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

IN THE MATTER OF:
PLANPROMATRIX ONLINE CO.

SEC CDO CASE NO.
06-19-052

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),
Movant.
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CEASE AND DESIST ORDER

This treats of the ***Motion for Issuance of a Cease and Desist Order***[1] filed by the Enforcement and Investor Protection Department ("EIPD") against **PLANPROMATRIX ONLINE CO.** ("PPM"), its partners, officers, representatives, salesmen, agents and any and all persons and conduit entities claiming and acting for and its behalf, to cease and desist from further engaging in the selling and/or offering securities in the form of investment contracts until the requisite registration statements are filed and approved by the Securities and Exchange Commission ("Commission").

The EIPD in its *Motion* avers that PPM is a partnership registered with the Commission on 11 April 2017 with Company Registration No. PG201712634. PPM's capital is Five Million pesos (₱5,000,000)[2] and its primary purpose as stated in its Articles of Partnership is:

> "To conduct and engage in the buy and sell, by wholesale and retail of goods pertaining or related to telecommunication products such as but not limited to prepaid cellular load and/or cellphone cards, electronic gaming cards internet cards, and all kinds of electronics gadgets, tools and trading of wellness products such as but not limited to cosmetics and dermatological and/or skin care products and other general merchandise and without engaging in investment solution nor investment taking activity from public investor."[3]

PPM's partners are: (1) Mark George Barnuevo Naval ("Mr. Naval"), Filipino and a resident of xxx, Camarines Norte (complete address omitted)

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[1] Filed on 11 June 2019.
[2] Article VI, PPM Articles of Partnership (Annex "A" of the Motion).
[3] Article V, Ibid.

and (2) Junnel Rosario ("Mr. Rosario"), Filipino and a resident of xxx, Camarines Norte (complete address omitted).

EIPD's investigation started when it received an email from the Mediation Division of Fair Trade Enforcement Bureau (MDFTEB) of the Department of Trade and Industry (DTI) forwarding the complaint[4] of Mario P. Pitallano ("Mr. Pitallano"). In his complaint, Mr. Pitallano alleges that he was recruited in the networking of PPM for an online typing job of captcha images but the job is not profitable since PPM's website is just loading. Also attached to the complaint are the photos of the proof of payment addressed to Janeth Elejorde and PPM's Business Permit issued by the Municipality of Daet, Province of Camarines Norte.

The EIPD followed up on Mr. Pitallano's complaint but the latter did not answer. Meanwhile, the EIPD requested certifications from the Corporate Governance and Finance Department ("CGFD"), Markets and Securities Regulation Department ("MSRD") and the Company Registration and Monitoring Department ("MSRD") if PPM has any secondary license to offer or sell securities under Sections 8 and 12 of the Securities Regulation Code or if it has any standing application.

The EIPD also requested SEC-Legazpi Extension Office ("Legazpi EO") to conduct an investigation since PPM's principal address is within Legazpi EO's jurisdiction.[5]

The MSRD and the CGFD issued negative certifications[6] stating the PPM is not a registered issuer of any securities under Sections 8 and 12 of the Securities Regulation Code ("SRC") nor does it have any standing application for registration. The CRMD likewise issued a negative certification[7] stating the PPM is a registered partnership but it does not have the secondary license to act as a broker and/or dealer of securities, dealer in government securities, investment house and transfer agent. The CRMD also certified that PPM does not have any pending application for the issuance of a secondary license.

On **9 February 2018** the EIPD posted an Advisory[8] in the Commission's website. The Advisory stated that PPM is enticing the public to invest in business through the internet. The Advisory contains PPM's business model and scheme. Pertinent portion of the said Advisory is quoted as follows:

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[4] Annex "B" of the Motion.
[5] Annex "H" of the Motion.
[6] Annex "F", Annex "F-1", Annex "G" and Annex "G-1" of the Motion, respectively.
[7] Annex "I" of the Motion.
[8] Annex "J" of the Motion.

"Each member/investor of PPM may earn through the following:

1. E-loading business;
2. Data Entry Job; and
3. Advertising Agent.

On the other hand, PPM promises six (6) ways to earn for being an "**Advertiser**" in the company, to wit:

a. 2x1 Matrix System - where a member earns Php300.00 for every two (2) recruits;

b. Pass3Unli - where a member earns Php50.00 for his every 2nd, 4th, 6th, 7th, 8th and onwards direct recruits while the Upline earns Php50.00 fron the former's 1st, 3rd, and 5th direct recruits;

c. Unilevel/Indirect Referral Commission - where a member may earn Php5.00 for every direct recruit and the recruits of his downlines up to the 10th level;

d. Profit sharing - where a member, to be qualified, is required to recruit 5 direct downlines every month and entitled to a share or portion of the income appropriated by PPM;

e. Binary Matching Bonus - where a member may earn Php100.00 whenever his downlines activated their respective binary. To activate a binary, a member must have 4 direct recruits per account. Alternatively, a member, to activate his binary, may purchase a Binary Activation Code amounting to Php300.00 each; and

f. Binary Direct Downlines Commission - where a member may earn Php30.00 for every direct downline that activates their respective binary.

In addition, PPM introduced a new compensation plan which is called "TABLE OF EXIT" where a member should pay an amount of Php1,800.00 (Php600.00 of which entitles the member to the abovementioned ways to earn and the remaining Php1,200.00 shall pertain to Table of Exit). The Table of Exit is illustrated, thus:

TABLE 1.

LEVEL 1	**Mr. 1**								
LEVEL 2	**Mr. 2**				**Mr. 3**				
LEVEL 3	**Mr. 4**		**Mr. 5**		**Mr. 6**		**Mr. 7**		
LEVEL 4	**Mr. 8**	**Mr. 9**	**Mr. 10**	**Mr. 11**	**Mr. 12**	**Mr. 13**	**Mr. 14**	**Mr. 15**	

In the above table, level 4 must be filled up by paying each an amount of Php.1,800.00. Once level 4 is completely filled up, Mr. 1 shall exit and proceed to Table 2.

LEVEL 1	**Mr. 2**								**Mr. 3**							
LEVEL 2	**Mr. 4**				**Mr. 5**				**Mr. 6**				**Mr. 7**			
LEVEL 3	**Mr. 8**		**Mr. 9**		**Mr. 10**		**Mr. 11**		**Mr. 12**		**Mr. 13**		**Mr. 14**		**Mr. 15**	
LEVEL 4	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

The table shall thereafter split into two, respectively, now being headed by Mr. 2 and Mr. 3 on the Level 1. Again, after Level 4 is completely filled up, the person in Level 1 shall exit and proceed to the next table. The process continues so long as there are invites/recruits.

> Members who exited in the first, second, third, fourth, and fifth table shall earn Php.3,000.00, Php.10,000.00, Php.30,000.00, Php.100,000.00, and Php.500,000.00, respectively."

The Advisory mentioned that PPM is registered as partnership but such registration does not authorize PPM to offer, solicit, sell or distribute any investments/securities as these activities require a Secondary License from the Commission. The Advisory also stated that persons acting as salesmen, brokers, dealers or agents of PPM who are selling or convincing people to invest in PPM's investment scheme, including those solicitations or recruitment done in the internet, may be prosecuted and held criminally liable under Section 28 of the SRC.

As alleged in the Motion, PPM President and CEO, Mr. Naval together with his counsel voluntarily appeared before the EIPD on **13 February 2018** to discuss and present PPM's marketing scheme.[9] Mr. Naval made a minor correction on PPM's business scheme particularly pertaining to the activation code for the binary system. According to Mr. Naval the code cannot be purchased, instead, the five-hundred-peso (₱500) payment is automatically deducted from the members' account. Another correction is in the Table of Exits. The proper chronology should be 4, 3, 2, and 1 not 1, 2, 3, and 4 as presented in the Advisory. Other than these corrections, PPM did not dispute the contents of the Advisory.

Among the complaints received by the EIPD is the complaint of a certain Paula Beliran sent through the i-Message Mo facility,[10] who alleges that she registered with PPM's Starter Account in the amount of six hundred pesos (₱600) hoping that she will earn through PPM's home-based/online business selling programs, data entry, and e-loading. Since the applications for said businesses are not working she was told to invite people to join so that she can earn while waiting for the application to work. Eventually, she, the downlines and other members of PPM were encouraged by her team leader to invite more people and for the old members to upgrade to the Premium Account and avail of the "Table of Exits".[11]

Despite the Advisory, PPM still enticed the public to invest through various Facebook posts. The Commission also received various queries regarding PPM's claims that it is compliant with the Commission.

The EIPD then inquired if PPM has a business permit in the Business Permits and Licensing Office of Mercedes Municipal Hall, Camarines Norte.

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[9] Annex "K", "K-1", "K-2" and "K-3" of the Motion.
[10] Annex "M" of the Motion.
[11] Paragraph 16 of the Motion.

The Municipal Treasurer replied[12] that the Municipality did not issue a business permit in favor of PPM.

Also attached in the Motion, is the Affidavit of a certain Maricar Cervo-Sibayan[13] ("Ms. Sibayan"). She stated that she was recruited to join PPM and paid six hundred pesos (₱600.00) with the intention of earning through the captcha typing. However, from the time she paid the membership she has not received any return of her investment. Furthermore, she narrated the promises and inducements made to her by PPM.

On **7 May 2018** the EIPD received the Investigation Report[14] from the Legazpi EO. According to the report, the principal place of business stated in the Articles of Partnership is actually the residence of one of the partners, Mr. Naval. It was also discovered from the mother of Mr. Naval that Mr. Rosario is not actually a partner of her son's business. Mr. Rosario's name was placed in the Articles of Partnership because he was easy to contact. The mother claims that Mr. Naval has a legitimate business but could not explain what it is. From what she knows, her son recruits people through the internet who become the company's agents upon payment of ₱600 registration fee.

On **9 August 2018** PPM through counsel filed its request for the removal of the Advisory posted in the Commission's website. The Commission En Banc, in a Resolution denied said request.

Subsequently, the Anti-Cyber Crime Group ("ACG") of the Philippine National Police (PNP) wrote to the EIPD requesting for verification and confirmation of PPM's business platform as there is a complaint filed against PPM alleging that it is an online-based pyramiding business scheme. The EIPD responded that "PPM appears to be engaged in investment-taking activities"[15] as described in the Advisory.

The EIPD subsequently referred the case to the Department of Information and Communications Technology and National Privacy Commission insofar as captcha typing is concerned as the same might be a threat to cyber security.

The Commission En Banc finds the Motion meritorious.

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[12] Annex "P" of the Motion.
[13] Annex "Q" of the Motion.
[14] Annex "R" of the Motion.
[15] Paragraph 26 of the Motion.

Securities as defined in Section 3 of the SRC are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate of contract, instrument whether written or electronic in character. The term "securities" includes investment contracts.

An investment contract, as defined in Rule 26.3.5 of the 2015 Implementing Rules and Regulations of the SRC ("SRC IRR"), is a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits primarily through the efforts of others. It is presumed to exist when a person seeks to use the money or property of other persons on the promise of profits.

The elements of an investment contract as pronounced by the Supreme Court are: (1) an investment of money; (2) in a common enterprise; (3) expectation of profits; and (4) profits arises primarily from the entrepreneurial and managerial skills of others.[16]

PPM'S BUSINESS SCHEME ARE INVESTMENT CONTRACTS; HENCE, CONSIDERED AS SECURITIES

PPM's business schemes such as: 2x1 Matrix System, Pass3Unli, Unilevel/Indirect Referral Commission, Profit Sharing, Binary Matching Bonus, Binary Direct Downlines Commission and Table of Exits Commission fall within the ambit of an investment contract as correctly pointed out by the EIPD.

There is placement of money

The *business schemes presented by PPM are the contracts or transactions* entered into by the investors. Investors enter into any of PPM's business schemes by ***placing his money in the amount*** of ₱600 or ₱1800 depending on the package he avails. An existing member who wishes to upgrade to the premium package is required to pay an additional ₱1250.

The money is placed in a common enterprise

A common enterprise is deemed created when two or more persons pool their resources.[17] PPM's business scheme is considered a pyramid scheme indicating that the money is invested in a common enterprise.[18]

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[16] Power Homes Unlimited Corporation *versus* SEC, G.R. No. 164182, 26 February 2008.
[17] Rule 26.3.5 if the 2015 SRC IRR, Paragraph 3,
[18] In the Matter of: Success200 International Marketing Corporation, SEC CDO Case No. 09-15-024

There is expectation of return

The investor ***expects a certain amount of return which depends on the member's chosen business scheme***. The primary reason why people recruit investors for PPM is not for the purpose of engaging in the e-load business nor for captcha image typing because these platforms are not working. PPM are encouraging people to join PPM by luring them into "commissions" through recruitment. According to the posts and statements made by those people encouraging people to invest in PPM, profits are earned primarily through recruitment; this belies PPM's claim that people earn through the e-loading and captcha typing facilities. The other way is to join the Table of Exits scheme whereby the investor only needs to pay the ₱1800 and those in the "table" will be the one to help him "exit" the table and earn the "commission".

Profits are derived primarily through the effort of others

Lastly, the investor expects the return of his investment ***through the entrepreneurial and managerial skills of others***. In the conversation attached in Annex "Q",[19] a certain Majelyn told Ms. Sibayan that the date of the payout depends if Ms. Sibayan is good at recruiting or if in the Table of Exits she need not invite. The investor is not required to do anything other than place his/her money, recruit more people or not recruit any person in the case of Table of Exits, and wait for the returns of his investment.

PPM's business scheme is akin to that of Success200 International Marketing Corporation.[20] In the said case, the Commission En Banc citing the Power Homes Unlimited Corporation[21] case, emphasized that it is the expectation of profits which are being bought and not the product itself. In PPM's case, investors are being lured to invest their money not for the purpose of using the e-loading facility, data entry software and the like, but ***for the purpose of obtaining "profits" by just recruiting other members or entering the table of exits and wait to exit the same through the efforts of others.***

All the elements of an investment contract are present in PPM's business scheme leading to the conclusion that ***PPM is offering and selling securities***. As securities, the general rule on registration must be complied with before these securities are offered or sold to the public.[22] ***The offering and selling of securities is not per se prohibited what is prohibited is the***

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[19] Affidavit of Maricar Cervo-Sibayan.
[20] SEC CDO Case No. 09-15-024
[21] G.R. No. 164182, 26 February 2008.
[22] Section 8 of the SRC.

offering and selling of securities without the necessary secondary license issued by the Commission. *Securities are registered for the purpose of* ***protecting the investing public from fraudulent securities.*** Securities regulation is strictly implemented because the capital markets depend on the public's level of confidence to the system.[23]

PPM IS PUBLICLY OFFERING INVESTMENT CONTRACTS WITHOUT THE NECESSARY SECONDARY LICENSE

PPM is publicly offering its business schemes through Facebook and YouTube, which was established by the screenshots of its promotions,[24] the i-Message Mo narration of Ms. Beliran[25] and through the Affidavit of Ms. Sibayan.[26] SRC IRR[27] defined public offering of securities in this manner:

> "**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:
>
> 3.1.17.1. Publication in any newspaper, magazine or printed reading material which is distributed within the Philippines;
> 3.1.17.2. Presentation in any public or commercial place;
> 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)

The negative certifications[28] issued by the MSRD, CGFD and CRMD show that ***PPM is offering and/or selling securities to the public without the requisite secondary license.*** PPM is using social media platforms in its public offering of securities notwithstanding the fact that it does not have any secondary license to do so. ***Being a registered partnership is insufficient,*** an entity who wishes to engage in the selling of securities, other than registering as a corporation or partnership, ***must first register the securities it will offer and sell to the public in accordance with Section 8 of the SRC.***

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[23] Power Homes Unlimited Corporation *versus* SEC, G.R. No. 164182, 26 February 2008.
[24] Annex "Z" of the Motion.
[25] Annex "M" of the Motion.
[26] Annex "Q" of the Motion.
[27] Rule 3.1.17
[28] Annexes "F", "G" and "I"

PPM'S PARTNERS, AGENTS, ETC. ARE NOT REGISTERED BROKERS, DEALERS, SALESMEN OR ASSOCIATED PERSONS

Correlated to the requirement of registration of securities, persons who desire to engage in the selling of securities must also register as brokers, dealers, salesmen and associated person under Section 28 of the SRC.[29] From the foregoing, *PPM's partners, agents, and any other person for and acting on their behalf must register themselves first to the Commission before they offer and sell the securities/investment contracts to the public.* ***However, this requirement was also not complied with by the partners, agents, etc. of PPM.*** This is a violation of Section 28 of the SRC for which said persons may be penalized under Section 73[30] of the same code.

PPM IS ENGAGING IN A BUSINESS WHICH IS NOT INCLUDED IN ITS PURPOSE CLAUSE

Noteworthy to also point out is the fact that PPM's public offering and selling of securities is not within the purpose for which the said partnership is registered. In fact, the last clause of Article V of its Articles of Partnership provides: "without engaging in investment solution nor investment taking activity from the public" (underscoring supplied).[31] Clearly and even on its Articles of Partnership, *PPM cannot engage in any form of investment taking activities.*

A CEASE AND DESIST ORDER MAY BE ISSUED EX-PARTE

The EIPD was able to sufficiently and substantially prove that ***PPM is engaging in the public offering and selling of securities in the form of investment contracts without the requisite secondary license from the Commission.***

Section 179 (f) of the Revised Corporation Code vests on the Commission the power and authority to: "Issue cease and desist orders *ex parte* to prevent imminent fraud or injury to the public." Further, Section 64.1 of the SRC provides:

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[29] **Section 28.** *Registration of Brokers, Dealers, Salesmen and Associated Persons.* – 28.1. No person shall engage in the business of buying or selling securities in the Philippine as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.

[30] **Section 73.** *Penalties.* – Any person who violates any of the provisions of this Code, or the rules and regulations promulgated by the Commission under authority thereof, or any person who, in a registration statement filed under this Code, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall, upon conviction, suffer a fine of not less than Fifty thousand pesos (P50,000.00) nor more than Five million pesos (P5,000,000.00) or imprisonment of not less than seven (7) years nor more than twenty-one (21) years, or both in the discretion of the court.

[31] Annex "A" of the Motion.

> 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 and underscoring supplied)

Any ***public offering of securities without first securing the secondary license to do so is a continuing violation of the SRC***. A violation of the SRC *necessitates that the Commission invoke its power to issue a cease and desist order to protect the investing public and preserve the integrity of the capital markets from these fraudulent transactions and schemes.*

WHEREFORE, premises considered, **PLANPROMATRIX OLINE CO**, its partners, officers, agents, representatives, conduits, assigns, AND ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND IN THEIR BEHALF are hereby ordered to **IMMEDIATELY CEASE AND DESIST**[32]**, UNDER PAIN OF CONTEMPT**, from engaging in activities of selling and/or offering for sale securities in the form of investment contracts or any others of the same nature, as discussed in this *Cease and Desist Order*, until the requisite registration statement is duly filed with and approved by the Commission and the corresponding to offer/sell is issued.

Furthermore, the subject partnership is directed to **CEASE** from promoting its investment scheme through internet websites and social media platforms.

Moreover, to forestall grave damage and prejudice to all concerned, and to ensure the preservation of the assets for the benefit of investors, respondents or any of their representatives, or any person/s acting for and in their behalf, and such other persons directing or controlling the activities of such partnership, its partners, officers, representatives, salesmen, and agents, are all **ENJOINED from: (a) transacting any and all business involving the funds in its depositary banks, and (b) from 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 named persons herein may have interest, claim, or participation whatsoever, whether directly or indirectly, **immediately upon receipt of this Cease and Desist Order, until further orders from this Commission.**

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[32] Section 64.1, SRC, The Commission, after proper investigation or verification, *motu propio,* 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 fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

The Commission will institute the appropriate administrative and criminal action against any persons or entities found to act as solicitors, information providers, salesmen, agents, brokers, dealers or the like for and in behalf of the subject partnership.

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

1) Serve this *Cease and Desist Order* to **PLANPROMATRIX ONLINE CO**, and on its partners;

2) Post copies of the *Cease and Desist Order* at the entrance of the main office and/or branches, if any, of **PLANPROMATRIX ONLINE CO**; and

3) Submit a Compliance Report in the form of a pleading to the Commission En Banc within five (5) days from receipt of this Cease and Desist Order.

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 respondents may file a ***Motion to Lift the CDO within five (5) days from receipt of this Cease and Desist Order***. The Motion to Lift the CDO must be filed to the Commission En Banc through the Office of the General Counsel.

SO ORDERED.

Pasay City, Philippines; 16 July 2019.

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner