered as faithfully performing its mandate. Consistent with the foregoing, the Supreme Court emphasized in Primanila Plans Inc. vs Securities and Exchange Commission[40], the purpose of a CDO which is essentially 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**

[39] SEC v. Interport Resources Corporation (G.R. No. 135808. October 6, 2008)
[40] G.R. No. 193791. August 6, 2014

> **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)

Thus, 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[41], to protect investors and to prevent fraud/injury that they may possibly sustain. Necessarily, as long as the violation subsists or the threat/possibility that a violation will be committed, the CDO issued by the Commission should and must continue to have full force and effect, otherwise the purpose for which Sec. 64 of the SRC is in place will conveniently be negated. This will open the floodgates to scams by scheming fraudsters and con artists who can conveniently prey on the investing public by taking advantage of an automatic lifting of a CDO by a mere lapse of time, especially if the proceedings on the same are not yet terminated, as what happened in the instant case. Such was clearly not the intent of the law. This is also the reason why proof of actual damage or the filing of actual complaint(s) are not sine qua non for the issuance of a CDO, as what Respondents and Individual Respondents insist. A CDO issued *motu proprio* will, by express provision of law, stand if issued based on the determination by the Commission that the same will protect the investing public.

Prescinding from the foregoing, Respondents and Individual Respondents' argument that the Assailed CDO was deemed lifted after the tenth (10th) day from the termination of the hearing without any resolution on the Motion to Lift[42], is patently without merit and basis. Such argument betrays the legal concept of a hearing and negates the intent and purpose of a CDO under Sec. 64 of the SRC, for which reason, it cannot be sustained.

Contrary to the position of Respondents and Individual Respondents, the concept of a hearing under Sec. 64 of the SRC vis-à-vis Sec. 4-3 Rule IV Part II of the 2016 Rules is broad enough to cover the entire proceeding on the CDO which affords parties the opportunity to present their defenses, considering that the law specifically excluded

[41] See Sections 53.3 and 64 of the SRC on the concept of CDO.
[42] Reply dated 7 August 2023. Par. 5.2

their involvement or participation in the investigation proceedings. This is consistent with Sec. 1-4 of the 2016 Rules[43] requiring liberal construction with its provisions, as well as the established rule in administrative proceedings that technical rules of procedure are not strictly applied.[44] Thus, in the case of *Perez vs Philippine Telegraph and Telephone Company*[45], 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 mean verbal argumentation alone inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings.***" (Emphasis supplied)

Verily, the filing of Motions to Lift and other pleadings by the parties, as well as the issuance of relevant processes by the Commission clearly show that a hearing (as described in the afore-quoted doctrine) was conducted, contrary to the claim of Respondents. In this regard, this Commission notes of the successive filing of pleadings by the parties from the time the Motion to Lift was filed which continued until the case was submitted for resolution. In fact, Respondents and Individual Respondents are estopped from claiming that the Assailed CDO was deemed lifted on 10 July 2023[46] by reason of the fact that on 7 August 2023, they stilled filed a responsive pleading where they reiterated their allegations and arguments in support of the Motion to Lift. Respondents

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[43] "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."

[44] "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)

[45] G.R. No. 152048. April 7, 2009

[46] Respondents and Individual Respondents claim that that Motion to Lift was filed on 15 June 2023; that the Commission had fifteen (15) days (or until 30 June 2023) within which to set a hearing on the Motion to Lift; and ten (10) days (or until 10 July 2023) within which to resolve the same.

and Individual Respondents thus admitted that the hearing/proceedings on the Assailed CDO was not yet terminated. Given these factual circumstances, Respondents' reliance on Sec. 64.3 of the SRC was clearly misplaced as the hearing on the Assailed CDO was not yet terminated. Perforce, there was no automatic lifting of the Assailed CDO to speak of.

WHEREFORE, premises considered, the *Verified Motion to Lift [Re: Cease and Desist Order dated 8 June 2023]* filed by CASA INFINI BUILDERS AND REALTY CO. LTD. ("CI Builders and Realty"), CASA INFINI REALTY MANAGEMENT CO. LTD. ("CI Realty Management"), RAY EDUCATION DIRECTIONS CONSULTANCY SERVICES ("Ray Education"), RAY INTERNATIONAL PHILIPPINES CORPORATION DOING BUSINESS UNDER THE NAME/S AND STYLE/S OF RAY EDUCATION DIRECTIONS CONSULTANCY SERVICES, BE UNRIVALED PRODUCTIONS AND SINE CORDILLERA ("Ray International"), CASA INFINI PROPERTIES AND DEVELOPMENT CORP. ("CI Properties"), JENNYLYN GALLETES DELOS SANTOS FLORESCA ("Jennylyn"), RAFFY PALANGDAN FLORESCA, JOVIELYN MALONZO MINA, JINKY DELOS SANTOS LONTOC, JACQUELINE COREL MELCHOR, PETER OMAWENG WASING, ERIC M. PINEDA, JERICK BAMBI SADERNAS, and KENJIE MILLAR. is hereby **DENIED** for lack of merit. The Cease and Desist Order dated 08 June 2023 is hereby made **PERMANENT**.

Let a copy of this **RESOLUTION** be posted in the Commission's website and be furnished to the Company Registration and Monitoring Division for its information and appropriate action.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

***KELVIN LESTER K. LEE**
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

*On official business