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

In the Matter of:

E-TON PHIL TRADING NON-SPECIALIZED WHOLESALE TRADING/ETON TRADING/ETON PHIL TRADING/ ETON TRADING: PROFIT SHARING formerly known as FIN TRADING

SEC CDO Case No. 06-23-103
Promulgated: 15 June 2023

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.
x----------x

CEASE AND DESIST ORDER

This resolves the *Motion for Issuance of a Cease and Desist order (the "Motion")* filed on 06 June 2023 by the Enforcement and Investor Protection Department (EIPD), praying that an Order be issued directing **E-TON PHIL TRADING NON-SPECIALIZED WHOLESALE TRADING/ETON TRADING/ETON PHIL TRADING/ETON TRADING: PROFIT SHARING and also formerly known as FIN TRADING, PRINCESS SAMSON CABUNGCAL-FRIAS (**reported and known to be the CEO of FIN TRADING and ETON TRADING**) and ELTON JOHN MALABARBAS** (DTI registered owner of ETON TRADING) [collectively referred to as the "Subject Entities"], its officers, representatives, salesmen, and all persons, conduit entities and subsidiaries claiming and acting for and in its behalf (the "Agents") to cease and desist from further engaging in the sale and/or offer of securities in the form of investment contracts as they have no license/permit to offer/sell securities from the Commission.

The **EIPD** also prays that the Subject Entities and their Agents be immediately prohibited from transacting any and all business involving the funds in their depository banks, and/or from transferring, disposing,

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or conveying in any other manner, any and all assets, properties, real or personal, 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, without the prior written authority from the Commission.[1]

THE PARTIES

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

ETON TRADING (formerly known as FIN TRADING) and **E-TON TRADING: PROFIT SHARING** are entities that are not registered with the Commission either as a corporation or as a partnership or a One Person Corporation.[3] These entities are allegedly engaged in the sale of frozen goods.

E-TON PHIL NON-SPECIALIZED WHOLESALE TRADING is an entity registered with the Department of Trading and Industry (DTI).

Princess Samson Cabungcal-Frias is the reported and known CEO of FIN TRADING and ETON TRADING.

Elton John Mejias Malabarbas is the DTI-registered owner of ETON TRADING.

RELEVANT FACTS

Beginning January 2023, the EIPD received a considerable number of complaints which were sent/filed electronically against ETON TRADING, ETON TRADING: PROFIT SHARING and ETON PHIL TRADING alleging that they have scammed billions of Pesos from Filipinos here and abroad.[4]

Acting on the said complaints, the EIPD conducted a formal investigation and surveillance operation on the business operations and transactions of the Subject Entities and their Agents to verify the veracity of the same, and to determine if the relevant provisions of the Securities

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[1] Motion for *Issuance of a Cease and Desist Order* dated 05 June 2023
[2] Section 2-2 (c)(1-c), Rule II, Part I of the 2016 SEC Rules of Procedure
[3] Annex "B" of the Motion
[4] Statement of Facts No. 1 and 2 of the Motion, See Annex "A" to "A-30"

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Regulation Code (the "SRC") and/or other applicable laws have been violated. Relative thereto, the EIPD looked into and gathered information online[5], specifically from the social media accounts of the Subject Entities and their Agents, all of which were submitted in evidence. The information and the evidence presented by the EIPD show that the Subject Entities and/or their Agents selling/offering unregistered securities without the requisite license from the Commission.

The investment scheme employed by the Subject Entities involves the offer/sale of the following investment plans which they classified into four (4) options, to wit:

> OPTION A: 20% Monthly Cash Out – 11 Months Lock-In Capital, Cash-Ins Until January 31, 2023 (Auto ReCash-In Capital if Extended)
>
> OPTION B: 30% Compounding – 3 Months Lock-In Capital, Cash-Ins Until September 30, 2023 (Auto ReCash-In Capital)
>
> OPTION C: 40% Non-Compounding – 6 Months Lock-In Capital & Interest, Cash-Ins Until June 30, 2023 (Auto ReCash-In Capital)
>
> OPTION D: 50% Non-Compounding – 11 Months Lock-In Capital & Interest, Cash-Ins Until September 30, 2023 (Auto ReCash-In Capital If Extended)

Under the foregoing scheme, an investor may invest in amounts ranging from PHP 5,000.00 to PHP 100,000.00, and is guaranteed to earn an income ranging from PHP 1,250.00 to PHP 39,062.50 depending on the option chosen. The investor may also earn a rebate bonus in an amount equivalent to 5% of the fresh cash-ins.[6] The Subject Entities entice their investors to park their investments with them for a longer period for a higher yield.

Relative thereto, the EIPD submitted in evidence a screenshot of the offer made by the Subject Entities to the public which is posted in their Facebook account, and which affirms that the latter are engaged in investment-taking activities, thus:

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[5] Annex "A"

[6] Annex "F-8" of the Motion

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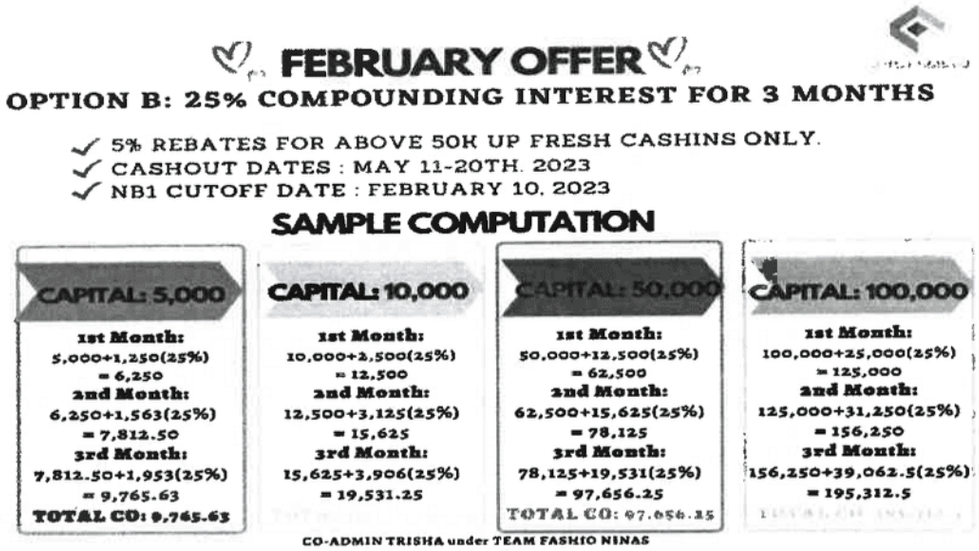

Moreover, in support of its allegation that the Subject Entities are engaged in the unauthorized sale of unregistered securities, the EIPD submitted in evidence Certifications issued by the Company Registration and Monitoring Department (CRMD), Markets and Securities Regulation Department (MSRD), and the Corporate Governance and Finance Department (CGFD) of the Commission which confirmed that the Subject Entities are not registered with the Commission, have not been issued a license to sell/offer securities; nor have they filed an application for the approval of the required registration statement.

Based on the verification conducted by the EIPD, the Subject Entities are not in any way related to or connected with the registered company ETON PROPERTIES PHILIPPINES, INC. and any of its subsidiaries nor do they have any affiliation thereto.

On 3 February 2023, the Commission issued an Advisory[7] informing the public that the Subject Entities and their Agents are offering, soliciting, and/or selling investments from the public without the requisite license, and warning the latter not to invest, or to stop investing in the Subject Entities and/or exercise caution in dealing with the latter.

ISSUE

Whether the issuance of a Cease and Desist Order (CDO) against the Subject Entities and their Agents is warranted based on the allegations and evidence presented by the EIPD.

[7] *Id.* Annex "G"

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RULING

The *Motion* is impressed with merit.

The EIPD was able to establish by substantial evidence that the Subject Entities and their Agents are offering and/or selling unregistered securities to the public in the form of investment contracts without the requisite license from the Commission

Section 3 of the Securities Regulation Code ("SRC") defines securities, to wit:

> "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**:
>
> xxx
>
> (b) **Investment contracts**, certificates of interest or participation in a profit-sharing agreement, certificates of deposit for a future subscription;" (Emphasis supplied)

In relation thereto, Rule 26.3.5 of the 2015 Implementing Rules and Regulations of the (the "SRC-IRR") specifically defines an investment contract as follows:

> **"An investment contract is a contract, transaction or scheme *(collectively "contract")* whereby a person invests his money in a common enterprise and is led to expect profits primarily through 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." (Emphasis supplied)

In *SEC v. Howey Co.*, the US Supreme Court defined an investment contract 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.[8] 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

[8] 328 U.S. 293 (1946)

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through the efforts of the promoter or of someone other than themselves.[9]

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 applied the afore-quoted provision and 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 traces its roots from the US Supreme Court case entitled *Securities and Exchange Commission v. W.J. Howey Co.*[11] where the Court held 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. On this basis, transactions or schemes where individuals invest their money in a common enterprise with the expectation of earning a profit

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[9] *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 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.

[10] Note 24, *Supra.*

[11] 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244, 163 A.L.R. 1043 (1946).

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through the efforts of the promoter or of someone other than themselves were consistently been considered as investment contracts.[12]

This concept of investment contract was thereafter adopted and used in *Power Homes Unlimited Corporation v. Securities and Exchange Commission,*[13] where the Supreme Court ruled that in our jurisdiction, for transactions/schemes to be considered securities in the form of investment contracts, the following elements must be shown to exist: *(1) an investment of money; (2) in a common enterprise; (3) with expectation of profits, (4) primarily from the efforts of others.* The Supreme Court further ruled that 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 securities.[14]

Applying the foregoing to the instant case, the Commission finds and so holds that the Subject Entities and their Agents are engaged in the unauthorized sale and/or offer of unregistered securities in the form of an investment contracts in violation of Section 8 of the SRC, considering that all the elements of the Howey Test are present, thus:

First, the investment scheme of Subject Entities requires an investment of money ranging from PHP 5,000.00 to PHP 100,000.00.[15] The numerous complaints received by the EIPD affirm that people actually invested in the Subject Entities.[16]

Second, the investment scheme of the Subject Entities involves the pooling of the investors' money/funds which are purportedly used to finance the importation of frozen goods[17], but which are actually used to pay the guaranteed returns of existing investors to ensure their continued operation. This is the common enterprise that is being sustained by the investments received by the Subject Entities from the public.

Third, the Subject Entities is offering investment plans with a promise of guaranteed returns[18] ranging from 20% to 50% depending on the lock-in period, to wit:

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[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 SRC IRR replaced the qualifier 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).
[15] Annex "F-7" of the Motion
[16] Annex "A-1" to Annex "A-30"
[17] Annex "F-15" of the Motion
[18] Annex "F-13" of the Motion

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i. "20% monthly cash out with a lock-in period of 11 months,"
ii. "30% monthly compounding interest with a lock-in period of 3 months,"
iii. "40% monthly non-compounding interest with a lock-in period of 6 months," and
iv. "50% monthly non-compounding interest with a lock-in period of 11 months."

Fourth, the profits which investors expect to receive are generated by the efforts of the Subject Entities and their Agents who carry out the operations to ensure the entry of new investors and payment of the guaranteed returns to early investors. Thus, after an investor parts with his/her hard-earned money, all he/she needs to do is to wait for the maturity date of the option chosen and claim the guaranteed return.

Moreover, the act of the Subject Entities and their Agents in publicly offering its unauthorized investment scheme through their respective social media accounts, inviting and enticing investors to part with their hard-earned money, and promising guaranteed returns, constitute a public offering of securities as defined in Rule 3.1.17 of the 2015 IRR of the SRC, thus:

> "Rule 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: i. Publication in a newspaper, magazine or printed reading material which is distributed within the Philippines or any part thereof; ii. Presentation in public or commercial place; iii. Advertisement or announcement in any radio, telephone, **electronic communications, information communication technology or any other forms of communication**; or iv. 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." (Emphasis supplied)

Considering that the Subject Entities and their Agents have no license to offer securities, their act of publicly offering unregistered securities constitutes a clear violation of the afore-quoted provision of the SRC-IRR.

Relative to the issuance of a CDO, Section 64.1 of the SRC provides that the Commission may issue a CDO without the necessity of conducting a hearing if, to its mind, the act or practice will operate as a fraud on

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investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public, 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)

Under the afore-quoted provision, there are two (2) essential requisites that must be complied with before a CDO 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.[19]

In the instant case, the foregoing requisites were complied with. First, the records disclose that the EIPD conducted a formal investigation and presented sufficient evidence in support of its *Motion* i.e. Certifications from the CRMD, CGFD, and MSRD,[20] Affidavit of the EIPD[21] investigating officers; screenshots of Facebook postings showing the unauthorized investment-taking activities of the Subject Entities and their Agents; and the numerous complaints.

Second, the evidence presented which showed the unauthorized investment-taking activities of the Subject Entities and their Agents warrant the issuance of a CDO because the same will operate as a fraud on investors, or is likely to cause grave or irreparable injury or prejudice to the investing public, if not restrained, considering that they have no license to sell, offer or deal in securities.

The foregoing finds support in the case *of Securities and Exchange Commission vs. CJH Development Corp.*[22] (SEC vs. CJH), where the Supreme Court emphasized the need for a prompt issuance of a CDO after a finding

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[19] *Securities and Exchange Commission vs. Performance Foreign Exchange Corporation*, G.R. No. 154131, July 20, 2006.
[20] *Motion*. Annexes "B" to "D"
[21] *Ibid*. Annex "A"
[22] 18 G.R. No. 210316, November 28, 2016

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by this Commission 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."

WHEREFORE, premises considered, **E-TON PHIL TRADING NON-SPECIALIZED WHOLESALE TRADING/ETON TRADING/ETON PHIL TRADING/ETON TRADING: PROFIT SHARING and also formerly known as FIN TRADING.**, its partners, operators, directors, officers, salesmen agents, representatives, promoters, and all persons, conduit entities and subsidiaries claiming and acting for and, on its behalf, are hereby directed to **IMMEDIATELY CEASE AND DESIST UNDER PAIN OF CONTEMPT** from further engaging in, promoting and facilitating the selling of the Securities Regulation Code and/or offering for sale securities in the form on investment contracts and/or other activities/transactions, until the requisite registration statements are duly filed with and approved by this Commission, and the corresponding license and/or permit to offer/sell securities are issued.

E-TON PHIL TRADING NON-SPECIALIZED WHOLESALE TRADING/ETON TRADING/ETON PHIL TRADING/ETON TRADING: PROFIT SHARING and also formerly known as FIN TRADING, its officers, operators, administrators, promoters, representatives, salesmen, agents, investment team planners, mentors, enablers, influencers, assigns, conduit entities, subsidiaries, and any and all persons claiming and/or acting for and in their behalf are likewise directed to immediately **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,

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information providers, salesmen, agents, brokers, dealers, or the like for and in their behalf.

Finally, the Commission hereby **PROHIBITS E-TON PHIL TRADING NON-SPECIALIZED WHOLESALE TRADING/ETON TRADING/ETON PHIL TRADING/ETON TRADING: PROFIT SHARING and also formerly known as FIN TRADING**, its partners, operators, directors, officers, salesmen agents, representatives, promoters, and all persons, conduit entities and subsidiaries claiming and acting for and on its behalf from transacting any business involving the funds covered by this CDO in its depository banks, and from transferring, disposing, or conveying in any manner, all assets, properties, real or personal, including but not limited to bank deposits, of which the named persons herein may have any interest, claim or participation whatsoever, directly or indirectly, under its/their custody, to forestall grave damage and prejudice to all concerned and to ensure the preservation of the assets for the benefit of the investors.

The **EIPD** of the Commission is hereby **DIRECTED** to:

1) Serve this *Cease and Desist Order* to **E-TON PHIL TRADING NON-SPECIALIZED WHOLESALE TRADING/ETON TRADING/ETON PHIL TRADING/ETON TRADING: PROFIT SHARING and also formerly known as FIN TRADING** and their owners; or if impracticable;[23]

2) Cause the posting of this *Cease and Desist Order* in the Commission's website.

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 Section 4-3 of the 2016 Rules of Procedure of the Commission, the parties

[23] Due to Declaration of State of Public Health Emergency throughout the Philippines as declared by President Rodrigo Duterte under Presidential Proclamation No. 922. S. 2020 dated 8 March 2020.

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subject of this CDO may file a verified *Motion to Lift the CDO* within five (5) days from receipt thereof. The Motion to Lift the CDO must be filed to the Commission En Banc through the Office of the General Counsel.

FAIL NOT UNDER PENALTY OF LAW

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

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