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

IN THE MATTER OF:
CROWD1 ASIA PACIFIC, INC.
SEC Company Registration
No. CS201917023

SEC CDO Case No. 05-20-064

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.
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RESOLUTION

For consideration of the Commission En Banc ("Commission") is the *Motion to Lift Cease and Desist Order Ad Cautelam* ("Motion to Lift") filed by CROWD1 Asia Pacific, Inc. (CROWD1) through counsel, by electronic mail on 27 May 2020.

In its Motion to Lift, CROWD1 alleged that it has not yet received a copy of the Cease and Desist Order (CDO); hence, they are filling the Motion to Lift *ad cautelam.*

RELEVANT FACTS

On 5 May 2020, the Enforcement and Investor Protection Department ("EIPD") filed a *Motion for Issuance of a Cease and Desist Order* praying that an order be issued directing CROWD1, its directors, officers, partners, representatives, salesmen, agents and any and all persons and conduit entities acting for and its behalf, to cease and desist from engaging in the sale and/or offer unregistered securities in the form of investment contracts for want of the requisite registration statement duly filed with and approved by the Commission, and to cease and desist from selling, encumbering conveying or disposing of the properties and other assets.

On 12 May 2020, this Commission issued a CDO after finding that the evidence presented by EIPD was able to show and establish by substantial evidence, that CROWD1 is engaged in the sale and/or offer of securities in the form of investment contract without the requisite license. The finding that CROWD1 was selling/offering investment contract was anchored on proof submitted by EIPD that all the elements of the Howey Test are present.

On 27 May 2020, CROWD1 filed the Motion to Lift where it argued that the CDO violated its right to due process as it was issued *motu proprio* without affording CROWD1 an opportunity to be heard.

CROWD1 further argued that the alleged marketing of investment contracts are not official acts of CROWD1 as its charter mandates it to render Business Process Outsourcing ("BPO") services to an international organization under the name "Impact Crowd Technology SL." CROWD1 also maintains that it could not have solicited investments because it is not authorized to market nor receive money or investments; and that any investments/money received go to and are managed by the organization itself.

Acting on the Motion to Lift, the Commission, through the Office of the General Counsel ("OGC") issued an Order on 10 June 2020, directing the EIPD to file its Comment on the Motion to Lift within five (5) days from receipt thereof.

Pursuant to and in compliance with the Order of the OGC, the EIPD timely filed its *Comment* to the Motion to Lift on 15 June 2020.

In its Comment, the EIPD averred that the Commission can issue a CDO *motu proprio*, it being unnecessary that it results from a verified complaint from an aggrieved party. The EIPD argued that in the issuance of a CDO, it is sufficient that the act restrained will operate as fraud to investors or is likely to cause grave or irreparable injury to the investing public. The EIPD is of the position that the continued utilization and dissipation of funds received by CROWD1 from the investors through the unauthorized investment schemes would certainly cause grave or irreparable injury to the investing public.

As to CROWD1's allegation that it renders BPO services, the EIPD pointed out that it is in fact an admission that it exercises powers beyond those granted to it in its Articles of Incorporation (AoI) and by-laws. The EIPD posited that CROWD1 "does not only assist in promoting the investment activities referred to by them as "marketing of products" of the organization but also appear to act as conduit of funds."[1] The EIPD found that CROWD1 Network Ltd., which owns 40% of CROWD1[2], is the one issuing receipts to the investors.[3]

On 24 June 2020, the OGC issued an Order informing the parties that the Motion to Lift was deemed submitted for resolution.

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[1] Paragraph 17 of the Comment.
[2] Section 8 of CROWD1's AOI.
[3] Annex "E" of the Comment.

ISSUE

Whether the arguments and the evidence presented by CROWD1 in its Motion to Lift justifies the setting aside or lifting of the CDO.

DISCUSSION

Before we delve into the merits of the case, we first resolve the procedural issue at hand.

Part II, Rule IV, Section 4-3 (b) of the 2016 Rules of Procedure of the Commission ("SEC Rules of Procedure") provides the procedure in the lifting of a CDO, to wit:

> "b. For a CDO issued ex-parte under Sec. 64 of the SRC and other special laws. The same may be lifted upon filing by the person subject thereof of a ***verified* motion to lift the CDO** within five (5) days from receipt of said Order. Xxx" (emphasis and underscoring supplied)

Section 4, Rule 7, 2019 Rules of Civil Procedure provides that a pleading required to be verified that contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading. In *Pfizer v. Galan*,[4] the Supreme Court (the "Court") explained the nature and purpose of a verification, to wit:

> "Verification is intended to assure that the allegations in the pleading have been prepared in good faith or are true and correct, not mere speculations."

On the basis of the foregoing, the Motion to Lift is clearly dismissible for having been filed without the requisite verification. However, in the light of the fact that the instant case is being determined in an administrative proceedings, the requirement for strict adherence to technical rules observed in judicial proceedings may be dispensed with.[5] The atmosphere of administrative tribunals may be one of expeditiousness or liberally conceived remedies and, whether by provision of statute, official rule or judicial decision, it is general rule that they are unrestricted by the technical or formal rules of procedure which govern trials before a court.[6]

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[4] 358 SCRA 240, May 25, 2001 cited in Novelty Philippines, Inc. v. Court of Appeals, G.R. No. 146125, (September 17, 2003).
[5] Ocampo v. Office of the Ombudsman, 322 SCRA 17; CIR v. Hantex Trading Co., Inc., 454 SCRA 301; Velasquez v. Hernandez, 437 SCRA 354.
[6] *See* Concerned Officials of the MWSS v. Vasquez, 240 SCRA 502.

The relaxation of the foregoing verification requirement notwithstanding, the Commission nonetheless resolves to deny the Motion to Lift for failure of CROWD1 to show by substantial evidence that is not engaged in the sale and/or offer for sale of securities in the form of investment contracts.

CROWD1 was not denied of due process when the CDO was issued *motu proprio*.

In its Motion to Lift, CROWD1 maintains that it was denied of due process because the issuance of the CDO *motu proprio* deprived it of the opportunity to present its side in a proper proceeding. CROWD1 argues that this constitutes a deprivation of its constitutional right to life, liberty or property without due process of law which is protected by the Constitution.

CROWD1's argument fails to persuade.

The Commission's power to issue a CDO *ex parte* proceeds from its mandate to protect the integrity of the capital markets and the investing public against unauthorized, fraudulent or unscrupulous activities. Section 64 of the Securities Regulation Code (SRC) expressly grants to the Commission the authority to issue *motu proprio* a CDO, after investigation or verification, to wit:

> **Section 64.** *Cease and Desist Order*. – 64.1. The Commission, **after proper investigation or verification**, **motu proprio** 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**. (Emphasis and underscoring supplied)

The afore-quoted provision categorically authorizes and empowers the Commission to issue a cease and desist order after a proper investigation sans a prior hearing to ensure prompt and adequate protection of the investing public from the fraudulent activity sought to be restrained. **It bears emphasis that when it comes to fraudulent activities or practices, time is of the essence because the law specifically seeks to avoid investors from being gravely and irreparably injured or prejudiced**. The Commission is thus duty-bound to promptly stop any act or practice which, to its mind, will likely defraud the investing public. The foregoing was discussed and affirmed by the Court in *Primanila Plans, Inc. v. SEC* (Primanila),[7] to wit:

[7] G.R. No. 193791, August 6, 2014.

> "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 desist order that aims to curtail fraud or grave or irreparable injury to investors." (Emphasis supplied)

In the case of *Power Homes Unlimited Corporation v. Securities and Exchange Corporation*[8], the Court categorically ruled that:

> "Trite to state, **a formal trial or hearing is not necessary to comply with the requirements of due process**. Its essence is simply the opportunity to explain one's position. Public respondent SEC abundantly allowed petitioner to prove its side." (Emphasis supplied)

In administrative proceedings, the requirement of due process and fair play is met when the entity subject of the CDO is given the opportunity to present its defense. The foregoing was explained in Primanila, thus:

> "The SEC was **not mandated to allow Primanila to participate in the investigation conducted by the Commission prior to the cease and desist order's issuance**. Given the circumstances, it was **sufficient for the satisfaction of the demands of due process that the company was amply apprised of the results of the SEC investigation**, and then **given the reasonable opportunity to present its defense**. Primanila was able to do this *via* its motion to reconsider and lift the cease and desist order. After the CED filed its comment on the motion, Primanila was further given the chance to explain its side to the SEC through the filing of its reply."[9] (Emphasis and underscoring supplied).

The issuance of the CDO was brought about by the EIPD's motion which sufficiently convinced the Commission, based on substantial evidence presented, that CROWD1 was engaged in the unauthorized sale and/offer for sale of unregistered securities. The investigation of the EIPD resulted in the production and submission of the following pieces of evidence: (a) investigation report of SEC-Davao on the activities of CROWD1; (b) invitation by Ms. Paras to CROWD1's event and the subsequent meeting which facilitated the discussion on CROWD1's business model; and (c) several reports, complaints and queries from the public before and after the issuance of the Advisory. Suffice it to state that the records will show that the EIPD conducted a thorough investigation and verification before it moved for the issuance of the CDO.

Applying the doctrine in *Primanila,* the requirement of due process was satisfied when CROWD1 was informed of the result of the investigation

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[8] G.R. No. 164182, February 26, 2008.
[9] Ibid.

conducted by the EIPD and when it was given the opportunity to present its defense in its Motion to Lift, contrary to the argument of CROWD1.

The essence of due process in administrative proceedings is simply an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of. For as long as the parties were given fair and reasonable opportunity to be heard before judgment was rendered, the demands of due process were sufficiently met.[10] It must also be emphasized that one may be heard, not only by verbal presentation but also through pleadings. As such, a formal or trial type hearing is not, at all times, necessary.[11] In this case, CROWD1 was given the opportunity to refute the allegations in the CDO and to present its defense in its Motion to Lift. CROWD1 cannot therefore argue that it was denied of due process.

The directive to cease and desist from utilizing the funds in its depository banks and from transferring or disposing its assets embodied in the CDO is within the authority of the Commission.

In its Motion to Lift, CROWD1 argued that the Commission went over legal bounds when it issued a sweeping and general CDO barring the use of its company funds for legal purposes. CROWD1 alleges that the Commission's directive will cripple the operations and prevent it from carrying out or "*performing even its legal activities allowed under its charter*".

The Commission does not agree.

At the outset, the Commission notes of the glaring albeit implied admission made by CROWD1 that it is engaged in unauthorized or illegal activities, apparently referring to the sale and/or offer of securities to the public without license. **By arguing and insisting that it will be deprived from "performing even its legal activities allowed under its charter", CROWD1 is in effect pleading that the CDO issued by the Commission should not operate to bar the performance of its legitimate activities, but only its illegal or unauthorized activities**.

It bears emphasis that the EIPD was able to present evidence in its Motion for Issuance of a Cease and Desist Order that a number of investors have parted with their hard earned money and actually purchased the educational packages sold by CROWD1. Necessarily, CROWD1 was able to

[10] Magcamit v. Internal Affairs Service-PDEA, GR No.198140, January 25, 2016.
[11] Samalio v. Court of Appeals, G.R. No. 140079, March 31, 2005.

obtain funds from the public as a consequence of the sale of its educational packages which it earlier impliedly admitted as an illegal/unauthorized activity. It thus became imperative for the Commission to stop CROWD1 from utilizing and/or disposing of its assets to ensure that investors will be able to recover their investments in CROWD1. This is consistent with the Commission's mandate and duty to protect investors.

In sustaining the Commission's authority to issue a CDO *motu proprio*, the Court emphasized in Premanila the purpose for the grant of such authority, to wit:

> "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)

It is not difficult to see from the afore-quoted doctrine that the Commission is authorized to include in the CDO a restraint in the utilization, disposition and dissipation of CROWD1's assets and funds to ensure that all persons who invested in its unauthorized investment taking activities will be able to recover their investments. To sanction a contrary view would render nugatory the very purpose of the CDO. CROWD1's assets and funds should be preserved and held in trust for the benefit of those who have been fraudulently induced to invest in its unauthorized activities.

CROWD1 is engaged in the sale and/or offer of securities without license.

In its Motion to Lift, CROWD1 finally argued that its assistance to its affiliates abroad is limited to business processing as it is only mandated to render BPO services. It alleged that the international affiliates aim to market products and shares in the earnings of the organization. In relation to the educational packages which it was selling to the public, CROWD1 argued that the same is allowed since its objective is to educate the affiliates of the organization on possible wealth to be gained from marketing products and services.

CROWD1's argument does not induce assent.

A careful review of the Motion to Lift will show that except for its general denials, CROWD1 failed to present any evidence in support of its claim that it is not engaged in the sale and/or offer for sale of securities in the form of investment contracts. It is a basic rule of evidence that "bare

allegations, unsubstantiated by evidence, are not equivalent to proof."[12] Mere allegations are not evidence.

The evidence presented by EIPD which was sustained by the Commission in the CDO showed that CROWD1, its officers, agents and representatives were soliciting investments by enticing people to avail of its educational packages and recruit more investors to receive commissions. As correctly pointed out by the EIPD, people avail of the so-called educational packages for the purpose of securing for themselves the guaranteed high yields promised by CROWD1. Thus, we agree with the EIPD that the marketing of CROWD1's investment products is actually a public sale and/or offering of securities in the form of investment contracts. We also agree with the EIPD that CROWD1 acts as a conduit of funds. CROWD1's allegation that it is not authorized to market nor receive payments from investors is belied by the receipts[13] it issued to the investors which is under the name of a corporation which owns 40% of CROWD1.

Finally, We find CROWD1's investment taking activities to be violative not only of Sections 8 and 12 of the SRC, but also Section 44 of the Revised Corporation Code which provides that "*no corporation shall possess or exercise corporate powers other than those conferred by this Code or by its articles of incorporation and except as necessary or incidental to the exercise of the powers conferred*."

CROWD1's investment taking activities consisting of marketing and sale of educational packages plus bonuses are clearly *ultra vires* for they are not included in the powers conferred to it by law and its AOI which provides:

> SECOND: That the primary purpose for which the corporation is incorporated
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> "*To engage in business process outsourcing services by rendering inbound and outbound customer and client services to business entities outside the country specifically receiving customer requests and enquiries and providing customer relations services and offering such other services and to do and perform such other activities necessary, incidental or conducive to the attainment of the above objects or any of them, or which may be conveniently carried on and done in connection therewith, or which may be calculated directly or indirectly to enhance the value of or render profitable any interest or property of the corporation insofar as may be permitted by laws, rules and regulations, including without limitation, to invest, own or hold interest in similar activities.*

[12] Rogelia Gatan and the Heirs of Bernardino Gatan versus Jesusa Vinarao and Spouses Cabauatan, G.R. No. 205912, 18 October 2017 *citing* Domingo vs. Robles, 453 SCRA 812, 818 [2005].
[13] Annex "E" of the Comment.

Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts.

The afore-quoted provision of CROWD1's AOI expressly prohibits it from soliciting or taking investments/placements from the public and/or issuing securities in the form of investment contracts. Performing *ultra vires* acts and making it appear to the public that it can carry out investment-taking activities in the guise of selling educational packages constitute serious misrepresentation on what it can do or is doing to the prejudice and damage of the public.

On the basis of the foregoing, the Commission does not find any cogent reason that warrants the setting aside of the CDO.

WHEREFORE, premises considered, the ***Motion to Lift Cease and Desist Order Ad Cautelam*** ("Motion to Lift") filed by CROWD1 Asia Pacific, Inc. is hereby **DENIED** for lack of merit. The Cease and Desist Order dated 12 May 2020 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.

Pasay City, Philippines; 02 July 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner