Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

In the matter of:
EMGOLDEX PHILIPPINES, GLOBAL INTERGOLD, PROSPEROUS INFINITE PHILS. HOLDING CORPORATION

SEC CDO Case No. 10-15-026

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.

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CEASE AND DESIST ORDER

On 07 October 2015, the Commission's Enforcement and Investor Protection Department (EIPD) filed a *Motion for Issuance of Cease and Desist Order*[1](Motion) to enjoin EMGOLDEX Philippines (Emgoldex) and its allied entities GLOBAL INTERGOLD (Global Intergold) and PROSPEROUS INFINITE PHILS. HOLDING CORPORATION (PIPHC), from further selling and/or offering for sale securities in the form of investment contracts until the requisite registration statement is duly filed with and approved by the Commission and the corresponding permit to offer/sell is issued. On 30 October 2015, EIPD filed a *Supplement to the Motion for Issuance of Cease and Desist Order*[2]which provided additional information and evidence in support to its *Motion*.

The facts of the case are as follows:

Emgoldex and Global Intergold are entities with no certificates of registration from the Commission[3] or any other government agency and have no known office address in the Philippines. However, person/s involved pursue their activities under the name and style of Emgoldex Philippines and Global Intergold.

PIPHC is a stock corporation registered with the Commission on 06 August 2015 with Company Registration No. 201515706. Its principal office address is at 702 Centro Plaza Condominium, Sct. Torillo, Brgy. South Triangle, Quezon City[4]. Its primary purpose is:

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[1] Dated 06 October 2015.
[2] Dated 29 October 2015.
[3] Annex "A" of the Motion.
[4] Annex "H" of the Motion,.

"To invest in, purchase or otherwise acquire and hold, use, sell, assign, transfer, mortgage, pledge, exchange or otherwise dispose of personal property of every kind and description including shares of stocks, bonds, debentures, notes, evidences of indebtedness, contacts and other securities and obligations of any corporation, partnership, company or association, whether domestic or foreign for whatever lawful purpose or purposes the same may have been organized; and to pay therefore in money or by exchanging therefore in stocks, bonds, debentures, notes or other evidences of indebtedness or securities and while the owner or holder of such notes, evidence of indebtedness, contracts and other securities and obligations of any corporation, to receive, collect and dispose of the interest, dividends and income arising from such property and investments and to possess and exercise in respect thereof, all the rights and powers and privileges of ownership to the extent authorized by law, without however engaging in any banking or quasi-banking activities, nor shall the corporation engage in the business of investment company as defined in the Investment Company Act (R.A. 2629) without complying with the provisions of the said act. Provided it shall not engage in stock brokerage and dealer in securities."

Its incorporators and board of directors, as shown in its Articles of Incorporation (AOI), are:

Name	Nationality	Address
Raabhel O. Ymas	Filipino	26 Rosario Vill. Brgy., Sta. Lucia, Pasig City
Kevin Miranda	Filipino	Blk. 19 Lot 4, Gemma Cruz St. BF Resort Vill., Brgy. Talon Dos, Las Pinas City
Charles Juiz Y. Padilla	Filipino	460 Mapagbigay St., Brgy. Pinyahan, Quezon City
John Rafael M. Calicdan	Filipino	12 Gen. V. Lim St. Brgy. Little Baguio, San Juan City
Ryan Manuit	Filipino	205 Danga St. Brgy. San Miguel, Calumpit, Bulacan

Sometime December 2014, SEC Cebu Extension Office (SEC-CEO) submitted a report[5] to EIPD regarding an online solicitation of investments pursued by Emgoldex. The report established the following:

1. Emgoldex promises investors/recruits more than one hundred percent (100%) return/profit of an investor's Thirty-Five Thousand Peso (Php35,000.00) investment;
2. Emgoldex recruits investors through online means such as Facebook and Youtube;

[5] Paragraph 3 of the Joint-Affidavit of EIPD Investigators which is attached as Annex "B" of Supplemental Motion.

3. Emgoldex uploaded in Youtube its video presentations on how the investment scheme works and its contact details for interested investors.

Thereafter, EIPD has received numerous complaints/reports, through electronic mails (e-mails) and phone queries, from the public inquiring about Emgoldex's registration status and legitimacy of its online solicitation of investments.[6]

This prompted EIPD to conduct an investigation as to the operations of Emgoldex. During the course of the investigation, it was discovered that:

> "5. Upon verification with the internet by searching the EMGOLDEX Philippines, the investigators found several news and information about EMGOLDEX Philippines including its investment offering entitled "EMGOLDEX PHILIPPINES' Pinoy Style Patak Patak" wherein an investment of One Thousand Pesos will earn profits ranging from Five Thousand to Ten Thousand Pesos or a placement of Thirty Five Thousand will yield One Hundred Eighty Thousand to Three Hundred Sixty Thousand Pesos (1K = 5K to 10K payout or 35K = 180K to 360K payout)[7]."

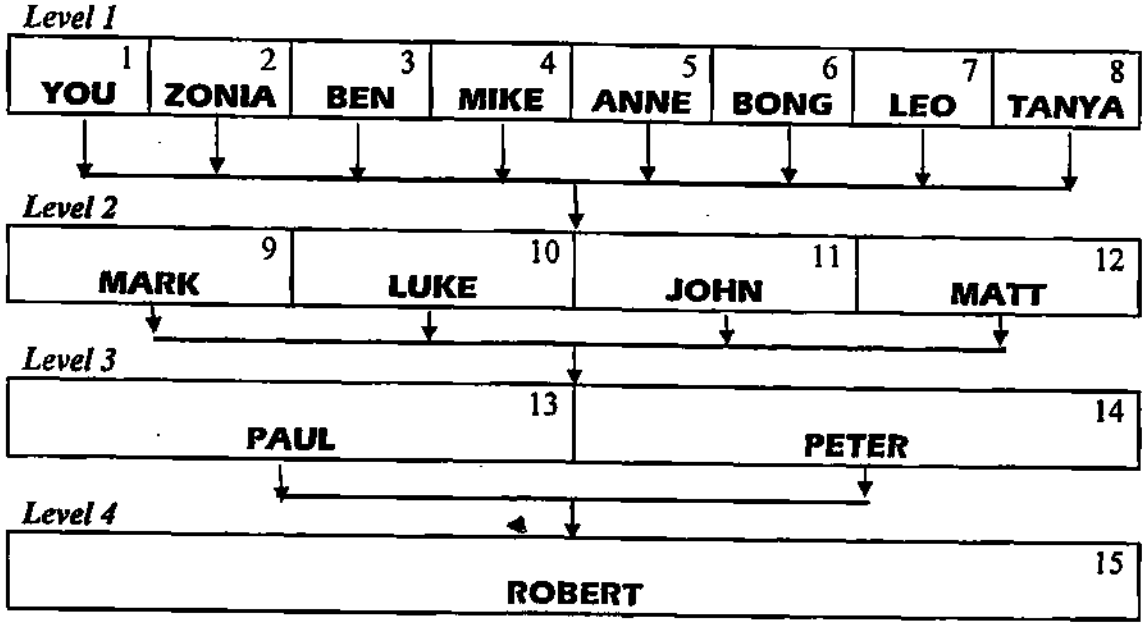
In one video[8], Emgoldex claims to be an online store for those who wants to buy/sell investment gold bars. Emgoldex claims that its parent company is Gold & Silver Physical Metals that is based in Munich, Germany which has been operating since 2008. The video introduces "Emgoldex Marketing Program" wherein a participating investor/recruit may earn profits from investment gold bars. The program has two essential requirements that an investor/recruit has to comply:

1.) The investor/recruit must invest the amount of Php 36,500.00/540 Euros (500 Euros for pre-payment of gold; 40 Euros for Online Account Fee);
2.) The investor/recruit must recruit two (2) other investors (referrals) who must also invest the same amount of Php36,500.00/540 Euros. This is called the "1+2 marketing formula".

Thereafter, the investor/recruit will participate in what it refers to as the 1st Main Table of Orders, an example of which is illustrated below:

[6] Paragraph 4 of the Joint-Affidavit of EIPD Investigators which is attached as Annex "B" of Supplemental Motion.
[7] Paragraph 5 of the Joint-Affidavit of EIPD Investigators which is attached as Annex "B" of Supplemental Motion.
[8] Attached video recordings of EIPD's Compliance dated 04 November 2015.

1ST MAIN TABLE OF ORDERS



The investor/recruit (YOU) is added to a table and starts at the lowest level (Level 1). When a table is complete or filled up, the investor/recruit (ROBERT) in the highest level (Level 4), shall graduate and exits the table. Thereafter, the table will be split into two (2) and the investors/recruits (YOU, ZONIA, BEN, MIKE – Table A) (ANNE, BONG, LEO, TANYA – Table B) in the lowest level (Level 1) will now move to the next level (Level 2). Thereafter, the lowest level (Level 1) in both Tables A and B will be vacant and be filled up with new investors/recruits. The process will continue until said recruit/investor (YOU) reaches Level 4 and exits. It is claimed that one cycle will take around 1-3 months, however this may be shortened if the table is filled up sooner.

When an investor/recruit (ROBERT) exits the table, he/she may opt to receive One Hundred Eighty Thousand Pesos (Php 180,000.00) or receive 100 grams of gold bar as a bonus or reward (profit). The investor/recruit (ROBERT) who exits the table will be automatically entered to a 2nd Main Table of Orders starting again at the lowest level (Level 1). Then, this will undergo the same process until the investor/recruit (ROBERT) exits and will receive another One Hundred Eighty Thousand Pesos (Php 180,000.00) or 100 grams of gold bar.

Based on the video presentation, the exiting investor/recruit may receive 100 grams of gold bar with a value around Php 170,000.00-180,000.00 based on a London gold fixing company. The exiting investor/recruit has three options to receive his/her gold, to wit:

1.) Gold to Cash – since an investor/recruit may buy/sell gold in Emgoldex, the said investor/recruit may sell to the company and have the proceeds

wired to his/her bank account, or convert it to a coupon (worth 540 Euros) which can be sold to other investors/recruits to register with Emgoldex;
2.) Via Secured Mail – the gold product will be shipped to the exiting investor/recruit;
3.) Safe House Keeping – the exiting investor/recruit may have his/her gold kept in Germany.

After exiting the 2nd Table, the system will ask you if you want to re-order (pay another Php 36,500.00 which will be deducted from your profits) or not to continue the business process. If the exiting investor desires to re-order, he/she will be entered to a 3rd Main Table of Orders and the above-discussed process will be repeated.

However, if an investor/recruit fails to comply with the second requirement (recruiting two (2) other investors or "1+2 Marketing Formula"), his/her investment of 500 Euros (online account fee of 40 Euros is forfeited) will be returned and exits from the Table of Orders.

The video presentation also shows another investment option for those who cannot afford to pay Php 36,500. A prospective investor/recruit may instead invest only the amount of One Thousand Forty Two Pesos (Php 1,042.00) to join the Emgoldex Marketing Program. However, the said scheme was not explained but directed the viewers to contact cellphone numbers provided for further details.

On 13 February 2015, the Commission posted, through its official website[9], a *SEC Advisory* warning the public that Emgoldex is not a registered corporation or partnership. Likewise, such entity is not authorized to solicit investments from the public as it did not secure prior registration and/or license or permit to solicit investments from the Commission as required under Section 8.1 of the Securities Regulation Code[10].

Thereafter, it was reported to EIPD that Emgoldex changed its name to Global Intergold. This entity is also not registered with the Commission. Afterwards, it was reported to EIPD that Emgoldex and Global Intergold was then changed to PIPHC[11]. This is evidenced by an e-mail with attached online announcement[12] and statements of witnesses[13]

EIPD also received reports that Emgoldex/Global Intergold is operating in Bicol. Some of the team leaders of Emgoldex were identified as Mr. Don Don Caceres and Mr. Pete Carlo Froa Santos (a.k.a. Cholo Santos). EIPD invited these

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[9] www.sec.gov.ph.
[10] Paragraph 7 of the Joint-Affidavit of EIPD Investigators which is attached as Annex "B" of Supplemental Motion.
[11] Annex G of the Motion.
[12] Annex G of the Motion.
[13] Sworn Affidavits of PO3 Lenin T. Guinit, PO2 Josegelio Ferrer Dayrit III and PO3 Eduard S. Gulam attached Annexes of the Manifestation dated 03 November 2015.

identified team leaders for a conference to determine the operations of Emgoldex and/or its allied entities. EIPD, in the joint affidavit of its investigators, stated that:

> "17. Hence, the EIPD called Mr. Caceres and Mr. Santos for conference to shed light on their alleged participation in the operation of EMGOLDEX Philippines. At the conference, Mr. Caceres and Mr. Santos voluntarily admitted under oath before the EIPD that they are members, participants and actually involved in the Emgoldex/Global Intergold operation in Bicol.
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> 19. Based on the testimony given by Mr. Caceres and Mr. Santos, the EIPD investigators gathered pertinent information about the online solicitation of investment of EMGOLDEX Philippines/ GLOBAL INTERGOLD and its leaders particularly, KEVIN MIRANDA and among others. As shown in the Articles of Incorporation of Prosperous Infinite Phils. Holdings Corporation, KEVIN MIRANDA is an incorporator of said corporation.
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> 20. They explained, one can become a member/investor of Emgoldex by paying the amount of P36,500.00. Once a member, he has to recruit another two (2) members who shall likewise pay 36,500.00 each. In turn, the two will each recruit another two (2) members and so on until they have completely filled up eight slots in order for the first member to receive an exit bonus of Php182,000.00.
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> 21. According to Mr. Caceres, he invested 36,500.00 in EMGOLDEX Philippines through his friend, Fr. Teodorico Pervera, a parish priest in Pili, Camarines Sur. He gave the money to Fr. Pervera without receipt due to sheer trust and confidence. He mentioned that as a member, he was required to recruit two (2) members. He explained that the video showing him holding some cash as exist bonus was not actually his money.
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> 22. On the part of Mr. Santos, he named and identified a certain Christopher Cruz, Troy Sia, Carmelita "Milet" Villanueva and Kevin Miranda to be the most active and pioneer operators of EMGOLDEX Philippines."

On 03 August 2015, EIPD was issued a certifications that the subject entities are not a registered issuer of mutual funds including exchange traded funds, membership certificates, time shares and unlisted securities under Section 17.2 (a) of the Securities Regulation Code (SRC) and therefore not licensed to offer or issue such securities to the public[14].

On 03 November 2015, EIPD filed a *Manifestation* providing additional evidence in support to its earlier *Motion*. EIPD attached sworn affidavits, supported by documentary evidence, of PO3 Lenin T. Guinit and PO2 Josegelio Ferrer Dayrit III who were recruited and invested in Emgoldex, Global Intergold and/or PIPHC. EIPD

[14] Annex J and J-1 of the Motion.

also provided a sworn affidavit, supported by documentary evidence, of PO3 Eduard S. Guiam from the Philippine National Police, Anti-Cybercrime Group (PNP-ACG) on the online profiling and engagement of the subject entities.

In PO3 Guinit's affidavit, he stated that:

"1) Ako ay ni-recruit ng katrabaho ng aking asawa na si JOSE LEE, na sumali sa EMGOLDEX Philippines, na ito daw ay isang investment sa gold. Pagkatapos kong pag-aralan sa internet ang mga video na naibahagi ng mga nauna nang sumali sa Emgoldex Philippines ay pumayag ako sumali at ako ay ipinakilala ni JOSE LEE sa kanyang mga kasamahan na sina PAUL ALVIAR, at iba pang niyang mga kasamahan na hindi ko na maalala ang mga pangalan. Nagkita kami sa isang meeting na idinaos noong buwan ng November 2014 sa Starbucks coffee shop na matatagpuan sa Quezon City. Doon kay hinikayat akong mag invest ng halagang THIRTY SIX THOUSAND FIVE HUNDRED PESOS (Php 36,500.00) kapalit daw ng five (5) grams na ginto o kaya mas malaking kita ng pera;

x x x

7) Pagkatapos maipaliwanag sa akin ni PAUL ALVIAR ang Sistema ng EMGOLDEX Philippines, ito ay pinag-aralan ko ulit sa youtube (www.youtube.com/watch?v=9UOAxXavflM) na inabisuhan sa akin ni PAUL ALVIAR. Matapos kong pag-aralan ang lahat, ako na ay nag-invest ng 10,420) na aking dineposit sa bank account sa Bank of Philippine Islands ("BPI") noong November 26, 2014 na nasa pangalan ng isang JONAS TYRONE DE ROMA GARCIA. Ginawa ko ito ayon sa direkyon ni JOSE LEE at bilang patunay nang aking deposit ay binigyan ako ng BPI ng Deposit Slip (A copy of the Deposit Slip is attached as Annex "B")

8) Pagkatapos kong mag-invest/magdeposit ay nag antay ako nang mga humigit kumulang nang dalawang (2) buwan para Makita kung kikita nga ba ako. Ayon sa sistema ng Pinoy Patak-Patak, ang pangalan ko ang nakalagay na account holder. Bilang account holder ng grupo namin, ako ay binigyan ng username and password para ma-monitor ko ang account ng grupo sa pamamagitan ng website ng EMGOLDEX Philippines (www.emgoldex.com). Sa pamamagitan nito ay nakikita ko ang pag progreso ng account ng grupo ko ayon sa Table of Orders at kung anong level na kami.

9) Matapos ng ilang buwan ay nakagraduate na an gaming account at ako ay nabigyan nang halagang humigit kumulang sa FORTY FIVE THOUSAND PESOS (Php 45,000.00) bilang aking pay-out/kita sa aking ininvest na Php 10,420.00. Personal kong kinuha ang pera sa condominium ni PAUL ALVIAR na malapit sa SM Sucat sa Paranaque. Nang kinuha ko ang aking pay-out ay kinunan ako ni PAUL ALVIAR ng litrato na hawak ko ang buong Php 182,500.00 na kita/pay-out nang account ng grupo namin. Ang nasabing litrato ay pinadala ni PAUL ALVIAR sa akin sa pamamagitan ng private message sa aking Facebook

account na aking ginawaan ng print-out sa isang computer shop at aking ginawan ng kopya sa I-Pad ng aking misis (A copy of the picture is attached as Annex "C")

10) Matapos nito ay naengayo na ako mag-invest sa EMGOLDEX Philippines sa halagang THIRTY SIX THOUSAND FIVE HUNDRED PESOS (Php 36,500.00) at nagging solo account holder na ako pero nakapanganlan sa akin asawa. Agad agaran kong binigay ang nasabing halaga kay PAUL ALVIAR na binawas ko sa nakuha kong pay-out. Dito nabanggit ni PAUL ALVIAR ang pinaka "Upline" ng EMGOLDEX Philippines na si KEVIN DEL MUNDO MIRANDA na kumikita na halos Php 180,000.00 kada araw dahil sa EMGOLDEX Philippines;

11) Sa panahon na ito ay nagsimula na din akong mag-recruit ng mga tao para maging account holder. Ang aking mga na-recruit ay nilgay ni PAUL ALVIAR sa ibat ibang account at ibat-ibang table ayon sa Table of Orders. Isa sa mga narecruit ko na tao ay si PO2 JOSEGELIO FERRER DAYRIT III na ka-batch ko sa Philippine National Police ("PNP");

12) Noong Hunyo 2015, ay may lumabas na abiso sa account ko na pinapayuhan ang lahat ng account holder na wag muna magbukas ng mga account kasi mag uupdate ang EMGOLDEX Philippines. Matapos ang ilang oras ay binuksan ko ulit ang account ko at napunta ako sa website (www.globalintergold.com) ng GLOBAL INTERGOLD ("GIG") na pumalit na sa EMGOLDEX Philippines;

x x x

14) Sa aking pagka-alam, nakarecruit ako nang tatlumpong-isa (31) na tao na personal kong kinilala at pinakilala kay PAUL ALVIAR para mag-invest sa EMGOLDEX Philippines at GIG bilang mga solo account holder. Lahat ng nasabing tao ay sinulat ko sa king personal na listahan para mabalitaan ko sila sa kanilang mga account. (A copy of the List is attached as Annex "D");

15) Karamihan sa aking mga narecruit ay ako ang personal na kumuha ng kanilang investment at ito ay dineposit ko sa ibat ibang account ni PAUL ALVIAR sa Banco De Oro ("BDO") para sila ay maipasok na bilang account holder sa Table of Orders. Sa tuwing ako ay nagdedeposit sa mga account ni PAUL ALVIAR ay kinuha ko ang deposit slip para maipakita sa aking mga na-recruit na na-invest ko na ang pera nila sa GIG sa pamamagitan ni PAUL ALVIAR (Copies of the BDO Deposit Slips are attached as Annexes "E" to "E-22");

x x x

18) Noong August 14, 2015 ay inimbitahan ulit ako ni PAUL ALVIAR sa isang event na ginanap sa function hall ng Luxent Hotel sa Timog, Quezon City para sa launching ng kanilang bagong company na pangalan ay PROSPEROUS INFINITE PHILIPPINES HOLDINGS CORP.

("PIPHC"). Ayon kay PAUL ALVIAR, ang PIPHC ang makakatulong sa mga hindi gimagalaw na mga Table of Orders sa GIG."

In PO2 Dayrit's affidavit, he stated that:

a.) NAako ay nahikayat ni PO3 LENIN GUINIT y TANGCALAGAN na sumali sa Emgoldex noong March 30, 2015 sa 7/11 Espana Branch, tapat ng UST, upang mag invest ng halagang THIRTY SIX THOUSAND FIVE HUNDRED PESOS (Php 36,500.00) kapalit ng five (5) grams na ginto na hindi naman nahawakan o nakita man lang;

b.) NA ang aking investment na Php 36,500.00 ayon kay PO3 LENIN GUINIT y TANGCALAGAN ay tutubo ng malaking halaga na aabot sa ONE HUNDRED EIGHTY TWO THOUSAND FIVE HUNDRED PESOS (Php 182,500.00), sa pamamagitan ng gold investment program na ito ay totoo at marami na silang natulungan;

c.) NA ako ay nag-invest dito dahil ako nasunugan ng bahay noong January 13, 2015 at kinontak ko ang aking ka-batch na si PO3 Guinit dahil nakita ko sa kanyang Facebook account na may litrato niya na may hawak na maraming pera;

d.) NA pinag-aralan ko sa Youtube ang Sistema ng EMGOLDEX sa video na may pamagat na Emgoldex Presentation Tagalog Version;

x x.x

h.) NA noong June 2, 2015 ako ay nakapag-exit sa TABLE OF ORDERS matapos akong maka-recruit ng dalawang (2) katao;

i.) NA noong June 16, 2015 ay nagkita kami ni PAUL MIRASOL ALVIAR, team leader ng TEAM OSAKA INTERNATIONAL (isa sa mga teams ng EMGOLDEX) at PO3 GUINIT para tanggapin ko ang payout na P182,500.00 sa Old Spaghetti House, SM Manila, kasama ang iba pa naming mga ka-batch sa pagpasok sa PNP (attached photo marked as Annex "A");

j.) NA doon sa meeting na iyon ay ipinagyayabang ni PAUL MIRASOL ALVIAR sa aming lahat na maraming personal accounts sa EMGOLDEX si KEVIN MIRANDA, na napag-alaman ko na siyang "GRAND UPLINE" o nagdala sa Pilipinas ng EMGOLDEX;

x x x

l.) NA noong July 2015 ay nalaman ko sa website ng Emgoldex na nagpalit ng pangalan ang Emgoldex at nagging Global Intergold (GIG) na at ngayon ang website ng Emgoldex ay may URL na: https://www.globalintergold .com;

x x x

y.) NA dahil dumirestso na ako kay PAUL MIRASOL ALVIAR ay sa kanya ko na ibinigay sa iba't ibang araw at petsa ang pera ng mga sumaling downlines. Ang iba rito ay kinuhanan ko pa ng larawan (attached photos marked as Annexes "H-9", "J", "J-1" at "J-2") ngunit ang iba pang mga pera na naibigay ko sa kanya ay hindi ko nakuhanan ng larawan;

x x x

bb.) NA noong bandang August 2015 sa isang salo salo sa Chowking kasama si PAUL MIRASOL ALVIAR at aking mga kaibigan (photo attached as Annex "E"), pinaliwanag ni PAUL MIRASOL ALVIAR na mahirap na ang mag-invite sa pagsali sa GLOBAL INTERGOLD kaya inendorse niya na subukan naming ang PROSPEROUS INFINITE PHILIPPINES HOLDINGS CORPORATION (PIPHC);

x x x

kk.) NA ako ay nag-deposit sa BDO bank account number xxxxxx ng PIPHC sa iba't ibang petsa na may kabuuang halagang P464,100.00. Ito ay binubuo ng pera ko at pera ng aking mga ka-miyembro (attached photocopies of deposit slips marked as Annexes "H", "H-1", "H-2", "H-3", "H-4", "H-5", "H-6", "H-7", "H-8", "H-9");

mm.) NA simula noong September 2015 ay hindi nan aka-exit ang aking mga downlines;

nn.) NA hindi na sumasagot pa sa telepono si PAUL MIRASOL ALVIAR at ayaw na ring magpakita pa upang sumagot sa aking mga katanungan. Dahil dito, ang halagang Php 2,117,000.00 (5,800 grams of 24K GOLD or Php 11,680,000.00-equivalent reward) na nainvest ng aking mga na recruit ay hindi ko na makuha pa at hindi na rin nila maibalik sa akin. Higit pa dito, nalaman ko mula sa SEC na ang EMGOLDEX/GLOBAL INTERGOLD ay mga kumpanyang hindi rehistrado sa kanila kaya ang kanilang recruitment ng investors ay illegal;

oo.) NA kahit kalian ay walang pinakita si PAUL MIRASOL ALVIAR sa akin na lisensya mula sa SEC na nagbibigay awtoridad sa kanya para mag-alok at/o mabenta ng mga investment sa publiko (license to offer securities as broker/salesman/investment advisor/solicitor);

pp.) NA napag alaman ko sa bandang huli, na ang bahagi sa ibinayad or investments ng labing-apat (14) na downlines ko ang siya naming ibibigay sa akin sa pag-exit ko sa TABLE OF ORDERS at ganundin ang mangyayari sa mga downlines ko sa kanilang pag-exit, may bahagi ng perang investments ng kanilang downlines ang mapupunta sa bawat isa sa kanila. Kapansin-pansin na Malaki ang sumosobra dito at siyang EXTRA MONEY na siya naming napupunta sa mga opisyal ng EMGOLDEX/GLOBAL INTERGOLD/PIPHC;"

In PO3 Guiam's affidavit, he stated that:

"13. At about 3:10 pm of October 27, 2015 the undersigned together with "Ms. A" and "Mr. B[15]" of Securities and Exchange Commission (SEC) made a personal meeting with a certain leader of JAY DEE GROUP (GIG) at Mister Donut Trinoma Branch, located at 2nd floor TRINOMA Mall, North Triangle, Quezon City.

14. As agreed during the conversation thru Facebook chat last October 26, 2015, a certain Mr. Jay Dee, leader of Jay Dee Group GLOBAL INTERGOLD will appear at the said meeting place to conduct seminar/presentation about the mechanics of GIG.

15. At about 3:30 PM, alleged Mr. Jay Dee arrived and started discussing on how to become a member of GLOBAL INTERGOLD.

16. Mr. Dee averred that GLOBAL INTERGOLD (GIG) was formerly Emirates Gold Exchange (EMGOLDEX). An online store engage in buying/selling of gold bars (1 to 100g) with an initial investment of €540 (Five Hundred Forty Euros) or equivalent to Php 36,500.00 with the following break down:

Equivalent	Pre-Payment	Online Account Fee
Euro	€500	€40
Peso	Php 34,460.00	Php 2,040.00

17. Accordingly, said investment will gain a total amount of €7000 (Seven Thousand Euro) or equivalent to Php360,000.00 upon exit with GIG Tables;

18. Below were the mechanics as presented by Mr. Dee, to wit:

a. Rule 1+2- Investor needs to recruit Two (2) persons;
b. The recruited Two (2) persons must recruit for another 2 persons in order to complete the 15 person on a single table; and
c. Upon completion of the single table, one person (upline) will exit and will be receiving Php 180,000.00 for the first table.

19. He also explained that in this new type of marketing strategy, anyone can be a member with initial investment of Php 1,250.00, Php 5,500.00 and Php 10,500 which is offered by their group and once you completed their preliminary tables that is the time you go to the table of GLOBAL INTERGOLD after gaining Php 36,500.00.

20. Lastly, currently they are facing problems on recruiting because of a large money involve."

[15] Names withheld for confidentiality.

We find merit in the *Motion.*

Evidence show that Emgoldex and its allied entities, Global and PIPHC, are selling or offering for sale 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"[16] and includes an investment contract.[17]

Section 8.1 of the SRC provides 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 Commission. In connection therewith, Section 12.1 of the SRC states that all securities required to be registered under Subsection 8.1 shall be registered through the filing by the issuer in the main office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission shall prescribe.

An "investment contract" has been defined as follows:

> "G. 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.
>
> 1. An investment is presumed to exist whenever a person seeks to use the money or property of others on the promise of profits.
>
> 2. 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."[18]

The concept of an investment contract in the Philippines is of American origin. It traces its roots from the US Supreme Court case *Securities Exchange Commission v. W.J. Howey Co.*[19] where the 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.

In a subsequent U.S. Supreme Court case, it was 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

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[16] Section 3.1., Securities Regulation Code (SRC).
[17] Section 3.1.(b), *Id.*
[18] SRC Rule 3(1)(G), Amended Implementing Rules and Regulations (IRR) of the SRC.
[19] 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244, 163 A.L.R. 1043 (1946).

affording broad protection to the public. Because of this, it is no longer necessary that the expected profit accrue solely from the efforts of others. [20]

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*[21], the Supreme Court 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, (4) 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.[22]

As to the first requisite, an investment of money occurs when an investor commits money to an enterprise or venture in a manner that subjects himself to financial loss.[23] In the instant case, Emgoldex entices and solicits from investors the amount of Thirty Six Thousand Pesos/Five Hundred Forty Euros (Php 36,500.00/540 Euros) in order to participate in its "Emgoldex Marketing Program[24]". This investment scheme or program was subsequently adopted and utilized by Global Intergold and PIPHC based on the statements of PO3 Guinit and PO2 Dayrit. Thus, the first requisite is present.

As to the second requisite, there is a common enterprise. To reiterate, a common enterprise is deemed created when two (2) or more investors "pool" their resources. Several tests have evolved to determine what constitutes "common enterprise".[25] One of these tests is the horizontal commonality approach. Under this test, the determination of whether a transaction satisfies the commonality element of the modified Howey test involves an inquiry into whether the said transaction involves the joint participation of more than one investor in (i) the investment of funds or (ii) the sharing of profits.[26] Furthermore, joint participation by investors in the same investment enterprise, achieved by pooling the invested funds for a common purpose, is required in order to satisfy the common enterprise element.[27]

In the instant case, when the investor pays the Php 36,500 investment, he/she is entered in a table of orders comprised of 15 other investors under the said program. When the investor recruits two (2) new investors, he/she is elevated to the next Level. This cycle is repeated until the investor reaches or moves to Level 1 and exists from the Table of Orders. The common enterprise is the pooling of money to complete the Table of Orders. There is no productive enterprise and it can be seen that the source of

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[20] *SEC v. Glenn W. Turner Enterprises, Inc*, 474 F. 2d 476, 414 U.S. 821, 94 (1973).
[21] G.R. No. 164182, 26 February 2008.
[22] *Investment Co. Institute v. Camp*, 274 F. Supp. 624 (D. D.C. 1967).
[23] *SEC v. International Mining Exchange, Inc.*, 515 F. Supp. 1062.
[24] As illustrated in the Video Presentation in youtube.com which is attached to the Compliance dated 04 November 2015.
[25] *In the Matter of Octopus Network, Inc.*, SEC-PED Case No. 98-2220, 22 May 1998.
[26] Note 26, citing 69 Am Jur 2d citing *Stenger v. R.H. Love Galleries, Inc.* 741 F2d 144.
[27] Note 26, citing Wasnowic v. Chicago Bd. of Trade 352 F Supp 1066.

the pay-outs is the money coming from new investors/recruits. Thus, the second requisite is present.

As to the third requisite, there must be an expectation of profits. Profits may be generated from either capital appreciation resulting from the development of the initial investment, or participation in earnings resulting from the use of investors' funds. In the Emgoldex scheme, investors are "attracted primarily by the prospects of a return on his investment."[28] The investor's payment of Php 36,500.00 will earn Php 180,000.00 or allegedly 100 grams of gold when he/she reaches Level 1 and exits from the Table of Orders. Thus, an investor participating in the said program is expecting profits from his/her investment. Thus, the third requisite is present.

As to the fourth requisite, there must be the expectation of profits primarily from the efforts of others. In *Turner*[29], the US Supreme Court adopted a more realistic test which is "whether the efforts made by those other than the investors are undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise". In the instant case, it is only when the investor reaches Level 1 that he/she earns profits from his/her investment. To reach Level 1, the Main Table of Orders should be completely filled up by new investors. It can be clearly seen that the investor earns from the efforts of new investors who pays the amount of investment. The investor, who reaches Level 1 and exits, does not sell any concrete product but merely relies on the recruitment of new investors for them to earn profit. Furthermore, it is the subject entities and/or their agents acting on their behalf are the ones who develops, administers, maintains and promotes the investment scheme and an investor simply earns from such efforts. Therefore, the fourth requisite is present.

Finding all the elements of an investment contract present, Emgoldex, Global Intergold and/or PIPHC should be considered as to be engaged in selling and/or offering for sale securities in the form of investment contracts provided under the SRC.

In *Power Homes Unlimited vs. Securities and Exchange Commission*[30], the Supreme Court ruled that:

> "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."

Furthermore, Rule 3, paragraph 1, sub-paragraph N of the Amended Implementing Rules and Regulations of the SRC provides that:

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[28] *Power Homes Unlimited Corporation v. Securities and Exchange Commission.*
[29] Note 33, Supra.
[30] Note 34 Supra.

> **"Public offering means a random or indiscriminate offering of securities in general 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 any public or commercial place;**
> iii. **Advertisement or announcement in any radio or television, or any online or e-mail system;** or
> iv. Distribution and/or making available flyers, brochures or any offering material in a public or commercial space, or mailing the same to prospective purchasers."

In the instant case, evidence adduced by EIPD show that Emgoldex, Global Intergold and/or PIPHC are offering for sale its investment schemes publicly through online advertisements, video presentations and invitations to the public in general, thru meetings, fora, etc., to potential investors without prior registration.

In view of the above discussions, we see two (2) violations by Emgoldex, Global Intergold and PIPHC.

First, non-registration of securities. Under the law, unless what is involved are exempt securities or exempt transactions which are not covered by the 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.[31] 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.[32] As discussed above, the subject entities are engaged in the offering and selling of securities in the form of investment contracts which need prior registration with the Commission.

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 Philippines as a broker or dealer unless registered as such with the Commission.[33] In the instant case, the subject entities and/or all persons acting for and in their behalf are acting as either broker or dealer without being registered as such.

Relative thereto, Section 64 of the SRC provides that:

> 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**

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[31] Section 8.1., SRC.
[32] *Id.*
[33] Section 28.1., SRC.

otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

Thus, there are two essential requirements that must be complied with before a cease and desist order is issued: **First,** a proper investigation or verification was conducted; and **Second,** 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.[34]

As to the first requirement, EIPD conducted an investigation by verifying the allegations of the complaints/reports from the public concerning Emgoldex, Global Intergold and/or PIPHC investment schemes. Certifications were obtained to the effect that Emgoldex, Global Intergold and/or PIPHC are not licensed to sell securities. EIPD was also able to obtain affidavits from complainant-investors (PNP Officers) who personally invested and recruited for Emgoldex, Global Intergold and/or PIPHC.

As to the second requirement, based on EIPD investigation, Emgoldex, Global Intergold and PIPHC are engaged in the offering and selling of securities in the form of investment contracts without the necessary secondary license from the Commission. The lack of registration with the Commission means these subject entities did not undergo the evaluation process to determine whether the business activity is viable and if their income can support their claimed investment returns. Worse, Emgoldex and Global Intergold are operating in the Philippines without any license from any government agency nor a certificate of registration from the Commission. These acts are indicative of a fraudulent scheme that will likely cause grave or irreparable injury or prejudice to the investing public.

Thus, in the absence of a secondary license, Emgoldex, Global Intergold and/or PIPHC should be restrained from offering or selling securities in the form of investment contracts.

WHEREFORE, premises considered, **EMGOLDEX PHILIPPINES, GLOBAL INTERGOLD and PROPEROUS INFINITE PHILS. HOLDINGS CORPORATION,** their partners, officers, directors, agents, representatives, conduits, assigns, AND ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND IN THEIR BEHALF are hereby ordered to **IMMEDIATELY CEASE AND DESIST[35], UNDER PAIN OF CONTEMPT**, from engaging in activities of selling and/or offering for sale securities in the form of investment contracts or any others of the same nature, as discussed in this *Order*, until the requisite registration statement is duly filed with and approved by the Commission and the corresponding to offer/sell is issued.

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[34] Securities and Exchange Commission vs. Performance Foreign Exchange Corporation, GR No 154131, July 20, 2006.

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

Furthermore, the subject corporations/entities are directed to cease its internet presence relating to above-stated investment-taking activities. 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 like for and in behalf of the subject corporations.

The **Enforcement and Investor Protection Department** is hereby **DIRECTED** to: 1.) serve this *Order* to (a) EMGOLDEX PHILIPPINES, GLOBAL INTERGOLD and person/s, entities, representatives and assigns acting in their behalf, wherever they be found; and (b) PROPEROUS INFINITE PHILS. HOLDINGS CORPORATION, their President, General Manager, Corporate Secretary, Treasurer, In-House Counsel or partners; 2) post copies of the *Order* at the entrance of the main office and/or branches, if any, of EMGOLDEX PHILIPPINES, GLOBAL INTERGOLD and PROPEROUS INFINITE PHILS. HOLDING CORPORATION.

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 all operating departments and offices of the Commission for their information and appropriate action.

EIPD, in coordination with other concerned departments, is **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[36] of SRC and Sec. 10-3 of the 2006 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.

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[36] **SRC, Section 64.3. Any person against whom a cease and desist order was issued may, within five (5) days from receipt of the order, file a formal request for a lifting thereof. Said request shall be set for hearing by the Commission not later than fifteen (15) days from its filing and the resolution thereof shall be made not later than ten (10) days from the termination of the hearing. If the Commission fails to resolve the request within the time herein prescribed, the cease and desist order shall automatically be lifted.**

SO ORDERED.

Mandaluyong City, Philippines; 05 November 2015.

TERESITA J. HERBOSA *
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

BLAS JAMES G. VITERBO
Commissioner

EPHYRO LUIS B. AMATONG *
Commissioner

* On Official Travel