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

Office of the General Counsel

In the Matter of

HYPER PROGRAM INTERNATIONAL DIRECT SALES AND TRADING CORPORATION and HPI DIRECT SALES AND TRADING CORPORATION,

SEC CDO Case No. 06-15-020

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.

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CEASE AND DESIST ORDER

Submitted for resolution is the *Motion for Issuance of Cease and Desist Order*, dated 28 May 2015, filed on 2 June 2015 by the Enforcement and Investor Protection Department (EIPD) of this Commission, enjoining the *Respondents*, **HYPER PROGRAM INTERNATIONAL DIRECT SALES AND TRADING CORPORATION and HPI DIRECT SALES AND TRADING CORPORATION** and their respective officers, directors, representatives, salesmen, agents and any and all persons claiming and acting for and in their behalf, from further selling, or otherwise offering for sale securities in the form of investment contracts in violation of Section 8.1 of Republic Act No. 8799, otherwise known as the Securities Regulation Code (SRC).

The records show that *Respondent* **HYPER PROGRAM INTERNATIONAL DIRECT SALES AND TRADING CORPORATION** (Hyper Program) is a corporation duly registered with the Commission on 2 February 2015, under SEC Registration No. CS201501619, with principal office located at 301 Cabrera Building, Timog Avenue, South Triangle, Quezon City. Its primary purpose, as shown in its Articles of Incorporation[1], is:

> "To engage in, conduct and carry on the business of buying, selling, distributing, marketing, supplying at wholesale/retail basis in so far as may be permitted by law all kinds of goods such as soap, body oil, health products, mobile phone prepaid cell phone cards, and other related products of every kind and description; to enter into all kinds of contracts for the purchase, acquisition, sale at wholesale/retail basis and other disposition for its own account as principal or in representative capacity as manufacturer's representative,

[1] Annex "A", *Motion for Issuance of Cease and Desist Order*, page 84 of the Records.

merchandise broker, indentor, commission merchant, factors or agents, upon consignment of all kinds of goods such as soap, body oil, health products of every kind and description whether natural or artificial and to provide services relative to trading of such goods."

On the other hand, *Respondent* **HPI DIRECT SALES AND TRADING CORPORATION** (HPI) is a corporation duly registered with the Commission on 9 May 2014, under SEC Registration No. CS201409056, with principal office located at Unit 19, 20 Anonas Complex, Anonas, Quezon City. Its primary purpose, as shown in its Articles of Incorporation[2], is identical with *Respondent* **HYPER PROGRAM INTERNATIONAL DIRECT SALES AND TRADING CORPORATION.**

The names of the Incorporators and first directors of *Respondents* with their respective addresses and nationalities are as follows:

HYPER PROGRAM INTERNATIONAL DIRECT SALES AND TRADING CORPORATION

NAMES	ADDRESS	NATIONALITY
1. Darlito M.Dela Cruz[3]	Unit 20-D. Torre Venezia, Timog Ave., Quezon City	Filipino
2. Queen Ashley T. Ablan	Unit 20-D. Torre Venezia, Timog Ave., Quezon City	Filipino
3. Pablito Andal	Lot 10, unit 1, Blk. 15, Cabuyao Major Home, Cabuyao, Laguna	Filipino
4. Aida-Lyn D. Gabriel	21 Miami St., Cubao, Quezon City	Filipino
5. Arleen M. Dela Cruz	NTRA, Taugtog, Botolan, Zambales	Filipino

HPI DIRECT SALES AND TRADING CORPORATION

NAMES	ADDRESS	NATIONALITY
1. Darlito M.Dela Cruz	Unit 20-D. Torre Venezia, Timog Ave., Quezon City	Filipino
2. Angelita Basbas	Blk. 3, Lot 28, Ph. 1, San Lorenzo Subd., Sta. Rosa City, Laguna	Filipino
3. Mary Jane Terrible	Blk. 2, Lot 18A, Multiland Subd., San Isidro, Cabuyao, Laguna	Filipino
4. Ernesto Lee Pinera Jr.	271 Roosebelt Ave., San Francisco Del Monte, Quezon City	Filipino
5. Pablito Andal	Lot 10, unit 1, Blk. 15, Cabuyao	Filipino

[2] Annex "B", *Ibid.*
[3] Names in bold letters are common incorporators and directors of Hyper Program and HPI.

	Major Home, Cabuyao, Laguna	
6. Bernadette Villapaz	412 Ph. 2 Parkwood Greens Executive Village, Maybunga, Pasig City	Filipino
7. Queen Ashley T. Ablan	Unit 20-D. Torre Venezia, Timog Ave., Quezon City	Filipino

The EIPD was alerted about the *Respondents'* operations when it received letters[4] from the public inquiring on their activities and alleging that they are involved in pyramiding scam. These letter senders requested the Commission to investigate the activities of the *Respondents*.

Acting on the public's request, the EIPD created a team to conduct investigations on the business transactions of *Respondents*.

On March 16, 2015, an investigating team member called-up the office of the Hyper Program pretending to be an interested investor. The investigator was able to talk with a certain Jannet who introduced herself as the accountant of the company. During the conversation, she offered several packages where an investor can put in his/her money and earn high profit share in a span of 40 to 45 days. Interestingly, she also told the investigator that the company's products are only a front as they are focusing more on the investment program/scheme.

On April 16, 2015, said team went to the principal office of Hyper Program to conduct surveillance operation on its activities. They met Jenn Santos who introduced herself as accounting personnel and told them that she would do the orientation. Jenn Santos led them to a conference room and showed them the company's brochures, business packages and a computation chart. The team informed her that they are interested in knowing about the company and the benefits of investing therein. In reply, she explained that investing in the company would enable one to make profits. She also emphasized that selling of products and recruiting of down lines are optional. She then offered several packages that the investigators can invest in, starting from the Bronze Package amounting to Php 7,350.00 up to Triple Platinum Package at Php 268,800.00. She reiterated that by investing alone, one can earn 30% to 35% in profit shares in a span of 40 to 45 days. She also emphasized that one can make more profits by direct referrals up to the tenth level. The team asked if they can invest more than Php 268,800 pesos. She said that there is no limit in terms of investing. When the team asked how the money or investment will earn if selling of products and the recruitment is optional, she explained that investors earn through the Reward System (Company Group Sales Incentives). She repeated that the company's business plan is focused more on investment-"taking" and not on the products. When a member of the investigating team asked if there is a contract between the investors/members and the *Respondents*, she said that the company issues official receipts for the amount invested which serve as proofs or contracts between the company and the investors/members[5].

[4] Annexes "C-1", "C-2", "C- 3", and "C-4", *id.*
[5] Annex "E", *id.*

The information gathered during its Field Investigation prompted the EIPD to request the Corporate Governance and Finance Department (CGFD) and the Markets and Securities Regulation Department (MSRD) for certifications on whether the *Respondents* are issuer, broker and/or dealer of securities, investment adviser of an investment company, investment house, transfer agent, and sell, offer for sale or distribute securities and commodity future contracts under the SRC.

On April 28, 2015, the EIPD received from the CGFD a Certification[6] declaring that, based on the records on file with the Commission, the *Respondents* are not registered issuers of securities and is therefore not licensed to offer or sell securities to the public.

On May 18, 2105, the MSRD issued a Certification[7] stating that based on records the *Respondents* have not been issued Certificate of Registration or Licenses to act as commodity futures merchant, broker and/or dealer in securities, dealer in government securities, investment adviser of an investment company, investment house, transfer agent and seller, offer for sale or distribute securities and commodity future contracts to the public.

EIPD further discovered that the *Respondents* have an official website www.hpidirectsales.ph[8] through which they communicate with their members and the public.

Subsequently, and in response to SEC Advisory dated May 18, 2015, EIPD received a letter[9] from counsel of Hyper Program, Atty. James K. Abugan, dated July 8, 2015, attaching the former's method of selling products to customers, seeking advise on how to undergo some corrective measures, and committing to pay penalties if there is a violation of the SRC for the purpose of lifting the advisory. The compensation plan attached to the letter outlines how to be a member of Hyper Program by purchasing the packages and, in turn, earning through the Four (4) Ways to Earn, namely: Direct Selling or Retail, Rewards System Incentive, Rebates Bonus and Qualifying Bonus.

On July 21, 2015[10], the investigating teams proceeded to the principal office of HPI as stated in its Articles of Incorporation to conduct a separate ocular inspection and surveillance operation of the company. Upon arrival at the address, the team noticed that the business signage reads "House of Three Hundred Corporation" (House of Three) and not HPI. More importantly, the office is closed. Ensuing verification shows that the House of Three is registered with the Commission on February 26, 2015 with Company Registration No. CS201503595. Moreover, the members of the Board of Directors of

[6] Annex "K", *id.*
[7] Annex "L", *id.*
[8] Annex "H", *id.*
[9] Annex "I", Supplement to the Motion for Issuance of Cease and Desist Order, dated October 6, 2015, page 174 of the Records.
[10] Annex "A", Note 9, *supra.*

House of Three are almost the same as the members of the Board of Directors of HPI except for Eleazar Sta. Ana who is not an incorporator of HPI and Hyper Program.

On August 7, 2015, EIPD received another letter from Atty. Abugan, dated August 6, 2015, pertaining to Hyper Program and/or HPI and submitting *Respondents'* Secretary's Certificate[11] as well as their President's Special Power of Attorney[12], respectively authorizing him:

> "1. To represent Hyper Program International Direct Sales and Trading Corporation in all its conference, hearings and investigations that may be conducted at the Securities and Exchange Commission (SEC) in relation to the SEC Advisory issued against the corporation and/or HPI Direct Sales and Trading Corporation;"

> "1. To represent me and/ Hyper Program International Direct Sales and Trading Corporation in all its conference, hearings and investigations that may be conducted at the Securities and Exchange Commission (SEC) in relation to the SEC Advisory issued against the Hyper Program International Direct Sales and Trading Corporation and/or HPI Direct Sales and Trading Corporation;"

In the meantime, EIPD received copies of separate sworn statements[13] of Bryan V. Montilla[14], Vincent V. Ong[15], Rey Angelo Q. Marbella[16] and Kenny Choa Sy[17], who commonly stated that they "**joined Hyper Program International (HPI) Direct Sales and Trading Corporation located at 2nd Floor Anonas Complex, Anonas Street, Project 3, Quezon City and now located at 301 Cabrera Building 1, Timog Ave., Bgy Sacred Heart, Quezon City, headed by Mr. Darlito Marquez Dela Cruz as the acting Chairman/Owner.**" They also stated the scheme of *Respondents* as "buy the package in exchange for a product and code equivalent to the amount invested, the code shall be encoded in the system then after two weeks you will receive the pay-out."

We now resolve the *Motion.*

Sections 3 and 8 of the SRC provide:

> "Section 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:

[11] Dated July 2, 2015.
[12] Dated July 1, 2015.
[13] Annexes "D" to "G", Note 9, supra.
[14] Dated September 22, 2015.
[15] September 9, 2015.
[16] September 9, 2015.
[17] September 15, 2015.

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(b) **Investment contracts**, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription;

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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 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."[18]

To implement the said provisions of the SRC, Rule 3 Paragraph 1, subparagraph (G) of the Amended Implementing Rules and Regulation of the SRC (AIRR-SRC) defines an investment contract as:

"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.

a. An investment contract is **presumed to exist** whenever **a person seeks to use the money of others on the promise of profits**.

b. A common enterprise is deemed created when two or more investors "pool" their resources, creating a common enterprise, even if the promoter receives nothing more than a broker's commission."

The concept of an investment contract in the Philippines is of American origin. It traces its roots from *SEC v. W.J Howey Co.*[19] where the US Supreme Court ruled 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. This is known as the **Howey Test**.

In a subsequent case of *SEC v. Glenn Turner Enterprises, Inc.*[20], the U.S. Supreme Court held that the element that profits must come "solely" form 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 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.

[18] *Emphasis supplied.*
[19] 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244, 163 A.L.R. 1043 (1946).
[20] 474 F. 2d 476, 414 U.S. 821, 94 (1973).

This concept has since been transported in the Philippines. In *Power Homes Unlimited vs. SEC*[21], the Supreme Court held that an investment contract in our jurisdiction, to be a security subject to regulation of 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 the efforts of others.

Prescinding from these premises, the Commission rules that substantial evidence on record show that the *Respondents'* product packages are investment contracts which have the following elements:

1. Investment of Money

A "payment of money" does not satisfy the first element of the Howey Test, whereas an "investment in money" does. An "investment in money" carries with it a possibility of a gain or loss, but the purchase of a product or service is simply a sales transaction with no expectation of gain and no possibility of loss. Consequently, US Courts[22] have held that "an investment of money occurs when an investor commits his money to an enterprise or venture in a manner that subjects himself to financial loss. In this case, the *Respondents* require investors to purchase at least a Bronze Package for a fee of PhP 7,350.00 to participate in their compensation plan. The fee is not merely for products and incidentals, but more importantly, for qualification to join the *Respondent's* bonuses and incentives[23]. In fact, one[24] of HPI's Sale Invoices show that on July 18, 2014 a certain Ronaldo Dimagiba paid the former the amount of PhP 46,500.00, not only, for ten kilograms of rice, but more importantly, for 10 codes and 200 activation codes. Moreover, *Respondents'* accounting personnel represented that, by investing, one can earn 30% to 35% profits in a span of 40 to 45 days. This profit shows the element of "investment in money" rather than a "payment of money".

2. Common Enterprise

In *Powerhomes*[25], the Commission declares that:

> "Under the 'horizontal' commonality approach, the determination of whether a transaction satisfies the commonality element of the modified Howey Test, involves an inquiry into whether the transaction involved the joint participation of more than one investor in the investment of funds **or** the sharing of profits (69 Am Jur 2d S 40 p. 114)."[26]

In the instant case, the common enterprise is the *Respondents'* compensation plan.

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[21] G.R. No. 164182, February 26, 2008.

[22] *S.E.C. v. International Mining Exchange, Inc.*, 515 F.Supp. 1062, 1068 (D.Colo. 1981), *quoting Stowell v. Ted S. Finkel Investment Services, Inc.*, 489 F.Supp. 1062, 1068 (D.Fla. 1980). *See also: S.E.C. v. Comcoa Ltd.*, 855 F.Supp. 1258, 1260 (D. Fla. 1994; *Wooldridge Homes, Inc. v. Bronze Tree, Inc.*, 558 F.Supp. 1085, 1986 (D. Colo. 1983); *Kolibash v. Sagittarius Recording Co.*,626 F.Supp. 1173 (S.D. Ohio 1986).

[23] Note 9 supra and pages 89-92 of the Records.

[24] Annex "H", Note 9 supra and page 135 of the Records.

[25] SEC CED Case No. 20-2486

[26] Emphasis supplied.

Investors pool their resources (at least PhP 7,350.00 each) to the *Respondents*. In turn, investors share in the profits realized from *Respondents'* Four (4) Ways to Earn.

In another matter, although it was mentioned that recruitment is optional, it is clear from the compensation plan that investors receive Rebates Bonus when "an active HPI Member sponsors another individual to become a member via product purchase"[27]. This transaction is a clear manifestation of the joint participation of more than one investor in the investment of funds. Furthermore, the *Respondents'* accountant admitted that the company focuses on "investment taking" rather than selling of the company's products. Indeed, the sworn statements of Bryan V. Montilla, Vincent V. Ong, Rey Angelo Q. Marbella and Kenny Choa Sy confirm the accountant's representation that investing in the company would enable one to make profits. This is sharing of profits.

3. Expectation of Profits

The expected profits may be derived from capital appreciation resulting from the development of the initial investment or from participation in earnings resulting from the use of the investors' funds.[28] In this case, the *Respondents'* compensation plan is a clear indication of investors' participation in the earnings.

To reiterate, *Respondents* entice prospective investors to place money by emphasizing the prospective earnings from their compensation plan. The *Respondents'* accountant claim that investors can earn 30%-35% profits by simply waiting for a period forty (40) to forty-five (45) days from the date of investment. The accountant's representation is confirmed by the Reward System Incentive[29] of the compensation plan, *viz.*:

- Being a customer and member at the same time, people who purchased HPI Packages will receive a Rewards Incentive via points system through their Rewards Account that can be viewed at their online tracking system.
- Points are given to all those who purchased the packages as a reward for patronage of the products and loyalty to the company.
- Points has an equivalent peso value depending on the purchased above mentioned product packages.
- Rewards incentive will be accumulated and released within and not longer than two (2) months.

An expectation of profits is further shown by the fact that investors, who want to earn more from the *Respondents'* Rebates Bonus, can recruit downlines. Moreover, upon graduation of the recruited downlines' initial investment, the up lines or recruiters earn a corresponding Qualifier Bonuses. The compensation plan declares that "when referred customers becomes a member and receives Rewards Incentives, sponsoring Member will receive a Qualifying Bonus"[30].

[27] Note 9 supra and page 90 of the Records.
[28] (69 Am Jur 2d §38 p.110) cited in Powerhomes, Note 26, supra.
[29] Note 9 supra and pages 90-91 of the Records.
[30] Note 9 surpa and page 89 of the Records.

4. Primarily from the Efforts of Others

The *Respondents'* Articles of Incorporations show that they have common incorporators and directors, namely: Darlito M. Dela Cruz, Pablito Andal, and Queen Ashley T. Ablan. Stated otherwise, these directors, aside from the other incorporators/directors of the *Respondents,* manage and oversee the company.

The "efforts of others" in the case at bar is the expertise and managerial efforts of the *Respondents* Directors and Officers' in implementing their compensation plan. This scheme was conceptualized, developed, maintained and promoted by the *Respondents*. In fact, *Respondents* merely require their investors to pay Php7,350.00 for a promise of profit after a certain period of time without any further effort or obligation from their investors. Stated otherwise, the investors earn, without significant effort or obligation. Thus, the critical determinant of the success of the Respondents' business lies primarily on the success of its compensation plan.

From the foregoing elements, the *Respondents'* compensation plan, in relation to the packages being offered, are investment contracts which should be registered with the Commission prior to their sales or distribution by filing registration statements as required by Sections 8 and 12 of the SRC and its AIRR-SRC for registration of securities.

Since the securities offered for sale or distributed by the *Respondents* have not yet been registered with the Commission, there is an imperative need for said corporations to be enjoined[31] from operating as such and from further engaging in the activities of selling, offering for sale or distributing securities in order to protect the interest of the investors and the public in general. Otherwise, allowing the *Respondents* to continue their business operations will operate as a fraud on investors or is likely to cause grave or irreparable injury or prejudice to the investing public. Indeed, several investors have filed their affidavits with the EIPD declaring that *Respondents* have been changing compensation plans without prior notice to investors, hence, prejudicial to their interest.

WHEREFORE, premises considered, **HYPER PROGRAM INTERNATIONAL DIRECT SALES AND TRADING CORPORATION and HPI DIRECT SALES AND TRADING CORPORATION,** their officers, directors, agents, representatives, assigns, and any and all persons claiming and acting for and in their behalf and under their authority, are hereby ordered to **IMMEDIATELY CEASE AND DESIST, UNDER THE PAIN OF CONTEMPT**, from further offering, soliciting, or otherwise offering or selling unregistered securities to the public, until they have complied with the requirements of the SRC and its AIRR.

[31] **SEC. 64.***Cease and Desist Order.* -
64.1. The Commission, after proper investigation or verification, *motu proprio,* or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

Furthermore, the subject corporations are directed to cease its internet presence relating to above-stated investment activities. The Commission will institute the appropriate administrative and criminal action against any persons or entities found to violate this Cease and Desist Order by further engaging in such activities or acting 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: (a) serve this Order to **HYPER PROGRAM INTERNATIONAL DIRECT SALES AND TRADING CORPORATION and HPI DIRECT SALES AND TRADING CORPORATION** or on their President, General Manager, Corporate Secretary, Treasurer or In-House Counsel, and (b) post copies of the Order at the entrance of the main offices and/or branches, of any of the *Respondents*.

EIPD is **FURTHER DIRECTED** to submit a compliance report on the service and posting, by way of a pleading, to the Commission *En Banc* within five (5) working days from receipt of this *Cease and Desist Order*.

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

In accordance with the provisions of Section 64.3 of the SRC and Section 10-3 of the 2006 Rules of Procedure of the Commission, the parties subject of this Cease and Desist Order may file a motion for the lifting thereof within an non-extensible period of five (5) days from receipt hereof, otherwise the same shall be made permanent.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Mandaluyong City, 5 November 2015.

TERESITA J. HERBOSA *
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG *
Commissioner

BLAS JAMES G. VITERBO
Commissioner

* On Official Travel