Republic of the Philippines
Department of Finance
Securities and Exchange Commission
PICC Secretariat Bldg., Roxas Blvd., Pasay City

COMMISSION EN BANC

In the Matter of:

EVER ARM ANY MARKETING

SEC CDO Case No. **06-19-050**

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),
Movant.

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

CEASE AND DESIST ORDER

This resolves the *Motion for Issuance of a Cease and Desist Order* (Motion) filed on June 3, 2019 by the Enforcement and Investor Protection Department (EIPD) praying to enjoin **EVER ARM ANY MARKETING** and it's officers, representatives, salesmen, agents and any and all persons claiming and acting for and in its behalf, from any unauthorized public solicitation of investments and sale of securities in the form of investment contracts.

Based on the records of the Commission, EVER ARM ANY MARKETING (EVER ARM) is not registered with the Commission either as a corporation or partnership but a sole proprietorship whose business name is registered with the Department of Trade and Industry (DTI).

The investigation against respondent EVER ARM stemmed from reports received by the Commission that EVER ARM is offering five hundred percent (500%) of investment in less than a month.

Upon validation by the EIPD of the investment taking activities of EVER ARM from the latter's Facebook account[1] and various promotional Youtube videos, an ADVISORY was posted on the Commission's website on 31 May 2019 on the activities of respondent EVER ARM.[2]

Based on the 3 June 2019 Certification issued by the Company Registration and Monitoring Department[3], the records of the Commission do not show the registration of EVER ARM ANY MARKETING as a corporation or partnership.

---

1 Snapshot of EVER ARM ANY MARKETING Facebook page.
2 ADVISORY on EVER ARM ANY MARKETING posted on the Commission's website on May 31, 2019.
3 3 June 2019 Certification issued by the Company Registration and Monitoring Department.

On the other hand, the 3 June 2019 Certification of the Corporate Governance and Finance Department[4] (CGFD) states that based on the records on file with the Commission, EVER ARM ANY MARKETING is not a registered issuer of mutual funds, exchange traded funds and proprietary/non-proprietary shares or membership certificates and timeshares pursuant to Sections 8 and 12 of the Securities Regulation Code and therefore not licensed to offer and sell such securities to the public.

Likewise, the Commission's Markets and Securities Regulation Department (MSRD) stated in its 3 June 2019 Certification[5] that per records of file with the MSRD, EVER ARM ANY MARKETING has not registered any securities pursuant to Sections 8 and 12 of the Securities Regulation Code (SRC). Likewise, the MSRD has not issued Permit to Sell Securities in favor of EVER ARM ANY MARKETING. Further, said entity has not filed nor has any pending application for registration/permit to sell securities.

Based on the verification conducted by the EIPD, the latter found sufficient evidence showing that EVER ARM is soliciting investments from the public employing what is commonly known as a Ponzi scheme in its investment scheme.

Hence, we find the *Motion* meritorious.

EIPD's Motion as supported by substantial evidence, shows that EVER ARM is engaged in the offer and/or sale of securities to the public in the form of investment contracts without the necessary license from the Commission.

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" and includes an "investment contract".

In a plethora of cases, it has been 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; and (4) to be derived solely from the efforts of others.[6] This definition has been adopted by the Supreme Court of the Philippines which succinctly stated that an investment contract in our jurisdiction, to be a security subject to regulation by the Commission, must be proved to be (1) an investment of money; (2) in a common enterprise; (3) with expectation of profits; and (4) primarily from efforts of others.[7]

---

4 3 June 2019 Certification issued by the Corporate Governance and Finance Department.

5 3 June 2019 Certification issued by the Markets and Securities Regulation Department.

6 Securities and Exchange Commission v. W.J. Howey Co 328 U.S. 293, 66 S. Ct. 1100, 90 L.Ed. 1224, 163 A.L.R. 1043 (1946)

7 Power Homes Unlimited Corporation v. Securities and Exchange Commission G.R. No. 164182, February 26, 2008.

As aptly elucidated by the EIPD, it was able to show that the investment scheme of respondent **EVER ARM** falls within the ambit of an investment contract because of its essential features, as follows:

(1) The investor **enters into a contract**. There is a placement of money where for a certain sum the investors are guaranteed Five hundred percent (500%) return in less than a month.

(2) **The money invested is placed in a common enterprise and the investor-member expects to derive profits.**

(3) Finally, the member-investor **expects to earn profits from the entrepreneurial and managerial efforts of others.** The investor need not do anything but go to the office of EVER ARM and receive the guaranteed return to them. The investors just have to invest money.

Having established that the investment scheme of EVER ARM is an investment contract, the provisions of Section 8.1 of the SRC should be complied with before said securities could be offered or sold to the public.

Thus, EVER ARM has engaged itself in offering or selling such securities to the general public sans the necessary license or permit as attested by the Market Securities Regulation Department (MSRD) and Corporate Governance and Finance Department (CGFD) of this Commission.

Further, the investment scheme of EVER ARM has the characteristics of a **Ponzi scheme** as it promises an exorbitant rate of return with little or no risk at all to investors as exemplified in the case of *People of the Philippines vs. Palmy Tibayan and Rico Z. Puerto (G.R. Nos. 209655-60, January 14, 2015)*, where the Supreme Court held that:

> "To be sure, a Ponzi scheme is a type of investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors. ***Its organizers often solicit new investors by promising to invest funds in opportunities claimed to generate high returns with little or no risk.*** In many Ponzi schemes, the ***perpetrators focus on attracting new money to make promised payments to earlier-stage investors to create the false appearance that investors are profiting from a legitimate business***. It is not an investment strategy but a gullibility scheme, which works only as long as there is an ever increasing number of new investors joining the scheme. It is difficult to sustain the scheme over a long period of

> time because the operator needs an ever larger pool of later investors to continue paying the promised profits to early investors. The idea behind this type of swindle is that the "con-man" collects his money from his second or third round of investors and then absconds before anyone else shows up to collect. Necessarily, Ponzi schemes only last weeks, or months at the most." (Underscoring added for emphasis)

The EIPD adduced sufficient evidence to support its allegations that EVER ARM is engaged in offering for sale securities to the public through indiscriminate or random offering online[8] promoting its investment scheme to potential investors without prior registration. Thus, Section 64 of the Securities Regulation Code would apply, to wit:

> SEC. 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.

The Commission is duty-bound to protect the interest of the investing public. Thus, it is necessary that a Cease and Desist Order be issued to enjoin EVER ARM from further offering and selling unregistered securities to the public. Otherwise, to allow EVER ARM to continue soliciting investments and/or selling or offering for sale securities to the public without the necessary license or permit will operate as a fraud on investors or is likely to cause grave or irreparable injury or prejudice e to the investing public.[9]

Hence, the selling or offering for sale of securities by the respondent[10] EVER ARM ANY MARKETING should be immediately restrained to prevent any further grave injury or prejudice to the investing public. Likewise, it is imperative that a Cease and Desist Order be issued as the continued public offering and sale of such securities without the required license from the Commission makes the public offering and selling a continuing illegal act.

WHEREFORE, premises considered, **EVER ARM ANY MARKETING AND ITS ALLIED ENTITIES**, their partners, officers, agents, representatives,

---

[8] Under Rule 3.1.17.4 of the 2015 SRC Rules, any offering, solicitation and presentation of securities for sale to the public through information communication technology, such as internet, shall be presumed to be a public offering.

[9] *In the matter of Boracay Transpacific Properties Inc. & Paradisya Land Inc.,* SEC CDO Case No. 07-14-01 February 26, 2015.

[10] https://www.facebook.com/JeanELopez/posts/2207043299365559

conduits, assigns 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 engaging in activities of selling and/or offering for sale securities in the form of investment contracts or any other forms of the same nature, as discussed above.

Furthermore, the subject entities and individuals are directed to CEASE from promoting its investment scheme through the internet and/or delete or remove immediately the promotional presentation of such investment scheme from the websites.

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) 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 Investor Protection Department and/or the Commission's Extension Offices having jurisdiction over the area where the principal office of the subject of this Cease and Desist Order is located, are hereby directed to: (1) serve this Order to **EVER ARM ANY MARKETING AND ITS ALLIED ENTITIES**, its General Manager, In-House Counsel or partners; and 2) post copies of the Order at the entrance of the main office and/or branches, if any, of **EVER ARM ANY MARKETING AND ITS ALLIED ENTITIES.**

Let a copy of this Order be also posted in the Commission's website, published in a national newspaper of general circulation and furnished to the Company Registration and Monitoring Department, the Corporate Governance and Finance Department and the Economic Research and Information Department for their information and appropriate action.

The EIPD and/or the Extension Office who served and posted this order are further directed to submit a formal compliance report, by way of a pleading, to the Commission *En Banc* within ten (10) days from receipt of this Cease and Desist Order.

In accordance with the provisions of Sec. 64.3 of SRC and Sec. 4-3 of the 2016 Rules of Procedure of the Commission, the parties subject of this Cease and Desist Order may file a request for the lifting thereof within five (5) days from receipt hereof.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Pasay City, Philippines, 04 June 2019.

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG*
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

* On Leave