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

IN THE MATTER OF:
IMMENSITY TECHNOLOGY, INC./
SAGA AI

SEC CDO CASE NO. 11-22-095
Promulgated: 29 November 2022

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.

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CEASE AND DESIST ORDER

This resolves the *Motion for Issuance of A Cease and Desist Order*[1] (the "Motion") filed by the Enforcement and Investor Protection Department (EIPD), praying that an order be issued: (a) directing **IMMENSITY TECHNOLOGY INC. / SAGA AI**, together with **RODARA CRUZ TAFALLA, ROMULO DELOS SANTOS GALLATO JR., ALDEN CELIZ SANTIAGO, BRENDEL FERIA MACADANGDANG** and **SAMSON AGPASA TRINIDAD** (incorporators), and all persons, conduit entities and subsidiaries claiming and acting for and in its behalf (collectively referred to as the "Agents") to immediately cease and desist from further engaging in the sale or offer of securities in the form of investment contracts, and/or any activities related thereto until the requisite registration statement is duly filed with and approved by the Securities and Exchange Commission (the "Commission") and the corresponding license to offer/sell securities is issued; and (b) prohibiting **IMMENSITY TECHNOLOGY INC. / SAGA AI**, together with **RODARA CRUZ TAFALLA, ROMULO DELOS SANTOS GALLATO JR., ALDEN CELIZ SANTIAGO, BRENDEL FERIA MACADANGDANG** and **SAMSON AGPASA TRINIDAD** (incorporators), and their Agents, from transacting any and all businesses involving the funds in its depository banks, and from transferring, disposing, or conveying in any other manner, any and all assets, properties, real or personal, including bank deposits, if any, of which the named persons herein may have any interest, claim, or

[1] Filed on 14 November 2022

participation whatsoever, whether directly or indirectly, under their custody, to prevent grave damage and prejudice to all concerned and to ensure the preservation of assets for the benefit of the investors without authority from the Commission.

RELEVANT FACTS

IMMENSITY TECHNOLOGY INC. is a corporation duly organized and existing under Philippine laws, having been issued a Certificate of Incorporation with Company Registration No. CS201953317. Its principal office is Unit AB 20/F Rufino Pacific Tower 6784 Ayala Ave. cor. Rufino San Lorenzo, City of Makati, Fourth District, NCR Philippines 1229.[2]

Article SECOND of the Articles of Incorporation (AOI) of IMMENSITY TECHNOLOGY INC. which embodies its primary purpose specifically contains a provision prohibiting it from soliciting, accepting, or taking investments, to wit:

> "That the primary purpose for which such corporation is incorporated:
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> To engage in research, development of computer software, internet technologies and computer communications networks and systems technology development, technical advice and technical services, computer systems integration and technical services production for products, information systems management, reconstruction, and backup services, network information and data systems and technical advice, providing products production for maintenance, development, installation, technical advice; production for sale of products, computer software, hardware wholesale, without engaging in financial leasing nor acting as internet service provider, subject to the provisions of the Data Privacy Act of 2012 (R.A. 10173) and without engaging in mass media activities and telecommunication business.
>
> Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts."

[2] Article THIRD of the Articles of Incorporation

Beginning in August 2022, the EIPD started receiving numerous inquiries, reports, inquiries and complaints[3] regarding the alleged solicitation and investment-taking activities of IMMENSITY TECHNOLOGY INC. / SAGA AI, which prompted the EIPD to conduct a formal investigation on the business operations and activities of the company for possible violations of the Securities Regulation Code (SRC), Revised Corporation Code of the Philippines and such other laws, rules and regulations enforced by the Commission.

On 5 September 2022, the EIPD investigating team made an ocular survey of the principal office of IMMENSITY TECHNOLOGY INC./SAGA AI and found out that the corporation is not a tenant of the building and is not holding an office therein. The investigating team inquired with the neighboring occupants on the 20th Floor of Rufino Pacific Tower, as well as the security personnel of the building, where they got confirmation that no such company with the name IMMENSITY TECHNOLOGY INC./SAGA has occupied the office space specified in the AOI of the corporation.

On the same date, the investigating team visited another address of IMMENSITY TECHNOLOGY INC. which they found from the SAGA AI Group Chat in WhatsApp *i.e.* 15F Pacific Star Building, Makati Avenue, 1126 Sen. Gil J. Puyat Avenue, Makati, Metro Manila. The investigating team was able to access the office where they found the signage bearing the name of SAGA AI, and proceeded to take pictures of the office which, at that time, was devoid of occupants.[4]

The EIPD surveyed, collected, and gathered all relevant information relating to the operations of IMMENSITY TECHNOLOGY INC. / SAGA AI available on the internet and social media platforms, which confirmed the allegations in the complaints that the corporation is engaged in unauthorized investment-taking activities.[5] The evidence gathered by the EIPD showed that IMMENSITY TECHNOLOGY INC. is operating and maintain a mobile application called the SAGA AI that can be downloaded into GOOGLE PLAYSTORE and APP STORE (APPLE), which can capture and provide information on the real-time prevailing currency price difference between major exchanges that will enable traders to make a quick profit. IMMENSITY TECHNOLOGY INC. claims that SAGA AI's capability of quickly capturing the price difference between major exchanges facilitates the prompt completion of the buy low, sell high trade scheme which individual traders are not capable of. IMMENSITY TECHNOLOGY INC. also claims that it is only through SAGA AI which

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[3] *Motion*, Annex "E"
[4] *Ibid.* Annex "D"
[5] *Ibid.* Annexes "E-1" and "F"

makes possible the theoretical trading principle of "buy at a low price" and "sell at a high price", that investors can make an intelligent investment.

The investment scheme of IMMENSITY TECHNOLOGY INC. consists of selling unregistered securities in the form of an investmecontractsact by enticing the public to make an investment ranging from Php1,650.00 to Php110,000.00, with guaranteed monthly earnings ranging from Php660.00 up to Php61,710.00, depending on the number and kind of SAGA AI robot they will choose to rent. IMMENSITY TECHNOLOGY INC. also gives a 12% commission per day to its primary agents, a 6% commission per day to its secondary agents, and a 3% commission per day for level 3 agents. IMMENSITY TECHNOLOGY INC. / SAGA AI claims that the investment opportunities that it is offering to the public are low risk, with high returns.

The EIPD alleged in the Motion that IMMENSITY TECHNOLOGY INC. / SAGA AI's investment scheme is basically a "Ponzi Scheme" which relies mainly on incoming investments to fund its operations and pay earlier investors; this scheme is designed mainly to favor its operators, top recruiters and/or prior risk takers, but is detrimental to subsequent members which will be left holding on to an empty bag.

In support of its allegation that IMMENSITY TECHNOLOGY INC. / SAGA AI has no license to sell/offer securities, the EIPD presented in evidence the Certifications issued by the Company Registration and Monitoring Department (CRMD), the Corporate Governance and Finance Department (CGFD) and the Markets and Securities Regulation Department (MSRD) of the Commission which confirmed that IMMENSITY TECHNOLOGY INC. / SAGA AI has not been issued a secondary license to operate as a broker/dealer of securities, and is not a registered issuer of any securities pursuant to Sections 8 and 12 of the SRC, or of mutual funds, including exchange traded funds, membership certificates, and time shares.[6]

ISSUE

Whether the issuance of a Cease and Desist Order (CDO) against IMMENSITY TECHNOLOGY INC. / SAGA AI is warranted based on the evidence presented by the EIPD.

[6] *Ibid.* Annexes "G" "H" and "I"

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RULING

The *Motion* is impressed with merit.

The EPD's *Motion* which is supported by substantial evidence sufficiently established that IMMENSITY TECHNOLOGY INC. / SAGA AI is offering and/or selling securities in the form of investment contracts to the public without the requisite license from the Commission.

At the outset, the Commission notes that the primary purpose of IMMENSITY TECHNOLOGY INC. as stated in its AoI, specifically provides that it has no authority to solicit or accept investments from the public. This is categorically spelled out in the following phrase of ARTICLE SECOND of its AOI, to wit:

> *"Provided that* ***the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts.****"* (Emphasis supplied)

Section 3 of the SRC defines "securities" as follows:

> "SEC. 3. Definition of Terms. –
>
> 3.1. "**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. It **includes:**
>
> xxx
>
> (b) **Investment contracts,** certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription;" (Emphasis supplied)

Moreover, an "investment contract" is defined 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.

> **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."[7] (Emphasis supplied)

Section 8.1 of the SRC categorically provides that securities cannot be sold or offered for sale within the Philippines if the same are not registered with the Commission in the form of an approved Registration Statement and a Permit to Offer/Sell issued in favor of the applicant, to wit:

> "**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**. Prior such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser." (Emphasis and underscoring supplied)

In the case of *Power Homes Unlimited v. Securities and Exchange Commission,*[8] the Supreme Court ruled that investment contracts are securities that are required to be registered with the Commission for the protection of the investing public, to wit:

> "As an investment contract that is security under R.A. No. 8799, it must be registered with public respondent SEC, otherwise the SEC cannot protect the investing public from fraudulent securities. The strict regulation of securities is founded on the premise that the capital markets depend on the investing public's level of confidence in the system." (Underscoring supplied)

The concept of an investment contract in the Philippines is of American origin. It traces its roots from the US Supreme Court case entitled *Securities and Exchange Commission v. W.J. Howey Co.*[9] where the Court stated that an investment contract is 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. Investment contracts have been used and adopted in various situations where individuals were led to invest

[7] Rule 26.3.5 of the Implementing Rules and Regulations of the SRC.
[8] Note 24, *Supra*.
[9] 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244, 163 A.L.R. 1043 (1946).

money in a common enterprise with the expectation that they would earn a profit through the efforts of the promoter or of someone other than themselves.[10]

This concept of investment contract was thereafter adopted and used in *Power Homes Unlimited Corporation v. Securities and Exchange Commission,*[11] where the Supreme Court ruled 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.* Under this definition, whenever an investor relinquishes control over his or her funds and submits their control to another for the purpose of deriving profits from them, he or she is in fact investing in a security.[12]

Based on the foregoing, the Commission finds and so holds that IMMENSITY TECHNOLOGY INC. / SAGA AI is engaged in the unauthorized sale and/or offer of securities in the form of an investment contract in violation of Section 8 of the RCC because it has no license to carry out the same. The foregoing is further supported by the fact that the elements of the Howey Test are present in the instant case:

> ***First***, there is an investment of money. IMMENSITY TECHNOLOGY INC. / SAGA AI entices the public to invest money as a condition precedent for the use of the SAGA AI where they can make intelligent investments. In addition to the same, the investment is guaranteed to earn monthly income ranging from Php660.00 up to Php61,710.00, and commissions.
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> ***Second***, the EIPD was able to show that the investment scheme of IMMENSITY TECHNOLOGY INC. / SAGA AI involves the pooling of money/funds consisting of the member-investors' investments which is used to pay the guaranteed returns of existing member-investors and intended to ensure the continued operation albeit temporarily, of the corporation. This is the common enterprise that is being sustained by the investments received by IMMENSITY TECHNOLOGY INC. / SAGA AI from

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[10] *Ibid.* Although the definition as stated in the Howey Case qualified that the earning of profit was expected to be solely through the efforts of another party, Rule 26.3 of the 2015 IRR of the SRC replaced the qualifier with *"primarily"*, acknowledging that an investment contract may still be present where the individual who placed the money exerted a small amount of effort in an attempt to earn the profits.

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

[12] Investment Co. Institute v. Camp, 274 F. Supp. 624 (D. D.C. 1967).

the public who believes that they will timely receive their guaranteed returns and other benefits;

Third, the evidence on record shows that member-investors obviously expect to receive the profits within a period of one month from the time they invested with the corporation; and

Fourth, there is a promise of a guaranteed return or passive income per month. The members/investors need not do anything to receive these guaranteed returns all they have to do is part with their initial investments and wait for the five-month period to end.

Section 8.1 of the SRC also specifically proscribes the offering of securities without a Registration Statement duly filed with and approved by the Commission, to wit:

*"**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**. Prior such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser."* (Emphasis and underscoring supplied)

Relative thereto, Rule 3.1.17 of the 2015 Implementing Rules and Regulations of the SRC defines "Public Offering" as follows:

"3.1.17. **Public offering is any 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:

x x x

3.1.17.3 Advertisement or announcement in radio, television, telephone, **electronic communications, information communication technology or any other forms of communication**;"[13] (Emphasis supplied)

In the instant case, the evidence on record shows that IMMENSITY TECHNOLOGY INC. / SAGA AI is offering unregistered securities in the

[13] Rule 3.1.17 of the Implementing Rules and Regulations of the SRC.

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form of investment contracts to the investing public through its website and social media platforms, i.e., Facebook, without the requisite license.

The foregoing constitutes a public offering as defined under SRC Rule 3.1.17; thus, requires a registration statement duly approved by the Commission before the same can be lawfully undertaken. Considering that BEASTNESSALLDAY CORP. has not secured a license from the Commission, its act of offering securities to the public thus constitutes a clear violation of Section 8 of the SRC in relation to Rule 3.1.17 of the SRC IRR.

Finally, relative to the issuance of a CDO, Section 64.1 of the SRC provides that the Commission may issue a CDO without the necessity of conducting a hearing if, to its mind, the act or practice will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public, thus:

> "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 supplied)

Under the afore-quoted provision, there are two (2) essential requisites that must be complied with before a cease and desist order can be validly issued:

1) There must be a conduct of proper investigation or verification; and

2) There must be a finding that 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.[14]

After a careful review of the records of the case, the Commission finds and so holds that the EIPD fully complied with the requirements prescribed by law which will justify the valid issuance of a CDO.

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[14] *Securities and Exchange Commission vs. Performance Foreign Exchange Corporation*, G.R. No. 154131, July 20, 2006.

Anent the first requisite, the records disclose that the EIPD conducted a formal investigation and presented sufficient evidence in support of its *Motion* showing the unauthorized investment activities of IMMENSITY TECHNOLOGY INC. / SAGA AI. The EIPD presented Certifications from the CRMD, CGFD, and MSRD, and the Affidavit of the EIPD investigating officer stating how the investigation was conducted and the pieces of evidence gathered in the course thereof.

The second requisite is likewise present as shown by IMMENSITY TECHNOLOGY INC. / SAGA AI's willful employment of fraud by making it appear to the public that it is authorized to sell, offer, and deal with securities in the form of investment contracts, when no such authority was ever issued to it.

The Commission takes cognizance of the fact that IMMENSITY TECHNOLOGY INC. / SAGA AI's authorized capital stock is only P1,000,000.00, where only 25% of the subscribed shares have been paid. Given this factual circumstance, it is clear that IMMENSITY TECHNOLOGY INC. / SAGA AI's business model which is heavy on technology and promises high return on investments is not sustainable, and can only be carried out as long as new investors continue to come in. This is a fraudulent scheme which will likely cause grave or irreparable injury or prejudice to the investing public. Thus, We hold that the act of IMMENSITY TECHNOLOGY INC. / SAGA AI. in selling/offering unregistered securities operates as a fraud to the public which, if unrestrained, will likely cause grave or irreparable injury or prejudice to the investing public.[15] This finds support in the case of *Securities and Exchange Commission vs. CJH Development Corp.*[16] where the Supreme Court emphasized the need for prompt issuance of a CDO after a finding of a violation of the SRC that will likely defraud or cause grave or irreparable injury to 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 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.**

[15] Section 64 of the Securities Regulation Code.
[16] (G.R. No. 210316, November 28, 2016)

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> **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." (Emphasis supplied)

On the basis of the foregoing disquisitions, this Commission finds and so holds that the issuance of a CDO is warranted and is in order.

WHEREFORE, premises considered, directing **IMMENSITY TECHNOLOGY INC. / SAGA AI**, together with **RODARA CRUZ TAFALLA, ROMULO DELOS SANTOS GALLATO JR., ALDEN CELIZ SANTIAGO, BRENDEL FERIA MACADANGDANG** and **SAMSON AGPASA TRINIDAD** (incorporators), and all persons, conduit entities and subsidiaries claiming and acting for and in its 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 and/or any other similar or related acts, until the requisite registration statement is duly filed with and approved by the Commission.

IMMENSITY TECHNOLOGY INC. / SAGA AI, together with **RODARA CRUZ TAFALLA, ROMULO DELOS SANTOS GALLATO JR., ALDEN CELIZ SANTIAGO, BRENDEL FERIA MACADANGDANG,** and **SAMSON AGPASA TRINIDAD**, its officers, operators, administrators, promoters, representatives, salesmen, agents, investment team planners, mentors, enablers, influencers, assigns, conduit entities, subsidiaries, and any and all persons claiming and/or acting for and in their behalf are likewise directed to immediately **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** and all persons, conduit entities, and subsidiaries claiming and acting for and in its behalf, its officers, operators, administrators, promoters, representatives, salesmen, agents, investment team planners, mentors, enablers, influencers, assigns, conduit entities, subsidiaries, and any and all persons claiming and/or acting for and in their behalf from transacting any business involving the funds in its depository banks and/or in any non-bank financial institution, 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 **EIPD** of the Commission is hereby **DIRECTED** to:

1) Serve this *Cease and Desist Order* to IMMENSITY TECHNOLOGY INC., its President, General Manager, Corporate Secretary, Treasurer, or In-House Counsel; or if impracticable;[17]

2) Cause the posting of this *Cease and Desist Order* on the Commission's website.

The 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 furnished to the Company Registration and Monitoring Department, Market and Securities Regulation Department, Corporate Governance and Finance Department and the Information and Communications Technology Department of this Commission, the Bangko Sentral ng Pilipinas, the Department of Trade and Industry, the National Privacy Commission, the Department of Information and Communications Technology, and the relevant local government unit(s) for their information and appropriate action.

In accordance with the provisions of Section 64.3 of the SRC and Part II, Rule IV, Section 4-3 of the 2016 Rules of Procedure of the SEC, the Respondent may file a verified ***Motion to Lift the CDO*** to the Commission En Banc thru the Office of the General Counsel, within five (5) days from receipt of this Order.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

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[17] Due to Declaration of State of Public Health Emergency throughout the Philippines as declared by President Rodrigo Duterte under Presidential Proclamation No. 922. S. 2020 dated 8 March 2020.

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