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

In the matter of:

HECTOR PANTOLLANA, ZEUS LIAO PANTOLLANA, REYMOND LACSAMANA GALANG, QUARRY QUIENG, AND ERWIN L. BANGALAN, ET. AL.

SEC CDO Case No. 02-23-098
Promulgated: 12 October 2023

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.

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RESOLUTION

For consideration of the Commission En banc are the: (a) *Motion to Lift Cease and Desist Order* dated 28 March 2023, filed by Respondent Spouses Raffy Palangdan Foloresca and Jennylyn Galletes Delos Santos-Floresca (Spouses Floresca) on 30 March 2023; (b) *Verified Motion to Lift Cease and Desist Order with Motion to Issue Clarification (of Respondent Vanessa Magboo)* dated 29 March 2023, filed by Respondent Vanessa M. Magboo (Ms. Magboo) on 11 April 2023; (c) *Verified Motion to Lift Cease and Desist Order* dated 1 April 2023, filed by Respondent Hector Aldwin Liao Pantollana (Mr. Pantollana),on 04 April 2023; (d) *Verified Motion to Lift Cease and Desist Order* dated 1 April 2023, filed by Respondents Joseph G. Martinada, Ronaldo E. Renta, Neshemah Rock L. Renta, Avegail N. Cruz, Maricel R. Cesumision, Joseph J. Zabala, Maria Cecilia T. Viscayno, James Christopher T. Rojas (the "Martinada Group") on 04 April 2023; (e) *Verified Motion to Lift Cease and Desist Order* dated April 2023, filed by Respondents Rhoda A. Casuga, Mikhaella D. Ty, Ariel R. Katigbak, Heinn Carreon Humilde, Zen Carreon Humilde, and Den Abad (the "Casuga Group") on 04 April 2023; (f) *Verified Motion to Lift Cease and Desist Order* dated 3 April 2023, filed by Respondents Reymond L. Galang, Kim Mejica, Daniel Agbisit, Paul T. Maranan, JM Almodiente, Quarry Quieng, Erwin "Weng" Bangalan, and CJ Quinzon (the "Galang Group") on 04 April 2023; and (g) *Entry of Appearance with Verified Urgent Motion* dated 19 May 2023, filed by Respondent Stephen Cecilio A. Dorog ("Mr. Dorog") on 24 May 2023 (hereinafter collectively referred to as the "Motions to Lift"), all praying for the issuance by the Commission of an *Order* lifting the *Cease and Desist Order* dated 16 March 2023 (the "Assailed CDO"), the dispositive portion of which reads, in part, thus:

> "**WHEREFORE,** premises considered, Respondents **HORIZON PLAYERS CLUB, PHILIPPINE NATIONAL ESPORTS LEAGUE, TEAM Z,** HECTOR PANTOLLANA, ZEUS LIAO PANTOLLANA, REYMOND "MONSKI" LACSAMANA GALANG, QUARRY QUIENG, ERWIN "WENG" L. BANGALAN, KIM MEJICA, DANIEL AGBISIT, PAUL TOLENTINO MARANAN, JM ALMODIENTE, CJ QUINZON, VANESSA MENDOZA MAGBOO, GUMBA MARTINADA, RONALDO EMBING RENTA, NESHEMAH ROCK LORICO RENTA,MARICEL RAPOSON CESUMISION, AVEGAIL NAMOC CRUZ, JAMES CHRISTOPHER TAN ROJAS, JOSEPH JUNIA ZABALA, MARIA CECILIA TABANO VIZCAYANO, STEPHEN CECILIA A. DOROG, ZEN CARREON HUMILDE, HEIN CARREON HUMILDE, RAFFY PALANGDAN FLORESCA, JENNILYN GALLETES DELOS SANTOS FLORESCA, RHODA ANDRADA CASUG, MIKHAELLA DAMASCO TY, ARIEL RAMOS KATIGBAK, and DEN ABAD, representatives, salesmen, solicitors, agents, uplines, enablers and influencers, and any and all persons claiming and acting for and in their behalf, are hereby directed to **IMMEDIATELY CEASE AND DESIST from further engaging in, promoting and facilitating selling and/or offering for sale securities in the form of evidence of indebtedness and/or other activities/transactions relative thereto, until the requisite registration statements are duly filed with and approved by the Commission, and the corresponding license and/or permit to offer/sell securities are issued.**
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> Respondents HORIZON PLAYERS CLUB, PHILIPPINE NATIONAL ESPORTS LEAGUE, TEAM Z, HECTOR PANTOLLANA, ZEUS LIAO PANTOLLANA, REYMOND "MONSKI" LACSAMANA GALANG, QUARRY QUIENG, ERWIN "WENG" L. BANGALAN, KIM MEJICA, DANIEL AGBISIT, PAUL TOLENTINO MARANAN, JM ALMODIENTE, CJ QUINZON, VANESSA MENDOZA MAGBOO, GUMBA MARTINADA, RONALDO EMBING RENTA, NESHEMAH ROCK LORICO RENTA, MARICEL RAPOSON CESUMISION, AVEGAIL NAMOC CRUZ, JAMES CHRISTOPHER TAN ROJAS, JOSEPH JUNIA ZABALA, MARIA CECILIA TABANO VIZCAYANO, STEPHEN CECILIA A. DOROG, ZEN CARREON HUMILDE, HEIN CARREON HUMILDE, RAFFY PALANGDAN FLORESCA, JENNILYN GALLETES DELOS SANTOS FLORESCA, RHODA ANDRADA CASUG, MIKHAELLA DAMASCO TY, ARIEL RAMOS KATIGBAK, and DEN ABAD, representatives, salesmen, solicitors, agents, uplines, enablers and influencers, and any and all persons claiming and acting for and in their behalf, are likewise directed to CEASE their transactions relative to the Casino Junket Operation 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 on their behalf.

Finally, the Commission hereby **PROHIBITS** Respondents HORIZON PLAYERS CLUB, PHILIPPINE NATIONAL ESPORTS LEAGUE, TEAM Z, HECTOR PANTOLLANA, ZEUS LIAO PANTOLLANA, REYMOND "MONSKI" LACSAMANA GALANG, QUARRY QUIENG, ERWIN "WENG" L. BANGALAN, KIM MEJICA, DANIEL AGBISIT, PAUL TOLENTINO MARANAN, JM ALMODIENTE, CJ QUINZON, VANESSA MENDOZA MAGBOO, GUMBA MARTINADA, RONALDO EMBING RENTA, NESHEMAH ROCK LORICO RENTA,MARICEL RAPOSON CESUMISION, AVEGAIL NAMOC CRUZ, JAMES CHRISTOPHER TAN ROJAS, JOSEPH JUNIA ZABALA, MARIA CECILIA TABANO VIZCAYANO, STEPHEN CECILIA A. DOROG, ZEN CARREON HUMILDE, HEIN CARREON HUMILDE, RAFFY PALANGDAN FLORESCA, JENNILYN GALLETES DELOS SANTOS FLORESCA, RHODA ANDRADA CASUG, MIKHAELLA DAMASCO TY, ARIEL RAMOS KATIGBAK, and DEN ABAD, its partners, operators, directors, officers, salesmen agents, representatives, promoters, and all persons, conduit entities and subsidiaries claiming and acting for and on its behalf from transacting any business involving the funds covered by this CDO in its depository banks, and from transferring, disposing, or conveying in any manner, all assets, properties, real or personal, including but not limited to bank deposits, of which the named persons herein may have any interest, claim or participation whatsoever, directly or indirectly, under its/their custody, to ensure the preservation of the assets for the benefit of the investors."

On a procedural matter, the Commission has consolidated the Motions to Lift pursuant to Section 1 Rule 31[1] of the Rules of Court, which applies suppletorily[2], considering that they present a common question of law, i.e., whether the Assailed CDO should be lifted.

The records show that on 20 February 2023, the Enforcement and Investor Protection Department ("EIPD") filed before the Commission *En Banc* (the "Commission"), through the Office of the General Counsel, a *Petition for Issuance of a Cease and Desist Order*[3] (the "Petition") against Horizon Players Club (HPC), Philippine National Esports League (PNEL), Team Z, Mr. Pantollana, Zeus Liao Pantollana, the Galang Group, Ms.

[1] "SECTION 1. Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."
[2] SEC. 1-6, Rule I Part I of the 2016 Rules of Procedure of the Securities and Exchange Commission provides that: "The pertinent provisions of the Rules of Court may, in the interest of expeditious dispensation of justice and whenever practicable, be applied by analogy or in a suppletory character and effect."
[3] Petition for Issuance of a Cease and Desist Order dated 21 February 2023.

Magboo, the Martinada Group, Mr. Dorog, and, the Spouses Floresca, the Casuga Group, (collectively referred to as the "Individual Respondents").

On 16 March 2023, the Commission issued the *Assailed CDO* after finding that HPC, PNEL, Team Z, and the Individual Respondents are engaged in the sale/offer of unregistered securities in the form of evidences of indebtedness without the requisite license in violation of Section 8 of the Securities Regulation Code (SRC), in relation to Sec. 3.1.17.2 of the 2015 Implementing Rules and Regulations of the SRC (the "2015 SRC-IRR"). In particular, the Commission found that loan and post-dated checks issued by HPC, PNEL, Team Z, and the Individual Respondents are securities in the form of evidences of indebtedness inasmuch as they were executed in exchange for a considerably big number of individual non-personalized loans obtained or solicited from the public.

On 19 April 2023, the EIPD filed a Motion to File Consolidated Comment on the Respondents' Motion to Lift Cease and Desist Order and Motion for Extension of Time to File Comment (the "EIPD Motion"), praying for the grant of an additional period of fifteen (15) days within which to file a Consolidated Comment, on the ground that there are allegedly twenty-eight (28) respondents who have filed their respective pleadings, and it has yet to receive the relevant Order(s) from the Office of the General Counsel.[4]

On 2 May 2023, the Spouses Floresca filed a Manifestation (with Motion for Issuance of an Order Lifting the Cease and Desist Order against Respondent Spouses Floresca), therein opposing the Motion for Extension of Time to File Comment by the EIPD for allegedly being a prohibited pleading. They also argued that since the Motions to Lift were not resolved after the lapse of the fifteen (15) day period for the EIPD to file its comment, the Assailed CDO was deemed lifted.

On 2 May 2023, the other Respondents[5] filed an Urgent Motion to Issue an Order Lifting the Cease and Desist Order dated 16 March 2023 (the "Urgent Motions"), maintaining that under Sec. 64.3 of the SRC, the Assailed CDO was automatically lifted due to the failure of the

[4] Motion to File Consolidated Comment on the Respondents' Motion to Lift Cease and Desist Order and Motion for Extension of Time to File Comment dated 18 April 2023. Par. 2

[5] (A) Zeus Liao Pantollana, Reymond Lacsamana Galang, Quarry Quieng, Erwin L. Bangalan, Kim Mejica, Daniel Agbisit, Paul Tolentino Maranan, JM Almodiente and CJ Quinzon; (B) Rhoda A. Casuga, Mikhaella D. Ty, Ariel R. Katigbak, Den Abad, Heinn Carreon Humilde, Zen Carreon Humilde and Vanessa Magboo; (C) Joseph G. Martinada, Ronaldo E. Renta, Neshemah Rock L. Renta, Avigail N. Cruz, Maricel R. Cesumision, Joseph J. Zabala, Maria Cecilia T. Vizcayno and James Christopher T. Rojas; and (D) Hector Aldwin Liao Pantollana

Commission to set and conduct a hearing on the same. Respondent Magboo essentially adopted the foregoing argument, and posited that Sec. 4-3b, Rule IV of the 2016 Rules of Procedure of the Securities and Exchange Commission (the "2016 Rules") reiterates Sec. 64.3 of the SRC.

On 24 April 2023, the Spouses Floresca filed their Manifestation, praying for the denial of the EIPD Motion for being a prohibited pleading under the 2016 Rules. They also reiterated their prayer to have the Assailed CDO lifted as to their persons.

On 24 May 2023, an *Entry of Appearance with Verified Urgent Motion*[6] was filed by Respondent Dorog, alleging that no evidence was presented to prove that he offered or sold securities to the public.

On 4 May 2023, the EIPD filed its Consolidated Comment praying for the denial of the Motions to Lift for want of merit.

On 13 September 2023, the Spouses Floresca filed a Manifestation (with Traverse to the Order dated August 23, 2023), arguing that the Order dated 23 August 2023 has been mooted by the automatic lifting of the Assailed CDO pursuant to Section 64.3 of the SRC.

In their *Motion to Lift*[7], Respondents Spouses Floresca maintained that the Assailed CDO should be lifted insofar as it covers them on the ground that they were denied their constitutional right to due process under Section 1 of Article 3 of the 1987 Constitution.[8] They alleged that the Commission failed to conduct a proper investigation and to notify them of the proceedings. The Spouses Floresca equally maintained that there was no substantial evidence presented which showed their involvement in the acts subject of the Assailed CDO. In support thereof, they presented certifications attesting to their alleged lack of involvement, directly or indirectly, with PNEL[9] and HPC.[10]

Respondent Magboo on the other hand claims that there is no basis for the finding that there is a violation of the securities law and that such violation poses a threat of grave or irreparable injury to the investing

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[6] Dated 19 May 2023.
[7] Motion to Lift Cease and Desist Order dated 28 March 2023.
[8] No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.
[9] Motion (n2), Annexes "C", "C-1", and "C-2."
[10] Ibid, Annexes "D", "D-1", and "D-2."

public. These, according to her, warrant the lifting of the Assailed CDO which was allegedly improvidently issued.[11]

For their part, Mr. Pantollana, the Martinada, Galang, and Casuga Groups maintained in their Motion to Lift that (a) the Assailed CDO was issued without jurisdiction arguing that the SRC limits the authority of the Commission over corporations, partnerships, or associations who are grantees of primary licenses;[12] (b) their involvement in the sale/offer of unregistered securities or in the unlawful solicitation of investments was not proven by substantial evidence, as they did not transact with the complainants; and (c) the required investigation or verification was not complied with, in violation of their right to due process. On account thereof, the Martinada and the Galang Groups maintain that the lifting of the Assailed CDO is warranted.

After carefully considering the arguments of Respondents, as well as the evidence submitted in support of the same, the Commission finds and so holds that the Motions to Lift are bereft of merit.

A. The Commission has jurisdiction over the persons of the individual respondents.

In their Motions to Lift, Mr. Pantollana, the Martinada, Galang, and Casuga Groups maintain that the Assailed CDO should be lifted as the same was issued without jurisdiction, inasmuch as it was directed to individuals and not to corporations, partnerships, or associations. They are in effect telling this Commission that a CDO can never be issued to an individual as this power was not granted under the SRC.

Respondents are wrong.

Section 5 of the SRC, provides for the powers and authority which the law specifically granted to the Commission, among which are as follows:

> "Section 5. Powers and Functions of the Commission. – 5.1. The commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the

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[11] *Verified Motion to Lift Cease and Desist Order with Motion to Issue Clarification (of Respondent Vanessa Magboo)* dated 29 March 2023. Par. 27.
[12] *Verified Motion to Lift* dated 1 April 2023. Pars. 5 & 6 (page 3)

> Corporation Code, the Investments Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:
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> xxx xxx xxx
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> (d) **Regulate, investigate or supervise the activities of persons to ensure compliance;**
>
> xxx xxx xxx
>
> (g) **Prepare, approve, amend or repeal rules, regulations and orders**, and issue opinions and provide guidance on and supervise compliance with such rules, regulation and orders;
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> xxx xxx xxx
>
> (n) Exercise such other powers as may be provided by law as well as those which **may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.**" (Emphasis supplied)

The powers and authority granted in the afore-quoted provision were carefully and specifically included by the Congress to ensure that the following State policies are implemented and achieved, to wit:

> "The State shall establish a socially conscious, free market that regulates itself, encourage the widest participation of ownership in enterprises, enhance the democratization of wealth, **promote the development of the capital market, protect investors, ensure full and fair disclosure about securities, minimize if not totally eliminate insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market**. To achieve these ends, this Securities Regulation Code is hereby enacted."[13] (Emphasis supplied)

The afore-quoted provision embodies the *raison d'être* of the SRC which should always be used as a guide and reference point in all actions made relating to the interpretation and implementation of its provisions. In other words, the interpretation and implementation of the provisions of the SRC should be made in a manner that will ensure compliance therewith, consistent with the intent of Congress in affording ample protection to the investing public and in promoting the integrity of the capital markets.

Prescinding from the foregoing, this Commission holds that in implementing the provisions of the SRC and the SRC-IRR, the exercise of

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[13] Sec. 2 of the SRC

the regulatory powers, functions, and authority granted therein covers not only corporations but also natural persons who violate (or are about to violate) its provisions. In this regard, Sec. 5(d) of the SRC is categorical in authorizing the Commission to *"regulate, investigate, or supervise the activities of* ***persons*** *to ensure compliance."* In the same manner, Section 53[14] of the SRC categorically grants the Commission the authority to investigate any person who has violated or is about to violate its provisions, while Section 72.1 of the SRC[15] expressly authorizes the Commission to *"classify* ***persons****, securities, and other matters within its jurisdiction, prescribe different requirements for different classes of persons, securities, or matters, and by rule or order, conditionally or unconditionally exempt any person, security, or transaction, or class or classes of persons, securities or transactions, from any or all provisions of this Code"*.

More importantly, in recognition of the Congressional fiat that a CDO can be issued to natural persons, Sec. 64 of the SRC itself grants to these natural persons subject of a CDO a remedy, to wit:

> "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. xxx"

Applying the rule of statutory construction[16], the unqualified use of the word "person" in the afore-quoted provisions only means that Congress clearly intended that both natural and juridical persons are placed under the supervisory, regulatory, and investigative powers of the Commission the moment they engage in any activity or transaction that is covered by the SRC to ensure compliance. A different interpretation would place corporations in a position of disadvantage vis-a-vis

[14] SECTION 53. *Investigations, Injunctions and Prosecution of Offenses.* — 53.1. The Commission may, in its discretion, make such investigations as it deems necessary to determine whether **any person** has violated or is about to violate any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency, other self-regulatory organization, and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the Commission shall determine, as to all facts and circumstances concerning the matter to be investigated xxx.

[15] "**This is a general provision intended to make clear that the SEC's authority to adopt rules extends to all Sections of the Code, not just where specific order power is set out.** The Department of Justice thus ruled that the provision should not be interpreted to limit the exemption to the directory provisions of the Code only, but should be construed to include exemptions from its mandatory and prohibitory provisions in order to give way to public interests. The SEC, however, in the exercise of the authority to promulgate rules and regulations, has to ensure that the rules conform to, and implement, the declared State policy enunciated in Sec. 2 of the Code. The exemptive powers given to the SEC is a legislative recognition of the complexity and ever changing nature of the capital market and the impossibility of foreseeing all possible situations and contingencies that cannot be addressed in advance, necessitating delegation of legislative function to the SEC as the most suitable and qualified government agency to provide the detailed rules, regulations, and exemptions in regulating securities transactions without the need of legislative amendment." (DOJ Opinion No. 45, Series of 2001, dated 12 September 2001)

[16] "Where the law does not distinguish, we should not distinguish." (*Forest Hills Golf and Country Club, Inc. v. Kings Properties Corp.*, G.R. No. 212833 (Notice), [August 7, 2019])

individuals who can carry-out activities and perform transactions which are regulated under the SRC, directly, or indirectly, without having to be accountable for the same.

On account thereof, the argument of Mr. Pantollana, the Martinada, Galang, and Casuga Groups that the Commission has no jurisdiction to issue the Assailed CDO against their persons is clearly bereft of any legal basis. The implementation and enforcement of the provisions of the SRC for the protection of investors, among others, is a mandate that has been entrusted exclusively to the Commission. By express provision of Sec. 5(d) of the SRC, the fact that it is an individual person who violates and/or refuses to comply does not remove him/her from the jurisdiction of the Commission; neither will it insulate him/her from appropriate sanctions provided by law. Thus, the Commission correctly took cognizance of the instant case and issued the Assailed CDO against the individual respondents who were found to be engaged in the sale/offer of unregistered securities without the requisite license.

An interpretation of the SRC and Revised Corporation Code (RCC) that limits the jurisdiction of the SEC to registered corporations, partnerships, or associations runs counter to its express provision and betrays/negates the spirit and the objectives which these laws seek to uphold and achieve. It cannot be gainsaid that effective, reputable, efficient, and credible capital markets can only be possible in a regulatory regime where the activities of persons are placed under the regulatory supervision or subjected to investigation by the SEC to ensure compliance or penalize any violation. This is what the SRC has clearly ordained.

B. The Respondents were not denied of their right to due process.

Individual Respondents also argued that the Assailed CDO is infirm and should thus be lifted on the ground that it was issued without the required investigation or verification. Specifically, Respondents bewail the alleged failure of the EIPD and this Commission to afford them the opportunity to a fair hearing and to present their defense.[17] For their part,

[17] *Verified Motion to Lift Cease and Desist Order* dated 1 April 2023 filed by the Martinada Group. Pages 4 and 5; see also *Verified Motion to Lift Cease and Desist Order* dated 1 April 2023 filed by the Galang Group. Pages 4 and 5; see also *Verified Motion to Lift Cease and Desist Order* dated 1 April 2023 filed by the Casuga Group. Pages 4 and 5; *Verified Motion to Lift Cease and Desist Order* dated 1 April 2023 filed by Mr. Pantollana. Pages 4 and 5; see also Motion to Lift Cease and Desist Order dated March 28, 2023 (Pages 3 and 4)

the Spouses Floresca emphasized the failure of the EIPD to inform them of the complaints filed against them, which deprived them of the opportunity to address the same.[18]

Respondents' arguments are misplaced and devoid of any legal basis.

At the outset, Sec. 64.2 of the SRC categorically mandates and classifies any investigation or complaint filed in relation to an act/transaction that may warrant the issuance of a CDO as confidential, to wit:

> "**Until the Commission issue a cease and desist order, the fact that an investigation has been initiated or that a complaint has been filed, including the contents of the complaint, shall be confidential**. Upon issuance of a cease and desist order, the Commission shall make public such order and a copy thereof shall be immediately furnished to each person subject to the order." (Emphasis supplied)

Under the afore-quoted provision, the Commission is bereft of any authority nor the discretion to divulge to anybody any investigation or complaint filed with it that may eventually result in the issuance of a CDO. The purpose of the law in requiring that the investigation or complaint filed be kept confidential is to ensure that the Commission promptly acts on the matter and exercises the appropriate regulatory authority, unhampered by dilatory schemes which may be employed by the persons involved, for the protection of the investing public. This finds support in the case of *Primanila Plans, Inc. v. Securities and Exchange Commission,*[19] (the "Primanila Plans Case") where the Supreme Court emphasized the significance/importance of denying potential subjects thereof of any participation in the investigation, 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. "Trite to state, a formal trial or hearing is

[18] Motion to Lift Cease and Desist Order dated March 28, 2023 (page 4)
[19] G.R. No. 193791, August 6, 2014, 732 SCRA 264.

> not necessary to comply with the requirements of due process. Its essence is simply the opportunity to explain one's position." (Emphasis supplied)

On the basis thereof, Respondents' insistence that they were denied due process because they were not informed of or provided copies of the complaint(s) filed against them, and/or were not involved in the investigation conducted by the EIPD/Commission, must fail as it clearly runs counter to, and violates Sec. 64.2 of the SRC.

The foregoing notwithstanding, both law and jurisprudence however recognize and afford persons or entities subject of a CDO the opportunity to present their defense(s) in their formal request or motion to lift, which is a remedy available to them **after** the CDO is issued. This satisfies the due process requirement.

It must be emphasized, however, that the instant case is administrative in nature, where the rules and principles governing administrative proceedings apply. In this regard, the rule established in jurisprudence is that administrative due process is satisfied where the notice requirement and the opportunity to be heard, either through oral arguments or pleadings, are complied with,[20] and the respondent is given the opportunity to explain his/her side or the opportunity to seek reconsideration of the action/ruling that is being assailed. We find this rule emphasized and applied in the case of *Ledesma v. Court of Appeals*[21], thus:

> "Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. **The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.**

In the instant case, Respondents filed their respective Motion to Lift and supplemental/responsive pleadings, where they presented their defenses and arguments to support their position that the Assailed CDO should be lifted. These are the very matters and issues that are being

[20] Vivo vs Philippine Amusement and Gaming Corporation (G.R. No. 187854, November 12, 2013)
[21] G.R. No. 166780, December 27, 2007, 541 SCRA 444.

considered and passed upon in the instant Resolution. In short, Respondents fully availed of the remedy provided under Sec. 64.3 of the SRC. They cannot therefore claim that they were denied their day in court.

Anent the Respondents' allegation that the investigation required under Sec. 64.2 of the SRC was not conducted in the instant case, this Commission finds the same to be devoid of factual basis. A perusal of the Assailed CDO will readily disclose that the EIPD complied with the investigation requirement, a fact that was clearly spelled out therein, thus:

> "In the instant case, the foregoing requisites were met. **The EIPD conducted an independent investigation which resulted in the gathering and presentation of evidence that supported its *Petition*,** i.e., Certifications from the Commission's CRMD, MSRD and CGFD; the Contracts of Loan which were duly certified by the RTC of La Trinidad, Benguet, and the affidavits of the complainants. More importantly, this Commission is convinced that evidence on record which showed the unauthorized investment-taking activities of the Respondents warrant the issuance of a CDO because the same will operate as a fraud on investors or is likely to cause grave or irreparable injury or prejudice to the investing public, if not restrained. This finding is supported by the fact that Respondents admitted to carrying out a ponzi scheme which was affirmed by the Certifications of the CRMD, MSRD and CGFD." (Emphasis supplied)

The afore-quoted finding which is duly supported by the pieces of evidence mentioned therein negates Respondents' allegation that no investigation was conducted prior to the issuance of the Assailed CDO. Respondents however lament their exclusion from participating in the investigation and consider themselves as having been denied of due process. Sadly, Respondents' argument and position are misplaced. As mentioned earlier, the exclusion of Respondents in the investigation is expressly mandated by law and affirmed in jurisprudence. Thus, no allegation of violation of due process arising from an act that fully complies with a statutory mandate could possibly prosper.

C. The Assailed CDO was not automatically lifted; the proceedings on the Assailed CDO is not yet terminated.

In their Motions to Lift and the subsequent Urgent Motions, Respondents invoked and zeroed-in on Sec. 64.3 of the SRC in advancing their position that the Assailed CDO was automatically lifted. Respondents claim that no notice or hearing was set after the Motions to Lift were filed. Hence, they argued that under Sec. 64.3 of the SRC, such failure operated to automatically lift the Assailed CDO after the lapse of the 10-day period.

We do not agree with Respondents.

For a correct and proper interpretation of the provisions of the SRC and the SRC-IRR, it is imperative to ALWAYS go back to the declared State policies which underlie the very purpose for which the law was enacted. These State policies provide coherence, meaning, and direction to the various provisions of the SRC which the Commission is mandated to implement. As quoted earlier in this Resolution, and it is worth to reiterate the same due to its paramount importance and significance, Sec. 2 of the SRC specifically ordains the State *to establish a socially conscious, free market that regulates itself, encourage the widest participation of ownership in enterprises, enhance the democratization of wealth, **promote the development of the capital market, protect investors,** ensure full and fair disclosure about securities, **minimize if not totally eliminate** insider trading and **other fraudulent or manipulative devices and practices which create distortions in the free market.***

In the case of *Palanca IV v. RCBC Securities, Inc.*[22], the Supreme Court emphasized that Section 2 of the SRC which embodies the core principles of the securities laws of the country should be considered in interpreting its provisions, to ensure that they are effectively carried out, thus:

> **"It has been observed that the afore-quoted provision lays down seven core principles of our securities regulation laws**: self-regulation, encouragement of the widest participation of ownership in enterprises, enhancement of the democratization of wealth, promotion of capital market development, protection of investors, ensuring full and fair disclosure about securities, and minimization, if not total elimination, of insider trading and other fraudulent or manipulative devices and practices that create distortions in the free market, **<u>with the unifying principle being the protection of investors</u>. These core principles animate the whole of the SRC; and as such, any doubt or conflict in the interpretation of the SRC and its implementing rules**

[22] G.R. No. 241905, [March 11, 2020].

> **must be resolved in a manner that will carry out the foregoing principles**. We therefore resolve the issues before Us with these principles in mind, giving particular attention to the principles of full disclosure, investor protection, and the elimination of fraudulent or manipulative devices and practices." (Emphasis supplied)

Bearing in mind that under the afore-quoted doctrine, investor protection was specifically identified by the High Court as the unifying principle, the various provisions of the SRC, specifically Sec. 64 which is the subject of, or at issue in the instant case, should thus be interpreted in a way that will promote and achieve such purpose. This principle finds support in the case of *Securities and Exchange Commission v. Interport Resources Corporation*[23], where the Honorable Supreme Court emphasized that in implementing a statute, the Commission is mandated to effectuate its general policies, to wit:

> "**It is well established that administrative authorities have the power to promulgate rules and regulations to implement a given statute and to effectuate its policies, provided such rules and regulations conform to the terms and standards prescribed by the statute as well as purport to carry into effect its general policies**. Nevertheless, it is undisputable that the rules and regulations cannot assert for themselves a more extensive prerogative or deviate from the mandate of the statute." (Emphasis supplied)

The power of the Commission to issue a CDO and the purpose thereof must therefore be anchored on the unifying principle of the SRC which has for its goal the protection of investors. Only from such a perspective can Sec. 64 of the SRC truly have meaning and significance; and only from such perspective can the Commission be truly considered as faithfully performing its mandate. Consistent with the foregoing, the Supreme Court emphasized in the Primanila Plans Case the purpose of a CDO which is essentially to curtail fraud and prevent injury upon 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**." (Emphasis supplied)

[23] SEC v. Interport Resources Corporation (G.R. No. 135808. October 6, 2008)

Thus, the Commission is duty-bound to issue a CDO, motu proprio, or upon a complaint, if it finds or has a reason to believe based on substantial evidence, that a person has committed or is about to commit any act or practice that constitutes a violation of the SRC and/or the SRC-IRR[24], to protect investors and to prevent fraud/injury that they may possibly sustain. Necessarily, as long as the violation subsists or the threat/possibility that a violation will be committed, the CDO issued by the Commission should and must continue to have full force and effect, otherwise the purpose for which Sec. 64 of the SRC is in place will conveniently be negated. This will open the floodgates to scams by scheming fraudsters and con artists who can conveniently prey on the investing public by taking advantage of an automatic lifting of a CDO by a mere lapse of time. Such was clearly not the intent of the law.

Moreover, it should be emphasized, and this Commission so holds that the Assailed CDO was never automatically lifted on 29 April 2023[25] for the reason that on the said date, the proceedings were not yet terminated. In this regard, We are mindful of how Respondents firmly insisted on a myopic interpretation of the word "hearing" i.e. as a circumstance where parties confront each other, to support their position that none was conducted which resulted in the automatic lifting of the Assailed CDO. This position is however patently erroneous not only because it betrays the legal concept of a hearing, but equally so because it negates the intent and purpose of Sec. 64 of the SRC.

Contrary to the position of Respondents, the concept of a hearing under Sec. 64 of the SRC vis-à-vis Sec. 4-3 Rule IV Part II of the 2016 Rules is broad enough to cover the entire proceeding on the CDO which affords parties the opportunity to present their defenses, considering that the law specifically excluded their involvement or participation in the investigation proceedings. This is consistent with Sec. 1-4 of the 2016 Rules[26] requiring liberal construction with its provisions, as well as the established rule in administrative proceedings that technical rules of procedure are not strictly applied.[27] Thus, in the case of *Perez vs*

[24] See Sections 53.3 and 64 of the SRC on the concept of CDO.
[25] *Manifestation* dated May 1, 2023. Par. 9
[26] "These Rules shall be liberally construed and administered to promote public interest, to secure a just, prompt, expeditious, and inexpensive determination of every action and proceeding before the Commission and to carry out the objectives of the laws it is mandated to implement."
[27] "Administrative tribunals exercising quasi-judicial powers are unfettered by the rigidity of certain procedural requirements, subject to the observance of fundamental and essential requirements of due process in justiciable cases presented before them. In administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense." (*Samalio vs Court of Appeals*. G.R. No. 140079. March 31, 2005)

Philippine Telegraph and Telephone Company[28], the Supreme Court ruled that in administrative proceedings, the term "hearing" is used in a general sense to cover an entire proceeding instead of a single rigid proceeding, to wit:

> "The standard for the hearing requirement, ample opportunity, is couched in general language revealing the legislative intent to give some degree of flexibility or adaptability to meet the peculiarities of a given situation. To confine it to a single rigid proceeding such as a formal hearing will defeat its spirit.
>
> A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the controversy. ***"To be heard" does not mean verbal argumentation alone inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings.*** " (Emphasis supplied)

Verily, the filing of Motions to Lift and other pleadings by the parties, as well as the issuance of relevant processes by the Commission clearly show that a hearing (as described in the afore-quoted doctrine) was conducted, contrary to the claim of Respondents. In this regard, this Commission notes of the successive filing of pleadings by the parties from the time the first Motion to Lift was filed which continued until the case was submitted for resolution. More importantly, the fact that Respondent Magboo filed her Motion for Automatic Lifting of Cease and Desist Order only on 18 September 2023 equally belies the claim of Respondents that such hearing was terminated on 29 April 2023. Given these factual circumstances, Respondents' reliance on Sec. 64.3 of the SRC was clearly misplaced as the hearing on the Assailed CDO was not yet terminated. Perforce, there was no automatic lifting of the Assailed CDO to speak of.

D. Respondents failed to trounce the evidence which showed that they sold/offered unregistered securities without the required license from the Commission.

The Assailed CDO was issued on the basis of Our finding that Respondents were selling/offering unregistered securities in the form

[28] G.R. No. 152048. April 7, 2009

evidences of indebtedness without the required license. Specifically, the evidence presented by the EIPD showed that the scheme which the Respondents used involved the execution of a contract of loan with investors covering an aggregate amount of about PhP114,000,000.00, where the latter are promised a return ranging from 60% to 111% per annum of the loaned/invested amount and issued post-dated checks as security. Respondents' representation to the investing public was that the loaned amount will be used to finance their junket operations consisting of the provision of luxury travel, accommodation, and related services to high-roller casino players.[29]

After a careful examination of the Motions to Lift and related pleadings filed by the Respondents, this Commission finds and so holds that there was nothing therein that controverted the finding that they were selling/offering unregistered securities to the public, which was established by substantial evidence. Respondents' bare denials of any involvement in the unauthorized and fraudulent investment scheme[30] will not suffice to tilt the scales in their favor applying the rule of evidence that bare allegation is not proof.[31] The same is true with their allegation that they are not connected with the entities named in the Assailed CDO inasmuch as they are being subjected thereto in their personal capacity, therein being substantial evidence of their involvement/participation in the unauthorized investment-taking activities subject thereof.

Relative thereto, the evidence presented by the EIPD shows that Respondents, including the Spouses Floresca, respondents Magboo and Dorog were positively identified by the complainants Tibiranca and De-Felipe to be part of the operations of TEAM Z, Horizon Players Club, and PNEL which are co-respondents in the instant case. In fact, the complainants positively identified respondents and attached their pictures in their Affidavit-Complaint dated 3 October 2022.[32] The Commission is cognizant, based on the evidence presented, that the unauthorized investment scheme subject of the Assailed CDO is being perpetrated collectively by the Respondents herein who necessarily have participated, promoted, propagated, and/or contributed in furthering

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[29] *Cease and Desis Order*. See page 6
[30] See Motions to Lift of the Martinada, Galang, and Casuga Groups (page 4)
[31] "Well-settled is the rule that denials, if unsubstantiated by clear and convincing evidence, are negative and self-serving which merit no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.
A denial does not become "specific" merely because it is qualified by that word, but because it specifies the allegations that are not admitted, setting forth, if practicable the matters relied upon to support the denial." (Carpio vs Valmonte. G.R. No. G.R. No. 151866, 9 September 2004)
[32] See pars. 1.11, 1.22, 1.23, 38, and 39

their collective (as well as individual) objectives. Hence, the fact that other Respondents are not signatories to the loan agreements, or the post-dated checks does not justify their exemption from the coverage of the Assailed CDO. This Commission takes administrative notice of the fact that it is normal and even necessary for the participants of a fraudulent scheme to assume/take on different roles and responsibilities in carrying the same out. The establishment of the unauthorized investment scheme and the positive identification of the Respondents as participants of this grand scheme; and the absence of any controverting evidence justifies the denial of the Motions to Lift.

A FINAL NOTE. The function of a CDO is to protect investors and to promote the integrity of the capital market. The Commission is not expected to wait until the investing public actually suffers damage, or the capital market is compromised. The Commission is duty-bound to issue a CDO whenever it has reasonable grounds to believe based on substantial evidence that the provisions of the SRC and/or the SRC-IRR will be violated. A contrary position does not only run counter to the very nature, purpose, and function of a CDO, it also seriously undermines the capability of the Commission to effectively perform its mandate. This is not what the law intended. In the instant case, more than a mere possibility of violating the SRC, Respondents were shown to have been violating the same.

WHEREFORE, premises considered, the (a) *Motion to Lift Cease and Desist Order* dated 28 March 2023, filed by Respondent Spouses Raffy Palangdan Foloresca and Jennylyn Galletes Delos Santos-Floresca (Spouses Floresca) on 30 March 2023; (b) *Verified Motion to Lift Cease and Desist Order with Motion to Issue Clarification (of Respondent Vanessa Magboo)* dated 29 March 2023, filed by Respondent Vanessa M. Magboo (Ms. Magboo) on 11 April 2023; (c) *Verified Motion to Lift Cease and Desist Order* dated 1 April 2023, filed by Respondent Hector Aldwin Liao Pantollana (Mr. Pantollana),on 04 April 2023; (d) *Verified Motion to Lift Cease and Desist Order* dated 1 April 2023, filed by Respondents Joseph G. Martinada, Ronaldo E. Renta, Neshemah Rock L. Renta, Avegail N. Cruz, Maricel R. Cesumision, Joseph J. Zabala, Maria Cecilia T. Viscayno, James Christopher T. Rojas (the "Martinada Group") on 04 April 2023; (e) *Verified Motion to Lift Cease and Desist Order* dated April 2023, filed by Respondents Rhoda A. Casuga, Mikhaella D. Ty, Ariel R. Katigbak, Heinn Carreon Humilde, Zen Carreon Humilde, and Den Abad (the "Casuga Group") on 04 April 2023; (f) *Verified Motion to Lift Cease and Desist Order* dated 3 April 2023, filed by Respondents Reymond L. Galang, Kim Mejica, Daniel Agbisit, Paul T. Maranan, JM Almodiente, Quarry Quieng, Erwin "Weng" Bangalan, and CJ Quinzon (the "Galang Group") on 04 April 2023; and (g) *Entry of Appearance with Verified Urgent Motion* dated 19 May 2023, filed by Respondent Stephen Cecilio A. Dorog ("Mr. Dorog") on 24 May 2023) are hereby **DENIED** for lack of merit. The Cease and Desist Order dated 16 March 2023 is hereby made **PERMANENT**.

Let a copy of this **RESOLUTION** be (a) posted in the Commission's website; and (b) be furnished to the Company Registration and Monitoring 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, and the Department of Information and Communications Technology, for their information and appropriate action.

The EIPD, in coordination with other concerned departments, is FURTHER DIRECTED to submit a formal compliance report, by way of a pleading, to the Commission *En Banc* WITHIN TEN (10) DAYS from receipt of this *Resolution.*

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