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

IN THE MATTER OF:

ALPHANETWORLD CORPORATION doing business under the name and style of NWORLD

SEC CDO Case No. 02-22-081
Promulgated: 19 July 2022

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),
Movant.

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RESOLUTION

For consideration of the Commission is the ***Verified Motion to Lift Cease and Desist Order*** (*"Motion to Lift"*) filed by ALPHANETWORLD CORPORATION doing business under the name and style of NWORLD ("NWORLD"), through counsel, praying for the lifting of the *Cease and Desist Order* dated 23 February 2022 (the "*Assailed CDO*") for evident lack of merit.[1]

The *Assailed CDO* directed NWORLD, Julius Allan Nolasco (Mr. Nolasco), and their agents to immediately cease and desist from engaging in the unlawful/unauthorized solicitation, offer and/or sale of securities in the form of investment contracts, after the Commission found, based on substantial evidence, that such investment-taking activities were being carried out in violation of Section 8 of the Securities Regulation Code (SRC).[2] The dispositive portion of the Assailed CDO reads, in part:

> "WHEREFORE, premises considered, **ALPHANETWORLD CORPORATION doing business under the name and style of**

[1] Filed on 07 March 2022.
[2] Republic Act No. 8799.

> **NWORLD**, its president, **JULUIS ALLAN C. NOLASCO**, its directors, stockholders, officers, representatives, salesmen, solicitors, agents, uplines, enablers and influencers, 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.
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> **ALPHANETWORLD CORPORATION doing business under the name and style of NWORLD**, its president, **JULUIS ALLAN C. NOLASCO**, its directors, stockholders, officers, 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 internet presence relating to the transactions and investment scheme covered by this *Cease and Desist Order*. The Commission will institute the appropriate administrative and criminal action against any persons or entities found to act as solicitors, information providers, salesmen, agents, brokers, dealers or the or the like for and in their behalf.
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> Finally, the Commission hereby **PROHIBITS ALPHANETWORLD CORPORATION doing business under the name and style of NWORLD**, its president, **JULUIS ALLAN C. NOLASCO**, its directors, stockholders, officers, representatives, salesmen, solicitors, agents, uplines, enablers and influencers, 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."

In its Motion to Lift, NWORLD maintained that its Silver, Gold and Platinum Product Packages are not securities or investment contracts as defined under the SRC and this warrants the lifting of the Assailed CDO. In support thereof, NWORLD argued that the purchase of its products and packages are plain sales transactions, allegedly carried out *via* the direct selling method where buyers become down-line sellers and earns commissions from purchases made by new buyers referred by him.[3]

Under the foregoing business scheme and process, NWORLD argued that the Silver, Gold and Platinum Product Packages which it offers/sells to the public cannot be considered an investment contract, contrary to the finding of this Commission, because not all of the elements prescribed under the Howey Test is present. In this regard, NWORLD insists that the prices paid to it for the packages purchased are not investments that purchasers make, but simply payment of a purchase price. Moreover, under its existing marketing scheme, it is NWORLD, and not its down-line sellers, that expects profits from the sale of its products.

We deny the Motion to Lift for lack of merit. The evidence presented by NWORLD in support of its allegations and arguments therein simply failed to trounce the finding of this Commission that NWORLD is engaged in the sale of securities in the form of investment contract, and is in continuous violation of Section 8 of the SRC.

At the outset, it should be emphasized that the instant case is administrative in nature where the quantum of evidence required is simply substantial evidence,[4] or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[5]

A careful review and evaluation of the allegations and evidence presented by NWORLD reinforces the finding of this Commission that its Silver, Gold and Platinum Packages (without the word "Product" which NWORLD appears to have purposely used in the Motion to Lift) are securities in the form of investment contracts because they actually operated and/or enabled the investors who purchased the

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[3] See page 7 (3rd paragraph), and page 9 of the Motion to Lift

[4] "The quantum of proof in administrative proceedings necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The burden to establish the charges rests upon the complainant. The case should be dismissed for lack of merit if the complainant fails to show in a satisfactory manner the facts upon which his accusations are based. The respondent is not even obliged to prove his exception or defense. Given these precepts, we find that there is no substantial evidence to hold Conrado liable for grave misconduct." (*NBI vs Najera*; G.R. No. 237522, June 30, 2020) [Emphasis supplied]

[5] *Diaz vs Office of the Ombudsman* (G.R. No. 203217, July 2, 2018)

same to participate and/or acquire an interest in the profit making venture of the company. Otherwise stated, the allegations and evidence presented by NWORLD are replete with admissions that the packages that were offered and sold to the public were investment contracts because its investors-cum-members/distributors actually had a stake in the operations of the company in the sense that they profited and/or stood to profit in the continued sale of the packages.

At the outset, emphasis should be made on the fact that just like the securities acts of other jurisdictions, specifically the United States of America, the SRC adopted a very broad definition of securities,[6] which is intended to be liberally construed in order to achieve the main purpose of its enactment, regulation of the issuance and sale of securities and prevention of fraud.

Rule 26.3.5 of the Implementing Rules and Regulations of the SRC (SRC-IRR) defines an "investment contract" as follows:

> "An investment contract means a contract, transaction or **scheme** whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others. It is **presumed to exist** whenever a person seeks to use the money or property of others on the promise of profits."

The law considers investment contract as securities because what the purported issuer is, or will be using to further his business is money put in by the public who expects a return of their investment. Consistent with the broad definition of securities, the term investment contract should include and cover all forms and varieties thereof which are known or considered, or ought to be known or considered to be such, in the financial world.

Moreover, cognizant of the fact borne by the sad experiences of people around the globe that have been duped by scamsters and con artists, the Supreme Court, adopting the doctrine in the United States (US) case of *SEC v. W.J. Howey Co.*, held in *Power Homes Unlimited Corporation vs Securities and Exchange Commission*[7] (Power Homes

[6] "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." (Section 3.1 of the SRC)
[7] G.R. No. 164182, February 26, 2008

Case), that the term "investment contract" embodies a flexible principle that is intended to cover schemes devised by persons who seek to use the money of others on the promise of profits, thus:

> "It behooves us to trace the history of the concept of an investment contract under R.A. No. 8799. Our definition of an investment contract traces its roots from the 1946 United States (US) case of *SEC v. W.J. Howey Co.* In this case, the US Supreme Court was confronted with the issue of whether the Howey transaction constituted an "investment contract" under the Securities Act's definition of "security." The US Supreme Court, recognizing that the term "investment contract" was not defined by the Act or illumined by any legislative report, held that "Congress was using a term whose meaning had been crystallized" under the state's "blue sky" laws in existence prior to the adoption of the Securities Act. Thus, <u>it ruled that the use of the catch-all term "investment contract" indicated a congressional intent to cover a wide range of investment transactions</u>. It established a test to determine whether a transaction falls within the scope of an "investment contract." Known as the Howey Test, it requires 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. <u>Although the proponents must establish all four elements, **the US Supreme Court stressed that the Howey Test "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits**</u>." Needless to state, any investment contract covered by the Howey Test must be registered under the Securities Act, regardless of whether its issuer was engaged in fraudulent practices." (Emphasis supplied)

In the *US case of SEC v. Joiner Leasing Corp.,*[8] the US Supreme Court emphasized that it is not the nature of the assets behind a particular instrument which defines whether the same should be considered a security. What is controlling is the attribution given in commerce based on the terms thereof, to wit:

> "In applying acts of this general purpose, the courts have not been guided by the nature of the assets back of a particular document or offering. <u>The test, rather, is what character the instrument is given</u>

[8] 320 U.S. 344 (1943) [https://supreme.justia.com/cases/federal/us/320/344/]

> in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect. In the enforcement of an act such as this, it is not inappropriate that promoters' offerings be judged as being what they were represented to be." (Emphasis supplied)

Under the foregoing legal precepts, an investment contract is considered to exist once it is determined that the proponent is offering to the public an opportunity to contribute money and to share in the profits of the operations. In this regard, the importance of a "common enterprise" managed by the proponent in furtherance of the business, comes into play considering that purchasers who are normally untrained in finance, merely rely on the proponent's knowledge and expertise in carrying out the grand investment scheme.

More importantly, in our jurisdiction, a transaction or scheme where a person uses or intends to use money or property of others with a promise of profits is presumed by law to be an investment contract which should be registered with the Commission prior to the offer/sale thereof.

In the context of the foregoing rules, as well as the parameters established by law and jurisprudence, this Commission finds no cogent reason to disturb its earlier finding. The Assailed CDO should be, as it is hereby is, sustained.

Contrary to the vigorous assertion by NWORLD that its business operations are solely limited to the sale of product packages which are not securities in the form of investment contracts, its own admissions and the evidence presented by EIPD say otherwise. All the elements prescribed under the Howey test are present in this case.

> **First**, the complaints which the EIPD submitted in evidence established the fact that there is in the instant case, an investment in money where member-investors of NWORLD who purchased its Silver, Gold and/or Platinum Packages (henceforth, the "Investment Packages") actually paid for the same. In the same vein, the Affidavits executed by the distributors-cum-investors of NWORLD show that money was

paid by the former for the Investment Packages that were purchased, which in turn, enabled them to offer/sell the same Investment Packages to the public.

Second, the "common enterprise" which NWORLD managed and carried out, consists in, and was represented by the Investment Packages with the commissions, bonuses, and incentives as essential components which, taken together, constituted NWORLD's business scheme. In other words, the evidence on record shows that the fortunes of NWORLD's distributor-investors are linked to each other and are clearly essential to the success of the business. The continued sale of Investment Packages and the concomitant entry of new distributor-investors facilitate and make possible the receipt of commissions, incentives and bonuses by existing distributor-investors.

A careful examination of the business model of NWORLD will show that the commissions, bonuses and incentives are essential and indispensable components of the investment scheme as they facilitate the sale of the Investment Packages. Specifically, the commissions, bonuses and incentives were apparently showcased by NWORLD to ensure that its distributor-investors sell Investment Packages and continuously create and establish as many down-lines, as the continued operation of its business is solely dependent on this. Stated otherwise, NWORLD's Investment Packages, coupled with the commission, bonus and incentive schemes, under which NWORLD and its distributor-investors (which include all new and prospective distributor-investors) possess and exercise a power that is essential to the operation and success of the business, as well as the attainment of the promised return, rendered such scheme an investment contract.

Interestingly, NWORLD's claim that it is not engaged in the sale of securities because its operations use the direct selling method to peddle its products or product packages, is not supported by evidence, and is in fact belied by its own admissions and the evidence presented. The marketing/advertising materials of NWORLD bear out clearly that what is being sold to the public under its business model is its Investment Packages; and this business model in fact encourages the purchase of additional Investment Packages by the same investor who is given a discounted rate for his/her succeeding purchases i.e. the Platinum Package which sells at PHP19,000.00, is subsequently sold to the same investor at PHP18,000.00. In fact, a complaint on record shows that a distributor-investor who relied on the representation of NWORLD that it will take care in providing for his downlines under the "Invest, Wait and Earn" system, purchased seven (7) accounts.

The marketing/advertising materials which essentially provides for the price of the relevant Investment Package and the incentives available, also negates the claim of NWORLD that distributor-investors have the option to purchase its products "*individually and resell them or they may opt to purchase product packages*"[9], because by the express terms thereof, distributor-investors can only buy the Investment Package itself and nothing else, to wit:

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[9] Par. 4 (page 7) of the Motion to Lift

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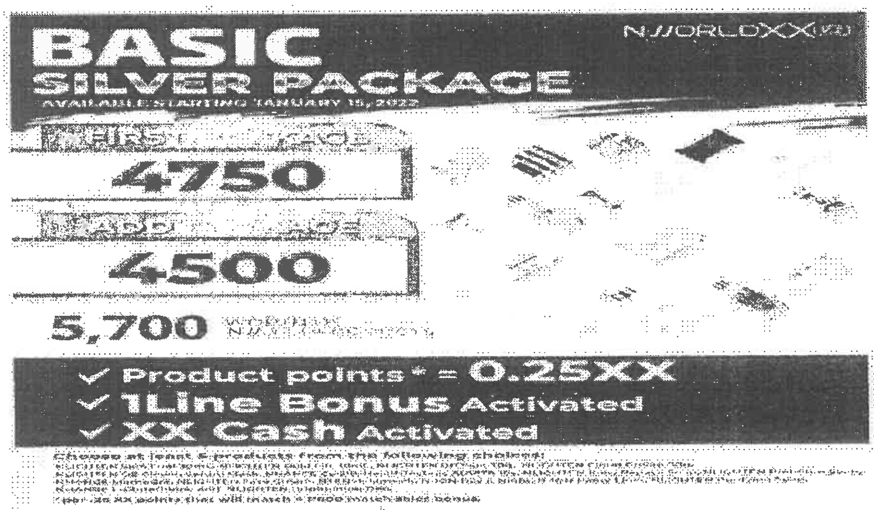

Third, the complaints on record confirmed that the primary consideration/reason that led investors to purchase NWORLD's investment packages was the commissions, bonuses and incentives which was practically guaranteed to them with the assumption by NWORLD of the obligation to look for their down-lines. The foregoing finds affirmation in the statements of distributor-investors who stated in their complaint that NWORLD informed them that they don't even need to recruit and sell products because they are already assured of their returns. The same complainants even agreed to have the products that were due to them under the Investment Packages purchased to remain in the custody of NWORLD.

The distributor-investors of NWORLD clearly expects profits in the form of commissions, bonuses and incentives which are promised to them every time their respective downlines are created with the purchase of packages (and not products) by new distributor-investors. Hence, existing distributor-investors who are able to bring in new distributor-investors are in effect guaranteed a passive income in the form of commissions, bonuses and incentives. The passive income guaranteed by NWORLD was confirmed by a complainant who was assured that NWORLD will take care of finding his downlines, and that all he needs to do is buy the package.

The foregoing only shows that as far as the distributor-investors are concerned, the main consideration that attracts them purchase NWORLD's Investment Packages is the prospects of return and not the desire to use or sell the products given to them as part of the packages. This satisfies the requirement established in jurisprudence on reasonable expectation of profits on the part of investors.[10] As correctly pointed out by the EIPD, this scheme finds affirmation in the notes/findings on the AFS of NWORLD which show that the expenses on commissions far exceed the cost of goods sold which NWORLD ironically claims to be its primary business, to wit:

> "The most significant expense of the company for the past years were arising from Commission Expense described in the AFS as the incentives given to the company's distributors. The amount of Commission Expenses being incurred are exceptionally high even higher than the cost of goods sold especially during the 2016 operation. Considering that the commission expenses in a distributorship are expected to be only a small percentage of revenue, the amount is expected to not exceed the cost of goods sold. Moreover, the trend of the commission expense is found to be, by the same means, corelated to the movement of revenue." (Emphasis supplied)

Fourth, the claim of NWORLD that its packages are not investment contracts because the profits earned by its

[10] SEC vs International Loan Network, Inc. (421 US 837)

distributor-investors are not dependent on the efforts of others has no merit because the evidence on record shows otherwise. Relative thereto, it bears emphasis that this grand scheme is operated and implemented by NWORLD, Mr. Nolasco and their conduits who clearly ensure that existing distributor-investors continue either to buy additional Investment Packages or sell the same to new investors by the promise of guaranteed returns in the form of commissions, incentives and bonuses. In this regard, the complaint on record which shows that distributor-investors are only after the guaranteed commissions, bonuses and incentives, and have no intent on selling NWORLD's products confirmed this.

Be that as it may, the Supreme Court has ruled in the Power Homes Case that in relation to the fourth element of the Howey test, the profits received by investors need not come "solely" from the efforts of others, contrary to what NWORLD has continuously asserted, as it is sufficient that the same merely comes <u>primarily</u> from the efforts of others, to wit:

> "After Howey came the 1973 US case of *SEC v. Glenn W. Turner Enterprises, Inc. et al.* In this case, the 9th Circuit of the US Court of Appeals ruled that the element that profits must come "solely" from the efforts of others should not be given a strict interpretation. <u>It held that a literal reading of the requirement "solely" would lead to unrealistic results. It reasoned out that its flexible reading is in accord with the statutory policy of affording broad protection to the public</u>. <u>Our R.A. No. 8799 appears to follow this flexible concept for it defines an investment contract as a contract, transaction or scheme (collectively "contract") whereby a person invests his money in a common enterprise and **is led to expect profits not solely but primarily from the efforts of others.**</u> Thus, to be a security subject to regulation by the SEC, an investment contract in our jurisdiction 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." (Emphasis supplied)

Applying the afore-quoted doctrine, the fact that the profits of existing distributor-investors consisting of the commissions, bonuses and incentives come from the efforts of new distributor-investors in their down-line, and from the efforts of NWORLD, Mr. Nolasco and their conduits for the sole purpose of sustaining the business, clearly makes the fourth element present.

Moreover, NWORLD's allegation that it is operating a direct selling method which foregoes the use of middlemen in selling its products and allows people to buy the same outside the usual retail system,[11] is likewise negated by its admission that its products are available in Watsons branches nationwide.[12] This, apparently, is an afterthought carefully designed to provide its Investment Packages a semblance of legitimacy, and make it appear that the profits from the sale of products *per se* are the source of the commissions, bonuses, and incentives paid to distributor-investors who sells Investment Packages. In this regard, the Commission notes that the complaints on record disclose that distributor-investors are really not intent on selling products because what they are after is the profit that they will receive from their purchase of the Investment Packages. For this reason, it is not surprising that while NWORLD was able to show that one of its products are available at Watsons, no proof was submitted to show that its sales therein are up. On account thereof, NWORLD'S argument that its products are registered with the FDA becomes irrelevant in the face of the substantial evidence which shows that these products are merely tools to facilitate sale of unregistered securities.

NWORLD also vigorously rebuked EIPD's resort to, and reliance on the evaluation and position of the Direct Selling Association of the Philippines (DSAP) on the business model of the company, for allegedly being self-serving and hearsay. NWORLD insists that, contrary to the position of DSAP, it is a legitimate direct selling company which has passed the 8-Point Test.

The Commission is not convinced.

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[11] Pars. 3 and 4 (page 9) of the Motion to Lift
[12] Par. 26 (Annexes "G-1" and "G-2") of the Verified Reply to Comment

While it may be true that the legitimacy of a direct selling enterprise is not dependent on a company's membership with DSAP, a careful examination of the evaluation and position of DSAP will readily show that the same merely confirms the earlier findings of the Commission on the unauthorized sale by NWORLD of unregistered securities. The absence of intent on the part distributor-investors to sell the products (as opposed to the Investment Packages) of NWORLD; the total dependence in terms of income, by existing distributor-investors on the number of new distributors who purchase Investment Packages under their respective down-lines; and the likelihood that the operations of NWORLD will immediately fail if the sale of Investment Packages is stopped, to name a few, are matters that were already established by evidence but were nonetheless pointed out by DSAP. In this regard, We hold that the Letter dated 10 March 2022 of DSAP constitutes substantial evidence, corroborative in nature, that bolsters the earlier findings of this Commission.

We cannot over-emphasize the fact that the Commission is mandated to ensure, among others, that only registered securities are offered/sold to the public, and that issuers of securities strictly comply with applicable laws, rules or regulations under pain of administrative and/or criminal liability should they fail to do so. Only in such manner will the development of the capital market and the protection of investors is assured and promoted. Hence, Section 64 of the SRC does not require that there be actual fraud before a CDO can be validly issued. It is sufficient that the Commission determines that an act or practice will operate as a fraud or is likely to cause grave or irreparable injury or prejudice to the investing public. The reason for the foregoing was explained by the Supreme Court in *Primanila Plans, Inc. v. SEC*,[13] to wit:

> "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. <u>There is good reason for this provision, as any delay in the restraint of acts that yield such results</u>

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

> can only generate further injury to the public that the SEC is obliged to protect.
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> xxx xxx xxx
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> It is beyond dispute that Primanila plans were not registered with the SEC. Primanila was then barred from selling and offering for sale the said plan product. A continued sale by the company would operate as fraud to its investors, and would cause grave or irreparable injury or prejudice to the investing public, grounds which could justify the issuance of a cease and desist order under Section 64 of the SRC. Furthermore, even prior to the issuance of the subject cease and desist order, Primanila was already enjoined by the SEC from selling and/or offering for sale pre-need products to the public. The SEC Order dated April 9, 2008 declared that Primanila failed to renew its dealer's license for 2008, prompting the SEC's NTD to issue a letter dated January3, 2008 addressed to Primanila's Chairman and Chief Executive Officer Eduardo S. Madrid, enjoining the company from selling and/or offering for sale pre-need plans to the public. It also had not obtained a secondary license to act as dealer or general agent for pre-need pension plans for 2008." (Emphasis supplied)

Given the foregoing disquisitions, the Commission does not find any cogent reason to disturb its earlier findings. The CDO should forthwith stand and be made permanent for the protection of the investing public.

WHEREFORE, premises considered, the *Verified Motion to Lift Cease and Desist Order* filed by ALPHANETWORLD CORPORATION doing business under the name and style of NWORLD is hereby **DENIED** for lack of merit. The Cease and Desist Order dated 23 February 2022 issued against the subject corporation, its president, directors, stockholders, officers, representatives, salesmen, solicitors, agents, uplines, enablers and influencers, and any and all persons claiming for and in their behalf, is hereby made **PERMANENT.**

The Enforcement and Investor Protection Department is hereby DIRECTED to: (a) serve this RESOLUTION to the President, General Manager, Corporate Secretary, Treasurer or In-House Counsel of ALPHANETWORLD CORPORATION doing business under the name and style of NWORLD; and (b) post copies of the RESOLUTION at the entrance of the main offices and/or branches, if any, of ALPHANETWORLD CORPORATION doing business under the name and style of NWORLD.

Let a copy of this RESOLUTION be also posted on the Commission's website; and published in a national newspaper of general circulation and furnished to all operating departments and offices of the Commission for their information and appropriate action.

The Enforcement and Investor Protection Department, in coordination with other concerned departments, is FURTHER DIRECTED to file a compliance with the Commission En Banc within ten (10) days from receipt of this RESOLUTION.

SO ORDERED.

Makati City, Philippines; 19 July 2022.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner