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

In the Matter of:

MARIA FRANCESCA TAN (MFT) GROUP OF COMPANIES, INC. DOING BUSINESS UNDER THE NAME AND STYLES OF MFT GROUP AND MFT GROUP OF COMPANIES, FOUNDRY VENTURES I, INC., MARIA FRANCESCA F. TAN a.k.a. "MICA TAN", FLORITA F. TAN, CHARLES EDWARD F. TAN, CHRISTIAN KONSTANTIN "CK" P. AGBAYANI, RONALDO G. NERY, PARKER R. ONG, CHIQUI T. TAN, JD B. MONTELIBANO, ROMARICO "RICO" S. RUIZ, ARLENE M. NAVARRO, BEATRIZ R. TOMAS, MARY RUTH A. OQUENDO, JOANNE A. CABAERO, THUY NGUYEN, ROXANNE G. AGBAYANI, LUIS GABRIEL R. CANCIO, JR., NOEL M. OLAN, JR. HERNANDEZ, CHRISTIAN OLAN, TITO COSEJO, JR., and CHRISTIAN "KENCHI" DE VERA,

Respondents,

SEC CDO Case No. 01-24-106
Promulgated: 16 January 2024

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),
Movant.

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CEASE AND DESIST ORDER

This resolves the *Motion for the Issuance of a Cease and Desist Order* dated 11 January 2024 (the "*Motion*") filed by the Enforcement and Investor Protection Department (EIPD), praying that a Cease and

Desist Order be issued (a) directing MARIA FRANCESCA TAN (MFT) GROUP OF COMPANIES, INC. DOING BUSINESS UNDER THE NAME AND STYLES OF MFT GROUP AND MFT GROUP OF COMPANIES, FOUNDRY VENTURES I, INC., MARIA FRANCESCA F. TAN a.k.a. "MICA TAN", FLORITA F. TAN, CHARLES EDWARD F. TAN, CHRISTIAN KONSTANTIN "CK" P. AGBAYANI, RONALDO G. NERY, PARKER R. ONG, CHIQUI T. TAN, JD B. MONTELIBANO, ROMARICO "RICO" S. RUIZ, ARLENE M. NAVARRO, BEATRIZ R. TOMAS, MARY RUTH A. OQUENDO, JOANNE A. CABAERO, THUY NGUYEN, ROXANNE G. AGBAYANI, LUIS GABRIEL R. CANCIO, JR., NOEL M. OLAN, JR. HERNANDEZ, CHRISTIAN OLAN, TITO COSEJO, JR., and CHRISTIAN "KENCHI" DE VERA (collectively referred to as the "Subject Persons") and their directors, officers, representatives, operators, salesmen, agents, enablers, influencers, and any and all persons, conduit entities and subsidiaries (collectively referred to as the "Agents") claiming and acting for and on their behalf, to immediately cease and desist from engaging in the unauthorized sale/offer of securities, and (b) prohibiting the Subject Persons and their Agents from transacting any and all business involving the funds in its depository banks, and from transferring, disposing, or conveying in any other manner, any and all assets, properties, real or personal, including bank deposits, if any, of which the named and/or covered persons herein may have any interest, claim or participation whatsoever, whether directly or indirectly, under their custody, without the authority from the Commission.[1]

PARTIES

Movant EIPD is one of the Commission's operating departments tasked, among others, to investigate *motu proprio* or upon complaint or referral, violations of laws, rules, and regulations administered, implemented, or issued by the Commission, and to seek the issuance of a Cease and Desist Order whenever warranted by the circumstance.[2]

MARIA FRANCESCA TAN (MFT) GROUP OF COMPANIES, INC. DOING BUSINESS UNDER THE NAMES AND STYLES OF MFT GROUP AND MFT GROUP OF COMPANIES ("MFT Group", for brevity), is a corporation duly organized and existing under Philippine laws, having been issued a Certificate of Incorporation bearing Company Registration No. CS201415841 on 14 August 2014. Its principal office address is at the 18th Flr., The Trade and Financial Tower (TFT) 7th Ave., cor. 32nd St. Fort Bonifacio, Taguig City.

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[1] *Motion for Issuance of Cease and Desist Order* dated 11 January 2024.
[2] SEC Office Order No. 512, series of 2013.

FOUNDRY VENTURES I, INC. ("The Foundry," for brevity) is a corporation duly organized and existing under Philippine laws, having been issued a Certificate of Incorporation bearing Company Registration No. CS201901905 on 1 February 2019. with principal office address at Upper (UG) E, F1 Hotel, 32nd Fort Bonifacio, Taguig City, NCR, Fourth District, Philippines.

MARIA FRANCESCA F. TAN, a.k.a. "MICA TAN" is of legal age, Filipino citizen, and a resident of 28 Kasayahan St., Kawilihan Village, Pasig City. She is the President and Chief Executive Officer of the MFT Group, and the President and Managing Director of The Foundry.

FLORITA F. TAN is of legal age, Filipino citizen, and a resident of 28 Kasayahan St., Kawilihan Village, Pasig City. She is the Corporate Secretary of the MFT Group.

ENRIQUE EDUARDO F. TAN is of legal age, Filipino citizen, and a resident of 8 S. Tuano St., San Juan, Metro Manila. He is the Treasurer of MFT Group.

CHARLES EDWARD F. TAN is of legal age, Filipino citizen, and a resident of No. 28 Kapayapaan Cor. Kasayahan Sts., Kawilihan Village, Pasig City. He is a member of the board of directors of the MFT Group.

CHRISTIAN KONSTANTIN "CK" P. AGBAYANI is of legal age, Filipino citizen, and a resident of Unit 209 Encino Two Serendra McKinley Parkway and 11th. He is a member of the board of directors of the MFT Group, and a Co-Founder/Deputy Managing Director of The Foundry.

RONALDO G. NERY is of legal age, Filipino citizen, and with office address at 18th Flr. The Trade and Financial Tower (TFT) 7th Ave., cor. 32nd St. Fort Bonifacio, Taguig City. He is the Chief Financial Officer of MFT Group.

PARKER R. ONG is of legal age, Filipino citizen, and with office address at 18th Flr. The Trade and Financial Tower (TFT) 7th Ave., cor. 32nd St. Fort Bonifacio, Taguig City. He is the Chief Corporate Development Officer of MFT Group.

CHIQUI T. TAN is of legal age, Filipino citizen, and with office address at 18th Flr., The Trade and Financial Tower (TFT) 7th Ave., cor. 32nd St. Fort Bonifacio, Taguig City. He is the Chief Marketing Officer of MFT Group.

JD B. MONTELIBANO is of legal age, Filipino citizen, and with office address at 18th Flr., The Trade and Financial Tower (TFT) 7th Ave., cor. 32nd St. Fort Bonifacio, Taguig City. He is the Director of Operations of MFT Group.

ROMARICO "RICO" S. RUIZ is of legal age, Filipino citizen, and with office address at 18th Flr., The Trade and Financial Tower (TFT) 7th Ave., cor. 32nd St. Fort Bonifacio, Taguig City. He is the Director for Partnerships and Integration of MFT Group.

ARLENE M. NAVARRO is of legal age, Filipino citizen, with office address at 18th Flr., The Trade and Financial Tower (TFT) 7th Ave., cor. 32nd St. Fort Bonifacio, Taguig City. She is the Sales Director of Mondial Medical Technologies.

BEATRIZ R. TOMAS is of legal age, Filipino citizen, with office address at 18th Flr., The Trade and Financial Tower (TFT) 7th Ave., cor. 32nd St. Fort Bonifacio, Taguig City. She is the Business Unit Head for Asian Invest of MFT Group.

MARY RUTH A. OQUENDO is of legal age, Filipino citizen, with office address at 18th Flr., The Trade and Financial Tower (TFT) 7th Ave., cor. 32nd St. Fort Bonifacio, Taguig City. She is the Vice President of MFT Group.

JOANNE A. CABAERO is of legal age, Filipino citizen, with office address at 18th Flr., The Trade and Financial Tower (TFT) 7th Ave., cor. 32nd St. Fort Bonifacio, Taguig City. She is the Business Unit Head, MFT Ventures Singapore.

THUY NGUYEN is of legal age, Filipino citizen, with office address at 18th Flr., The Trade and Financial Tower (TFT) 7th Ave., cor. 32nd St. Fort Bonifacio, Taguig City. She is the Business Unit Head, SaladStop, Vietnam.

ROXANNE G. AGBAYANI is of legal age, Filipino citizen, and a resident of Unit 209 Encino Two Serendra McKinley Parkway and 11th. She is the Treasurer/Co-Founder/Director for Administration of The Foundry.

LUIS GABRIEL R. CANCIO, JR. is of legal age, Filipino citizen, and a resident of 12 Ifugao, Katipunan, Quezon City. He is a founding Director of the Foundry.

NOEL M. OLAN is of legal age, Filipino citizen, and with office address at Upper (UG) E, F1 Hotel, 32nd Fort Bonifacio, Taguig City, NCR, Fourth District, Philippines. He is the Director for Business Programs of the Foundry.

JR HERNANDEZ is of legal age, Filipino citizen, and with office address at Upper (UG) E, F1 Hotel, 32nd Fort Bonifacio, Taguig City, NCR, Fourth District, Philippines. He is the Director for Business Programs of the Foundry.

CHRISTIAN OLAN is of legal age, Filipino citizen, and with office address at Upper (UG) E, F1 Hotel, 32nd Fort Bonifacio, Taguig City, NCR, Fourth District, Philippines. He is the Director for Business Programs of the Foundry.

TITO COSEJO, JR. is of legal age, Filipino citizen and with office address at Upper (UG) E, F1 Hotel, 32nd Fort Bonifacio, Taguig City, NCR, Fourth District, Philippines. He is the Director for Business Programs of the Foundry.

CHRISTIAN "KENCHI" DE VERA is of legal age, Filipino citizen, with office address at 18th Flr., The Trade and Financial Tower (TFT) 7th Ave., cor. 32nd St. Fort Bonifacio, Taguig City. He is a member of the board of directors of the MFT Group.

RELEVANT FACTS

On 30 September 2015, an email[3] was received by the EIPD from an unnamed individual, alleging that the MFT Group solicited from him an investment of Five Hundred Thousand Pesos (Php 500,000.00), with a guaranteed of two percent (2%) per month. The investments, according to the MFT Group will be used to promote start-up companies for a higher rate of returns.[4]

In 2019, the EIPD received a number of queries on the legitimacy of the operations of the MFT Group. The EIPD promptly responded to, and addressed the said queries.[5] No investigation was pursued on the matter as the EIPD did not to get any further response from the persons concerned.[6]

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[3] *Motion* (n1), Email dated 29 September 2015 attached as Annex "H."
[4] *Ibid.* Par. 7 (Annex "Z")
[5] *Ibid.* Pars. 11 to 14 (Annexes "I" and "K")
[6] *Ibid.*

On 13 June 2023, another email was received by the EIPD from an unnamed complainant who claimed that his mother was enticed by the MFT Group to invest a considerable amount of money, after he was promised good return/profits.[7] For this purpose, post-dated checks were issued by the MFT Group to his mother. Being the assignee of the proceeds of the investment (after his mother passed away), complainant coordinated with The MFT Group on the matter. The amounts indicated in the checks were not paid; and same was true with the returns that were guaranteed to his mother.[8]

Still, another complainant came forward and provided the EIPD with his experience of being scammed by the MFT Group, through one Christian "Kenchi" De Vera. He recounted the event organized by the MFT Group that was attended by hundreds of people who were offered generous returns i.e. 1-1.5% per month net of tax which went up to 18% per annum.[9] After the complainant invested and got the post-dated checks representing his guaranteed returns, he never heard of them, and he allegedly did not receive a single peso from the guaranteed payouts.[10]

The foregoing was followed by more Complaint-Affidavits that were filed with the EIPD, which recounted the experiences of investor who were allegedly defrauded by the MFT Group using essentially the same modus.[11]

On 21 December 2023, the EIPD received and processed the complaints of eight (8) more investors who alleged to have been defrauded by the MFT Group and its cohorts, and who presented documentary evidence to support such allegation.[12]

On the basis of the complaints received by the EIPD, as well as on the independent investigation that was conducted, the EIPD arrived at a conclusion that the MFT Group, which later on transitioned to The Foundry, is offering and selling unregistered securities in the form of investment contracts to the public in the guise of executing Borrower-Lender Agreements (in the form of a Memorandum of Agreement) which later on transformed to Promissory Notes. The promise of high returns i.e. 12 to 18% interest income (a term that the MFT Group deliberately used to give semblance of legitimacy to the transactions) per annum lured investors to invest their money with it.[13]

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[7] *Id.* Par. 16
[8] *Id.*
[9] *Id.* Par. 17
[10] *Id.* Page 15
[11] *Id.* Pars. 18 and 19
[12] *Id.* Par. 20
[13] *Id.* Pars. 20 and 21(Annexes "R" and "S")

In support of its allegation that Respondents are engaged in the unauthorized sale/offer of unregistered securities, the EIPD submitted the Certifications issued by the Company Registration and Monitoring Department (CRMD), the Markets and Securities Regulation Department (MSRD), and the Corporate Governance and Finance Department (CGFD), which all attested to the fact, based on their respective records, that the Subject Persons and their Agents have not been issued a license to act as a Lending Company, Broker and/or Dealer of Securities, Dealer in Government Securities, Investment Adviser of an Investment Company Investment House and Transfer Agent. Neither have they registered any securities with the Commission pursuant to Section 8 and 12 of the Securities Regulation Code (SRC).

ISSUE

Whether the allegations and the evidence warrant the grant of the *Motion* and the issuance of a CDO.

RULING

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

The EIPD was able to establish by substantial evidence that the Subject Persons and their Agents are offering and/or selling unregistered securities to the public in the form of investment contracts and/or "evidences of indebtedness" without the requisite license from the Commission, in violation of the SRC and the SRC-IRR.

Section 3.1 of the SRC, defines "securities" as follows:

> 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:
>
> "xxx
>
> i. Shares of stocks, bonds, debentures, notes, **evidences of indebtedness**, asset-backed securities;
>
> ii. **Investment contracts**, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription. (Underscoring supplied)
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> xxx". (Emphasis supplied)

An investment contract is defined as follows:

An investment contract is defined under Rule 26.3.5 of the 2015 Implementing Rules and Regulations of the SRC (the "SRC-IRR") as follows:

> "**An investment contract means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others**. It 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." (Emphasis supplied)

In the case of *SEC v. 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.[14] 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.[15] It is in the context of the foregoing that the U.S. Supreme Court came up with and adopted the *Howey Test*[16] in determining if an investment scheme, regardless of the legal terminology used, partakes of the nature of an investment contract.

The Supreme Court reiterated and emphasized the applicability of the Howey Test in determining if a security is an investment contract that requires prior registration from the Commission in the case of *Virata v. Ng Wee*[17], thus:

> "In this jurisdiction, the Court employs the Howey test, named after the landmark case of Securities and Exchange Commission v. W.J. Howey Co., to determine whether or not the security being offered takes the form of an investment contract. The case served as the foundation for the domestic definition of the said security.
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> Under the Howey test, the following must concur for an investment contract to exist: (1) a contract, transaction, or scheme; (2) an investment of money; (3) investment is made in a common enterprise;

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[14] 328 U.S. 293 (1946).
[15] *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.
[16] *Ibid.*
[17] G.R. Nos. 220926, 221058, 221109, 221135 & 221218, July 5, 2017.

(4) expectation of profits; and (5) profits arising primarily from the efforts of others. Indubitably, all of the elements are present in the extant case."

Moreover, in the case of *Power Homes Unlimited Corp. v. Securities and Exchange Commission*[18] the Supreme Court ruled that in applying the Howey Test, the nature and the entirety of the transaction should be considered, thus:

"It behooves us to trace the history of the concept of an investment contract under R.A. No. 8799. Our definition of an investment contract traces its roots from the 1946 United States (US) case of SEC v. W.J. Howey Co. In this case, the US Supreme Court was confronted with the issue of whether the Howey transaction constituted an "investment contract" under the Securities Act's definition of "security." The US Supreme Court, recognizing that the term "investment contract" was not defined by the Act or illumined by any legislative report, held that "Congress was using a term whose meaning had been crystallized" under the state's "blue sky" laws in existence prior to the adoption of the Securities Act. Thus, it ruled that the use of the catch-all term "investment contract" indicated a congressional intent to cover a wide range of investment transactions. It established a test to determine whether a transaction falls within the scope of an "investment contract." Known as the Howey Test, it requires a transaction, contract, or scheme whereby a person (1) makes an investment of money, (2) in a common enterprise, (3) with the expectation of profits, (4) to be derived solely from the efforts of others. **Although the proponents must establish all four elements, the US Supreme Court stressed that the Howey Test "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.**" Needless to state, any investment contract covered by the Howey Test must be registered under the Securities Act, regardless of whether its issuer was engaged in fraudulent practices." (Emphasis ours)

Applying the foregoing jurisprudential parameters to the instant case, the Commission agrees with the EIPD's finding, and so holds that the Subject Persons and their Agents are engaged in the sale and/or offer of unregistered securities in the form of investment contracts as all the elements of the Howey Test are present in the instant case.

First, the investment scheme requires an investment of money which makes a potential investor commit or give his money to an enterprise or venture in a manner that subjects himself to financial loss.[19] In the instant case, the complaints on record show that investor-victims actually invested

[18] G.R. No. 164182, February 26, 2008.
[19] SEC v. International Mining Exchange, Inc., 515 F. Supp. 1062.

money ranging from Fifty Thousand Pesos (Php 50,000.00) to Eight Million Pesos (Php 8,000,000.00).[20]

Second, a common enterprise is deemed created when two (2) or more investors "pool" their resources. Thus, joint participation by investors in the same investment enterprise, achieved by pooling the invested funds for a common purpose, is required in order to satisfy the common enterprise element. In the instant case, the EIPD was able to show that the investment scheme of the Subject Persons and their Agents involve the pooling of amounts poured in by its investors which are actually utilized to satisfy and pay the guaranteed returns of its existing investors. By representing to the public that the investments received will be utilized in the operations of their subsidiaries or affiliated companies i.e. 32nd Street Prime Diner, Inc., Mondial Medical Technologies, Inc., Mr. Angel Credit Corporation, Asianinvest Consultants, Inc., Meihao Corporation, Accentik, Inc. Saladstop Spain[21], there exists a common enterprise.

Third, profit is either through capital appreciation resulting from the development of the initial investment, or participation in earnings resulting from the use of investors' funds. In both cases, investors are "attracted primarily by the prospects of a return on their investment." In the instant case, there is an expectation of profit on the part of the investors as the Subject Persons and their Agents expressly guaranteed to their investors a return of 1%-2% per month (which went as high as 18% per annum).[22] In fact, an article published by BILYONARYO dated 05 November 2023 disclosed that the MFT Group was offering profits which reached as high as 35% per annum.[23]

Fourth, investors expected to earn their guaranteed profits primarily from the efforts of others *i.e.* investors are not required to perform any act other than to entrust their investments to the Subject Persons and wait for the maturity date to arrive which will enable them to get the promised payout.

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[20] *Motion.* Annexes "O" and "Q"
[21] *Motion* (n1), Par. 47.
[22] *Ibid,* Paragraphs 7, 16, 17,18, and 19.
[23] *Ibid, Par. 65.*

> This presence of this element is shown by the representation of the Subject Persons that their investments will be used to finance the operations of their subsidiaries which will yield high returns. In short, the investors need not do anything because the business operation and the work will be done by the subsidiaries and the Subject Persons, respectively.

Moreover, this Commission equally finds the Borrower-Lender Agreements executed by the MFT Group and its investors to securities in the form of evidences of indebtedness under the SRC.

Relative thereto, We cannot overemphasize that the SRC has adopted a broad definition of securities with the intent of covering practically all forms and varieties thereof which are known or considered, or ought to be known or considered, to be such in the commercial/financial world. Thus, in the case of *Gabionza vs. Court of Appeals*[24] (the "Gabionza Case"), the Supreme Court ruled that 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.

This Commission has thus consistently held that **all shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidence by a certificate, contract, instrument, whether written or electronic in character within the Philippines are securities or presumed to be securities.**

In particular, a certificate or evidence of indebtedness is *a written representation of debt securities or obligations of corporations* such as long term commercial and short-term commercial papers[25]. A certificate of indebtedness pertains to certificates for the creation and maintenance of a permanent improvement revolving fund, similar to a "bond". Being equivalent to a bond, it is properly understood as acknowledgement of an obligation to pay a fixed sum of money. It is usually used for the purpose of long-term loans.[26]

In the Gabionza Case, the Supreme Court ruled that the checks and loan documents that were issued are evidences of indebtedness because they were issued in lieu of securities which the SRC requires to be registered with the Commission, thus:

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[24] G. R. No. 161057, 12 September 2008.

[25] Decasa, Lucia M., *Securities Regulations Code Annotated with Implementing Rules and Regulations*, 2004, 1st ed., p.7.

[26] G.R. No. 93397, Traders Royal Bank vs. Court of Appeals, 3 March 1997.

> "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 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)

In the instant case, it is interesting to note how the Subject Persons and their Agents appears to have deliberately used loan agreements, checks and even promissory notes to facilitate their unauthorized investment scheme. By using the said instruments, the Subject Persons and their Agents made it appear that the investments which they were getting from the public are loans which are used to fund the operations of their alleged subsidiaries.

However, applying the doctrine in the Gabionza Case, this Commission finds and so holds that the contracts of loan and the post-dated checks are securities in the form of "evidence of indebtedness" contemplated under the SRC, inasmuch as they were executed and issued, or are clearly intended to be executed and issued, in exchange for a considerably big number of individual non-personalized loans obtained or solicited from the public. In fact, without this CDO, the Subject Persons and their Agents will continue with their unauthorized investment scheme where tens of thousands of investors are at the risk of being potential victims thereof.

Considering that the Subject Persons and their Agents have not been issued the requisite license to sell/offer securities, this Commission is duty-bound to immediately stop their unauthorized investment-taking activities for the protection of the investing public. This regulatory and enforcement action is fully sanctioned by Section 8.1 of the SRC which categorically provides that securities shall not be sold or offered for sale or distribution within the Philippines, if the same is not registered with

the Commission in the form of an approved Registration Statement and a Permit to Offer/Sell issued in favor of the applicant, to wit:

> "SEC. *8 Requirement of Registration of Securities.* – 8.1. **Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission**. Prior such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser." (Emphasis supplied)

In the case of *Herbosa vs. CJH Development Corporation*[27] the Supreme Court emphasized that the purpose of the provision of the SRC requiring the registration of securities is to afford the public protection from investing in worthless securities.

In the same vein, this Commission finds and so holds that the act of the Subject Persons and their Agents in publicly offering their unregistered securities through business presentations conducted in public events, which included the seminars held in the Bayanihan Center in Mandaluyong City, Alphaland City Club in Makati City, hotels, restaurants, other function halls, and the roadshow at Mt. Malarayat Golf and Country Club in Batangas,[28] constitutes public offering of securities as defined Rule 3.1.17 of the 2015 IRR of the SRC, thus:

> "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:

> "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:

> Xxx

> 3.1.17.2. Presentation in any public or commercial place; xxx (Emphasis supplied)

Again, the evidence on record shows that the Subject Persons and their Agents have not been issued a license to offer securities. Perforce, their act actually offering securities in the form of investment contracts and evidences of indebtedness constitutes a clear and continuing violation of Section 8 of the SRC.

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

[28] *Ibid,* Bilyonaryo Article dated 12 November 2023, Par. 65.

Finally, Section 64.1 of the SRC provides that the Commission may issue a CDO without the necessity of conducting a hearing if, to its mind, the act or practice will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public, thus:

> "Section 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.**" (Emphasis supplied)

Under the afore-quoted provision, there are two (2) essential requisites that must be complied with for a valid issuance of a CDO:

1. There must be a conduct of a proper investigation or verification; and
2. There is 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.[29]

In the instant case, We find that the foregoing requisites were complied with. The EIPD conducted an independent investigation which resulted in the gathering and presentation of evidence that supported its Motion, i.e. Certifications from the Commission's CRMD, MSRD and CGFD; video recording of the Zoom Presentation by the MFT Group and The Foundry of its scheduled interest rate payments to lenders from the year 2022 onwards[30], the Promissory Note and Memorandum of Agreement, and the anomalies in the financial reports of the Respondents as well as their affiliates and subsidiaries, as presented by the Office of the General Accountant. More importantly, this Commission is convinced that the unauthorized investment-taking activities of the Respondents warrant the issuance of a CDO because the same will operate as a fraud on investors, or will likely cause grave or irreparable injury or prejudice to the investing public, if not restrained.

We cannot overemphasize that the Subject Persons and their Agents' act of selling/offering unregistered securities in the form of investment contracts and/or evidences of indebtedness constitutes fraud which should be promptly restrained for the protection of the investing public. This finds support in the case of *Securities and Exchange*

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[29] *Securities and Exchange Commission vs. Performance Foreign Exchange Corporation* (G.R. No. 154131, July 20, 2006)

[30] *Motion* (n1), Video recording of Zoom conference held on 04 February 2023 attached as Annex "N."

Commission vs. CJH Development Corp.[31] where the Supreme Court categorically held that:

> "**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)

WHEREFORE, premises considered, Respondents **MARIA FRANCESCA TAN (MFT) GROUP OF COMPANIES, INC. DOING BUSINESS UNDER THE NAME AND STYLES OF MFT GROUP AND MFT GROUP OF COMPANIES, FOUNDRY VENTURES I, INC., MARIA FRANCESCA F. TAN a.k.a. "MICA TAN", FLORITA F. TAN, CHARLES EDWARD F. TAN, CHRISTIAN KONSTANTIN "CK" P. AGBAYANI, RONALDO G. NERY, PARKER R. ONG, CHIQUI T. TAN, JD B. MONTELIBANO, ROMARICO "RICO" S. RUIZ, ARLENE M. NAVARRO, BEATRIZ R. TOMAS, MARY RUTH A. OQUENDO, JOANNE A. CABAERO, THUY NGUYEN, ROXANNE G. AGBAYANI, LUIS GABRIEL R. CANCIO, JR., NOEL M. OLAN, JR. HERNANDEZ, CHRISTIAN OLAN, TITO COSEJO, JR.,** and **CHRISTIAN "KENCHI" DE VERA** representatives, salesmen, solicitors, agents, uplines, enablers and influencers, and any and all persons claiming and acting for and in their behalf, are hereby directed to **IMMEDIATELY CEASE AND DESIST** from further engaging in, promoting and facilitating selling and/or offering for sale securities in the form of evidence of indebtedness and/or other activities/transactions relative thereto, until the requisite registration statements are duly filed with and approved by the Commission, and the corresponding license and/or permit to offer/sell securities are issued.

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

Respondents **MARIA FRANCESCA TAN (MFT) GROUP OF COMPANIES, INC. DOING BUSINESS UNDER THE NAME AND STYLES OF MFT GROUP AND MFT GROUP OF COMPANIES, FOUNDRY VENTURES I, INC., MARIA FRANCESCA F. TAN a.k.a. "MICA TAN", FLORITA F. TAN, CHARLES EDWARD F. TAN, CHRISTIAN KONSTANTIN "CK" P. AGBAYANI, RONALDO G. NERY, PARKER R. ONG, CHIQUI T. TAN, JD B. MONTELIBANO, ROMARICO "RICO" S. RUIZ, ARLENE M. NAVARRO, BEATRIZ R. TOMAS, MARY RUTH A. OQUENDO, JOANNE A. CABAERO, THUY NGUYEN, ROXANNE G. AGBAYANI, LUIS GABRIEL R. CANCIO, JR., NOEL M. OLAN, JR. HERNANDEZ, CHRISTIAN OLAN, TITO COSEJO, JR.,** and **CHRISTIAN "KENCHI" DE VERA** representatives, salesmen, solicitors, agents, uplines, enablers and influencers, and any and all persons claiming and acting for and in their behalf, are likewise directed to **CEASE** their solicitations 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 on their behalf.

Finally, the Commission hereby **PROHIBITS MARIA FRANCESCA TAN (MFT) GROUP OF COMPANIES, INC. DOING BUSINESS UNDER THE NAME AND STYLES OF MFT GROUP AND MFT GROUP OF COMPANIES, FOUNDRY VENTURES I, INC., MARIA FRANCESCA F. TAN a.k.a. "MICA TAN", FLORITA F. TAN, CHARLES EDWARD F. TAN, CHRISTIAN KONSTANTIN "CK" P. AGBAYANI, RONALDO G. NERY, PARKER R. ONG, CHIQUI T. TAN, JD B. MONTELIBANO, ROMARICO "RICO" S. RUIZ, ARLENE M. NAVARRO, BEATRIZ R. TOMAS, MARY RUTH A. OQUENDO, JOANNE A. CABAERO, THUY NGUYEN, ROXANNE G. AGBAYANI, LUIS GABRIEL R. CANCIO, JR., NOEL M. OLAN, JR. HERNANDEZ, CHRISTIAN OLAN, TITO COSEJO, JR.,** and **CHRISTIAN "KENCHI" DE VERA** their partners, operators, directors, officers, salesmen agents, representatives, promoters, and all persons, conduit entities and subsidiaries claiming and acting for and on its behalf from transacting any business involving the funds covered by this CDO in its depository banks, and from transferring, disposing, or conveying in any manner, all assets, properties, real or personal, including but not limited to bank deposits, of which the named persons herein may have any interest, claim or participation whatsoever, directly or indirectly, under its/their custody, to ensure the preservation of the assets for the benefit of the investors.

Let a copy of this Cease and Desist Order be (a) posted in the Commission's website; and (b) be furnished to the Company Registration and Monitoring Department, Corporate Governance and Finance

Department, and the Information and Communications Technology Department of this Commission, the Bangko Sentral ng Pilipinas, the Department of Trade and Industry, the National Privacy Commission, the Department of Information and Communications Technology, and the appropriate Local Government Unit(s) for their information and appropriate action.

In accordance with the provisions of Section 64.3 of the SRC and Section 4-3 of the 2016 Rules of Procedure of the Commission, the parties subject of this CDO may file a verified motion to lift the CDO within five (5) days from receipt thereof. The Motion to Lift the CDO must be filed to the Commission En Banc through the Office of the General Counsel.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO*
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

*On Official Business