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

In the Matter of:

LION CITY FINANCE GROUP, INC.

SEC Admin Case No. 03-20-061

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.
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CEASE AND DESIST ORDER

This resolves the *Motion for Issuance of Cease and Desist Order*[1] (the "*Motion*"), filed by the Commission's Enforcement and Investor Protection Department ("EIPD") praying that an Order be issued directing LION CITY FINANCE GROUP, INC. ("LION CITY" for brevity), its officers, salesmen, agents, representatives, and any and all persons claiming and acting for and in their behalf, to immediately cease and desist from engaging in the offer and/or sale of securities, in the form of investment contract, until the requisite registration statement is duly filed and approved by the Commission.

RELEVANT FACTS

Movant EIPD is one of the Commission's operating departments tasked to investigate and institute administrative actions against persons and entities engaged in the sales and/or offer unregistered securities without requisite secondary license.[2]

Respondent LION CITY is a corporation organized and existing under Philippine laws with Certificate of Registration No. CS 201914212[3] issued by this Commission on 29 August 2019. Its registered office is at the 2nd floor, Lagman Garcia Bldg., Molino Road, Molino III, Bacoor City, Cavite.

Article SECOND of the Articles of Incorporation (AoI) of respondent

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[1] Dated 28 February 2020 and received by this Office on 3 March 2020.
[2] Section 2-2(c)(1-c), Rule II, Part I of the 2016 Rules of Procedure of the Securities and Exchange Commission.
[3] Certificate of Incorporation and Certificate of Authority hereto attached as Annex "A" of the Motion.

LION CITY provides that the primary purpose for which it was incorporated is:

> "To engage in the business of a financing company by extending credit facilities for any legal purpose to consumers and to industrial, commercial and/or agricultural enterprises, by direct lending, secured or unsecured, by discounting or factoring commercial papers or accounts receivable, by sales finance, by buying and selling contracts, lease, chattel mortgage or other evidence of indebtedness, or by financing or operating leasing of movable and immovable property, and real estate mortgages; money market trading operations; and, in furtherance of the above purposes, to undertake the collection of commercial papers, accounts receivable, negotiable instruments, letters of credit and other evidence of indebtedness.
>
> Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts."

Article FIFTH of LION CITY's AoI provides for the names, nationalities and places of residence of its incorporators and first board of directors as follows:

Name	Nationality	Place of residence
Mark Genesis G. Gonzales	Filipino	B8 L28 Mandrake St., PH4, villa Primarosa, Mambog III, Bacoor City, Cavite.
Nathaniel S. Batang	Filipino	L11 B12 Executive Springille, Molino III, Bacoor City, Cavite.
Ronalyn O. Cayabyab	Filipino	Lot 5 B10, Phase 4, Flovihomes, Letre Road, Tonsuya, City of Malabon
Generolls D. Ruiz	Filipino	Blk 16 Lot 3, Quees Charity St., Area A. Queens Row Central, Bacoor City, Cavite.
Bryan Jay Q. Papina	Filipino	Blk 6 Lot 21, Phase I, California Westhills, Buhay na Tubig, Imus City, Cavite.

Sometime in October 2019, the EIPD received numerous complaints, reports and inquiries regarding the solicitation of investment allegedly perpetrated by LION CITY which prompted the former to investigate for possible violations of the Securities Regulation Code (SRC) and its implementing rules and regulations which are implemented and enforced by the Commission.

In order to verify the veracity of the complaints and reports, and to better understand the investment scheme of LION CITY, the EIPD conducted an investigation and gathered relevant information available, including and especially internet based information and materials. The investigators of EIPD

who obtained and gathered the needed information executed a Joint Affidavit[4] where they declared and attested to the existence and veracity of the same.

Based on the records gathered by the EIPD, it was alleged that LION CITY is selling and/or offering securities to the public in the form of investment contract which promises a pure passive income of at least ten percent (10%) per month with no minimum amount of investment required. Records also show that in carrying out the foregoing investment scheme, LION CITY used and executed a pro-forma Memorandum of Agreement or Investment Contract[5] containing the terms of the investment, and secured the monthly guaranteed return with post-dated checks.

The Motion also alleged that, based on the complaints filed with EIPD, LION CITY represented to public that the money being invested will be used to finance real estate businesses, foreign exchange investments, casino financing activities, and the buying and selling of cars among others. The EIPD emphasized that the foregoing is outside the purpose for which LION CITY was established. The EIPD also alleged that LION CITY publicly offered unregistered securities through the lectures and investment offerings that it conducted (which it called "Financers' Night") in conspicuous places in Paranaque and Bacoor City, Cavite.[6] LION CITY also brought its investors for a tour in Okada to show to its prospective investors that it is a lucrative and a going concern.

The EIPD alleged that the complainants identified the following individuals who represented as agents and representatives of LION CITY namely: RICHARD L. SY, MARK MIRANDA, and JOMAR TANADA,[7] and who directly solicited from and offered them securities in the form of investment contracts through their social media accounts.

On the basis of the information gathered, on 2 October 2019, the EIPD requested: (1) the Company Registration and Monitoring Department (CRMD) for certification on whether LION CITY has applied for a primary franchise either as a corporation or partnership; (2) the Markets and Securities Regulation Department (MSRD) for certification on whether LION CITY has applied for and/or obtained a secondary license to offer or issue securities to the public pursuant to Sections 8 and 12 of the SRC; and (3) the Corporate Governance and Finance Department (CGFD) for certification on whether LION CITY is a registered issuer of mutual funds including exchange traded funds, membership certificates, and time shares.

Acting on EIPD's request, the CRMD issued a certification that LION CITY is registered as a financing company with SEC Registration Number

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[4] Affidavit executed dated 18 February 2020 attached as Annex "C" of the Motion.
[5] Screenshot of online post herewith attached as Annex "D" of the Motion.
[6] Screenshot of pictures during the conduct of said event herewith attached as Annex "E" of the Motion.
[7] Screenshot pictures of personalities involved on the said activities attached herewith as Annex "F" of the Motion.

CS201914212, while the MSRD and CGFD both issued negative certifications.[8]

On 22 October 2019, the Commission issued an ADVISORY[9], informing the public to exercise caution in dealing with individuals or group of persons soliciting investments for and on behalf of LION CITY or any entities engaged in solicitation activities guised as financing companies.

On 07 November 2019, the Commission received a Petition to Withdraw SEC Advisory on LION CITY[10] dated 30 October 2019 on the alleged ground that respondent LION CITY is not engaged in any unauthorized solicitation activities.

On 16 December 2019, the EIPD proceeded to the office address of LION CITY located at the 2nd floor, Lagman Garcia Bldg., Molino Road, Molino III, Bacoor City, Cavite, as stated in its AoI, to conduct further investigation.[11] The EIPD found out that LION CITY does not hold office in the said location. The EIPD also got confirmation from Mr. Joe G. Lagman, the owner of the said property, that LION CITY did not actually occupy the office space after it executed the lease agreement.

ISSUE

WHETHER LION CITY IS ENGAGED IN SELLING AND/OR OFFERING FOR SALE OF SECURITIES IN THE FORM OF INVESTMENT CONTRACT THAT WARRANTS THE ISSUANCE OF A CEASE AND DESIST ORDER FOR WANT OF THE REQUIRED LICENSE.

RULING

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

EIPD was able to establish by substantial evidence that LION CITY is selling and/or offering securities to the public in the form of investment contract which promised a pure passive income of at least ten percent (10%) per month. As a registered corporation, LION CITY was able to obtain funds from the public to allegedly finance its various business transactions and operations, and issued post dated checks to its investors covering the amount of the guaranteed return of investment.

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[8] Copies of the Certifications from CRMD, MSRD, and CGFD are hereto attached and made integral part hereof as Annexes "G", "H" and "I," of the Motion respectively.
[9] Copy of the SEC Advisory herewith attached as Annex "J" of the Motion.
[10] Copy of the Petition herewith attached as Annex "L" of the Motion.
[11] Copy of the Investigation Report attached as Annex "M" of the Motion.

Under Section 3 of the SRC, the term "Securities" is defined as:

> "Sec. 3. *Definition of Terms*. – 3.1. "Securities" are shares participation or interest 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:
>
> (a) Shares of stocks, bonds, 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." (Emphasis ours)

Rule 26.3.5 of the 2015 Implementing Rules and Regulations of the SRC (2015 SRC-IRR) specifically 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.
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> 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."

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]

It was 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

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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.

[14] *Ibid.*

to apply and discuss the *Howey Test* in the case of *Power Homes Unlimited Corporation vs. SEC*[15] and the elements of the same, to wit:

> "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."[16] (Emphasis ours)

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

First, there was an investment of money from the the public. LION CITY actually received money from the public who were enticed to invest in the company that represented to be engaged in a lucrative business. The investments received by LION CITY were evidenced by the post-dated checks which it issued to its investors, representing payment of the guaranteed return of their investments.

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[15] G.R. No. 164182, 26 February 2008.
[16] Power Homes Unlimited Corp. vs. Securities and Exchange Commission, G.R. No. 164182, February 26, 2008

Second, there was common enterprise in the sense that respondent LION CITY pooled the money invested by its investors in a profit-making venture which LION CITY represented to include real estate businesses, casino financing activities, foreign exchange transactions, and the buying and selling of cars.

Third, there was clearly an expectation of profits on the part of its investors who received and looked forward to the respective maturity dates of the post-dated checks issued by respondent LION CITY. Investors expected to earn at least ten percent (10%) monthly interest from their investment.

Lastly, the expectation of profits is derived primarily from the efforts of LION CITY and/or its directors, officers, agents or representatives who represented that they will use and deal with the pooled resources in real estate businesses, casino financing activities, foreign exchange transactions, and the buying and selling of cars; and that what is required of the investors is only to place their money and to wait for the monthly interest, which is considered a passive income considering that recipients do not participate in the business activity giving rise to the income, e.g. dividends, interest, rental income, royalties, etc.[17]

Moreover, the pieces of evidence presented by EIPD also support a finding that LION CITY sold and/or offered securities in the form of "evidences of indebtedness" which likewise requires a secondary license from this Commission. The Affidavit executed by the investigators of EIPD will show that under the Memorandum of Agreement, LION CITY represented to the public that it is authorized to secure funds required for its operations; and LION CITY in fact obtained funds in the form of loans from its investors. LION CITY's loans were secured by the post-dated checks which it issued to its investors.

The foregoing scheme was considered by the Supreme Court in the case of *Gabionza vs. Court of Appeals*,[18] as dealing with securities without the requisite license from this Commission, and the post-dated checks issued were considered as the "evidences of indebtedness" themselves, thus:

> "Under the circumstances, the checks assumed the character of "evidences of indebtedness", which are among the "securities" mentioned under the Revised Securities Act. <u>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</u> (69 Am Jur 2d, p. 604). Thus, it has been held that checks of a debtor received and held by the lender also

[17] The Organisation for Economic Co-operation and Development (OECD), Glossary of Tax Terms, https://www.oecd.org/ctp/glossaryoftaxterms.htm
[18] G.R. No. 161057, September 12, 2008

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> 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." (Emphasis supplied)

On the basis of the established fact that respondent LION CITY is engaged in the sale and/or offer for sale of securities to the public in the form of investment contracts and/or evidences of indebtedness without the requisite license from the Commission, LION CITY has thus clearly violated Section 8 of the Securities Regulation Code (SRC) which provides that:

> "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)

Furthermore, the act of LION CITY in allowing certain persons acting and/or representing to be its agents or representatives to make public presentations of its investment scheme, inviting the public to invest in the company through public presentations and the social media, constitutes public offering of securities as defined under Rule 3.1.17 of the 2015 Implementing Rules and Regulations of the SRC (2015 SRC-IRR) which provides that:

> "3.1.17. Public Offering is any means 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:

xxx.

3.1.17.3 Advertisement or announcement on radio, television, telephone, electronic communications, information communication technology or any other forms of communication; or

3.1.17.4 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)

Finally, this Commission is mindful of the doctrine in the case of *SEC vs. CJH Development Corporation*[19], which justifies the issuance of a CDO after a finding that there was sale and/or offer of securities without the requisite license on the ground that the same necessarily operates as a fraud on investors, 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." (Emphasis ours)

Based on the evidence presented, EIPD was able to establish that respondent LION CITY violated Section 8 of the SRC, and such violation has defrauded investors, and will likely cause irreparable injury or prejudice to the investing public, thus the issuance of a Cease and Desist Order is warranted in order to protect the public.

WHEREFORE, premises considered, respondent LION CITY, its officers, directors or operators among others namely: **MARK GENESIS G. GONZALEZ, NATHANIEL S. BATANG, RONALYN O. CAYABYAB, GENEROLLS D. RUIZ, and BRYAN JAY Q. PAPINA**, its representatives, salesmen, agents namely: **RICHARD L. SY, MARK MIRANDA,** and **JOMAR TANADA** AND ANY AND ALL PERSONS

[19] G.R. No. 210316, 28 November 2016.

CLAIMING AND ACTING FOR AND IN THEIR BEHALF, are hereby **ORDERED** to **immediately CEASE AND DESIST, UNDER PAIN OF CONTEMPT**, from further engaging in activities of selling and/or offering for sale of securities, in the form of investment contracts and/or evidences of indebtedness, or any others of the same nature as contemplated in the *Order*, until the requisite registration statement is duly filed with and approved by the Commission and the corresponding permit to offer/sell is issued.

Furthermore, to forestall grave damage and prejudice to all concerned, and to ensure the preservation of assets for the benefit of investors, LION CITY, or any of its representatives, or any person/s acting for and in their behalf, and such other persons directing or controlling the activities of LION CITY, including its directors, officers, representatives, salesmen, agents, are all **ENJOINED from (a) transacting any and all businesses involving the funds in its depositary banks, and (b) transferring, disposing, or conveying in any other manner, any and all assets and properties, real or personal, including bank deposits, if any, under their custody**, of which the named persons herein may have any interest, claim, or, participation whatsoever, whether directly or indirectly, immediately upon receipt of this *Order*, until another order modifying the same is issued by this Commission.

Finally, LION CITY, its directors, officers, operators, salesmen, agents, representatives and any and all persons claiming and acting for and in their behalf, are directed to **CEASE** their internet presence relating to the transactions and investment scheme covered by this *Order*. The Commission will institute appropriate administrative and/or criminal action against any person(s) or entity(ies) found to act as solicitors, information providers, salesmen, agents, brokers, dealers or the like for and in behalf of LION CITY.

The EIPD is hereby **DIRECTED** to:

1. serve this *Orde*r to LION CITY FINANCE GROUP, INC., their President, General Manager, Corporate Secretary, Treasurer or In-House Counsel; or if impracticable[20]

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.[21]

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

[20] Due to Declaration of State of Public Health Emergency throughout the Philippines as declared by President Rodrigo Duterte under Presidential Proclamation No. 922. S. 2020 dated 8 March 2020.
[21] The 2016 Rules of Procedure of the Securities and Exchange Commission.

Monitoring Department, the 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 Sec. 64.3[22] of the SRC and Sec. 4-3, Rule IV, Part II of the 2016 Rules[23], the parties subject of *the Cease and Desist Order* may file a request for lifting thereof within five (5) days from the lifting of the Enhanced Community Quarantine period.

SO ORDERED.

Pasay City, Philippines; 07 April 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

[22] Section 64.3. Any person against whom a cease and desist order was issued may, within five (5) days from the receipt of the *Order*, file a formal request for a lifting thereof. Xxx.
[23] *Ibid.*