Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

In the Matter of

AMAN FUTURES GROUP PHILS INC.

SEC CDO Case No. 10-12-009

ENFORCEMENT AND PROSECUTION DEPARTMENT

Movant.

x----------x

ORDER

This resolves the Motion for Issuance of Cease and Desist Order filed by movant Enforcement and Prosecution Department ("EPD") on 5 October 2012.

The facts of the case as culled from the records are as follows:

Respondent Aman Futures Group Phils, Inc. ("Aman Futures") is a corporation duly registered and existing under Philippines laws under SEC Reg. No. CS201211620 issued on 22 June 2012.[1] Its principal office is located at Units 6 & 7 Bldg. 1, Salem International Commercial Complex, Domestic Road, Pasay City, with Manuel K. Amalilio, Fernando R. Luna, Lelian Lim Gan, Eduard L. Lim, William L. Fuentes, Naezzelle M. Rodriguez and Lurix Lopez as incorporators and directors.[2] The primary purpose of the corporation is "[t]o engage in, conduct and carry on the business of buying, selling, distributing, marketing at wholesale/retail basis in so far as may be permitted by law all kinds of goods such as but not limited to palm oil, gold, coconut oil, manganese, nickel, ore and any agricultural products, commodities, wares and merchandise of every kind and description, to enter into all kinds of contracts for import, export, purchase, acquisition, sale at warehouse/retail basis and other dispositions for its own account as principal or representative capacity as manufacturing representative, merchandise broker, commission merchant, factors or agents upon consignment of all kinds of goods, ware, merchandise or product whether natural or artificial."[3]

---

[1] Motion, Annex A.
[2] *Id.*, Annex B, at 2-3.
[3] *Id.*, at 1.

Aman Futures' Certificate of Incorporation states that juridical personality is granted to the corporation, "but does not authorize it to undertake business activities requiring a Secondary License from this Commission such as, but not limited to acting as: **broker or dealer in securities**, government securities eligible dealer (GSED), investment adviser of an investment company, close-end or open-end investment company, investment house, transfer agent, **commodity/financial futures exchange/broker/merchant**, financing company, pre-need plans and time shares/club shares/membership certificates issuers or selling agents thereof. Neither does this Certificate constitutes as permit to undertake activities for which other government agencies require a license or permit."[4]

The EPD alleges that it "has been continuously receiving reports both personal and through phone queries, including emails, from concerned citizens and other government agencies, of an alleged double your money scam that is being perpetrated by Aman Futures in Pagadian City and other parts of Visayas and Mindanao."[5] According to these reports, "Aman Futures is soliciting investments from the public, promising a rate of return from 30% to as high as 60%," and that "[p]eople are allegedly lining up every day in order to invest their hard earned money in the hope of receiving the promised return."[6] Thus, the EPD launched an investigation "in order to look into the operations of Aman Futures."[7]

On 17 August 2012, while the investigation by the EPD was ongoing, a Memorandum to the EPD was issued by the Market Regulation Department (MRD) regarding the former's request for comment/recommendation on the proposed application for registration with the Commission of the Articles of Incorporation and By-laws of Aman Investment Opportunities Inc. ("Aman Opportunities") as an Investment House. The MRD noted that per its review of the records of Aman Futures and Aman Opportunities, it was discovered that save for Isagani Laluna, all the incorporators and directors of Aman Futures are also the incorporators and directors of Aman Opportunities.[8] The MRD also noted the reports gathered from the Commission's Zamboanga extension office reveal that Aman Futures might be engaged in illegal activities, which was reiterated by Director Mark Florendo of the Zamboanga Extension Office.[9]

On 6 September 2012, a conference was held with Aman Futures and its directors and officers "to shed light on the allegations of engaging in pyramiding or ponzi scheme by the corporation."[10] During the conference, Atty. Isagani Laluna, Corporate Secretary of Aman Futures and Lurix B. Lopez, one of its directors,

---

[4] Annex A. Emphasis supplied.
[5] Motion for Issuance of Cease and Desist Order, at 3.
[6] *Id.*, at 3.
[7] *Id.*
[8] *Id.*, at 2.
[9] *Id.*
[10] Motion for Issuance of Cease and Desist Order, at 3.

detailed the activities of Aman Futures before the investigating panel. They claimed that Manuel K. Amalilio, a Filipino of Malaysian descent, is allegedly a long-time trader in futures commodities in Malaysia and Japan. Believing that Aman Futures may engage in commodities trading activities, the company started accepting investments (money placements) from investors for the purpose of trading in commodities abroad, specifically in Malaysia, with the promise to return the principal with a good rate of return or interest.[11] The operational scheme of Aman Futures is narrated by Atty. Laluna and Mr. Lurix B. Lopez as follows:

> "xxx we have a domestic corporation, AMAN FUTURES GROUP PHILS. INC., headed by Manuel K. Amalilio as Chairman and CEO, that receives or accepts investments or money placements from a growing number of investors. xxx. The client signs an Investment Agreement/Profit Sharing xxx with AMAN FUTURES, where the "investor will entrust money in favor of the Agent AMAN FUTURES, and the Agent agrees to return the entire sum in the form of post-dated checks plus investment profit." **The profit ranges from 15% to 30%, or even as high as 40%.** xxx.
>
> "xxx AMAN FUTURES accepts the investment either in the form of check, or the investor opens a bank account where he puts his investment, transfers this amount to the bank account of AMAN FUTURES, **and at the end of the 20 or 30-day period, AMAN FUTUES puts into the investor's account the principal, plus the profit ranging from 15%-40%,** xxx.
>
> ON THE TRADING ASPECT
>
> "AMAN FUTURES has a Customer Agreement with OKACHI (MALAYSIA) SDN. BHD, a broker in Malaysia with address at Level 8 Pavilion KL, 168 Jalan Bukit Bintang, 55100 Kuala Lumpur, Malaysia, which is backed up by a bigger financial entity, OKACHI (JAPAN), which provides financial backing to OKACHI (MALAYSIA). xxx.AMAN FUTURES maintains a huge dollar account with OKACHI (MALAYSIA). Upon trading advisory/advice from Mr. Amalilio (acting as Trader on behalf of AMAN FUTURES), OKACHI (MALAYSIA) engages in commodity futures trading (e.g. oil, manganese, palm oil, nickel, etc.)
>
> "xxx this trading is conducted using the huge dollar account of AMAN FUTURES with OKACHI (Malaysia). The dollar-denominated profits from such trading are claimed by and remitted to AMAN FUTURES, with appropriate conversion to Philippine Pesos xxx. **On rare occasions, AMAN FUTURES utilizes funds from the local investments/deposits, converted into dollars, and transmitted via telegraphic transfer to the dollar account with OKACHI (MALAYSIA)** xxx."[12] (emphasis supplied)

During the conference, Atty. Laluna also confirmed that they have a pending

---

[11] *Id.*, at 3-4.
[12] Annex D, at 2-3.

application for certificate of registration of Aman Oportunities which will take over the activities of Aman Futures. According to him, Aman Oportunities will also apply for a secondary license in order for it to be able to engage in the activities of Aman Futures.[13]

It also appears that Aman Futures, by its own admission, has been able to collect PhP244,000,000.00 from its investors.[14]

Aman Futures claims that it is "dealing in futures commodities, which was done in good faith without knowing fully well that there is a need for a special permit/secondary license to engage in such."[16] However, the EPD "continues to receive reports that Aman Futures still continues to solicit investments from the public without the required secondary license from the Commission."[17]

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"[18] and includes an investment contract,[19] which is defined as 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."[20]

The concept of an investment contract in the Philippines is of American origin. It traces its roots from *SEC v. W.J. Howey Co.*[21] where the US Supreme 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.[22] Note, however, 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."[23] In other words, it was the intent of Congress to cover a wide range of investment transactions, in whatever form they are made and by whatever name they are called, in order to protect the investors through mandatory disclosure.[24]

---

[13] Motion for Issuance of Cease and Desist Order, at 4; Annex D, at 4.
[14] Annex B of Annex D.
[16] Annex D, at 3.
[17] Motion for Issuance of Cease and Desist Order, at 7.
[18] Section 3.1., R.A. 8799, otherwise known as the Securities Regulation Code (SRC).
[19] Section 3.1.(b), id.
[20] SRC Rule 3(1)(G), Amended Implementing Rules and Regulations (IRR) of the SRC.
[21] *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244, 163 A.L.R. 1043 (1946).
[22] *Id.*
[23] *Id.*
[24] *Id.*

SEC v. Glenn W. Turner Enterprises, Inc.[25] thereafter held that the element that profits must come "solely" from the efforts of others should be liberally construed because 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.[26] Because of this, it is no longer necessary that the expected profit accrue solely from the efforts of others.[27]

The concept of an investment contract has since been transported in the Philippines, thus, for example, in *Power Homes Unlimited Corporation v. Securities and Exchange Commission*[28] the Philippine Supreme Court stated that an investment contract in our jurisdiction, to be a security subject to regulation by the SEC, must be proved to be (a) an investment of money, (b) in a common enterprise, (c) with expectation of profits, (d) 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.[29]

Measured by the foregoing yardstick, it appears that Aman Futures is engaged in offering and selling securities in the form of investment contracts.

In the instant case, as admitted by Atty. Laluna and Mr. Lurix B. Lopez, Aman Futures, through its Chairman and CEO Manuel K. Amalilio, "receives or accepts investments or money placements from a growing number of investors." The investor entrusts money in favor of Aman Futures, and the latter "agrees to return the entire sum in the form of post-dated checks plus investment profit," which "ranges from 15% to 30%, or even as high as 40%."

Likewise, the 15% to as high as 40% profit of Aman Futures is primarily dependent in its expertise or efforts, more particularly in the person of Mr. Amalilio, its Chairman and CEO.

As previously intimated also, Aman Futures receives or accepts investments or money placements from a growing number of investors with an agreement to return the entire sum in the form of post-dated checks plus investment profit, which ranges from 15% to 30%, or even as high as 40%. Thus, it appears that what lures investors in parting with their money is the promise and corresponding expectation of high returns or profits.

---

[25] 474 F. 2d 476, 414 U.S. 821, 94 (1973).
[26] *Id.*
[27] *Robinson v. Glynn*, 349 F.3d 166 (4th Cir. 2003); *SEC v. Glenn W. Turner Enterprises, Inc.*, 474 F.2d 476 (1973).
[28] G.R. No. 164182, 26 February 2008.
[29] *Investment Co. Institute v. Camp*, 274 F. Supp. 624 (D. D.C. 1967).

Lastly, the profits derived by the investors are derived primarily from the efforts of Aman Futures via Mr. Amalilio, its Chairman and CEO. The participation of investors is limited in investing money with Aman Futures.

In view of the above discussions, we see four (4) grave violations by Aman Futures.

First, non-registration of securities. Under the law, unless what is involved are exempt securities[30] or exempt transactions[31] which are not covered by the

---

[30] Section 9.1., SRC. "The requirement of registration under Subsection 8.1 shall not as a general rule apply to any of the following classes of securities:

> "(a) Any security issued or guaranteed by the Government of the Philippines, or by any political subdivision or agency thereof, or by any person controlled or supervised by, and acting as an instrumentality of said Government.
>
> "(b) Any security issued or guaranteed by the government of any country with which the Philippines maintains diplomatic relations, or by any state, province or political subdivision thereof on the basis of reciprocity: xxx
>
> "(c) Certificates issued by a receiver or by a trustee in bankruptcy duly approved by the proper adjudicatory body.
>
> "(d) Any security or its derivatives the sale or transfer of which, by law, is under the supervision and regulation of the Office of the Insurance Commission, Housing and Land Use Regulatory Board, or the Bureau of Internal Revenue.
>
> "(e) Any security issued by a bank except its own shares of stock."

[31] Section 10.1., SRC. "The requirement of registration under Subsection 8.1. shall not apply to the sale of any security in any of the following transactions:

> "(a) At any judicial sale, or sale by an executor, administrator, guardian or receiver or trustee in insolvency or bankruptcy.
>
> "(b) By or for the account of a pledge holder, or mortgagee or any other similar lien holder selling or offering for sale or delivery in the ordinary course of business and not for the purpose of avoiding the provisions of this Code, to liquidate a *bona fide* debt, a security pledged in good faith as security for such debt.
>
> "(c) An isolated transaction in which any security is sold, offered for sale, subscription or delivery by the owner thereof, or by his representative for the owner's account, such sale or offer for sale, subscription or delivery not being made in the course of repeated and successive transactions of a like character by such owner, or on his account by such representative and such owner or representative not being the underwriter of such security.
>
> "(d) The distribution by a corporation, actively engaged in the business authorized by its articles of incorporation, of securities to its stockholders or

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.[32] 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.[33] As discussed above, Aman Futures appears to be engaged in the offering and selling of securities in the form of investment contracts which need prior registration with the Commission.

---

other security holders as a stock dividend or other distribution out of surplus.

"(e) The sale of capital stock of a corporation to its own stockholders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with the sale of such capital stock.

"(f) The issuance of bonds or notes secured by mortgage upon real estate or tangible personal property, where the entire mortgage together with all the bonds or notes secured thereby are sold to a single purchaser at a single sale.

"(g) The issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security surrendered in exchange to make such conversion: xxx

"(h) Broker's transactions, executed upon customer's orders, on any registered Exchange or other trading market.

"(i) Subscriptions for shares of the capital stock of a corporation prior to the incorporation thereof or in pursuance of an increase in its authorized capital stock under the Corporation Code, when no expense is incurred, or no commission, compensation or remuneration is paid or given in connection with the sale or disposition of such securities, and only when the purpose for soliciting, giving or taking of such subscriptions is to comply with the requirements of such law as to the percentage of the capital stock of a corporation which should be subscribed before it can be registered and duly incorporated, or its authorized capital increased.

"(j) The exchange of securities by the issuer with its existing security holders exclusively, where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange.

"(k) The sale of securities by an issuer to fewer than twenty (20) persons in the Philippines during any twelve-month period.

"(l) The sale of securities to any number of the following qualified buyers:

"xxx."

[32] Section 8.1., SRC.
[33] *Id.*

Second, non-registration as broker or dealer. The law provides that no person shall engage in the business of buying or selling securities in the Philippine as a broker or dealer unless registered as such with the Commission.[34] In the instant case, it appears that not only is Aman Futures soliciting and accepting investments from the public despite the fact that the company has not registered said investment contracts with the Commission, but is likewise acting as either broker or dealer without being registered as such.

Third, engaging in commodity futures contract. Under the law, no person shall offer, sell or enter into commodity futures contracts except in accordance with rules, regulations and orders the Commission may prescribe in the public interest. The Commission shall promulgate rules and regulations involving commodity futures contracts to protect investors to ensure the development of a fair and transparent commodities market.[35] Be that as it may, the public trading of commodities futures contracts is suspended until further ordered otherwise by the Commission.[36]

Under Rule 1(1) of the Revised Rules of Commodity Futures Trading,[37] a "commodity pool operator" is defined as "any person engaged in a business which is of the nature of an investment trust, syndicate or similar form of enterprise, and who, in connection therewith, solicits, accepts or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities or otherwise, for the purpose of trading in any commodity except otherwise contemplated under special laws. On the other hand, under the New Rules and Regulations on Future Trading,[38] a fund manager is "any person engaged in a business which is of the nature of pooled funds, investment trust or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, money for the sole purpose of trading in any futures contract."

Here, Aman Futures admits that Mr. Amalilio, its Chairman and CEO, invited investors, especially low-income earners, allegedly, to help them alleviate their financial conditions.[39] In order to pursue its objective, Aman Future "receives or accepts investments or money placements from a growing number of investors"[40] and, in order to facilitate its commodities futures investments, Aman Futures has a customer agreement with Okachi (Malaysia) Sdn. Upon instruction of Mr. Amalilio, Okachi (Malaysia) engages in "commodity futures trading (e.g. oil, manganese, palm oil, nickel, etc.)."[41]

---

[34] Section 28.1., SRC.
[35] Section 11, SRC.
[36] SRC Rule 11(4), Amended IRR of SRC.
[37] Effective 1 January 1983.
[38] Promulgated on 09 July 1999.
[39] Annex B, at 2.
[40] *Id.*, at 3.
[41] *Id.*

Fourth, commission of *ultra vires* acts. No corporation shall possess or exercise any corporate powers except those conferred by the Corporation Code or by its Articles of Incorporation and except such as are necessary or incidental to the exercise of the powers so conferred.[42] In this case, the business scheme of Aman Futures is off-tangent with the primary purpose of the company, which, as stated in its Articles of Incorporation, is that of a general trading company. Nowhere in the primary purpose of Aman Futures is it stated that the company can engage in the business of soliciting and accepting investments and money placements from the public. Incidentally, Aman Futures' Certificate of Incorporation states that it is not authorized to undertake business activities requiring a Secondary License from the Commission such as, but not limited to acting as **broker or dealer in securities**, government securities eligible dealer (GSED), investment adviser of an investment company, close-end or open-end investment company, investment house, transfer agent, **commodity/financial futures exchange/broker/merchant**, financing company, pre-need plans and time shares/club shares/membership certificates issuers or selling agents thereof. Neither does the Certificate serve as a permit to undertake activities for which other government agencies require a license or permit.

Thus, taken as a whole, the acts of Aman Futures complained of, 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.

PREMISES CONSIDERED, Aman Futures Group Phils. Inc., its officers, directors, agents, representatives, conduits, assigns, and any and all persons claiming and acting for and in behalf and under their authority are hereby ordered to **IMMEDIATELY CEASE AND DESIST,**[43] **UNDER PAIN OF CONTEMPT, from further offering, soliciting, or otherwise offering or selling unregistered securities to the public, such as, but not limited to, investment contracts, pooling of funds, investment trusts, or similar forms, and, in connection therewith, soliciting, accepting or receiving from others, money for the purpose of trading in any futures contract.**

Moreover, to forestall grave damage and prejudice to all concerned and to ensure the preservation of the assets for the benefit of the investors, respondents or any of their representatives, or any person/s acting for and in their behalf, and such other persons directing or controlling the activities of such corporation, officers, representatives, salesmen and agents, are all **ENJOINED from a) transacting any and all business involving the funds in its depository banks, and b)**

---

[42] Section 45, Corporation Code of the Philippines.

[43] 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 a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

xxx

from transferring, disposing or conveying in any other manner any and all assets, properties, real or personal, and including bank deposits, if any, of which the named persons herein may have any interest, claim or participation whatsoever, whether directly or indirectly, under their custody, immediately upon receipt of this Order, until further orders from this Commission.

The Enforcement and Prosecution Department is hereby **DIRECTED** to: (a) serve this Order on the President, General Manager, Corporate Secretary, Treasurer or In-House Counsel of Aman Futures Group Phils, Inc. (b) post copies of the Order at the entrance of the main office and/or branches, if any, of Aman Futures Group Phils, Inc. Let a copy of this Order be also posted in the Commission's website and published in a national newspaper of general circulation.

Let a copy of this Order be furnished the Company Registration and Monitoring Department, the Corporation Finance Department and the Economic Research and Information Department for their information and appropriate action.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Mandaluyong City; 08 October 2012.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E.CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner