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

IN THE MATTER OF:

FORSAGE and FORSAGE PHILIPPINES

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

SEC CDO Case No. 09-20-068

23 September 2020

TO:

FORSAGE

FORSAGE PHILIPPINES

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT
Ground Floor, Secretariat Building
PICC Complex, Pasay City

COMPANY REGISTRATION AND MONITORING DEPARTMENT
Ground Floor, Secretariat Building
PICC Complex, Pasay City

CORPORATE GOVERNANCE AND FINANCE DEPARTMENT
Ground Floor, Secretariat Building
PICC Complex, Pasay City

INFORMATION AND COMMUNICATIONS TECHNOLOGY DEPARTMENT
Ground Floor, Secretariat Building
PICC Complex, Pasay City

BANGKO SENTRAL NG PILIPINAS
A. Mabini Street cor. P. Ocampo Street
Malate, Manila City

DEPARTMENT OF TRADE AND INDUSTRY
Trade and Industry Building
361 Sen. Gil Puyat Avenue, Makati City

DEPARTMENT OF INFORMATION AND COMMUNICATIONS TECHNOLOGY
C.P. Garcia Avenue, Diliman
Quezon City

NATIONAL PRIVACY COMMISSION
5th Floor, Delegation Building
PICC Complex, Roxas Boulevard
Pasay City

G R E E T I N G S:

Please take notice that on 17 September 2020, a **CEASE AND DESIST ORDER** was issued in the above-entitled case, the original of which is now on file with this office.

Pasay City, Philippines.

By authority of the Commission: E. D.

EIPD

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Movant.

x - x

CEASE AND DESIST ORDER

This resolves the *Motion for Issuance of Cease and Desist Order* (the "Motion") filed on 10 September 2020 by the Enforcement and Investor Protection Department ("EIPD") praying: (1) to enjoin FORSAGE and FORSAGE PHILIPPINES (collectively as "Forsage"), its operators, directors, officers, representatives, salesmen, agents, and any and all persons, conduit entities and subsidiaries (collectively referred to as "Agents") claiming or acting for and in its behalf from selling and/or offering securities in the form of investment contracts and to cease its internet presence until the requisite permits are duly issued; and (2) to prohibit Forsage, its officers, representatives, salesmen, and agents from transacting any and all business involving the funds in its depository banks, and from transferring, disposing, or conveying in any manner, any and all assets, properties, real or personal, including bank deposits, if any, of which the named persons herein may have interest, claim or participation, whether directly or indirectly, under their custody, to ensure the preservation of the assets of the investors.

RELEVANT FACTS

Forsage is an entity that is not registered with the Commission. Neither is Forsage a registered crowdfunding intermediary or a funding portal under Memorandum Circular No. 14, series of 2019.[1] Forsage appears to have been developed by one LADO OKHOTNIKOV, and in terms of operations in the Philippines, is joined by a certain RICH ALEX APUNTAR.

[1] Rules and Regulations Governing Crowdfunding

In June 2020, the EIPD started receiving complaints, reports, and inquiries through its email address and the Commission's *iMessage* Mo Facility[2], regarding the legitimacy of the alleged investment, specifically in the context of the Advisory that was issued by the Commission[3], which prompted the EIPD to conduct an intensive investigation on its operations.

Based on the investigation of the EIPD, Forsage claims to own and operate a crowdfunding international platform and the first ever smart contract in the blockchain of Etherium (ETH) cryptocurrency.[4] Forsage further claims that it has no managers and is fully decentralized; thus it is not subject to government restriction and control.[5] Considering that its program is embodied in a smart contract based on the ETH blockchain technology, Forsage promises a long-term active and passive income to its investor through a system that is secured, scam-free and one that will continue to function after the closure of its website for whatever reason.[6]

There are two (2) commission programs or cycler tiers that grant payouts to its investors: Forsage X3 and Forsage X4. These programs require a minimum investment of 0.05 ETH which is equivalent to approximately Six Hundred Pesos (Php 600.00), and allows a maximum investment of up to 51.2 ETH which is equivalent to approximately Six Hundred Thousand Pesos (Php 600,000.00).[7] The Forsage X3 and X4 programs have each twelve (12) income slots that an investor may activate. Forsage claims that each investment slot under the X3 and X4 plans all have endless referral cycles which guarantees a potential income that is boundless. The X3 and X4 does not expire and is not susceptible of being deactivated.

Under Forsage X3, an investor needs three (3) referrals to complete a cycle. The first two (2) referrals' membership fees shall be paid to the referring member's account while the third shall be considered as a "re-entry fee" and shall be awarded to the referring member's sponsor or upline.

Under Forsage X4, an investor needs six (6) referrals to complete a cycle. Unlike Forsage X3, the first two (2) referrals shall be awarded to the sponsor's or upline's account while the third until the fifth referral fees shall be credited to the referring member's account while the sixth referral shall be considered as the "re-entry fee" to the system whereupon the same will now be converted to a four (4) tier matrix which will require only four (4) referrals to complete succeeding cycles.

As an added feature, Forsage provides "spillovers" to assist passive investors in completing their cycles. These are overflows or surplus of

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[2] Annex C of the *Motion*.
[3] SEC Advisory dated 30 June 2020.

referrals gathered by the passive member's sponsor or downlines which automatically forms part of his/her compensation cycle .

Basically, the active income generated from Forsage's compensation programs depends on the number of referrals and/or membership fees gathered, while passive income is acquired through spillovers. Hence, the earning capacity of Forsage's investors are dependent on the number of investors that they bring into the system. This, however is clearly not sustainable because it is bound to reach a point where no more new investors will be willing to invest in it.

In the course of its investigation, the EIPD was able to secure Certifications[8] from 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 showing that Forsage has not applied for a primary franchise as a corporation or partnership, and has not been issued any secondary license to operate as a broker/dealer of securities and is not a registered issuer of any securities pursuant to Sections 8 and 12 of the SRC, or of mutual funds (including exchange traded funds, membership certificates, and time shares).

EIPD's investigation likewise reveals that Forsage does not appear among the registered companies authorized to engage in digital assets with the Bangko Sentral ng Pilipinas ("BSP") in accordance with BSP Circular No. 944, or the Guidelines for Virtual Currency Exchanges, which requires all entities engaged in virtual currencies in the Philippines to obtain a Certificate of Registration to operate as a remittance and transfer company.

Further, the EIPD conducted an online search using Google, Facebook and YouTube to check the veracity of the information received from the public about the business operations of Forsage. The EIPD was able to get evidence showing Forsage's online presence by which it promotes, solicits, and entices the public to invest in its programs. Screenshots of the website[9], and relevant online posts in social media[10], presentations[11], and promotional videos[12] found online were included in the EIPD's affidavit[13] as faithful reproductions of such online posts and presentations, and submitted in evidence to support the Motion.

On 30 June 2020, the Commission issued an Advisory warning the public to stop investing in any scheme offered by Forsage or such other entities engaged in smart contracts, cryptocurrencies, and digital asset trading that are not registered with the Commission and the BSP.

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[8] Annexes G-1 to G-3 of the *Motion*.
[9] Annexes A-2, and E-1 to E-2 of the *Motion*.

Notwithstanding the Advisory, members and/or representatives of Forsage continued to solicit investments from the public. Worse, they attempted to discredit the Commission by spreading false or misleading information that they are outside the jurisdiction of the Commission. Further, it appears that Forsage devised another plan or scheme to solicit investments or to further their business engagements through Forsagetron.

The EIPD also continuously received various complaints from the public about Forsage's investment-taking activities, all of which were attached to the Motion and submitted in evidence to support the same.[14]

ISSUE

Whether or not the issuance of a cease and desist order against Forsage is warranted based on the findings and evidence presented by the EIPD.

DISCUSSION

The Commission finds merit in the Motion and hereby grants the same.

The EIPD's motion, as supported by substantial evidence, was able to establish that Forsage's so-called smart contract partakes of the nature of securities being sold/offered to the public in the form of investment contracts without the necessary license from the Commission.

Section 3 of the SRC defines "securities" as follows:

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

As a rule, securities cannot be sold or offered for sale within the Philippines without the same being registered with the Commission through the filing and approval of a Registration Statement and a corresponding Permit to Offer/Sell being issued in favor of the applicant.

An "investment contract" has been defined 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."[15] (Emphasis supplied)

The concept of an investment contract in the Philippines is of American origin. It traces its roots from the US Supreme Court case *Securities and Exchange Commission v. W.J. Howey Co.*[16] 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.

The concept of an investment contract was adopted and used in *Power Homes Unlimited Corporation v. Securities and Exchange Commission,*[17] where the Supreme Court ruled 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.[18]

In this case, the investment contract consists of a scheme or transactions whereby the referral, solicited by unregistered individuals, invests his money in the common enterprise, Forsage, and expects profits therefrom with minimal or without any effort at all.

After a careful review of the evidence submitted by the EIPD in support of its Motion, the Commission finds that all the elements of an investment contract are present, thus:

(1) There is an *investment of money* by investors who registers in the Forsage programs. The EIPD was able to show that investors actually made a minimum investment of 0.05 ETH or at least Six Hundred Pesos (Php 600.00) to a maximum of 51.2 ETH or almost Six Hundred Thousand Pesos (Php

600,000.00). Without such investment, the investor will not be eligible to any form of payout;

(2) The EIPD was also able to show that *Forsage is a common enterprise* since its operations involve the pooling of the resources of its investors into its programs, and where such resources are being utilized to provide monetary benefits to its existing investors;

(3) The *investors are motivated by the expectation of profits* in view of the promotional gimmicks and statements that Forsage's agents and/or representatives utilize; and

(4) Finally, the investors earn without significant effort or obligation. Forsage is the one who conceptualized and promoted the earning schemes making the investors efforts in recruiting minimal. Thus, the investor earns *primarily from the efforts of others*.

Moreover, the evidence presented by the EIPD also shows that Forsage's investment scheme involves public offering of securities.

Public Offering is defined as:

> "3.1.17. **Public offering is any offering of securities to the public or to anyone, 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:
>
> x x x
>
> 3.1.17.3 Advertisement or announcement in radio, television, telephone, **electronic communications, information communication technology or any other forms of communication**; or"[19] (Emphasis supplied)

In the instant case, evidence adduced by the EIPD shows that Forsage is publicly offering for sale Forsage X3 and Forsage X4 which are unauthorized securities through online advertisements, promotional videos and social platforms to potential investors without prior registration.

Section 64 of the SRC has two (2) essential requirements that must be met prior to the issuance of a cease and desist order: *First,* there must be a conduct of a proper investigation or verification; 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.[20]

In this case, a proper investigation has been duly conducted by the EIPD where it was able to gather information and evidence affirming the complaints of investors who were allegedly defrauded that Forsage is engaged in the public offering of unregistered securities. The EIPD presented the following evidence in support of its Motion:

(1) Certifications from the Commission's MSRD, CGFD, and CRMD to the effect that: (a) Forsage is neither a registered entity with the Commission nor has it been issued a secondary license as a Lending Company, Broker and/or Dealer of Securities, Dealer in Government Securities, Investment Adviser of an Investment Company, and Investment House and Transfer Agent; (b) Forsage has not registered any securities pursuant to Sections 8 and 12 of the SRC; and (c) Forsage has not been issued any license authorizing it to issue securities such as mutual funds, exchange traded funds, and membership certificates.

(2) A finding that Forsage is not qualified to operate as a crowdfunding entity in the Philippines as it must be duly organized under Philippine laws or must be a Filipino natural person, in violation of SEC Memorandum Circular No. 14, series of 2019. Neither is Forsage accredited and/or accepted by a crowdfunding intermediary.

(3) A finding that Forsage does not appear among the registered companies engaged in digital assets with the Bangko Sentral ng Pilipinas ("BSP") in accordance with BSP Circular No. 944, or the Guidelines for Virtual Currency Exchanges, which requires all entities engaged in virtual currencies in the Philippines to obtain a Certificate of Registration to operate as a remittance and transfer company.

(4) Investigator's affidavit which attested to the online search conducted using Google, Facebook and YouTube to check the veracity of the information received from the public about the business operations of Forsage. Screenshots of the website, and relevant online posts in social media, presentations, and promotional video found online were included in the affidavit as faithful reproductions of such online posts and presentations.

The foregoing shows that the EIPD properly made an investigation and studied the nature and operations of Forsage.

Furthermore, the investment practices of Forsage, if not restrained, will operate as a fraud on investors or to the investing public as it utilizes a "Ponzi

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."[21]

This scheme is made evident by Forsage's own declaration that an investor needs to make an effort to attract new partners and the opening of new platforms in X3 and X4 programs in order to get passive income and to earn good money.[22]

Moreover, the act of Forsage 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.[23] This finds support in the case of *Securities and Exchange Commission v. CJH Development Corp.*[24] (SEC vs. CJH) where the Supreme Court emphasized the need for a prompt issuance of a CDO after a finding 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.*" (Emphasis supplied)

Finally, Forsage's claim that it is decentralized and thus not subject to any government restriction and control is baseless. A **profit making venture** such as Forsage which utilizes smart contracts in selling or offering securities in the nature of investment contracts is required to be registered with the

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[21] People of the Philippines vs. Tibayan and Puerto, G.R. No. 209655-60, January 14, 2015.

Commission which regulates public offering or sale of securities within the Philippines.[25]

WHEREFORE, premises considered, **Forsage and Forsage Philippines**, and its operators, directors, officers, representatives, salesmen, agents, and any and all persons claiming, acting, and operating for and in their behalf, are hereby ordered to **IMMEDIATELY CEASE AND DESIST UNDER PAIN OF CONTEMPT** from engaging in the unlawful solicitation and sale of unregistered securities.

Forsage and Forsage Philippines, its operators, directors, officers, representatives, salesmen, agents and any and all persons claiming and acting for and in their behalf are likewise directed to **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, information providers, salesmen, agents, brokers, dealers or the like for and in their behalf.

Finally, the Commission hereby **PROHIBITS** Forsage and Forsage Philippines, its operators, directors, officers, representatives, salesmen, agents and any and all persons claiming and acting for and in their behalf from transacting any business involving funds in its depository banks, and from transferring, disposing, or conveying in any manner, any and all assets, properties, real or personal, including bank deposits, if any, of which the named persons herein may have interest, claim or participation, whether directly or indirectly, under their custody, to ensure the preservation of the assets of the investors

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

1) Serve this *Cease and Desist Order* to **Forsage and Forsage Philippines**, and its operators, representatives and/or agents including **Rich Alex Apuntar, Vhellpoe Forlares Garves, Yuka Kuroyanagi, Christopher Doroliat, Iam Kim, Jairra Fab Teoxon, Mark Nicole Escabarte Valerio, Myra Cris Sapar, Romnick Melañez and Vel Cabalza;** or if impracticable;[26]

2) Cause (a) the posting of this Order in the Commission's website and (b) the publication of the same in a newspaper of general circulation as provided for under Section 4-2, Rule IV, Part I of the 2016 Rules.

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 Part II, Rule IV, Section 4-3 of the 2016 Rules of Procedure of the SEC, the respondents may file a verified ***Motion to Lift the CDO*** to the Commission En Banc thru the Office of the General Counsel, within five (5) days from receipt of this Order.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Pasay City, Philippines; 17 September 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner