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

In the Matter of:

BETTER ADSOURCE SYSTEM, INC. / BETTER ADSOURCE ADVERTISING SERVICES

SEC CDO Case No. 09-19-056

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),
Movant.
x----------x

CEASE AND DESIST ORDER

This resolves the *Motion for Issuance of Cease and Desist Order*[1] (referred to as the "*Motion*"), filed by the Commission's EIPD, against BETTER ADSOURCE SYSTEM, INC./BETTER ADSOURCE ADVERTISING SERVICES, INC., its officers, salesmen, agents, representatives and any and all persons claiming and acting for and in their behalf, to cease and desist from engaging in the offer and/or sale of securities, in the form of investment contract, until the requisite registration statement is duly filed and approved by the Commission and the corresponding license to offer/sell is issued.

RELEVANT FACTS

Respondent, BETTER ADSOURCE SYSTEM, INC. /BETTER ADSOURCE ADVERTISING SERVICES ("BETTER ADSOURCE" for brevity), is an entity that is not registered and organized either as a partnership or a corporation with the Commission. Also, BETTER ADSOURCE is not authorized to solicit investments securities from the public considering that it has not secured prior registration and/or license from the same Commission as prescribed under Sections 8 and 28 of the Securities Regulation Code[2]

[1] Dated 27 September 2019.
[2] Republic Act No. 8799.

SEC OGC
CERTIFIED TRUE COPY OF
THE DOCUMENTS ON RECORD
PAGE 1 OF 12 PAGES
BY:

(SRC). In its social media posts[3], persons in the name of CARLO MANAOG, (Chief Operations Officer), VICTOR RAQUIPISO, (Chief Operations Officer), and RODRIGO P. LUGOD, JR. (System Operator), appear to be the persons managing and operating the company. Its principal office is located at BASS Advertising, Barangay Bancal, Carmona, Cavite[4].

On 24 September 2019, the EIPD, acting on an anonymous complaint, went through the internet and discovered the postings[5] of BETTER ADSOURCE on its social media site and web pages relative to its investment taking activity. The disclosure prompted the EIPD to investigate *motu proprio* for possible violations of the SRC, Revised Corporation Code of the Philippines and such other rules and regulations implemented by the Commission.

To further bolster its allegations, EIPD gathered all the relevant information found in BETTER ADSOURCE's website[6] to determine whether its activities are within the jurisdiction of the Commission and whether they are compliant with the laws, rules and regulations being implemented by the Commission.

Based on the information gathered, it was established that BETTER ADSOURCE offers and deals the following subscription types of contract under its compensation plan, namely:

a. **MINER**
   - One Thousand Five Hundred Pesos (Php 1,500.00) investment;
   - One (1) Silver jewelry business starter kit; and
   - Accident / Accidental Death Insurance package worth One Thousand Five Hundred Pesos (Php 1,500.00) with approximately Thirty Thousand Pesos (Php 30,000.00) benefits.

b. **GOLD**
   - Three Thousand Pesos (Php 3,000.00) investment;
   - Two (2) Perfumes (60 ml);
   - One (1) Silver jewelry business starter kit; and

SEC OGC
CERTIFIED TRUE COPY OF
THE DOCUMENTS ON RECORD
PAGE 2 OF 12 PAGES
BY

[3] Attached hereto as **Annex "A"** of the *Motion*.
[4] Attached hereto as **Annex "B"** of the *Motion*.
[5] Attached hereto as **Annex "C"** of the *Motion*.
[6] Affidavit on the compilation of internet postings executed by the elements of EIPD attached herewith as **Annex "D"** of the *Motion*.

- Accident / Accidental Death Insurance package worth One Thousand Five Hundred Pesos (Php 1,500.00) with approximately Thirty Thousand Pesos (Php 30,000.00) benefits.

c. **PLATINUM**
- Five Thousand Pesos (Php 5,000.00) investment;
- Three (3) Perfumes (60 ml);
- One (1) Silver jewelry business starter kit;
- One (1) 20-in-1 Coffee Mix;
- E-Loading business sim activation (1 Sim Load All); and
- Accident / Accidental Death Insurance package worth One Thousand Five Hundred Pesos (Php 1,500.00) with approximately Thirty Thousand Pesos (Php 30,000.00) benefits.

d. **RHODIUMs**
- Ten Thousand Pesos (Php 10,000.00) investment;
- Six (6) Perfumes (60 ml);
- One (1) Silver jewelry business starter kit;
- Two (2) 20-in-1 Coffee Mix;
- Two (2) Bath Sets;
- E-Loading business sim activation (1 Sim Load All); and
- Accident / Accidental Death Insurance package worth One Thousand Five Hundred Pesos (Php 1,500.00) with approximately Thirty Thousand Pesos (Php 30,000.00) benefits.

e. **TECHNETIUM**
- Fifty Thousand Pesos (Php 50,000.00) investment;
- One (1) Silver jewelry business starter kit;
- Ten (10) 20-in-1 Coffee Mix;
- Ten (10) Bath Sets;
- Assorted Silver Pieces of Jewelry worth Ten Thousand Pesos (Php 10,000.00);
- E-Loading business sim activation (1 Sim Load All);
- Accident / Accidental Death Insurance package worth One Thousand Five Hundred Pesos (Php 1,500.00) with approximately Thirty Thousand Pesos (Php 30,000.00) benefits; and
- Area Distributorship.

The abovementioned subscription plans are likewise boosted by their so called "Unilevel Referral Program" which entitles the investor to full

SEC OGC
CERTIFIED TRUE COPY OF
THE DOCUMENTS ON RECORD
PAGE 3 OF 12 PAGES
BY

compensation bonus regardless of the type of subscription that he/she has purchased.

It was further established that existing investors will get Ten Percent (10%) of the fees paid by persons referred by them who secures GOLD and PLATINUM Accounts while Fifteen Percent (15%) for RHODIUM and TECHNETIUM Accounts.

Finally, all subscribers will get Ten Percent (10%) for each First Level Indirect Referrals enrolled by their Direct Referrals and an additional Three Percent (3%) for every Second Level Indirect Referrals.

On 25 September 2019, EIPD requested from the following Operating Departments for certification on the registration status of respondent BETTER ADSOURCE based on the existing records of the Commission: (1) the Company Registration and Monitoring Department (CRMD) on BETTER ADSOURCE's primary franchise either as a corporation or partnership; (2) the Markets and Securities Regulation Department (MSRD) on BETTER ADSOURCE's secondary license to offer or issue securities to the public pursuant to Sections 8 and 12 of the SRC; and (3) the Corporate Governance and Finance Department (CGFD) on BETTER ADSOURCE's license as a registered issuer of mutual funds including exchange traded funds, membership certificates, and time shares.

Acting on the foregoing request, the CRMD, MSRD, and CGFD all issued their negative certifications[7] on respondent BETTER ADSOURCE.

On the basis of the foregoing and in order to protect the public, the Commission issued an ADVISORY[8] to inform and alert the public on the illegal scheme and investment taking activities carried out by the respondent, thus:

> "The public is advised NOT TO INVES T or STOP INVESTING in any investment scheme being offered by BETTER ADSOURCE SYSTEM, INC. and BETTER ADSOURCE ADVERTISING SERVICES and to exercise caution in dealing with any individuals or group of persons soliciting investments for and on behalf of it."

The public was further warned that BETTER ADSOURCE

[7] Copies of the certifications appropriate Operating Departments attached hereto as **Annex "E", "F", and "G"** respectively.
[8] Dated 25 September 2019.

SEC OGC
CERTIFIED TRUE COPY OF
THE DOCUMENTS ON RECORD
PAGE 4 OF 12 PAGES
BY

has not been issued primary and/or secondary license to publicly offer or sell securities by the Commission.

With the foregoing considered, we now resolve.

We find the *Motion* impressed with merit.

The Commission's jurisdiction, supervision and control over all corporations, partnerships or associations, who are grantees of primary franchises and/or a license or permit issued by the government to operate in the Philippines, is absolute.[9] Under Section 3 of P.D. 902-A[10], the law mandated the SEC to ensure that investment in regulated entities are not only encouraged, but protected as well, and in a manner that will promote economic development.

Securities cannot be sold or offered for sale within the Philippines without having it registered with the Commission through the filing and consequent approval of a Registration Statement. Evidence presented, based on the certifications issued by the CRMD, MSRD and CGFD, that no application for registration of its securities was filed with the Commission. The requirement for registration of securities is a mandatory requirement under Section 8, of the SRC thus:

> "**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 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."

Records show that BETTER ADSOURCE knowingly and willfully claimed and represented to the public to be a registered corporation despite full awareness that no license or primary franchise was issued and duly approved by the Commission. The foregoing constitutes fraudulent misrepresentation, a prohibited act under paragraph 26.1, Rule 26 of the 2015 Implementing Rules and Regulation (IRR) of the SRC:

SEC OGC
CERTIFIED TRUE COPY OF
THE DOCUMENTS ON RECORD
PAGE 5 OF 12 PAGES
BY:

[9] Union Glass & Container Corporation, et al. vs. The Securities and Exchange Commission, et al., 126 SCRA 38.

[10] Reorganization of the Securities and Exchange Commission with Additional Power Placing the Said Agency Under the Administrative Supervision of the Office of the President.

"Rule 26 - **Fraudulent Transactions. 26.1.** It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities to: (i) employ any device, scheme, or artifice to defraud; (ii) **obtain money or property by means of any untrue statement of a material fact of any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;** or (iii) engage in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person."(Boldface ours).

Records also show that BETTER ADSOURCE has been engaged in the offer and/or sale of securities to the public, in the form of investment contracts, without the requisite registration statement duly filed and approved by the Commission.

Section 3.1 of the SRC defines securities as:

"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:

xxx

(b) Investment contracts, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription;

xxx."

Based on the evidence presented, BETTER ADSOURCE is offering and soliciting money placement of investments from the public with a promise of return, through a number of packages offered under the pretext of subscription contracts of its compensation plan, to wit:

a. Referral Program - Earn from referring others up to third level indirect referrals. Pairing Bonuses are also awarded.

b. Completion Bonus - Earn unlimited Five Hundred Pesos (Php 500.00) every time a subscriber completed a fourth level referral;

c. Referral Bonus Pool - Passive income that give earnings with or without referrals. The Referral Bonus Pool is accumulated every time there is a new Referral Pay-in. 10% of

SEC OGC
CERTIFIED TRUE COPY OF
THE DOCUMENTS ON RECORD
PAGE 6 OF 17 PAGES
BY:

the subscription fee will go to the Referral Bonus Pool which will be distributed to all subscribers based on the stake they are holding. The Referral Bonus Pool will be distributed to subscribers every 24th day of the month;

d. Profit-Sharing Pool - Passive income that gives income in every sale made by the company; In every repeat order made by a subscriber, and offline direct sales, 10% will be added to the Profit Share Pool which will be distributed every 24th of the month among all stake holders base on the stake they hold;

e. Gadget & Prepaid Load Incentive - Earn loyalty points known as "blp" in every progress or activity a subscriber made in the system. These loyalty points are used to redeem Prepaid Loads and Gadgets like Phones, Tablets, and Laptops;

f. Income from Sales - Earn from direct selling. Subscribers will enjoy up to 50% discount on products;

g. Area Distributorship - Earn from all sales in a subscriber's area of responsibility. Whether they made the sale, or the customer will directly purchase from the company, the commission will go to their account; and

h. Bitcoin - Reward Faucet. Claim Bitcoin Rewards from the Company's Faucets every 15 minutes. BETTER ADSOURCE claims that it is a great way for its subscribers to earn money during their vacant time stating that thousands of pesos has been claimed for the first 2 weeks of its implementation.

Under the investment scheme being implemented by BETTER ADSOURCE, an investor is entitled to receive passive income from the pool of investments gathered/obtained from all subscribers, while active income is acquired from recruitment bonuses.

The allegations presented by EIPD which are duly supported by evidence clearly show that BETTER ADSOURCE is engaged in the offer and/or sale of securities to the public, in the form of investment contract, without the requisite license from the Commission.

SEC OGC
CERTIFIED TRUE COPY OF
THE DOCUMENTS ON RECORD
PAGE 7 OF 12 PAGES
BY

Parenthetically, an investment contract is defined under Section 26.3.5 of the 2015 Implementing Rules and Regulations (IRR) of the SRC to wit:

> "xxx.
>
> 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."

The elements of an investment contract were enumerated in the case of *Power Homes Unlimited Corporation vs SEC*[11] are as follows: (1) investment of money, (2) in a common enterprise, (3) with expectation of profits, (4) primarily from the efforts of others.

The foregoing is based on the Howey Test which was used in *SEC vs Howey Co.*[12], by the U.S. Supreme Court thus:

> "Investment contract has been defined as a contract or scheme for the placing of capital or laying out of money in a way intended to secure income or profit from its employment. It has been applied to a variety of 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."

The evidence presented indicate that BETTER ADSOURCE is engaged in the offer and/or sale of investment contracts as defined. Respondent BETTER ADSOURCE is offering an opportunity to contribute money to a common pool and to receive passive income therefrom and/or active income through the "Referral Program". Investors are not concerned of the products; they are attracted solely by the prospects of a guaranteed high return on their investment.

On the basis of foregoing, all the elements of investment contract are present in the instant case. The subscriptions being offered by BETTER ADSOURCE are investment contracts because investors who subscribed and paid for its investment packages were actually investing in a common

[11] G.R. No. 164182, 26 February 2008.
[12] 328 U.S. 293 (1946).

SEC OGC
CERTIFIED TRUE COPY OF
THE DOCUMENTS ON RECORD
PAGE 8 OF 12 PAGES
BY:

enterprise and were expecting a guaranteed return based on the accumulated subscription fees or pay-ins which were made possible through the efforts of others.

Moreover, the direct referral scheme of BETTER ADSOURCE also falls within the concept of investment contract because a person who parts with his/her money does so with the expectation of profit to be generated from direct/indirect referral income which is made possible by the efforts of others. It follows that the arrangements whereby the investors' interests are made manifest involve investment contracts, regardless of the legal terminology used for the same.

It is undisputable that the act of respondent BETTER ADSOURCE in publicly presenting its investment schemes, through its social media platforms, enticing investors to join and place their money to a common pool managed by it, is a form of solicitation or dealing in securities that requires prior approval from the Commission as further defined in the following provisions[13]:

> **"Dealing in securities** includes making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to acquiring, disposing of, subscribing for securities.
>
> **Solicitation** is the act of seeking or asking for business or information which includes the act of providing information about a security or investment product being offered for sale with the view of making another person a client or closing or bringing in a sale or purchase of security or investment product. The solicitor need not be a signatory to any contract relative to such offer or sale of the security."

Further, the acts of respondent BETTER ADSOURCE also constitute public offering as defined under paragraph 3.1.17, Rule 3, of the 2015 IRR, to wit:

> **"3.1.17 - "Public Offering** is any offering of securities to the public or to anyone who will buy, 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:
>
> 3.1.17.1 Publication in a newspaper, magazine or printed

[13] *Ibid.*

SEC OGC
CERTIFIED TRUE COPY OF
THE DOCUMENTS ON RECORD
PAGE 9 OF 12 PAGES
BY:

reading material which is distributed within the Philippines or any part thereof;

3.1.17.2 Presentation in any public or commercial place;

3.1.17.3 Advertisement or announcement in any radio, telephone, electronic communications, information communication technology or any other forms of communication; or

3.1.17.4 Distribution and/or making available flyers, brochures or any offering material in a public or commercial place, or to prospective purchasers through the postal system, information communication technology and other means of information distribution."

Finally, this Commission would like to emphasize that the registration of securities is a mandatory requirement imposed by law to protect the investing public and to promote investor confidence in a credible and reliable capital market.

Accordingly, BETTER ADSOURCE's offering and /or selling of securities, in the form of investment contract, without the necessary license or permit constitutes fraud on investors and is likely to cause grave or irreparable injury or prejudice to the investing public.

WHEREFORE, premises considered, BETTER ADSOURCE SYSTEM, INC. / BETTER ADSOURCE ADVERTISING SERVICES, its representatives, salesmen, agents AND ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND IN THEIR BEHALF, are hereby **ORDERED** to **immediately CEASE AND DESIST, UNDER PAIN OF CONTEMPT**, from further engaging in activities of selling and/or offering for sale of securities, in the form of investment contracts, or any other activities/transactions of the same nature as discussed in the *Order*, until the requisite registration statement is duly filed with and approved by the Commission and the corresponding permit to offer/sell is issued.

Furthermore, to forestall grave damage and prejudice to all concerned, and to ensure the preservation of assets for the benefit of investors, BETTER ADSOURCE SYSTEM, INC. / BETTER ADSOURCE ADVERTISING SERVICES, 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 entity, its representatives, salesmen, agents, are all **ENJOINED from**

(a) transacting any and all business involving the funds in its depositary

CERTIFIED TRUE COPY OF
THE DOCUMENTS ON RECORD
PAGE 10 OF 12 PAGES
BY:

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

Finally, BETTER ADSOURCE SYSTEM, INC. / BETTER ADSOURCE ADVERTISING SERVICES, its salesmen, agents, representatives and any and all persons claiming and acting for and in their behalf, are directed to **CEASE** from using, operating and maintaining its internet platform or application relative to the investment-taking activities covered by this Order. The Commission will institute appropriate administrative and criminal action against any person/s or entities found to act as solicitors, information providers, salesmen, agents, brokers, dealers or the like for and in behalf of BETTER ADSOURCE.

The EIPD is hereby **DIRECTED** to:

1.) serve this *Orde*r to BETTER ADSOURCE SYSTEM, INC. / BETTER ADSOURCE ADVERTISING SERVICES., its OWNERS, PRINCIPALS, GENERAL MANAGER, OFFICERS, and persons who are named and identified in the said *Motion*;

2.) post copies of the *Order* at the entrance of the main office and/or branches, if any, of BETTER ADSOURCE SYSTEM, INC. / BETTER ADSOURCE ADVERTISING SERVICES.

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 posted in the Commission's website.

SEC OGC
CERTIFIED TRUE COPY OF
THE DOCUMENTS ON RECORD
PAGE 11 OF 12 PAGES
BY

In accordance with the provisions, of Sec. 64.3[14] of the SRC and Sec. 4-3, Rule IV, Part II of the 2016 Rules[15], the parties subject of the *Cease and Desist Order* may file a motion for lifting to the *Commission en Banc*, through the Office of the General Counsel, within five (5) days from receipt hereof.

SO ORDERED.

Pasay City, Philippines; 17 October 2019.

EMILIO B. AQUINO*
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

**on official travel*

[14] Section 64.3. Any person against whom a cease and desist order was issued may, within five (5) days from the receipt of the Order, file a formal request for a lifting thereof. Xxx.
[15] The 2016 Rules of Procedure of the Securities and Exchange Commission.

SEC OGC
CERTIFIED TRUE COPY OF
THE DOCUMENTS ON RECORD
PAGE 12 OF 12 PAGES
BY: