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

IN THE MATTER OF:

PAWISNGPINOY ONLINE INVESTMENT

SEC CDO Case No. 02-22-083

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),

Movant.

x - x

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 **PAWISNGPINOY ONLINE INVESTMENT**, its owners, operators, representatives, agents, promoters and any and all persons claiming and acting for and in their behalf, to immediately cease and desist from engaging in the sale and/or offer of unregistered securities, and to remove or take down their online posts and offerings, as it does not have the license to solicit, accept or take investments, and the securities that it is selling/offering are not registered with the Securities and Exchange Commission (the "Commission"); and (b) prohibiting directing **PAWISNGPINOY ONLINE INVESTMENT**, its owners, operators, representatives, agents, promoters and any and all persons claiming and acting for and in their behalf, from selling, encumbering, conveying, or disposing any of its properties and/or assets without the prior written authority from the Commission.

THE PARTIES

The EIPD is one of the Commission's operating departments tasked, among others, to investigate, institute and prosecute administrative actions against persons and entities engaged in the sale and/or offer of unregistered securities without the requisite license issued by the Commission.[2]

---

[1] Filed on 24 February 2022.
[2] Section 2-2(c)(1-c), Rule II, Part I of the 2016 SEC Rules.

PAWISNGPINOY ONLINE INVESTMENT (hereinafter referred to as "PAWISNGPINOY") is an entity that is not registered with the Commission as a corporation or partnership, but operates and carries out an investment-solicitation business online. The relevant online posts on PAWISNGPINOY shows that it represents to be an entity registered with the Department of Trade and Industry (DTI), with DTI Certificate No. 00428181, and maintains a business address at 1906 Galleria Corporate Center, EDSA cor. Ortigas Avenue, Quezon City.

RELEVANT FACTS

On 22 November 2021, the EIPD received an email from one Mr. Rhany Marlon Grueso who inquired on the legitimacy of the investment-taking activities of PAWISNGPINOY that are being carried out online.[3] The EIPD also received information that in relation to its online operations, PAWISNGPINOY is using a Certificate of Filing of Amendment of By-Laws and an Advisory, purportedly issued by the Commission, to make it appear that it is authorized to solicit, accept and/or take investments from the public,[4] allegedly for use in furtherance of its rice trading business, construction and medical supplies distribution, and real estate operations.[5]

On the basis of the foregoing information, the EIPD formally conducted an investigation on the operations of PAWISNGPINOY for possible violation of the relevant provisions of Republic Act No. 8799 (the "Securities Regulation Code" or "RCC") and its Implementing Rules and Regulations (IRR).

As regards the Certificate of Filing of Amendment of By-Laws which PAWISNGPINOY is flaunting to the public, the EIPD was able to get confirmation that the same is a fake document; one that was originally issued to Top Frontier Investment Holdings, Inc. but which was accessed by PAWISNGPINOY from the Commission's Online Document Retrieval System (ODRS) and edited to make it appear as having been issue to it.[6]

In relation to the online investment-taking activities of PAWISNGPINOY, the EIPD checked and examined the online postings made by the persons who are operating the same, and submitted evidence showing that the latter is soliciting investments from the public who are promised a guaranteed passive income ranging from of Two

[3] Annex "A" of the Motion
[4] See Annexes "B" and "C" of the Motion; see also Par. 4 of the Motion
[5] Annex "K" of the Motion
[6] Par. 5 of the Motion; See also Annex "D" of the Motion

Hundred Five to Two Hundred Sixty-Five Percent Return of Investment (205-267% ROI) or more, within a period of five (5) days. Specifically, the investment scheme of PAWISNGPINOY consists of the following terms:

Amount of Investment (PhP)	Guaranteed Return (PhP)	Bonus (PhP)
2,000	4,500	500
3,000	6,500	700
4,000	8,500	1,000
5,000	10,500	1,200
6,000	12,500	1,500
7,000	14,500	1,700
8,000	16,500	2,000
9,000	19,500	1,700
10,000	20,500	2,500

In the course of its investigation, the EIPD was able to secure a Certification from the Company Registration and Monitoring Department (CRMD)[7], which confirmed that PAWISNGPINOY has not been issued a secondary license as a Lending Company, Broker and/or Dealer of Securities, Dealer in Government Securities, Investment Adviser of an Investment Company, Investment House and Transfer Agent. The Certification of the Corporate Governance and Finance Department (CGFD)[8] on the other hand, which was submitted in evidence by the EIPD confirmed that PAWISNGPINOY is not a registered issuer of mutual funds, exchange traded funds and proprietary/non-proprietary shares or membership certificates and timeshares.

The continued operations of PAWISNGPINOY has prompted the issuance of an ADVISORY on 11 January 2022, informing the public that PAWISNGPINOY has not been issued any license offer or sell securities.

Moreover, the EIPD was also able to identify and confirm that PAWISNGPINOY is using the GCash account of one Roy. G. in relation to its investment-solicitation activities for which reason, it sent a formal letter to G-Exchange, Inc. requesting for the "Know Your Client" (KYC) or GCash Account Opening Documents of the said individual on 13 January 2022.

It is on the basis of PAWISNGPINOY's lack of the required licenses to sell and/offer securities, which were also unregistered, that the EIPD

---

[7] Annex "G" of the Motion.
[8] Annex "F" of the Motion

came to this Commission seeking the issuance of a CDO for the protection of the investing public.

ISSUE

Whether the issuance of a cease and desist order against PAWISNGPINOY is warranted based on the findings and evidence presented by the EIPD.

RULING

The Commission finds the *Motion* meritorious.

After carefully considering the Motion which was supported by substantial evidence, the Commission holds that the EIPD was able to establish that PAWISNGPINOY is selling and/or offering unregistered securities in the form of investment contracts to the public without the requisite license from the Commission, in violation of Section 8 of the SRC and Rule 3.1.17 the SRC-IRR.

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:**
>
> x x x
>
> (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 in the SRC-IRR as follows:

> **An investment contract means a contract, transaction or scheme** (collectively "contract") **whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others**. An investment contract 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."[9] (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,*[10] 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." (Emphasis supplied)

The concept of an investment contract in the Philippines is of American origin. It traces its roots from the US Supreme Court case *Securities and Exchange Commission v. W.J. Howey Co.*[11] 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 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.[12]

---

[9] Rule 26.3.5 of the Implementing Rules and Regulations of the SRC.
[10] Note 24, *Supra.*
[11] 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244, 163 A.L.R. 1043 (1946).
[12] *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

The concept of an investment contract was thereafter adopted and used in *Power Homes Unlimited Corporation v. Securities and Exchange Commission,*[13] 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.[14]

Applying the foregoing to the instant case, this Commission finds, and so holds, that PAWISNGPINOY is unlawfully engaged in the sale and/or offer of unregistered securities in the form of investment contract, because it has no license to carry out the same.

> First, there is an investment of money by the public who paid PAWISNGPINOY for the investment plans that were chosen through its designated GCash account i.e. Roy G. The same GCash account was likewise used by PAWISNGPINOY in initially paying the guaranteed return of its investor's investments.
>
> Second, The EIPD was able to show that the investment scheme of PAWISNGPINOY involves the pooling of the money invested by its investors in rice trading, construction and medical supplies trading, real estate development, and buying and selling of gold jewelries which are actually, which was utilized to satisfy and pay the guaranteed returns of its existing investors. This is the common enterprise that is being sustained by the investments received by PAWISNGPINOY, although the same is masked by a product distribution, real estate, and jewelry business which, in reality, does not exist.
>
> Third, PAWISNGPINOY's investors expect a guaranteed profit in an amount ranging from 205%-267% of the invested amount within 5 or 6 days, which was promised to them.

---

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.

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

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

Finally, investors have been convinced that the business operation of PAWISNGPINOY consisting of rice, medical, and construction supplies trading, real estate development, buying and selling of gold jewelries, which is being run by its owners, operators, representatives and agents, generate the needed profits which are used to pay for the return of investments promised to them.

Moreover, the evidence presented by the EIPD also shows that PAWISNGPINOY's investment scheme involves public offering of securities in the form of investment contracts considering that its business operations are being published online through the social media platforms.

Public offering of securities is defined under Rule 3.1.17 of the 2015 IRR of the SRC 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;**"[15] (Emphasis supplied)

Here, the evidence submitted by the EIPD shows that PAWISNGPINOY is offering investment plans publicly through its official website and social media platforms, i.e., Facebook, to potential investors without prior registration.

Relative to a valid issuance of a CDO, Section 64 of the SRC provides, 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)

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

SEC OGC
CERTIFIED TRUE COPY OF
THE DOCUMENTS ON RECORD
PAGE 7 OF 11 PAGES
BY

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

1) There must be a conduct of a 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.[16]

Anent the first requisite, the records disclose that the EIPD conducted a proper investigation as evidenced by the various documents gathered and submitted in support of its Motion showing the unauthorized investment taking activities of PAWISNGPINOY.

The second requisite is likewise present considering that PAWISNGPINOY employed fraud when its directors, officers, agents, representatives and promoters made it appear to the public that it is investment plans are registered with the Commission and that it is authorized to sell, offer and deal with securities.

In *People of the Philippines vs. Mateo, et al.*[17], the Supreme Court held that fraud is a generic term that covers any act calculated to deceive, thus:

> "**Fraud**, in its general sense, **is deemed to comprise anything calculated to deceive**, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or **by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth** and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. On the other hand, **deceit is the false representation of a matter of fact**, whether by words or conduct, **by false or misleading allegations**, or by concealment of that which should have been disclosed **which deceives or is intended to deceive another so that he shall act upon it to his legal injury.**" (Emphasis supplied)

---

[16] Securities and Exchange Commission vs. Performance Foreign Exchange Corporation, G.R. No. 154131, July 20, 2006.
[17] G.R. No. 210612, October 9, 2017.

x--x

Moreover, this Commission holds that the act of PAWISNGPINOY in selling/offering unregistered securities necessarily operates as a fraud to the public which, if unrestrained, will likely cause grave or irreparable injury or prejudice to the investing public.[18] This finds support in the case of *Securities and Exchange Commission vs. CJH Development Corp.*[19] where the Supreme Court emphasized the need for a 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.**
>
> **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)

WHEREFORE, premises considered, **PAWISNGPINOY ONLINE INVESTMENT**, its owners, operators, representatives, agents, promoters and any and all persons claiming and acting for and in their behalf, are hereby ordered to **IMMEDIATELY CEASE AND DESIST** from engaging in the unlawful/unauthorized solicitation, offer and/or sale of securities in the form of investment contracts or any others of the same nature, as discussed in this *Cease and Desist Order*, until the requisite registration statement is duly filed with and approved by the Commission.

Further, **PAWISNGPINOY ONLINE INVESTMENT**, its owners, operators, representatives, agents, promoters and any and all persons claiming and acting for and in their behalf, are likewise directed to **CEASE** their internet presence relating to the transactions and investment scheme covered by this *Cease and Desist Order*. The Commission will institute the appropriate administrative and criminal action against any

---

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

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 PAWISNGPINOY ONLINE INVESTMENT**, its owners, operators, representatives, agents, promoters and any and all persons claiming and acting for and in their behalf from transacting any business involving funds in its depository banks, and from transferring, disposing, or conveying in any manner, any and all assets, properties, real or personal, including bank deposits, if any, of which the named persons herein may have interest, claim or participation, whether directly or indirectly, under their custody, to ensure the preservation of the assets of the investors

The **EIPD** of the Commission is hereby **DIRECTED** to (a) serve a copy of this Order to **PAWISNGPINOY ONLINE INVESTMENT**, (b) cause the posting of this Order in the Commission's website, and (c) the publication of the same in a newspaper of general circulation as provided for under Section 4-2, Rule IV, Part I of the 2016 Rules of Procedure of the SEC.

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 and the Department of Information and Communications Technology 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.

Pasay City, Philippines; 1 March 2022.

---x

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner