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

IN THE MATTER OF:

FAST TRACK WORLDWIDE, INC.
SEC Company Reg. No. CS201902428

SEC CDO Case No. 05-20-065

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),

Movant.

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CEASE AND DESIST ORDER

This resolves the *Motion for Issuance of a Cease and Desist Order* (Motion) filed on 19 May 2020 by the Enforcement and Investor Protection Department ("EIPD"), praying that an order be issued by the Commission directing FAST TRACK WORLDWIDE, INC. ("Fast Track"), its operators, directors, officers, representatives, salesmen, agents, and any and all persons, conduit entities and subsidiaries claiming and acting for and/or on its behalf, to immediately cease and desist (1) from engaging in activities of selling and/or offering for sale securities in the form of investment contracts until the required registration statement is filed with, approved by, and corresponding permits to offer and/or sell securities are issued by the Securities and Exchange Commission (the "Commission"); (2) from transacting all business involving the funds in its depository banks; and (3) from transferring, disposing and/or conveying in any manner any of its assets, real and/or personal properties, bank deposits, if any, without the authority of the Commission.

FACTS

Fast Track is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. Its Certificate of Incorporation, with Company Registration No. CS201902428, having been issued by the Commission on 18 February 2019. Its incorporators and current directors are Rey Aldwin Bautista Valeriano, James Rhyan Espinosa Guillera, Clive Christopher Cortez Llora, Jeneil Santos Aguilar, and Jay Piscadero Gregorio.

In 2019, the EIPD received a considerable number of inquiries and complaints on the alleged investment taking activities of Fast Track.[1] On account thereof, the EIPD conducted an investigation, gathered all relevant information available in the internet, which Fast Track was using as a platform to carry out its operations, the Facebook accounts of its directors, officers, members and agents; and the complaints which were sent/filed through email. The EIPD then found that Fast Track markets itself online as engaged in internet business which offers a compensation/investment plan to investors with a promised return of as high as three (3) million pesos a year.[2] The investors simply need to choose from among the four (4) packages available and invest, to wit:

1. Builder Package – P1,499.00
2. Delux Package – P4,999.00
3. Premium Package – P14,999.00
4. Executive Package – 49,999.00

In its promotional video,[3] Fast Track presents and offers various ways of earning profits from its investment packages, to wit:

> **"(1) Direct Referral Bonus**
>
> *Get Php 120.00 Direct Referral for every Builder Package purchased. Example:*
>
> *Three (3) Direct Referrals per day*
> *DR Commission = Php120.00*
> *x 90 Directs per month*
> *Total Earnings = Php 10,800 per month*
>
> **(2) Fast Track Double Income**
>
> *This incentive undertakes to double the direct referral income for members earning their first Php 1,000.00, Php 10,000.00, Php 100,000.00, and Php 1,000,000.00.*
>
> **(3) Max Pairing Income**
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> *For every pair a member gets, there is a corresponding remuneration. For their introductory package, a member will get Php 150.00 pairing bonus. Thus, an individual is allowed to have a maximum of twenty (20) pairs per account."*

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[1] Annexes "D" to "D-10" of the Motion.
[2] Annex "K" of the Motion.
[3] Annex "I" of the Motion.

The earning potential of Fast Track's investment packages on a per account basis is illustrated as follows:

Builder Package:

Direct Referral – Php 120.00
Pairing Bonus – Php 150.00
Max Pair – 20
Potential Monthly Income – Php 90,000.00"

Delux Package:

Direct Referral – Php 360.00
Pairing Bonus – Php 430.00
Max Pair – 25
Potential Monthly Income – Php 322,500

Premium Package:

Direct Referral – Php 1,200.00
Pairing Bonus – Php 1,440.00
Max Pair – 28
Potential Monthly Income – Php 1,211,280

Executive Package:

Direct Referral – Php 12,000.00
Pairing Bonus – Php 6,000.00
Max Pair – 30
Potential Monthly Income – Php 10,791,000."

The EIPD likewise discovered in the course of its investigation that the investment packages offered by Fast Track are bundled with health, lifestyle, and nutrition products which are valued at a price that is more than the money invested. Fast Track claims that the company is managed by professional online business practitioners which implements a laser targeting strategy that guarantees an almost zero percent (0%) rejection.

Respondent Fast Track also uses its online platform and Facebook Account[4] to advertise and offer to the public its products and investment packages, highlighting the *Executive Package* worth Php 49,999.00 which includes (1) a *Super Affiliate Course – Php 5,000.00*; (2) *Ecom Advanced Course – Php 15,000.00*; (3) *Closer Certification Program – Php 10,000.00*; and (4) *Products – Php 40,000.00*. The said package promises to provide additional profits through the following: (a) Direct Referral – Php 3,500.00; (b) Fast Track Double Income – Php 3,500.00; (c) Binary Pair - Php 3,000;

[4] Annex "K" of the Motion.

(d) Binary Max Income per day – Php 40,000.00; and (e) Binary Max Income per month – Php 125,000.00.

On 06 November 2019, the EIPD conducted a surveillance operation[5] at the office of Fast Track provided in its Articles of Incorporation, *i.e. 19F Marco Polo, Sapphire Road, Ortigas Center, Pasig City*, where it found that Fast Track is not holding office in the said address. The EIPD surveillance team was however informed by one of the personnel of Marco Polo (who appears to be connected with Fast Track) that the latter holds office at Unit G03, Saga Center, Scout Chuatoco Street, Quezon City and that Marco Polo is just a virtual office of the company.

Upon arrival at the address in Quezon City, the surveillance team was able to confirm that Fast Track was indeed conducting business therein. After the members of the surveillance team manifested their interest in investing with Fast Track, a certain Francis delos Santos ("Mr. delos Santos"), who introduced himself as a *"coach"*, entertained and presented to them the products and packages of Fast Track. During the presentation, Mr. delos Santos explained the three (3) available packages being offered by Fast Track *i.e. Builder Package, Deluxe Package, and Premium Package and their respective required amounts*.

Mr. delos Santos explained to the team that each package may be availed of at a discounted price and it may be sold at the following (higher) prices: (1) Builder Package – Php 2,100.00; (2) Delux Package – Php 6,100.00; and (3) Premium Package – Php 16,900.00. Mr. delos Santos also discussed to the surveillance team the max pairing bonus, where a member can have a maximum of 20 pairs and which has the following potential yield *i.e. (a) Builder – Php 3,000/day; (b) Delux – Php 10,500/day; and (c) Premium – Php 31,500.00/day*. Mr. delos Santos then invited the members of the team to invest and become members of the company because in addition to the guaranteed returns, they will receive the company's products and will be personally provided with a dashboard. The dashboard will serve as an access to the company's *e-shop*, a platform where the company's products may be purchased and advertised online by a member. They will also be provided with a platform for coaching.

On 21 February 2020, the EIPD surveillance team met Mr. Ed Christian Medalla, the head coach Fast Track.[6] Mr. Medalla informed and discussed to the team that Fast Track is an online business focused on e-commerce and selling of products. He emphasized that being an online business, the operation of Fast Track can be done anywhere and its members are not required to store its products since the company readily delivers the same. Mr. Medalla bragged that the company is at an advantage compared to others due to its so called "leverage" or its capacity to earn through the efforts of others. Mr. Medalla basically reiterated the presentation that was made by Mr. Delos

[5] Annex "J" of the Motion.
[6] Annex "L" of the Motion.

Santos on the packages offered by the company, the guaranteed returns and bonuses.

Mr. Medalla also discussed to the team the company's *e-shop*, an online platform where an individual and/or member may place their orders and make payments for the products availed of. He explained that a premium package holder can avail of sixty percent (60%) discount, ten percent (10%) of which redounds to the re-seller. He emphasized that re-sellers are individuals with no investments with Fast Track but their efforts are utilized by the company so that its members continue to earn.

The investigation on the operations of Fast Track by EIPD also led to the discovery, based on the similar scheme adopted, that the incorporators of Fast Track are the former top earners of Unity Network.[7]

More importantly, in support of its allegations in the Motion, the EIPD submitted Certifications issued by the Company Registration and Monitoring Department (CRMD), the Corporate Governance and Finance Department (CGFD) and the Markets and Securities Regulation Department (MSRD) of the Commission[8] which show that Fast Track, while registered as corporation, has no secondary license to operate as a broker/dealer, is not a registered issuer of mutual funds, ETFs and proprietary/non-proprietary shares, and has not registered any securities pursuant to Sections 8 and 12 of the Securities Regulation Code (SRC).[9]

On 27 March 2020, the Commission issued and posted an Advisory[10] which provides in part that:

> *"The public is advised **STOP INVESTING** in this money making scheme offered by **FAST TRACK WORLDWIDE, INC.** and in other similar schemes and to take the necessary precautions in dealing with the above-named entity and/or its representatives."*

Despite the Advisory issued by the Commission, the EIPD continuously received various reports and/or complaints from the public about the investment-taking activities of Fast Track.[11]

Hence, this Motion.

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[7] Annex "M" of the Motion.
[8] Annex "M", Annex "N" and Annex "O" of the Motion.
[9] Annexes "E", "F", and "G" of the Motion.
[10] Annex "N" of the Motion.
[11] Annexes "O" to "O-3" of the Motion.

ISSUE

Whether or not the issuance of CDO against Fast Track is warranted based on the findings and evidence presented by the EIPD.

RULING

After a careful review of the Motion and the evidence submitted by the EIPD in support of the allegations therein, the Commission finds merit to and hereby grants the same.

Fast Track is a corporation registered with the Commission on 18 February 2019 under Company Registration No. CS201902428 with the following purpose, thus:

> *"To engage in direct selling of goods and merchandises to consumers. Provided, the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts."* (Emphasis supplied)

It bears emphasis that the grant of juridical personality with the issuance of the Certificate of Incorporation to Fast Track did not include the grant of authority to sell or offer securities to the public as the same requires a secondary license from this Commission. This is very clear in the afore-quoted provision of Fast Track's Articles of Incorporation.

A careful review of the evidence submitted by the EIPD, however, reveals that Fast Track is engaged in the sale and/or offer of unregistered securities in the form of investment contracts without the requisite license.

Section 3 of the SRC provides:

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

The 2015 Implementing Rules and Regulations (IRR) of the SRC further define securities in Rule 3(3.1), thus:

"Rule 3 – Definition of Terms

3.1. As used in these Rule, unless the context provides otherwise:

xxxx xxxx xxxx

3.1.20. Securities shall include: (a) Shares of stock, bonds, government securities, commercial papers, debentures, notes, evidences of indebtedness, asset-backed securities; (b) Investment contracts, certificates of interest or participation in a profit-sharing agreement, certificates of deposit for a future subscription; (c) Fractional undivided interests in oil, gas or other mineral rights; (d) Derivatives like option and warrants; (e) Certificates of assignments, certificates of participation, trust certificates, voting trust certificates or similar instruments; (f) Proprietary or non-proprietary membership certificates in corporations; and (g) Other instruments as may in the future be determined by the Commission." (Emphasis supplied)

Section 26.3 of the SRC-IRR (Prohibited Representations, Dealings and Solicitations) defines an investment contract as follows:

"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." (Emphasis supplied)

In the case of *SEC vs. 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.[12] 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 through the efforts of the promoter or of someone other than themselves.[13]

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[12] 328 U.S. 293 (1946).

[13] *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.

It is in the context of the foregoing that the U.S. Supreme Court came up with and adopted the *Howey Test*[14] in determining if an investment scheme, regardless of the legal terminology used, partakes of the nature of an investment contract. In 2008, the Philippine Supreme Court had the occasion to apply and discuss the *Howey Test*, thus:

> "*It behooves us to trace the history of the concept of an investment contract under R.A. No. 8799. Our definition of an investment contract traces its roots from the 1946 United States (US) case of SEC v. W.J. Howey Co. In this case, the US Supreme Court was confronted with the issue of whether the Howey transaction constituted an "investment contract" under the Securities Act's definition of "security." The US Supreme Court, recognizing that the term "investment contract" was not defined by the Act or illumined by any legislative report, held that "Congress was using a term whose meaning had been crystallized" under the state's "blue sky" laws in existence prior to the adoption of the Securities Act. Thus, it ruled that the use of the catch-all term "investment contract" indicated a congressional intent to cover a wide range of investment transactions. It established a test to determine whether a transaction falls within the scope of an "investment contract." Known as the Howey Test, it requires 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. Although the proponents must establish all four elements, the US Supreme Court stressed that the Howey Test "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits." Needless to state, any investment contract covered by the Howey Test must be registered under the Securities Act, regardless of whether its issuer was engaged in fraudulent practices.*"[15] (Emphasis ours)

In the case of *Virata vs. Ng Wee*[16], the Supreme Court ruled that:

> "*In this jurisdiction, the Court employs the Howey test, named after the landmark case of Securities and Exchange Commission v. W.J. Howey Co., to determine whether or not the security being offered takes the form of an investment contract. The case served as the foundation for the domestic definition of the said security. Under the Howey test, the following must concur for an investment contract to exist: (1) a contract, transaction, or*

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[14] *Ibid.*
[15] Power Homes Unlimited Corp. v. Securities and Exchange Commission, G.R. No. 164182, February 26, 2008.
[16] G.R. Nos. 220926, 221058, 221109, 221135 & 221218, [July 5, 2017].

scheme; (2) an investment of money; (3) investment is made in a common enterprise; (4) expectation of profits; and (5) profits arising primarily from the efforts of others. Indubitably, all of the elements are present in the extant case."

Applying the *Howey Test* to the instant case, this Commission agrees with the finding of the EIPD, and holds that Fast Track is engaged in the sale and/or offer of securities in the form of investment contracts.

First, Fast Track sold and/or offered "Investment Packages" to the investing public, a transaction/scheme where Fast Track agreed to issue products and packages, and pay guaranteed returns, commissions, and bonuses in return for the investments made by the public;

Second, Fast Track's members invested money in exchange for *products* and packages, and a guaranteed return of their investment;

Third, Fast Track's members invested in a common enterprise consisting in the operation and maintenance of an online business which sells and/or offers investment packages bundled with health products, and provides "Referral Bonuses, Fast Track Double Income Incentives, and Max Pairing Income" which are designed to increase the guaranteed returns of its investors;

Fourth, Fast Track's members expect to receive a guaranteed return of their investments which is as high as 211.7% per day or 6,351% per month; and

Fifth, the member-investors expect to earn profits from the entrepreneurial and managerial efforts of others i.e. the member-investor waits for their respective re-sellers and/or downlines to sell the products and recruit other members; this entire scheme is facilitated by Fast Track.

Records of the case disclose that the foregoing investment scheme was confirmed and admitted by Mr. delos Santos and Mr. Medalla during their separate discussions with the EIPD Surveillance Team. Mr. Medalla even emphasized Fast Track's advantage due to its so-called *"leverage"* or its *capacity to earn through the efforts of others*, and that a member-investor with re-sellers and/or downlines does not need to exert any effort other than to pay for the investment packages in order to earn. The same was also corroborated by the complaints which the EIPD received and submitted in evidence. It is thus clear that Fast Track's act of selling and/or offering its investment packages to the public in return for their investments pursuant to a promise of a guaranteed return, constitutes sale/offer for sale of securities in the form of investment contracts, as it actively entices the public to part with their hard-earned money with the expectation of receiving passive income from the pool of investments gathered from all member-investors, while earning active income from recruitment and/or referral bonuses.

Moreover, the act of Fast Track in publishing and making actual presentations of its investment scheme through YouTube, Facebook and its web page and/or online platforms, and inviting investors to invest with them, constitute public offering as defined under Rule 3.1.17 of the 2015 IRR of the SRC, to wit:

> *"**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)

The SRC clearly provides that securities cannot be sold or offered to the public without a registration statement duly filed with and approved by the Commission.

Section 8(8.1) of the SRC provides for the requirement of securing a duly approved registration statement before a security can be offered or sold to the public, 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 supplied)

In the context of the afore-quoted provision, it is clear that Fast Track is not authorized to sell and/or offer the "Investment Packages" to the public because they are securities in the form of investment contracts, and Fast Track does not have the requisite license from the Commission. This undoubtedly warrants the issuance of a cease and desist order because the act of Fast Track in selling/offering unregistered securities operates as a fraud to the public

which, if unrestrained, will likely cause grave or irreparable injury or prejudice to the investing public.[17]

The foregoing finds support in the case of *Securities and Exchange Commission vs. CJH Development Corp.*[18] (SEC vs. CJH), where the Supreme Court emphasized the need for a prompt issuance of a CDO after a finding 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*."

Moreover, it bears emphasis that, as held in the case of *SEC vs. CJH,* fraud is attendant in the act of selling and/or offering securities without the requisite license, thus:

> "*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.*"

Without the registration statement duly filed with and approved by this Commission, Fast Track's act of selling/offering "Investment Packages" which are securities in the form of investment contracts constitutes a clear violation of the Section 8 of the SRC. This warrants the immediate issuance of a cease and desist order.

WHEREFORE, premises considered, **FAST TRACK WORLDWIDE, INC.**, 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 selling

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[17] Section 64 of the Securities Regulation Code.
[18] G.R. No. 210316, November 28, 2016.

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.

Finally, the Commission hereby **PROHIBITS** Fast Track, 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.

Let a copy of this Order be (a) posted in the Commission's website; (b) published in a newspaper of general circulation; and (c) be furnished to the Company Registration and Monitoring 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 Section 4-3(b), Rule IV of the 2016 Rules of Procedure of the SEC, the parties subject of this Cease and Desist Order (CDO) may file a verified motion to lift the CDO within five (5) days from the lifting of the Modified Enhanced Community Quarantine (MECQ).

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Pasay City, Philippines, 28 May 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner