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

IN THE MATTER OF:

ASTRAZION NOBLE TASK COMMUNITY FOUNDATION, ASTRAZION GLOBAL HOLDINGS PHILIPPINES, INC., and ASTRAZION INTERNATIONAL

SEC CDO Case No. 05-22-090
Promulgated: 11 August 2022

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),
Movant.

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RESOLUTION

Before this Commission is the *Motion to Lift Cease and Desist Order* (the *"Motion to Lift"*) filed[1] by Respondents Astrazion Noble Task Community Foundation (Astrazion Foundation) and Astrazion Global Holdings Philippines, Inc. (Astrazion Holdings), through counsel, praying for the lifting of the Cease and Desist Order dated 12 May 2022 (*Assailed CDO*), the dispositive portion of which, in part, reads:

> "WHEREFORE, premises considered, **Astrazion Noble Task Community Foundation, Astrazion Global Holdings Philippines, Inc., and Astrazion International**, and their incorporators, operators, directors and officers namely: Napoleon Dela Cruz Visperas, Remus Pedroso Salgado, Joan Ganancial, Rolando Candelario Oso, Francisco Gadayan Baladjay, Jr., Pierre Martin D. Reyes, Esther M. Weigand, and Carol Joy Balbuena Visperas, and its representatives, salesmen, agents, uplines, influencers, enablers such as Christopher "Toffy" Dimaguila, conduits, subsidiaries, and any and all persons, claiming, acting, and operating for and in their behalf, are hereby ordered to **IMMEDIATELY CEASE AND DESIST** from engaging in the unlawful/unauthorized solicitation, offer and/or sale of securities in the form of investment contracts 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.

Astrazion Noble Task Community Foundation, Astrazion Global Holdings Philippines, Inc., and Astrazion International, its operators, directors, officers, representatives, salesmen, agents 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 in their behalf.

Finally, the Commission hereby **PROHIBITS** Astrazion Noble Task Community Foundation, Astrazion Global Holdings Philippines, Inc., and Astrazion International, its operators, directors, officers, representatives, salesmen, agents and any and all persons claiming and acting for and in their behalf from transacting any business involving funds in its depository banks, and from transferring, disposing, or conveying in any manner, any and all assets, properties, real or personal, including bank deposits, if any, of which the named persons herein may have interest, claim or participation, whether directly or indirectly, under their custody, to ensure the preservation of the assets of the investors."

The Commission notes, at the outset, that among the entities covered by the CDO, only Astrazion Foundation and Astrazion Holdings (the "Astrazion Group") filed the instant Motion to Lift. Astrazion International did not question the Assailed CDO, and in effect accepted the findings of the Commission.

In their *Motion to Lift*, the Astrazion Group maintained that the Assailed CDO should be lifted insofar as they are concerned because the AZNT Tokens are not controlled and owned by them[2]. They explained that the AZNT Tokens, just like bitcoin, are created by, and given to members who participate in the mining process. The Astrazion Group posits that the sale of AZNT Tokens to non-members does not constitute sale of investment contracts because since it is decentralized, reliance is not made primarily on the efforts of others to earn a profit.[3] In support thereof, the Astrazion Group cited a statement allegedly made by the US SEC that a coin or token is not, *per se*, a security unless the criteria established in the Howey Test is met.[4]

The Astrazion Group also argued that the AZNT Tokens that are run and maintained by the AZNT Community is functional and not speculative

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[2] Par. 18 of the Motion to Lift

in the sense that they are intended to be used, in the future, for payment of goods and services purchased.[5] Thus, these tokens cannot be considered securities under the purview of the Securities regulation Code.

Finally, the Astrazion Group argued that the Assailed CDO should be lifted because they, as well as the AZNT Community, have no intent to violate the applicable laws, rules and regulations, and no harm or fraud was committed against the public in developing and dealing with the AZNT Tokens.[6]

In its Comment/Opposition (To the Motion to Lift), the EIPD maintained its position that the Astrazion Group is engaged in the sale/offer of securities in the form of investment contracts, and prayed for the denial of the Motion to Lift. The EIPD argued that the numerous complaints against the Astrazion Group on its illegal investment-taking activities, as well as the marketing materials and online posts showing the sale/offer of investment packages which were submitted in evidence, were not overcome by the allegations/arguments in the Motion to Lift.

After a careful review of the allegations and arguments proffered by the Astrazion Group, the Commission finds the Motion to Lift to be bereft of merit.

At the outset, it should be emphasized that the Assailed CDO was issued on the basis of a finding that its investment packages i.e. Starter (US$100), Bronze (US$300), Silver (US$500), Gold (US$1,000), Diamond (US$3,000), Platinum (US$5,000), and Double Platinum (US$10,000) [the "Investment Packages"] are securities in the form of investment contracts, and their sale/offer to the public sans the required registration statement violates Section 8 of the SRC.

Relative thereto, this Commission notes how the Astrazion Group tried to remove the whole investment scheme (which facilitated the sale/offer of Investment Packages) from the subject matter of this case; and never mentioned, discussed and/or addressed this issue in the Motion to Lift. Interestingly, while they insisted that they have no ownership or control, or have no part in the development and distribution of the AZNT Tokens, the Astrazion Group nonetheless staunchly denied that the same are securities; and even took pains to elaborate and present to this Commission the concepts of cryptocurrency, crypto assets, tokens, blockchain, the mining process, among others, citing for this purpose issuances and reports of the US SEC.

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5 Par. 19 of the Motion to Lift

This, however, effectively negated their feigned non-involvement in the development and distribution of the AZNT Tokens, and revealed that they are very much interested that this Commission clears the same of any violation of the SRC because they stand to profit if the Assailed CDO will be lifted.

Even without the foregoing implied admission, the allegation of the Astrazion Group that they have no ownership or control, or have no part in the development and distribution of the AZNT Tokens, which is not supported by any evidence, is belied by the marketing materials submitted in evidence by the EIPD which clearly showed that Astrazion Foundation is actively selling/offering AZNT Tokens through the different Investment Packages available.[7]

Moreover, it does not escape the attention of the Commission that Napoleon Dela Cruz Visperas and Remus Pedroso Salgado who incorporated Astrazion Foundation which is selling/offering unregistered securities in violation of the SRC, have also incorporated Astrazion Holdings. This is relevant because the admissions extant in the Motion to Lift shows that Napoleon Dela Cruz Visperas together with his cohorts intentionally secured the registration of these corporations to carry out the grand scheme of soliciting investments from the public by selling/offering unregistered securities. In fact, the official video presentation of Astrazion Holdings in YouTube[8] shows that just like Astrazion Foundation, it is offering the Investment Packages with guaranteed rewards of 3% per day for 100 days.

On the basis thereof, this Commission agrees with the EIPD that the Astrazion Group failed to present evidence that will warrant the lifting of the Assailed CDO. Their allegations and arguments that the AZNT Tokens are not securities, unsupported by evidence, cannot overturn the established fact, duly supported by evidence, that the Investment Packages covering AZNT Tokens which is being sold/offered by the Astrazion Group are securities in the form of investment contracts. No evidence was submitted by the Astrazion Group showing otherwise. In fact, the Astrazion Group did not deny that the Investment Packages are continuously being sold/offered to the public.

Similar to the securities acts of other jurisdictions, specifically the United States of America where it was pattered, the SRC adopted a very

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[7] Annex "C" of the Motion for Issuance of a Cease and Desist Order dated 29 April 2022

[8] https://mail.google.com/mail/u/0/#search/astrazion++CDO+++/FMfcgzGpFqPWLCXkgJdRFzRNcRJNpQCP?projector=1; see Annex "C" of the Motion for Issuance of a Cease and Desist Order dated 29

broad definition of securities[9], which is intended to be liberally construed in order to achieve the main purpose of its enactment: the regulation of the issuance and sale of securities and prevention of fraud.

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 of their investment. From this perspective, and in the rule on the liberal construction of the concept of securities, the term investment contract should include and cover all forms and varieties thereof which are known or considered, or ought to be known or considered to be such, in the financial world.

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*[10] (Power Homes Case), 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 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

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9 "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)

> 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.*[11], the US Supreme Court emphasized 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, it is not inappropriate that promoters' offerings be judged as being what they were represented to be." (Emphasis supplied)

On the basis thereof, this Commission has consistently held that an investment contract is considered to exist once it is determined that the proponent is offering to the public 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.

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 the instant case, the seven (7) packages that are being sold/offered by the Astrazion Group to the public through its website and social media accounts, offers a guaranteed return applying a 3% daily interest after one hundred (100) days, a residual income and direct referral income distribution amounting to 10% of the total amount paid by the downline and binary income earnings. This is the main consideration and reason why its member-investors and the investing public parted with their hard-earned money as shown in the complaints on record.

The "common enterprise" which the Astrazion Group has operationalized, managed, and maintained consists in the sale/offer of the Investment Packages with guaranteed daily earnings and bonuses. The fortunes of the member-investors of the Astrazion Group are linked to each other and are clearly essential to the success of the business. In other words, the continued sale of Investment Packages and the entry of new member-investors who will in turn become seller/agents of the Astrazion Group facilitate and ensure the payment of the guaranteed daily earnings and bonuses. It is therefore not surprising to see that the guaranteed daily earnings and bonuses were showcased by the Astrazion Group in all its presentations and marketing materials to ensure that its member-investors sell its Investment Packages considering that the continued operation of its business is solely dependent on this.

The foregoing establishes and affirms the existence of all the elements of the Howey Test, which this Commission has already expounded in the Assailed CDO.

Finally, the claim of the Astrazion Group that the investing public was not prejudiced or defrauded negated by the complaints on record which show that a considerable number of its member-investors have been defrauded into parting with their hard-earned money because of movant's investment scheme which ultimately left them empty-handed.

Given the foregoing disquisitions, the Commission does not find any cogent reason to disturb its earlier findings. The CDO should forthwith stand and be made permanent for the protection of the investing public.

WHEREFORE, premises considered, the *Motion to Lift Cease and Desist Order* filed by Astrazion Noble Task Community Foundation and Astrazion Global Holdings Philippines, Inc. is hereby **DENIED** for lack of merit. The Cease and Desist Order dated 12 May 2022 is hereby made **PERMANENT**.

Let a copy of this **RESOLUTION** be posted in the Commission's website and furnished to all operating departments/offices of the Commission for their 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