Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

In the Matter of:

SUCCESS200 INTERNATIONAL MARKETING CORPORATION

SEC-CDO CASE NO. 09-15-024
FOR: Issuance of Cease and Desist Order

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.

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CEASE AND DESIST ORDER

Pending consideration before the Commission *En Banc* is a verified *Motion for Issuance of a Cease and Desist Order* (Motion for CDO) dated 9 September 2015 filed by the Enforcement and Investor Protection Department (EIPD) of this Commission against SUCCESS200 INTERNATIONAL MARKETING CORPORATION (Success200).[1]

Success200 incorporated with the Commission on 12 May 2015 under SEC Registration No. CS201509200.[2] The primary purpose of Success200 is "[t]o engage in the business of manufacture, distribution and marketing of value products such as pharmaceutical grade medicinal products, foods, supplements; health and wellness products, ready to wear clothing apparels; computer and computer peripherals, gadgets and equipment, etc; through different modes of merchandising and marketing techniques **except broker 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 and time shares/club shares/membership certificate issuers or selling agents thereof**".[3]

The incorporators and directors of Success200 include Alberto P. Monzuela,[4] who is also its treasurer.[5] The authorized capital stock and paid up is Php 100,000.00.[6]

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[1] Motion for CDO filed on 23 September 2015.
[2] *Id.*, par. 1, Annex "A" (Certificate of Incorporation of Success200).
[3] *Id.*, par. 2, Annex "B" (Second Article of the Articles of Incorporation).
[4] *Id.*, par. 4, Annex "B" (Fifth and Sixth Articles of the Articles of Incorporation).
[5] *Id.*, par. 10, Annex "C" (General Information Sheet of Success200 for the Year 2015) and Annex "H" (Joint Affidavit executed on 7 September 2015 by the Investigating Team of the EIPD).

STATEMENT OF FACTS

In its Motion for CDO, the EIPD alleges that it received various email from the public reporting on the investment scheme of Success200. In one email, it states that Success200 claims that it "can turn an investment of Php 1,800.00 into Php 10,000.00".[7]

As a result of which, the EIPD alleges that its investigating team initiated an investigation on Success200 by viewing the website of Success200[8] and a Facebook page of a certain Ann Fevreir SJ Santiago.[9] The EIPD alleges that the Facebook account of Ms. Santiago is found to have performed promotional activities for Success200. Further, the EIPD states that the said Facebook account states "PURCHASE PRODUCT LOW END 1,800.00 ⟶ INVITE 2 ONLY ⟶ EXIT 2 OR 3 WEEKS". The said Facebook account also "shows a sample on how to 'exit'".[10]

On 14 July 2015, the Corporate Governance and Finance Department (CGFD) issued a certification to the effect that Success200 is "not a registered issuer of mutual funds including exchange traded funds, membership certificates, time shares and unlisted securities under Section 17.2(a) of the Securities Regulation Code and therefore not licensed to offer or issue such securities to the public."[11]

On 15 July 2015, the investigating team of the EIPD executed a Field Investigation Report stating that it proceeded to the principal office of Success200 to conduct an ocular inspection. During the ocular inspection, Alberto Monzuela introduced himself to the investigating team and stated that this is the office of Success200. He claimed that for the amount of Php 1,800.00 a member can get Php 1,500.00 worth of products such as tea, instant coffee and chocolate mix.[12]

Also, for the amount of Php 1,800.00 a member may earn Php 10,000.00 once such member completes one board, which consists of fifteen (15) members. In order to complete one board, each member in the board must refer at least two (2) people. Such referrals must then refer two (2) additional people, which is called a "split matrix". After the completion of one board, such member will "exit" or get a pay-out in the amount of Php 10,000.00. Such member will then transfer to a second board by paying the amount of Php 1,800.00, and will "exit" or get a pay-out in the amount of Php 9,000.00.[13]

Alberto Monzuela further stated that the investment amount of Php 1,800.00 is considered as the "low-end" level, and that a member may invest in the "high-end" level

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[6] *Id.*, par. 3, Annex "B" (Seventh and Eight Articles of the Articles of Incorporation).
[7] *Id.*, par. 6 and Annexes "D" and "E" (Email from the public).
[8] *Id.*, par. 8 and Annex "F" (Website page of Success200).
[9] *Id.*, par. 9 and Annexes "G-1" and "G-2" (Facebook account of Ann Fevreir SJ Santiago).
[10] *Id.*
[11] *Id.*, par. 11, Annex "I" (CGFD's Certification dated 14 July 2015).
[12] *Id.*, par. 10 and Annex "H" (Joint Affidavit executed on 7 September 2015 by the Investigating Team of the EIPD).
[13] *Id.*

for the amount of Php 36,000.00. Such investment in the "high-end" level will allow the member to "exit" or get a pay-out in the amount of Php 200,000.00.[14]

Furthermore, the investigating team of the EIPD inquired from Alberto Monzuela about investing more, and of the possibility of reselling their products. The latter replied that their members preferred employing a "split matrix" or recruiting.[15]

Additionally, Alberto Monzuela stated that Success200 has around 350,000 members and that it transferred its office to a temporary location in Boni Avenue, Mandaluyong City.[16]

It is noted in the Field Investigation Report that Alberto Monzuela is an incorporator and treasurer of Success200.[17]

The Field Investigation Report further stated the investigating team of the EIPD proceeded to the temporary office in Mandaluyong City on 20 July 2015. The investigating team noticed the following, among others: (i) a tarpaulin bearing the name "Success200" outside the building of the temporary office; (ii) a posting of a list of pay-out names; and (iii) a crowd of more or less 150 persons waiting for their names to be called by a lady.[18]

Thereafter, the EIPD filed a *Supplement to the Motion for [CDO]* attaching a Certification from the Markets and Securities Regulation Department (MSRD).[19] The Certification stated that Success200 has not been issued a Certificate of Registration or Licenses to act as Broker and/or Dealer in Securities, Dealer in Government Securities, Investment Adviser of an Investment Company, Investment House, Transfer Agent. The MSRD further certified that Success200 is not, under any circumstance, authorized or licensed to engage in activities and/or solicit investments necessarily connected with or incidental to the pursuit of and carrying on said business or profession which are required to secure certificates of registration/licenses from the Commission.[20]

Hence, the filing of this *Motion for Issuance of a Cease and Desist Order*.

ISSUE

Whether the issuance of a CDO is justified in this case.

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[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] Supplement to the Motion for CDO dated 4 January 2016 and filed on 8 January 2016.
[20] *Id*, Annex "A" (Certification of the MSRD dated 9 November 2015).

RULING

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".[21] It includes an investment contract,[22] which is defined as 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."[23] A presumption that a contract is an investment contract arises whenever a person seeks to use the money or property of others on the promise of profits.[24]

In *Power Homes Unlimited Corporation v. Securities and Exchange Commission*,[25] the Supreme Court stated that an investment contract in our jurisdiction, to be a security subject to regulation by the Commission, must be proved to be (1) an investment of money, (2) in a common enterprise, (3) with expectation of profits, (4) primarily from efforts of others.

In the case at bar, the investment scheme of Success200 constitutes an investment contract considering all four (4) elements of an investment contract are present, to wit –

1. An investment of money

As to the first element, an investment of money occurs when an investor commits money to an enterprise or venture in a manner that subjects himself to financial loss.[26] In the instant case, as provided for by Alberto Monzuela during the surveillance operation on 15 July 2015 at the principal office of Success200, its members may avail of the "low-end" package in the investment amount of Php 1,800.00 or the "high-end" package in the investment amount of Php 36,000. Clearly, there is an investment of money when the member avails of the "low-end" or "high-end" package offered by Success200.

2. Common enterprise

As to the second element, there is a common enterprise. A common enterprise is deemed created when two (2) or more investors "pool" their resources. Several tests have evolved to determine what constitutes "common enterprise".[27] One of these tests is the horizontal commonality approach. Under this test, the determination involves an inquiry into whether the transaction involves the joint participation of more than one investor in (i) the investment of funds or (ii) the sharing of profits.[28] Furthermore, joint

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[21] Section 3.1., SRC.
[22] Section 3.1.(b), *Id.*
[23] SRC Rule 3(1)(G), Amended Implementing Rules and Regulations of the SRC.
[24] *Id.*
[25] G.R. No. 164182, 26 February 2008.
[26] *SEC v. International Mining Exchange, Inc.*, 515 F. Supp. 1062.
[27] *In the Matter of Octopus Network, Inc.*, SEC-PED Case No. 98-2220, 22 May 1998.
[28] *Id.,* citing 69 Am Jur 2d citing Stenger v. R.H. Love Galleries, Inc. 741 F2d 144.

participation by investors in the same investment enterprise, achieved by pooling the invested funds for a common purpose, is required in order to satisfy the common enterprise element.[29]

In the case at bar, a common enterprise exists since there is a joint participation by the members and their referrals. As stated by Alberto Monzuela, each member of Success200 must refer or recruit two (2) persons in order to complete the board. These referrals or persons recruited must then refer two (2) additional persons, which is called a "split matrix". Clearly, there is a pyramid scheme[30] that exists in Success200, which indicates a common enterprise.

3. Expectation of profits

As to the third element, there must be an expectation of profits. By profits, the court has meant either capital appreciation resulting from the development of the initial investment, or participation in earnings resulting from the use of investors' funds. In such cases, the said investors are "attracted primarily by the prospects of a return on his investment."[31] In this case, the members may avail of the "high-end" or "low-end" package with the view of receiving profits from Success200. In fact, as stated by Alberto Monzuela, the members prefer "split matrix" or recruiting than reselling the products offered by Success200. In other words, the members flocked to Success200 primarily for the income opportunity and not for the products offered by the latter (e.g. tea, instant coffee and chocolate mix).

4. Primarily from the efforts of others

Lastly, as to the fourth element, there must be the expectation of profits primarily from the efforts of others. In this case, the operations and management rests upon Success200 and the members do not participate in such operations or management thereof.

Non-registration of securities

Next, Section 8.1 of the SRC provides that securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. In connection therewith, Section 12.1 of the SRC

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[29] *Id.*, citing Wasnowic v. Chicago Bd. of Trade 352 F Supp 1066.

[30] *People v. Balasa*, G.R. Nos. 108601-2 (1998), in citing the Consumer Act of the Philippines (RA 7394), defines a pyramid scheme as a sales devices whereby a person, upon condition that he makes an investment, is granted by the manufacturer or his representative a right to recruit for profit one or more additional persons who will also be granted such right to recruit upon condition of making similar investments: *Provided,* That, the profits of the person employing such a plan are derived primarily from the recruitment of other persons into the plan rather than from the sale of consumer products, services and credit; *Provided, further*, That the limitation on the number of participants does not change the nature of the plan.

[31] *Power Homes Unlimited Corporation v. Securities and Exchange Commission.*

states that all securities required to be registered under Section 8.1 shall be registered through the filing by the issuer in the main office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission shall prescribe.

As securities, the investment scheme of Success200 must be registered being offered or sold to the general public, in compliance with Sections 8.1 and 12.1 of the SRC.

In the instant case, the presentation of Alberto Monzuela at the principal office of Success200, during the ocular inspection, constitutes as a public offering under the Amended Implementing Rules and Regulations of the SRC,[32] viz –

> "Public offering means a random or indiscriminate offering of securities in general to anyone who will buy, whether solicited or unsolicited. **Any soliciatation or presentation for sale through any of the following modes shall be presumed to be a public offering**: x x x
>
> ii. **Presentation in any public or commercial place**; x x x" (Emphasis ours)

Anent thereto, the Certification issued by the MSRD clearly shows that Success200 is not registered issuer of securities pursuant to Sections 8.1 and 12.1 of the SRC, and therefore, not licensed to issue or offer securities to the public.

From the foregoing, there is ample evidence to show that Success200 is engaged in the sale and offer of securities, in form of investment contracts, without the proper registration.

Issuance of CDO warranted

Consequently, considering that it already has 350,000 members as stated by Alberto Monzuela, the issuance of the CDO is justified pursuant to Section 64[33] of the SRC since the scheme offered by Success200 will operate as a fraud on investors or likely to cause grave or irreparable injury. The Supreme Court, in a case, held that a transaction similar to the case at hand is not a legitimate investment strategy but a gullibility scheme, which works only as long as there is an ever increasing number of new investors joining the scheme. In fact, the paid up capital of Success200 is only Php 100,000.00 while the high-end" level investment pay-out is Php 200,000.00. In which case, it is difficult to sustain over a long period of time because Success200 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

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[32] SRC Rule 3(1)(N), Amended Implementing Rules and Regulations of the SRC.

[33] Section 64.1., SRC. The Commission, after proper investigation or verification, *motu propio*, or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

second or third round of investors and then absconds before anyone else shows up to collect. Necessarily, these schemes only last weeks or months at most.[34] Hence, the issuance of the CDO is justified.

WHEREFORE, premises considered, **SUCCESS200 INTERNATIONAL MARKETING CORPORATION**, its partners, officers, directors, agents, representatives, conduits, assigns, AND ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND IN THEIR BEHALF are hereby ordered to **IMMEDIATELY CEASE AND DESIST**[35]**, UNDER PAIN OF CONTEMPT**, from engaging in activities of selling and/or offering for sale securities in the form of investment contracts or any others of the same nature, as discussed in this *Cease and Desist Order*, until the requisite registration statement is duly filed with and approved by the Commission and the corresponding to offer/sell is issued.

Furthermore, the subject corporation is directed to cease its internet presence relating to above-stated investment activities. The Commission will institute the appropriate administrative and criminal action against any persons or entities found to act as solicitors, information providers, salesmen, agents, brokers, dealers or the like for and in behalf of the subject corporation.

The **Enforcement and Investor Protection Department** of the Commission is hereby **DIRECTED** to: 1) serve this *Order* to SUCCESS200 INTERNATIONAL MARKETING CORPORATION, its President, General Manager, Corporate Secretary, Treasurer, In-House Counsel or partners; 2) post copies of the *Cease and Desist Order Order* at the entrance of the main office and/or branches, if any, of SUCCESS200 INTERNATIONAL MARKETING CORPORATION.

Let a copy of this *Cease and Desist Order* be also posted in the Commission's website; published in a national newspaper of general circulation and furnished to the Markets and Securities Regulation Department, Company Registration and Monitoring Department, the Corporation Finance Department and the Economic Research and Information Department 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 *Cease and Desist Order.*

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[34] People v. Romero, et al., G.R. No. 112985, 21 April 1999.

[35] Section 64.1, SRC, The Commission, after proper investigation or verification, *motu propio,* or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

In accordance with the provisions of Sec. 64.3[36] of SRC and Sec. 10-3 of the 2006 Rules of Procedure of the Commission, the parties subject of this *Cease and Desist Order* may file a request for the lifting thereof within five (5) days from receipt hereof.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Mandaluyong City; 26 January 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

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BLAS JAMES G. VITERBO
Commissioner

[36] SRC, Section 64.3. Any person against whom a cease and desist order was issued may, within five (5) days from receipt of the order, file a formal request for a lifting thereof. Said request shall be set for hearing by the Commission not later than fifteen (15) days from its filing and the resolution thereof shall be made not later than ten (10) days from the termination of the hearing. If the Commission fails to resolve the request within the time herein prescribed, the cease and desist order shall automatically be lifted.

* On Official Business

COPY FURNISHED:

Company Registration and Monitoring Department
2nd Floor, Securities and Exchange Commission
SEC Building, EDSA, Greenhills
Mandaluyong City, Metro Manila Philippines

Corporate Governance Finance Department
11th Floor, Securities and Exchange Commission
SEC Building, EDSA, Greenhills
Mandaluyong City, Metro Manila Philippines

Markets and Securities Regulation Department
6th Floor, Securities and Exchange Commission
SEC Building, EDSA, Greenhills
Mandaluyong City, Metro Manila Philippines

Economic Research and Training Department
10th Floor, Securities and Exchange Commission
SEC Building, EDSA, Greenhills
Mandaluyong City, Metro Manila Philippines

Information and Communication Technology Department
7th Floor, Securities and Exchange Commission
SEC Building, EDSA, Greenhills
Mandaluyong City, Metro Manila Philippines