Republic of the Philippines
Department of Finance
Securities and Exchange Commission

**In the matter of:**
**THE SEASHORE BEACH CLUB, INC.**

**SEC CDO Case No. 07-17-044**

**ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,**
*Movant.*

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# CEASE AND DESIST ORDER

This resolves the *Motion for Issuance of Cease and Desist Order*[1] (**Motion**) filed, on 14 July 2017, by the Enforcement and Investor Protection Department (**EIPD**) praying that THE SEASHORE BEACH CLUB, INC. (**SEASHORE**) and its representatives/agents be enjoined from further selling and/or offering for sale club membership share certificates that can be considered as proprietary shares until the requisite registration statement is duly filed and approved by the Commission, and the corresponding license to offer/sell issued.

SEASHORE is a stock corporation registered with the Commission on 16 June 2016 with Company Registration No. CS201612679.[2] Its principal office is located at 1203 Entrata Building, Civic Drive, Alabang, Muntinlupa City, Metro Manila. Its primary purpose, as stated in its Articles of Incorporation, is:

> "To lease, buy, purchase, own, develop, manage, operate beach club leisure facilities encompassing water sport activities on shore in various strategic beach areas in the country; **to sell and issue beach club membership shares on a non-proprietary both local and international basis to entitle each beach club share holder the right to use the beach club facilities**; and to lease, buy, purchase, own, develop, manage, operate leisure theme parks under a non-proprietary club membership basis."[3]

It has an authorized capital stock of Php 1,000,000.00 divided into 10,000 shares with the par value of Php 100.00 per share.[4] Its incorporators are: 1.) Arnel S. Mindanao; 2.) Jocelyn M. Parba; 3.) Marlon M. Suarez ; 4.) Baby Daisy G. Mindanao; 5.) Renan C. Dumagonot; and 6.) Amiel Amparo Leyco.[5]

On 26 January 2017, the Commission's Company Registration and Monitoring Department (**CRMD**) referred to EIPD emails from a certain Mervin Ventura. The email-sender inquired if SEASHORE is allowed by the Commission

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[1] Dated 12 July 2017.
[2] Annex "A" of the Motion.
[3] Annex "B" of the Motion. .
[4] Id., Seventh paragraph.
[5] Id., Fifth paragraph.

to sell club membership shares.[6] Ventura claimed and attached website snapshots showing that SEASHORE sells/offers club shares for a consideration of Php 392,000.00 payable in 36 months, with a reservation fee of Php 10,000.00 to potential investors.[7] This prompted EIPD to conduct an investigation on SEASHORE's business activities.

EIPD discovered that when SEASHORE applied for its primary license, the Commission's Corporate Governance and Finance Department (**CGFD**) interposed no objection on the approval of SEASHORE's Articles of Incorporation (**AOI**) and By-laws. However, CGFD requested CRMD to advise SEASHORE to incorporate Securities Regulation Code (**SRC**) Rule 12.1.4.1 in its AOI and By-laws. CGFD also informed CRMD that SEASHORE should file a Registration Statement to cover the latter's securities.[8]

After the approval of its AOI, CGFD, in a *Letter* dated 13 December 2016, directed SEASHORE to submit a Registration Statement to cover the latter's securities in the form of club shares.[9] On 02 February 2017, CGFD, through a *Memorandum*[10], informed EIPD that SEASHORE has no secondary license to sell/offer for sale securities to the public nor it has any pending application for the same.

Acting on CGFD's endorsement, EIPD secured *Certifications*[11] from the appropriate departments to determine if SEASHORE is permitted to sell or offer club membership shares to the public, to wit: (1) CGFD, stating that SEASHORE is not a registered issuer of mutual funds, exchange traded funds, proprietary/non-proprietary shares or membership certificates, time-shares and registered but unlisted equity securities under Section 17.2 (a) of the SRC and therefore not licensed to offer or sell such securities to the public; (2) Markets and Securities Regulation Department (**MSRD**), stating that SEASHORE has not registered any securities pursuant to Section 8 and 12 of the Securities Regulation Code (**SRC**) nor did the Commission issue to SEASHORE a Permit to Sell securities. Further, SEASHORE has no pending application for the registration/permit to sell securities; (3) CRMD, stating that SEASHORE was not issued a secondary license as a Broker and/or Dealer of Securities, Dealer in Government Securities, Investment Adviser of an Investment Company, Investment House and Transfer Agent nor is there any pending application for the said secondary licenses.

Sometime in March 2017, EIPD also conducted an online investigation to verify if SEASHORE is selling/offering its club shares to the public using this medium.[12] The online investigation revealed that a facebook account was created by certain Reymart Zuniega and Jem Vodka Cellano, wherein they are enticing the public to invest in SEASHORE. The facebook pages confirmed the payment

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[6] Annex "C" of the Motion.
[7] Annex "D" of the Motion.
[8] Annex "E" of the Motion.
[9] Id.
[10] Id.
[11] Annex "I", "J", and "L" of the Motion.
[12] Annex "N" of the Motion.

schemes and privileges in buying SEASHORE's club shares. Likewise, these facebook pages show pictures of persons who have invested in SEASHORE.[13]

On 10 March 2017, an EIPD team conducted an ocular and surveillance operation at SEASHORE's principal office in Muntinlupa City. EIPD, in its report[14], states that the team was able to meet Amiel A. Leyco (**Leyco**), SEASHORE's Marketing Director. Thereafter, the EIPD team watched Leyco's presentation on SEASHORE's investment opportunity.

Leyco informed the team that "The Seashore Beach Club, Inc." is owned by Arnel S. Mindanao. He said that the club is located in San Juan, Batangas, where construction is still on-going. He further said that the club will be operational by 2019.

Leyco represented that for an investment of Php 392,000.00, with a reservation fee of Php 10,000.00, one could be an Exclusive Club Shareholder and life time member of SEASHORE. Leyco explained that there are three (3) payment terms available for an investor, to wit: 1.) Pay in cash within 30 days and avail a 15% discount; or 2.) 30% down payment and the 70% remaining balance spread over 36 months; or 3.) Deferred payment for 36 months at 0% interest. He added that a club member has the following privileges:

1.) Life-time membership which can be inherited by heirs, with **free one night stay only for family members once a year**;
2.) **Certain percentage discounts** from accommodation, water sports activities, restaurants, sports facilities, and its amenities;
3.) **Profit sharing of 30%** of its annual net income will be divided to all the members; and
4.) **20% income referral** when membership is used by friends or family, friends, club share membership can be saleable.

Leyco also told the EIPD team that SEASHORE started selling its club membership shares in 2016 in different countries like Japan, Dubai, Italy and the United States. It however started selling its club membership shares in the Philippines on 18 January 2017. Leyco claimed that SEASHORE sold 396 of its shares, wherein 111 shares of which came from the Philippines.

Afterwards, the EIPD team was able to meet Raymund Zuniga, SEASHORE's highest earning broker. He was the one who created the facebook account for SEASHORE. Leyco and Zuniga convinced the EIPD team to invest in SEASHORE at the soonest because by 11 March 2017, the membership fee will be increased to Php 420,000.00.

To further bolster its investigation, EIPD sought the opinion of CGFD to determine the nature of SEASHORE's business model. In a *Memorandum* dated 27 June 2017[15], CGFD rendered its evaluation, to wit:

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[13] Annex "N" of the Motion.
[14] Annex ""M" of the Motion.
[15] Annex "O" of the Motion.

"This Department is of the opinion that the club membership shares being sold are securities classified as non-proprietary shares under Section 3 of the SRC. Thus, TSBCI's (SEASHORE) scheme of selling the same to the public is considered as securities-solicitation.

In its Articles of Incorporation (AOI), the primary purpose of TSBCI is "to lease, buy, purchase, own, develop, manage, operate beach club leisure facilities encompassing water sport activities on shore in various strategic beach areas in the country; '***to sell and issue beach club membership shares on a non-proprietary both local and international basis to entitle each beach club share holder the right to use the beach club facilities****; and to lease, buy, purchase, own, develop, manage, operate leisure theme parks under a non-proprietary club membership basis.*' (emphasis supplied)

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The primary purpose of TSBCI indicates that it intends to sell non-proprietary shares to the public. SRC Rule 3.1.13 defines non-proprietary share or certificate as '*an evidence of interest, participation or privilege over a specific property of a corporation* <u>*that allows the holder of the share or certificate to use such property under certain terms and conditions.*</u> *The holder, however, shall not be entitled to dividends from the corporation or to its assets upon its liquidation.*'

TSBCI represents that 30% of its annual net income will be subject to profit sharing and divided to all the members. This is in conflict with its primary purpose of selling and issuing non-proprietary beach club membership shares.

Considering that the club membership shares being offered are securities under Section 3 of the SRC, a secondary license or Certificate of Permit to Offer Securities is required before TSBCI can offer its shares to the public. Also, since TSBCI is already offering the aforesaid shares to the public, its scheme will be considered as securities-solicitation."

The foregoing considered, we now resolve the case on the merits based on the results of EIPD's investigation and evidence presented in the *Motion*.

We find merit in the *Motion*.

It is declared in the SRC[16] that:

"***Section 2. Declaration of State Policy.*** – 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, <u>**ensure full and fair disclosure about securities**</u>, **minimize if not totally eliminate** insider trading and

[16] R.A. No. 8799.

> 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."

Section 3 of the SRC defines securities as:

> "Section 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, instruments, whether written or electronic in character. It includes:
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> x x x
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> (f) **Proprietary or nonproprietary membership certificates** in corporations;"

In this connection, Section 8.1 of the SRC provides that securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Moreover, Section 12.1 of the SRC states that **all securities required to be registered** under Subsection 8.1 shall be registered through the **filing by the issuer in the main office of the Commission, of a sworn registration statement** with respect to such securities, in such form and containing such information and documents as the Commission shall prescribe.

Proprietary share or certificate is an evidence of interest, participation or privilege in a corporation which gives the holder of the share or certificate the right to use the facilities covered by such certificate and to receive dividends or earnings from the corporation. Upon the liquidation of the corporation, the holder shall have proportionate ownership rights over its assets.[17]

On the other hand, non-proprietary share or certificate is an evidence of interest, participation or privilege over a specific property of a corporation that allows the holder of the share or certificate to use such property under certain terms and conditions. <u>The holder, however, shall not be entitled to dividends from the corporation or to its assets upon its liquidation</u>.[18]

In the instant case, SEASHORE sells/offers club membership shares for Php 392,000.00, payable in three (3) ways as above-mentioned. An investor who purchases the same is entitled several privileges which includes a free one night stay for family members once a year, certain percentage discounts on the club's amenities, <u>profit sharing of 30% of the club's annual net income, 20% income referral</u> when membership is used by friends or family friends to get access to the Beach Club and to use its facilities.

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[17] Rule 3.1.15 of the SRC-IRR.

[18] Rule 3.1.13 of the SRC-IRR.

Applying the above-definition of proprietary share, it cannot be denied that SEASHORE is selling or offering proprietary shares to the public. This is evidenced by the fact that there was a directive from CGFD to SEASHORE to file a registration statement to cover for the latter's securities. However, as to date, SEASHORE did not file the same. Further, we also agree with the CGFD when it opined that SEASHORE is engage in securities-solicitation without a secondary license or permit to do so.

It is also evident that SEASHORE is selling/offering its club membership shares to the public through online means such as the facebook account created by SEASHORE's agents. As a rule, public offering is any offering of securities to the public or to anyone, whether solicited or unsolicited. It may be done through advertisement or announcement on radio, television, telephone, electronic communications, information communication technology or any other forms of communications.[19] This clearly establishes a fact that SEASHORE is publicly offering its club membership shares.

In view of the above discussion, there are three (3) violations committed by SEASHORE and the persons acting for it.

First, the non-registration of securities. Under the SRC, unless what is involved are exempt securities or exempt transactions which are not covered by the requirement of registration, 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.[20] Prior to 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.[21] As discussed above, SEASHORE is engaged in the offering and/or selling of securities in the form of club membership shares or proprietary shares, without prior registration with the Commission.

Second, the non-registration of broker or dealer. The law provides that no person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.[22] In the instant case, SEASHORE and/or all persons acting for and on their behalf are acting as either broker or dealer, without being registered as such.

Third, the commission of *ultra vires* acts. No corporation or partnership shall possess or exercise any corporate powers except those conferred by the Corporation Code or by its Articles of Incorporation/Articles of Partnership and except such as are necessary or incidental to the exercise of the powers so conferred.[23] In that instant case, SEASHORE's primary purpose[24] does not

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[19] SRC Rule 3.1.17.
[20] Section 8.1, SRC..
[21] *Id.*
[22] Section 28.1, SRC.
[23] Section 45, Corporation Code of the Philippines.
[24] Note 3, *Supra.*

authorize to engage in the selling or offering for sale proprietary shares to the public.

Therefore, the violations committed by SEASHORE and its agents should immediately be enjoined pursuant to Section 64 of the SRC, which provides that:

> 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**.

From the foregoing, there are two essential requisites before the Commission may issue a cease and desist order: **First**, there must be a proper investigation or verification[25]. In the instant case, EIPD was able to conduct a thorough investigation on SEASHORE's investment-taking activities. EIPD confirmed Ventura's email that SEASHORE is selling/offering its club membership shares to the public through online means (facebook). Furthermore, EIPD conducted a surveillance operation at SEASHORE's principal's office, wherein they were able to elicit information from the presentation of Leyco, SEASHORE's Marketing Director. Furthermore, EIPD sought the opinion and certifications of CGFD, MSRD and CRMD, the Commission's operating departments which regulate registration of securities, wherein CGFD also determined that SEASHORE is engaged in securities-solicitation.

**Second,** 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[26]. It should be noted that without a license from the Commission, SEASHORE's investment-taking activities cannot be regulated nor supervised. It is noticeable that SEASHORE's investment scheme clearly falls as offering and/or selling of securities in the form of club membership shares or proprietary shares and if it remains unregulated or unsupervised, would likely defraud the investing public.

In *SEC, et al. vs. CJH Development Corporation, et al.*[27], the Supreme Court expounded the duty of the Commission concerning unregistered securities, to wit:

> "Lastly, the Court neither agrees with the ruling of the CA that there is nothing in the assailed CDO which shows that the acts sought to be restrained therein operate as a fraud on investors. The SEC arrived at a preliminary finding that respondents are engaged in the business of selling securities without the proper registration issued by the Commission. Based on this initial finding, **respondents' act of <u>selling unregistered securities would necessarily operate as a</u>**

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[25] Securities and Exchange Commission vs. Performance Foreign Exchange Corporation, GR No 154131, July 20, 2006.
[26] Ibid.
[27] G.R. No. 210316, 28 November 2016.

**fraud on investors as it deceives the investing public by making it appear that respondents have authority to deal on such securities**. As correctly cited by the SEC, 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. **The Court agrees with the SEC that the purpose of this provision is to afford the public protection from investing in worthless securities.**"

**WHEREFORE**, premises considered and pursuant to the authority vested in the Commission, **SEASHORE BEACH CLUB, INC.**, its partners, officers, directors, agents, representatives, conduits, assigns, and any and all persons claiming and acting for and in their behalf and under their authority are hereby ordered to **IMMEDIATELY CEASE AND DESIST[28], UNDER PAIN OF CONTEMPT**, from engaging in activities of selling and/or offering for sale securities in the form of club membership shares or proprietary shares or any others of the same nature until the requisite registration statement is duly filed with and approved by the Commission and the corresponding license to offer/sell is issued.

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

The **EIPD** is hereby **DIRECTED** to: 1) serve this *Order* to SEASHORE BEACH CLUB, INC., its President, General Manager, Treasurer, In-House Counsel or other officers, if any; and 2) post copies of the *Order* at the entrance of the main office and/or branches, if any, of SEASHORE BEACH CLUB, INC.

Let a copy of this *Order* be: 1.) posted in the Commission's website; 2.) published in a national newspaper of general circulation; and 3.) furnished to all the Commission's departments for their information and appropriate action.

EIPD is **FURTHER DIRECTED** to submit a formal compliance report, by way of a pleading, to the Commission *En Banc* WITHIN FIVE (5) DAYS from receipt of this *Cease and Desist Order*.

In accordance with the provisions of Sec. 64.3[29] of SRC and Sec. 4-3 (b)[30], Part II, Rule IV of the 2016 Rules of Procedure of the Securities and Exchange

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

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

Commission, the parties subject of this *Cease and Desist Order* may file a verified motion for the lifting thereof within five (5) days from receipt hereof.

**FAIL NOT UNDER PENALTY OF LAW.**

**SO ORDERED.**

Pasay City, Philippines; 31 August 2017.

**TERESITA J. HERBOSA**
***Chairperson***

**ANTONIETA F. IBE**
***Commissioner***

**EPHYRO LUIS B. AMATONG**
***Commissioner***

**BLAS JAMES G. VITERBO**
***Commissioner***

**EMILIO B. AQUINO**
***Commissioner***

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the hearing. If the Commission fails to resolve the request within the time herein prescribed, the cease and desist order shall automatically be lifted.

[30] 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. Said motion to lift shall be set for hearing by the Commission En Banc not later than fifteen (15) days from its filing and the resolution thereof shall be made not later than ten (10) days from the termination of the hearing. If the Commission fails to resolve the request within the period herein prescribed, the CDO shall automatically be lifted;