Republic of the Philippines
Department of Finance
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

In the matter of:

GRACELAND PROPERTIES AND DEVELOPMENT, INC., and ICON DEVELOPMENT CORPORATION

SEC CDO Case No. 03-12-002
For: *Cease and Desist Order*

ENFORCEMENT AND PROSECUTION DEPARTMENT,

Movant.

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ORDER

This resolves the Petition And/Or Motion to Lift Cease and Desist Order and to Vacate and Set Aside Order dated 14 June 2012 [with Entry of Appearance] ("Motion to Lift CDO") filed by **GRACELAND PROPERTIES AND DEVELOPMENT, INC.** ("GRACELAND")[1] and **ICON DEVELOPMENT CORPORATION** ("ICON")[2] [collectively referred to as "Respondents-Movants"] on 25 June 2012.

In an Order dated 25 July 2012, the Motion to Lift CDO filed by Respondents-Movants was set for hearing on 09 July 2012. The Enforcement and Prosecution Department ("EPD") filed its Opposition on 23 July 2012 while Respondents-Movants filed their Reply on 31 August 2012. On 25 September 2012, an Order was issued submitting the case for resolution.

In their Motion to Lift CDO, Respondents-Movants principally argue that the CDO issued by the Commission on 14 June 2012 should be set aside based on the following grounds:

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[1] SEC Company Reg. No. CS200405351.
[2] SEC Reg No. AS094-00009314.

(a) The transactions in question constitute simple individual loans which are civil in nature and not selling of securities contemplated by Republic Act No. 8799 or the Securities and Regulation Code ("SRC"); and

(b) The Commission, through the EPD, committed forum shopping since it has already filed several criminal complaints, to wit:

a) DOJ case entitled "Securities and Exchange Commission vs. Graceland Properties Development, Inc., Icon Development Corporation & Ronaldo R. Soliman" docketed as NPS Docket No. XCI-INV-10L-0036 for Violation of Sec. 8 in relation to Sec. 73 of R.A. 8799;
b) Enforcement and Prosecution Department case entitled *"In the matter of Graceland Properties Dev't, & ICON Development Corporation"* docketed as SEC Admin Case No. 08-11-130 for Revocation of Corporation Registration;
c) DOJ case entitled "*Ethelwoldo T. Pasiliao vs. Ronaldo R. Soliman, et al.*" NPS Docket No. IV-09-INV-10D-00216 (IV-16-INV-101-00373) for Syndicated/Large Scale Estasfa; and
d) DOJ case entitled "*Atty. Johnard S. Malvar, Jorge Vargas et al. vs. Ronaldo Soliman, et al.*" docketed as NPS Docket No. IV-09-INV-10D-00211 (IV-16-INV-101-00372) for Syndicated/Large Scale Estafa.[3]

Likewise, Respondents-Movants cite a similar complaint before the Office of Provincial Prosecutor in Lucena City, Province of Quezon ("Provincial Prosecutor", for brevity) for violation of Section 8, among others, of the SRC. However, the same was dismissed and the resolutions dismissing the same for lack of probable cause should be binding on the Commission.[4]

The EPD, in its Opposition to the Motion to Lift CDO, argues that: (a) the promissory notes and checks issued by the Respondents-Movants to the complainants-investors are securities, that the substance of the transaction and the relation between the issuer and security holder should control in the case; and (b) the issuance of the CDO did not violate the rule on forum shopping since the cases filed by the EPD involve different parties, causes of action and reliefs prayed for.

In their Reply, Respondents-Movants reiterate that the twin resolutions in the Lucena City case were the "final and ultimate verdict on the merits as far as the issue of violation of Securities and Regulation Code." Respondents-Movants likewise allege that the post-dated checks and promissory notes entered into by and between the alleged investors and Respondents-Movants are neither security nor an

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[3] Motion to Lift CDO, 6-7.
[4] Agnes Caralian, et al. vs. Ronaldo R. Soliman, et al. NPS Docket Nos. IV-09-INV-10E-000213 to 215; IV-09-INV-10E-000217 to 00226; IV-09-INV-10-E-000230; IV-09-INV-10-E-000231; IV-09-INV-10-E-000235; IV-09-INV-10-E-000248; IV-09-INV-10-E-000256; IV-09-INV-10-E-000257; IV-09-INV-10-E-000260; and IV-09-INV-10-E-000270.

investment contract under the SRC pursuant to the twin resolutions of the Provincial Prosecutor.

The Commission finds no cogent reason to vacate and set aside its CDO dated 14 June 2012.

To reiterate, the following are the relevant facts as stated in the Order dated 14 June 2012 of the Commission, granting the Motion for the Issuance of a Cease and Desist Order ("CDO") against Respondents-Movants:

> "Based on the numerous complaints filed against GRACELAND and ICON, and the Motion filed by EPD, there is a common thread to the narratives of the investors-complainants and their substantial allegations reveal an investment scheme to defraud investors of their money conducted in the following manner:
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> 1) Agents/salesmen would introduce themselves as representatives of GRACELAND to prospective investors and entice them to invest their funds in an investment scheme with a rate of 2-4% return per month;
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> 2) Once the investor agrees and invests his/her money, GRACELAND issues a promissory note to the investor and post-dated checks to cover the principal amount and interest, payable in equal installments;
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> a) For some investments, GRACELAND would issue to the investor Certificates of Membership in Graceland Estates & Country Club, Inc. in the name of "Graceland Properties and Development, Inc." and/or "Icon Development, Inc."; and
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> b) For even more substantial investments, GRACELAND would issue a Deed of Assignment in favor of the investor over one of its condominium units as security;
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> 3) The first check(s) due would be honored by the drawee bank. However, succeeding checks would then be dishonored and the investor would learn that the account was already closed; and
>
> 4) Ultimately, the payments for the principal and/or interest due remain unsettled. Moreover, the investors eventually discover that the certificates of membership are mere photocopies and not even in their own names, or that the Deed of Assignment over a condominium unit is the same collateral used to lure three (3) or more different investors. xxx

> Per verification by the EPD with the Corporation Finance Department ("CFD") of the Commission, GRACELAND and ICON are not registered issuers of securities under Sections 8 and 12 of the Securities Regulation Code ("SRC"), and are therefore not licensed to offer or issue securities to the public."

Respondents-Movants argue, among others, that the issuance of the promissory notes was for the purpose of securing a loan to finance the activities of the corporation, and well within the ambit of a valid corporate act and that these represent private transactions producing only a fixed return in the form of interest, and do not constitute "evidences of indebtedness" as contemplated by the SRC.

In a similar case, the Supreme Court enunciated with approval the findings of the Department of Justice in the investment scheme perpetrated by the ASB:

> "Respondents Roxas and Nolasco do not dispute that in 1998, ASB borrowed funds about 700 individual investors amounting to close to P4 billion, ***on recurring, short-term basis, usually 30 or 45 days, promising high interest yields, issuing therefore mere postdated checks.*** Under the circumstances, the checks assumed the character of "evidences of indebtedness," which are among the "securities" mentioned under the Revised Securities Act. The term "securities" embodies a flexible rather than static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek to use the money of others on the promise of profits (69 Am Jur 2d, p. 604). ***Thus, it has been held that checks of a debtor received and held by the lender also are evidences of indebtedness and therefore "securities" under the Act, where the debtor agreed to pay interest on a monthly basis so long as the principal checks remained uncashed, it being said that such principal extent as would have promissory notes payable on demand*** (*Id.*, p. 606, citing United States v. Attaway (DC La) 211 F Supp 682). In the instant case, the checks were issued by ASB in lieu of the securities enumerated under the Revised Securities Act in a clever attempt, or so they thought, to take the case out of the purview of the law, which requires prior license to sell or deal in securities and registration thereof. The scheme was to designed to circumvent the law. ***Checks constitute mere substitutes for cash if so issued in payment of obligations in the ordinary course of business transactions. But when they are issued in exchange for a big number of individual non-personalized loans solicited from the public, numbering about 700 in this case, the checks cease to be such. In such a circumstance, the checks assume the character of evidences of indebtedness. This is especially so where the individual loans were not evidenced by appropriate debt instruments, such as promissory notes, loan agreements, etc., as in this case. Purportedly, the postdated checks themselves serve as the evidences of the indebtedness. A different rule would open the floodgates for a similar scheme, whereby companies without prior license or authority from the SEC.*** This cannot be countenanced. The subsequent repeal of the Revised Securities Act does not spare

> respondents Roxas and Nolasco from prosecution thereunder, since the repealing law, Republic Act No. 8799 known as the "Securities Regulation Code," continues to punish the same offense (see Section 8 in relation to Section 73, R.A. No. 8799).xxx"[5]

The Supreme Court essentially agreed with the findings of the DOJ that the post-dated checks issued by the ASB were themselves "evidences of indebtedness" contemplated by the Revised Securities Act, then in force.[6] The Supreme Court went on further to state:

> "It is one thing for a corporation to issue checks to satisfy isolated individual obligations, and another for a corporation to execute an elaborate scheme where it would comport itself to the public as a pseudo-investment house and issue postdated checks instead of stocks or traditional securities to evidence the investments of its patrons."

The aforementioned ruling in *Betty Gabionza, et al. vs. Court of Appeals, et al.* (2008) is, contrary to Respondents-Movants' position, applicable to the case at bar. The *Gabionza* case is instructive in that the post-dated checks issued by ASB Holdings, Inc. were viewed by the Supreme Court as evidences of indebtedness in view of the bigger picture where they were due to the nature of the transactions involved, the number of checks issued and the purpose for which the transactions were constituted. Applying the foregoing, there are undeniable similarities between the *Gabionza* and the present case.

To recapitulate, agents of Respondents-Movants approached the complainants-investors with an investment scheme offering a high rate of return on their funds invested with Respondents-Movants. These "loans" were secured by promissory notes, post-dated checks and in some cases, Certificates of Membership and Deeds of Assignment in real estate properties owned by Respondents-Movants.

Contrary to Respondents-Movants' assertions, these transactions were far from simple, ordinary loans. Investors were persuaded and induced to part with their money with the expectation of substantial returns under the investment scheme proposed by Respondents-Movants. These investments were secured with notes and post-dated checks which fall under the enumeration provided in Section 3.1 of the SRC – i.e. "evidences of indebtedness." Unlike in a simple loan agreement, the "creditors" in this case are not merely expecting payment of their loan with interest. In a broader context, these "creditors" are actually investors expecting a monthly return rate of 2-4% on the money they invested in Respondents-Movants, which should be in turn registered with the Commission as securities. However, absent

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[5] *Betty Gabionza, et al. vs. Court of Appeals, et al.*, G.R. No. 161057, September 12, 2008.
[6] The Supreme Court reinstated the resolutions of the DOJ in filing criminal charges against Luke Roxas and Evelyn Nolasco of ASB Holdings, Inc. finding that the DOJ established a *prima facie* case for violation of Article 315(2)(a)of the Revised Penal Code in relation to Sections 4 in relation to Section 56 of the Revised Securities Act in relation to the issuance of unregistered securities.

proper compliance with the requirements of the SRC,[7] these unregistered securities are being offered and issued, unregulated, without the corresponding responsibility required of their issuers.

Anent Respondents-Movants' assertion that the EPD engaged in forum shopping by filing the instant case, we revisit the definition and fundamental concepts of forum shopping.

"Forum shopping is manifest whenever a party "repetitively avail[s] of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by, some other court."[8] It has also been defined as "an act of a party against whom an adverse judgment has been rendered in one forum of seeking and possibly getting a favorable opinion in another forum, other than by appeal or the special civil action of certiorari, or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition."[9]

"Forum shopping is defined as the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum (other than by appeal or the special civil action of *certiorari*), or the institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition."[10]

"The elements of forum shopping are: (a) identity of parties, or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration."[11]

Applying the foregoing on determining whether or not there was forum shopping in the cases filed by the EPD allegedly in violation of this rule, we find that there was no forum shopping in the instant case.

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[7] Section 8 of the SRC.
[8] *Alfredo Canuto, et al. vs. National Labor Relations Commission, et al.* G.R. No. 110914, June 28, 2001, citing Gatmaytan v. Court of Appeals, 267 SCRA 487, 500 (1997).
[9] *Ibid., citing* Sto. Tomas University Hospital v. Surla, 294 SCRA 382, 384 (1998).
[10] *Phil Pharmawealth vs. Pfizer, Inc. et al.* G.R. No. 167715, November 17, 2010, citing: Pulido v. Abu, G.R. No. 170924, July 4, 2007, 526 SCRA 483, 497; Clark Development Corporation v. Mondragon Leisure and Resorts Corporation, G.R. No. 150986, March 2, 2007, 517 SCRA 203, 213.
[11] *Id.,* citing: Pentacapital Investment Corporation v. Makilito Mahinay, G.R. No. 171736 and Pentacapital Corporation v. Makilito Mahinay, G.R. No. 181482, July 5, 2010; GD Express Worldwide N.V. v. Court of Appeals (Fourth Division), G.R. No. 136978, May 8, 2009, 587 SCRA 333, 346-347.

As clarified by the EPD, the Commission is a complainant in the following cases:

a) *Securities and Exchange Commission vs. Graceland Properties and Development, Icon Development Corporation and Ronaldo Soliman*, docketed NPS Docket No. XVI-INV-10I-0366 for Violation of Section 8 in relation to Section 73 of the SRC pending before the Department of Justice;
b) *In the Matter of Graceland Properties Dev't. Inc., Icon Development Corporation*, docketed as SEC Admin Case No. 08-11-130 for Revocation of Corporate registration, now pending with the Commission;
c) *In the Matter of Graceland Properties Dev't. Inc., Icon Development Corporation*, docketed as SEC CDO Case No. 03-12-002 for Issuance of Cease and Desist Order, now pending with the Commission and is the instant case.

To be clear, the Commission is not the complainant in two of the criminal complaints cited by Respondents-Movants in their Motion to Lift.[12] The complainants in the criminal complainants are individuals seeking the filing of charges against the Respondents-Movants and Ronaldo Soliman for violation of Article 315 of the Revised Penal Code in relation to Section 8 and 73 of the SRC.

As the EPD has stated, the aforementioned criminal complaint filed by the Commission and now pending with the DOJ is principally filed against Ronaldo Soliman, the Executive Vice-President of GRACELAND and President and CEO of ICON for violation of Section 8 in relation to Section 73 of the SRC – i.e. his failure to file a registration statement in conjunction with his obligation as an issuer of securities.

It should be emphasized that the filing of the above case is in conjunction with the Commission's mandate under Section 53.1 of the SRC.

As the Supreme Court held in *Manuel V. Baviera vs. Esperanza Paglinawan, et al.* (2007)[13]:

> "A criminal charge for violation of the Securities Regulation Code is a specialized dispute. Hence, it must first be referred to an administrative agency of special competence, i.e., the SEC. Under the doctrine of primary jurisdiction, courts will not determine a controversy involving a question within the jurisdiction of the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the specialized knowledge and expertise of said

[12] To wit: DOJ case entitled "*Ethelwodo T. Pasiliao vs. Ronaldo R. Soliman, et al.*" NPS Docket No. IV-09-INV-10D-00216 (IV-16-INV-101-00373) for Syndicated/Large Scale Estasfa; and DOJ case entitled "*Atty. Johnard S. Malvar, Jorge Vargas et al. vs. Ronaldo Soliman, et al.*" docketed as NPS Docket No. IV-09-INV-10D-00211 (IV-16-INV-101-00372) for Syndicated/Large Scale Estafa.
[13] Manuel V. Baviera vs. Esperanza Paglinawan, et al., G.R. No. 168380, February 8, 2007.

administrative tribunal to determine technical and intricate matters of fact. ***The Securities Regulation Code is a special law. Its enforcement is particularly vested in the SEC. Hence, all complaints for any violation of the Code and its implementing rules and regulations should be filed with the SEC. Where the complaint is criminal in nature, the SEC shall indorse the complaint to the DOJ for preliminary investigation and prosecution as provided in Section 53.1 earlier quoted.*** (citations omitted)" (*Emphasis supplied)*

On the other hand, the two other cases initiated by the EPD before the Commission are clearly administrative in character. The first case[14] is a petition for revocation of the corporate registration of Respondents-Movants, while the instant case stems from a Motion for the Issuance of a Cease and Desist order against the Respondents-Movants for the latter to stop offering and issuing unregistered securities to the public.

Revocation is the act of stripping a corporation of its registration founded on violations of Presidential Decree No. 902-A ("PD 902-A") and the SRC, and other laws. A petition for revocation is filed by the EPD with the Commission pursuant to PD 902-A. A CDO, on the other hand, is for the purpose of causing a corporation to ceast and desist from conducting activities which operate as a fraud to the investing public.

However, in any case:

"It is indeed a fundamental principle of administrative law that administrative cases are independent from criminal actions for the same act or omission. Thus, an absolution from a criminal charge is not a bar to an administrative prosecution, or vice versa. One thing is administrative liability; quite another thing is the criminal liability for the same act.

xxx The failure to adduce substantial evidence against petitioner in the former is not a ground for the dismissal of the latter. These two cases are separate and distinct; hence, independent from each other.

First, the quantum of evidence required in an administrative case is less than that required in a criminal case. Criminal and administrative proceedings may involve similar operative facts; but each requires a different quantum of evidence. Administrative cases require only substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.xxx

Rule 133 of the Revised Rules on Evidence provides:

Sec. 2. *Proof beyond reasonable doubt.* - In a criminal case, the accused is

[14] In the matter of: Graceland Properties and Development, Inc. and Icon Development Corporation, SEC Admin Case No. 08-11-130.

entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

Thus, considering the difference in the quantum of evidence, as well as the procedure followed and the sanctions imposed in criminal and administrative proceedings, the findings and conclusions in one should not necessarily be binding on the other. Notably, the evidence presented in the administrative case may not necessarily be the same evidence to be presented in the criminal cases. The prosecution is certainly not precluded from adducing additional evidence to discharge the burden of proof required in the criminal cases. xxx

Second, ***it is well settled that a single act may offend against two or more distinct and related provisions of law, or that the same act may give rise to criminal as well as administrative liability.*** As such, they may be prosecuted simultaneously or one after another, so long as they do not place the accused in double jeopardy of being punished for the same offense."[15]

Thus, even assuming that the resolutions dismissing the aforementioned criminal complaints filed before the Office of the Provincial Prosecutor of Lucena City for insufficient evidence are binding on the Commission, the Commission is not precluded from exercising its broad regulatory power over corporations registered with it in the proper administrative proceedings. It should also be noted that a single act can give rise to criminal and administrative liability. In this case, the issuance of unregistered securities has criminal sanctions under the SRC, as well as administrative sanctions under the law. There is no doubt that the Commission can pursue both actions without running afoul of the tenets of forum shopping.

Based on the discussion, it is clear that the elements that constitute forum shopping were not satisfied. To reiterate, there is no identity of the parties; the criminal case is principally against Ronaldo Soliman and his failure to register the securities, while the administrative cases pending with the Commission are against the Respondents-Movants.

The causes of action in the three cases are different: in the criminal complaint, the Commission seeks the filing of an information against Soliman, et al. for violating Sections 8 and 73 of the SRC. In the revocation case against Respondents-Movants, the action is based on Section 6(L) of PD 902-A, i.e. serious misrepresentation as to what the corporation can do to the public. Finally, in the instant case, the CDO was issued to restrain acts of Respondents-Movants, their agents and successors that operate as a fraud to the investing public.

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[15] *Brigido B. Paredes vs. Court of Appeals*, G.R. No. 169534, July 30, 2007. Citations omitted.

Likewise, there is no identity in the reliefs sought. The relief sought in the aforementioned criminal complaint is for the filing of an information against Soliman, et al. in court; in the administrative cases before the Commission, the EPD seeks the revocation of the certificate of registration of Respondents-Movants and the issuance of a CDO.

WHEREFORE, premises considered, the Cease and Desist Order dated 14 June 2012 issued against GRACELAND PROPERTIES AND DEVELOPMENT, INC. (SEC Reg. No. CS200405351) and ICON DEVELOPMENT CORPORATION (SEC Reg. No. AS094-00009314), their respective partners, officers, directors, agents, representatives, conduits, assigns, and any and all persons claiming and acting for and in behalf and under their authority is hereby **MADE PERMANENT**.

The Enforcement and Prosecution Department is hereby **DIRECTED** to: (a) serve this Order on the president, general manager, corporate secretary, treasurer or in-house counsel of GRACELAND PROPERTIES AND DEVELOPMENT, INC. and ICON DEVELOPMENT CORPORATION; (b) post copies of the Order at the entrance of the main office and/or branches, if any, of the Respondents-Movants. Let a copy of this Order be also posted in the Commission's website. Furthermore, let this Order be published in a national newspaper of general circulation.

Let a copy of this Order be furnished the Company Registration and Monitoring Department, the Corporation Finance Department and the Economic Research and Information Department for their information and appropriate action.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

City of Mandaluyong; 04 October 2012.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

* **RAUL J. PALABRICA**
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

** **ELADIO M. JALA**
Commissioner

* Did not participate
** On Vacation Leave

Republic of the Philippines
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SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

In the matter of

GRACELAND PROPERTIES AND DEVELOPMENT, INC., and ICON DEVELOPMENT CORPORATION,

SEC CDO Case No. 03-12-002
For: *Cease and Desist Order*

ENFORCEMENT AND PROSECUTION DEPARTMENT,

Movant.

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04 October 2012

TO:

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ENFORCEMENT AND PROSECUTION DEPARTMENT
Movant
Securities and Exchange Commission
5th Floor, SEC Building, EDSA Greenhills
Mandaluyong City

Greetings:

Please take notice that on 04 October 2012, an **ORDER** was issued in the above-entitled case, the original of which is now on file with the Commission.

Mandaluyong City, Philippines.

By Authority of the Commission En Banc:

C.A. GERARD M. LUKBAN
Commission Secretary