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

In the Matter of:

TOGACHAT ACADEMY PHILIPPINES INC.

SEC CDO Case No. 10-19-059

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.
x-----------------------------------x

CEASE AND DESIST ORDER

This resolves the Motion for the Issuance of Cease and Desist Order[1] (the "*Motion*", filed by the Commission's ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT ("EIPD" for brevity), enjoining TOGACHAT ACADEMY PHILIPPINES INC., its officers, directors, salesmen, agents, representatives and any and all persons claiming and acting for and in their behalf, **to cease and desist** from engaging in activities of selling and/or offering for sale of securities in the form of investment contract until the requisite registration statement is duly filed and approved by the Commission and the corresponding license to offer/sell is issued.

RELEVANT FACTS

Movant, EIPD is the Department tasked to investigate, *motu proprio* or upon complaint or referral, violations of the law and the rules and regulations of the Commission and to, among others, initiate the issuance of a Cease and Desist Order (CDO) by the Commission.[2] Pursuant to Section 4-1, Rule IV, Party II of *The 2016 Rules of Procedure of the Securities and Exchange Commission (SEC)*, an action for the issuance of a CDO or injunction may be commenced upon the filing of an application with the Commission *En Banc*, through the Office of the General Counsel (OGC), by any Operating Department, either *motu proprio* or upon a verified complaint by the public, after conducting a proper investigation or verification, if there is a finding that the grounds for the issuance of the CDO or injunction are present. Likewise, among its powers and functions under Section 179(f) of the Revised Corporation Code of the Philippines (RCCP) is the power to issue cease and desist orders ex parte to prevent imminent fraud or injury to the public and to enjoin an act or practice which is fraudulent or can reasonably be expected to cause significant, imminent, and irreparable danger or injury to public safety or welfare

Respondent, TOGACHAT ACADEMY PHILIPPINES INC.

[1] Dated 24 October 2019.
[2] SEC Office Order No. 512, series of 2013.

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(TOGACHAT, for brevity) is a registered domestic corporation with Certificate of Incorporation issued by the Commission on 07 December 2016, with Company Registration No. CS201628323. Its principal office address is located at Unit No. 14-02 Annapolis, Wilshire Plaza Condominium, #11 Annapolis Street, San Juan City,1500, Philippines.

The Certificate of Incorporation[3] issued to TOGACHAT explicitly provides:

> "This Certificate grants juridical personality to the corporation **but does not authorize it to undertake business activities requiring a Secondary License from this Commission** such as, but not limited to, acting as: broker or dealer in securities, government securities eligible dealer (GSED), investment adviser of an investment company, close-end or open-end investment company, investment house, transfer agent, commodity/financial futures exchange/ broker/merchant, financing company, pre-need plan issuer, general agent in pre-need plans and time shares/club shares/membership certificates issuers or selling agents thereof. Neither does this Certificate constitute as permit to undertake activities for which other government agencies require a license or permit." (*Emphasis supplied).*

The primary purpose of respondent TOGACHAT, as stated in its Articles of Incorporation (AOI)[4] is:

> "To promote the TogaChat Social Messaging Application and Technology Platform of TogaCapitalSdnBhd and Toga Ltd., and all of its related products and services by way of educating the public, marketing the products through any and all possible means allowed by law via any media such as TV, radio, print, CD, DVD, websites, internet, electronic facilities such as use of any gagdets, or memory device, telecommunication facilities such as video, voice and data and conducting meetings, seminars, training and agreements and partnerships, with other private or public companies, xxx."

The names, nationalities and addresses of its incorporators and directors, are as follows:

Name	Nationality	Residence
Yee Hing Yip	Malaysian	#47/48 Jalan Jambu Berasa Jinjang Selatan, 52000 Kuala Lumpur, Malaysia
Liew Choon Fook	Malaysian	# P.O. Box 8128, Kelana Jaya, 46782 Petaling Jaya, Malaysia
Jose Lyceus P. Aranal	Filipino	#5 Malumanay Street, Sikatuna Village, Quezon City

[3] Attached as Annex "A" of the *Motion*
[4] Attached as Annex "B" of the *Motion.*

Reymelyn M. Cortes	Filipino	#53 Matias Street, Brgy. Paltok, SFDM, Quezon City
Tita C. Anquilero	Filipino	#8417-C, Mayapis Street, Brgy. San Antonio, Makati City

Moreover, the names of the directors and officers, with their respective positions, of respondent TOGACHAT as appearing in its 2018 General Information Sheet (GIS)[5] are as follows:

Name	Incorporator	Board	Officer	Stockholder
Yee Hing Yip	Y	Member	N/A	Y
Liew Choon Fook	Y	Member	N/A	Y
Denia Isidro Filipino	N	Member	N/A	Y
Reymelyn M. Cortes	Y	Chairman	President	Y
Tita C. Anquilero	Y	Member	Treasurer/ Secretary	Y

On 29 April 2018, the EIPD received an e-mail[6] through the SEC I-Message Mo[7] facility informing it of the fraudulent transactions/activities of TOGACHAT involving the sale of stocks in the form of Toga Points. Content of the email are extracted as follows:

> *"SEC registered name TOGACHAT ACADEMY PHILIPPINES INC.*
>
> *Yippi a chat software used by TOGACHAT to sell stocks in the form of TP (Toga Points).*
>
> *The company is Listed not authorized nor approved by BNM (Central Bank of Malaysia).*
>
> *x x x*
>
> *Toga Limited has a MLM system of which the upline will received 50% income from downline signup.*
>
> *Malaysian Base company is registered in USA and selling TP points in Philippines, America, Indonesia and reportedly in Thailand.*
>
> *Please check TOGACHAT if its doing business according in Philippines Laws"*

[5] Attached as Annex "D" of the *Motion*.
[6] Attached as Annex "E" of the *Motion*.
[7] i-Message Mo facility is a web-based online application for lodging of questions, requests, complaints, issues, concerns, suggestions/opinions, tips/alerts, etc.

Succeeding emails were received from various individuals inquiring on the legitimacy of the respondent's business operation which prompted the EIPD to check whether TOGACHAT has secured a secondary license to the Commission in order for them to validly transact and solicit investments from the public.

Based on the Certifications issued by the Corporate Governance and Finance Department (CGFD)[8] and Markets and Securities Regulation Department (MSRD)[9] both dated 17 May 2018, respondent TOGACHAT, has **not** been issued any Secondary License by the SEC authorizing it to solicit investments from the Commission; and is therefore not a registered issuer of securities as prescribed under Section 8 and Section 12 of the Securities Regulation Code (SRC).

On 04 July 2018, elements of the EIPD's Special Operations Division (EIPD-SOD) spearheaded an investigation and proceeded to the office of respondent TOGACHAT to conduct an ocular inspection and surveillance of its operations. Based the Field Investigation Report[10] the team met Mr. Aries Bailingo and his male associate who introduced themselves as agents of TOGACHAT. During the said meeting, Mr. Bailingo tried to convince the investigating team to join TOGACHAT by discussing the company profile and most importantly, its compensation plans which are as follows:

PACKAGE	AMOUNT in $	Toga Credits
Bronze	100	200
Silver	300	750
Gold	1,000	3,000
Platinum	3,000	10,500
Titanium	10,000	40,000
Palladium	30,000	135,000
Rose Gold	100,000	500,000

Further, the presentation of Mr. Bailingo disclose that purchase by an investor of any of the seven (7) packages available shall be paid in US dollars or the equivalent conversion in US dollars; and as can be seen in the investment scheme provided by Mr. Bailingo, there are also corresponding Toga Credits for each package. A Toga Credit is earned every time an existing investor recruits a new investor, i.e. a member will receive 50% Toga Credit for each referral depending on the package availed of by the recruited person. The more Toga Credits earned translates into a higher ceiling of Toga Points which could be used to buy shares of Toga Capital Limited. Aside from the profit which investors will get from direct referrals, there is also a Pairing Bonus, where the agent/member earns additional Toga Credit for every pair in the binary structure. He also claimed that TOGACHAT is registered with the OTC[11] Market in the

[8] Attached as Annex "H" of the *Motion*.
[9] Attached as Annex "I" of the *Motion*.
[10] Attached as Annex "J" and "J-1" of the *Motion*.
[11] Over-the-counter (OTC) or off-exchange trading is done directly between two parties, without the supervision of an exchange.

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United States of America, and that Toga stocks are being traded in TOGA Exchange which is an internal platform of Toga Limited where stocks are traded.

The investigation report likewise disclose that respondent TOGACHAT encouraged its members to discuss, orient and market to the public through social media, particularly on its Facebook account, its investment schemes for the purpose of inviting/enticing them to join and invest its scheme.

Records of the EIPD also reveal that Dir. Jesus Salvador A. Uro of SEC Zamboanga Extension Office submitted a Memorandum dated 27 March 2019[12] where he informed EIPD there were two (2) Orders posted in the US SEC website. The first Order[13] stated that Toga Capital Limited "Toga" (CIK No. 1586227) is a revoked Nevada corporation located in Kuala Lumpur, Malaysia with a class of securities registered with US SEC, while the Second Order[14] refers to the show cause order against Toga Capital Limited.

To inform and warn the public of the widespread fraudulent activities of respondent TOGACHAT, on 17 July 2019, the Commission posted an Advisory[15] informing the public to stop investing in the investment scheme being offered by respondent TOGACHAT. It further stated that based on the records of the Commission, TOGACHAT is not authorized to solicit investments as it has no secondary license required under Sec. 8.1 of the SRC. Subsequently, a Show Cause Order[16] was issued by the EIPD against respondent TOGACHAT, addressed to all its incorporators, directing it to show-cause why its Certificate of Incorporation should not be revoked. On 06 September 2019, respondent TOGACHAT submitted its reply[17] which essentially contained general denial that it was not engaged in the sale/offer of securities to the public, and it has not violated the SRC.

On 01 October 2018, the joint test-buy operation was conducted by the SEC and PNP-CIDG. The members of the team attended the seminar conducted by respondent TOGACHAT where at least fifteen (15) other persons were present. The test-buy operation was completed when one of the investigating agents invested the amount of Php5,600.00, which is equivalent to a bronze package. The operation was evidenced by a field investigation report[18] and the official receipt[19] presented as proof of payment.

On account of the foregoing, EIPD alleged in its Motion that there are sufficient grounds to issue Cease and Desist Order against respondent TOGACHAT which has been shown to be engaged in the sale and/or offer for sale of securities without the requisite registration statement approved by the Commission.

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[12] Attached as Annex "EE" of the *Motion*.
[13] Attached as Annex "FF" of the *Motion*.
[14] Attached as Annex "GG" of the *Motion*.
[15] Attached as Annex "II" of the *Motion*.
[16] Attached as Annex "JJ" of the *Motion*, dated August 14, 2019.
[17] Attached as Annex "KK" of the *Motion*.
[18] Attached as Annex "Q" of the *Motion*.
[19] Attached as Annex "R" of the *Motion*.

ISSUE

Whether the allegations in the *Motion* together with the pieces of evidence presented by the EIPD in support thereof warrant the issuance of a Cease and Desist Order.

DISCUSSION

The Commission finds the *Motion* to be impressed with merit.

Section 8 paragraph 8.1 of the SRC is clear that a registration statement duly approved by the Commission is an indispensable requirement before an entity can offer or sell securities to the public, thus:

> "REGISTRATION OF SECURITIES
>
> SEC. *8 Requirement of Registration of Securities.* – 8.1. 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. Xxx."

Based on the evidence presented, respondent TOGACHAT is engaged in offer, solicitation and sale of securities to the public without the required registration statement duly filed and approved by the Commission.

TOGACHAT'S scheme whereby an investor pays a minimum amount of money to purchase a package offered by it to be invested in the shares of stock of Toga Capital Limited, clearly falls within the definition of "Securities" under Section 3.1 of the SRC:

> "Sec. 3. *Definition of Terms.* – 3.1 "Securities" are shares, participation or interest 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. It includes:
>
> (a) Shares of stocks, bonds, debentures, notes, evidences of indebtedness, asset-backed securities;
>
> (b) Investment contracts, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription; xxx."

Moreover, it also appears that the investment scheme of respondent TOGACHAT is covered by the concept of an investment contract under Rule 26.3.5 of the 2015 Implementing Rules and Regulations of the SRC which is defined as follows:

> "An **investment contract** means a contract, transaction or scheme (collectively "contract") whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others.
>
> An investment contract is presumed to exist whenever a person seeks to

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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."

In the case of *Power Homes Unlimited Corporation vs. SEC*[20] citing the so-called Howey Test enunciated in *SEC vs Howey*[21], the elements of an investment contract were enumerated as follows :

(1) an investment of money;
(2) in a common enterprise;
(3) with expectation of profits and;
(4) primarily from efforts of others.

Records show that in order to join and profit from the scheme being offered by respondent TOGACHAT, an investor has to choose a package that is being offered by respondent TOGACHAT and pay the corresponding amount. By doing so, the investor enters into a contract with respondent TOGACHAT. The money invested is placed and used to carry out a common enterprise where investors have no control on management of the amount pooled. The investors however hold an expectation of deriving profits from the entrepreneurial or managerial efforts of respondent TOGACHAT. The direct referral commissions and the pairing bonus are given by respondent TOGACHAT to entice existing investors to recruit new investors since they will be earning additional profit/shares to their account by doing so.

Based on the foregoing, the Commission affirms the finding of EIPD that respondent TOGACHAT is engaged in the sale, solicitation and/or offering of securities, in the form of investment contract, to the public which required a registration statement duly approved by the Commission. When respondent TOGACHAT carried out its investment scheme as presented by Mr. Bailingo without the registration statement, the necessity for the issuance of the Cease and Desist Order was triggered because respondent TOGACHAT was in effect defrauding the investing public.

The foregoing finds support in the case of *SEC vs. CJH DEVELOPMENT CORPORATION*[22] where the Supreme Court held:

> "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 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."

[20] G.R. No. 164182, 26 February 2008.
[21] 328 U.S. 293 (1946).
[22] G.R. No. 210316, 28 November 2016.

x--x

In the same manner, the act of respondent TOGACHAT of allowing its members to promote and market to prospective investors its products and investment scheme through, seminars, public presentations or in the social media, and subsequently entice them to invest their hard earned money is considered as "public offering" defined under Rule 3.1.17 of the Implementing Rules and Regulations of the SRC, thus:

> "**3.1.17. Public Offering**" is any means 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:
>
> Xxx.
>
> 3.1.17.2 Presentation in any public or commercial place;
>
> **3.1.17.3** ***Advertisement or announcement*** on radio, television, telephone, ***electronic communications***, ***information communication technology or any other forms of communication***; or
>
> 3.1.17.4 Distribution and/or making available flyers, brochures or any offering material in a public or commercial place, or to prospective purchasers through the postal system, ***information communication technology*** and ***other means of information distribution***." (Emphasis supplied)

Moreover, records reveal that in order to entice and facilitate recruitment of new investors to invest their hard earned money with them, respondent TOGACHAT, claiming to be under TOGA CAPITAL LIMITED, also misrepresented to the public that by the year 2019, Toga Limited shares will be registered with NASDAQ and as a consequence thereof, the market value of Toga Limited shares may increase up to 10,000%.[23] However, records reveal that contrary to its claims, respondent TOGACHAT's corporate license in Nevada, U.S.A. is already revoked and it has pending administrative cases before the US SEC. The foregoing serious misrepresentation which respondent TOGACHAT has been using as a tool to promote its unauthorized investment taking activities should be restrained.

Finally, the Commission agrees with the finding of EIPD, which is duly supported by evidence, that the investment scheme of respondent TOGACHAT is a Ponzi scheme which is a type of an investment fraud. The additional shares that will be used by existing investors to purchase Toga Points (or stocks of Toga Capital Limited) would come from the investments of later investors. This is the reason why respondent TOGACHAT is giving additional income for successful referrals. Considering that Ponzi schemes will work only as long as the number of new investors continue to increase which is in reality, unsustainable, the new investors will ultimately end up being victims of the investment scam perpetrated by respondent TOGACHAT.

[23] See Annex "K" of the Memorandum.

In the case of People vs Aquino[24], the Supreme Court went to the extent of considering Ponzi scheme as a criminal fraud because the same is used as a tool in committing a crime, thus:

> "Far from being a legitimate business venture, the Court herein observes that Felix and his co-accused's modus operandi is constitutive of criminal fraud as they used the same to commit a crime. In fact, their modus operandi may be characterized as a kind of Ponzi scheme, which schemes have gained notoriety in modern times. As generally defined, a Ponzi scheme is "a type of investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors. Its organizers often solicit new investors by promising to invest funds in opportunities claimed to generate high returns with little or no risk. In many Ponzi schemes, the perpetrators focus on attracting new money to make promised payments to earlier-stage investors to create the false appearance that investors are profiting from a legitimate business. It is not an investment strategy but a gullibility scheme, which works only as long as there is an ever increasing number of new investors joining the scheme. It is difficult to sustain the scheme over a long period of time because the operator needs an ever larger pool of later investors to continue paying the promised profits to early investors. The idea behind this type of swindle is that the 'con-man' collects his money from his second or third round of investors and then absconds before anyone else shows up to collect. Necessarily, Ponzi schemes only last weeks, or months at the most."

WHEREFORE, premises considered, TOGACHAT, its officers namely: Reymelyn M. Cortes and Tita C. Anquilero, its directors namely: Yee Hing Yip, Liew Choon Fook, Jose Lyceus P. Aranal, Reymelyn M. Cortes, Tita C. Anquilero and Denia Isidro Filipino, representatives, salesmen, agents AND ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND IN THEIR BEHALF, are hereby **ORDERED** to **immediately CEASE AND DESIST, UNDER PAIN OF CONTEMPT**, from further engaging in activities of selling and/or offering for sale of securities or any others of the same nature as discussed in the *Order*, until the requisite registration statement is duly filed with and approved by the Commission and the corresponding permit to offer/sell is issued.

Furthermore, to forestall grave damage and prejudice to all concerned, and to ensure the preservation of assets for the benefit of investors, TOGACHAT, or any of their representatives, or any person/s acting for and in their behalf, and such other persons directing or controlling the activities of such corporation, officers, representatives, salesmen, agents, are all **ENJOINED from (a) transacting any and all business involving the funds in its depositary banks, and (b) transferring, disposing, or conveying in any other manner any and all assets and properties, real or personal, including bank deposits, if any, under their custody**, of which the named persons herein may have any interest, claim, or, participation whatsoever, whether directly or indirectly, immediately upon receipt of this *Order*.

Finally, TOGACHAT, the above named directors and officers, salesmen, agents, representatives and any and all persons claiming and acting for and in

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[24] G.R. No. 232818, November 5, 2018.

their behalf, are directed to immediately **CEASE AND DESIST** from conducting their investment-taking activities using the internet and/or any social media platforms. The Commission will institute appropriate administrative and/or criminal action against any person/s or entities found to act as solicitors, information providers, salesmen, agents, brokers, dealers or the like for and in behalf of respondent TOGACHAT.

The EIPD is hereby **DIRECTED** to:

1.) serve this *Order* to TOGACHAT, its President, Corporate Secretary, Treasurer or In-House Counsel;

2.) post copies of this *Order* at the entrance of the main office and/or branches, if any, of TOGACHAT.

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 posted in the Commission's website.

In accordance with the provisions, of Sec. 64.3[25] of the SRC and Sec. 4-3, Rule IV, Part II of the 2016 Rules[26], the parties subject of *the Cease and Desist Order* may file a request for lifting thereof within five (5) days from receipt hereof.

SO ORDERED.

Pasay City, Philippines; 17 December 2019.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

[25] Section 64.3. Any person against whom a cease and desist order was issued may, within five (5) days from the receipt of the Order, file a formal request for a lifting thereof. Xxx.
[26] The 2016 Rules of Procedure of the Securities and Exchange Commission.

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