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

IN THE MATTER OF:

PLATINUM COIN / PLATINUM COIN PAWNSHOP

SEC CDO Case No. 03-23-101
Promulgated: 04 April 2023

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,

Movant.

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CEASE AND DESIST ORDER

This resolves the *Motion for Issuance of a Cease and Desist Order*[1] (the "*Motion*") filed by the Enforcement and Investor Protection Department (EIPD) on 23 March 2023, praying that a Cease and Desist Order ("CDO") be issued (a) directing PLATINUM COIN / PLATINUM COIN PAWNSHOP (collectively, referred to as "Platinum Coin"), its owner, JESSIEBOY MOMO DECENAN (Mr. Decenan), and all persons, conduit entities and subsidiaries claiming and acting for and in its behalf (the "Agents"), to immediately cease and desist from further engaging in activities of selling and/or offering securities in the form of investment contracts until the requisite registration statements are duly filed with and approved by the Securities and Exchange Commission (the "Commission") and the license(s) to offer/sell securities are issued; and (b) prohibiting Platinum Coin, Mr. Decenan 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 persons herein may have any interest, claim or participation whatsoever, whether directly or indirectly, under their custody, without authority from the Commission.

PARTIES

Movant EIPD is one of the Commission's operating departments tasked, among others, to investigate *motu proprio* or upon complaint or

[1] Dated 23 March 2023.

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PAGE 1 OF 14 PAGES
BY:

referral, violations of laws, rules, and regulations administered, implemented, or issued by the Commission, and to seek the issuance of a CDO whenever warranted by the circumstance.[2]

Platinum Coin are entities that are not registered with the Commission either as a corporation or a partnership. Platinumcoin Consumer Goods Trading is an entity that is registered with the Department of Trade and Industry (DTI) under the name of Mr. Decenan.[3] It was issued a Business Permit No. 2023-01623 by the Province of Zamboanga Sibugay – Municipality of Ipil on 07 February 2023 to operate/construct/install MNEC-Dishwashing Liquid.[4]

RELEVANT FACTS

Platinum Coin represents itself to the public as an entity engaged in a legitimate lending business operating in Dipolog City, Zamboanga del Norte.[5] It offers and extends loans to the public with an interest rate of twenty percent (20%) based on a sixty (60) day period, but the collects from its debtors on a daily basis.

The EIPD happened to come across the operations of Platinum Coin while it was monitoring the activities of various entities randomly. Based on its initial assessment, Platinum Coin is offering/dealing with unregistered securities to the public. This prompted the EIPD to conduct a formal investigation on the operations of Platinum Coin for possible violations of the Securities Regulation Code (SRC)[6], the Revised Corporation Code (RCC),[7] and other rules and regulations administered and implemented by the Commission.

The formal investigation resulted in the gathering of information and evidence which confirmed that Platinum Coin is offering/selling securities to the public whose investments are allegedly used to finance and/or sustain its lending business. Platinum Coin entices the public to invest their money with it by promising them a guaranteed return ranging from fifteen percent (15%) up to fifty percent (50%) in a period of thirty (30) days.[8] To give a semblance of legitimacy to its business operation, Platinum Coin executes an agreement with its investors and issues post-dated checks.

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[2] SEC Office Order No. 512, series of 2013.
[3] *Motion*. Paragraph 11 and Annex "H"
[4] *Ibid.* Paragraph 12 and Annex "I"
[5] *Ibid.* Annex "A"
[6] Republic Act No. 8799.
[7] Republic Act No. 11232.
[8] *Ibid.* Platinum Coin's Business Presentation Video (Annex "A" of the Motion")

SEC – OGC
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THE DOCUMENTS ON RECORD
PAGE 2 OF 14 PAGES
BY:

The investment scheme of Platinum Coin requires an investor to make an investment of One Thousand Pesos (₱ 1,000.00) to as high as Six Hundred Fifty Thousand Pesos (₱ 650,000.00)for such person to become a Platinum Coin co-owner. An investor can earn a one-time five percent (5%) outright commission. An investor who brings in new investors can later on become an Official Team Leader, where he/she will be entitled to (a) a monthly passive income of two and a half percent (2.5%) of the members' investment, (b) a cash gift ranging from Ten Thousand Pesos (₱ 10,000.00) up to Seventy Thousand Pesos (₱ 70,000.00), (c) and Five Hundred Pesos (₱ 500.00) worth of weekly load. Finally, an investor can also earn an annual bonus of twenty percent (20%) of the amount of the investment.[9] Platinum Coin assured its investors that there will be a lifetime payout until they withdraw their investment.

In the business presentation posted in Platinum Coin's Facebook account, the earnings of a Team Leader is summarized, as follows:

MEMBERS INVESTMENT	5% REFERRAL EARNINGS (₱)	2.5% MONTHLY PASSIVE (₱)
10,000	500	250
20,000	1,000	500
30,000	1,500	750
40,000	2,000	1,000
50,000	2,500	1,250
650,000	32,500	16,250

CASH GIFTS (₱)	QUALIFICATION
10,000	₱100,000 total invited investors for 90 days
30,000	₱200,000 total invited investors for 90 days
40,000	₱300,000 total invited investors for 90 days
50,000	₱400,000 total invited investors for 90 days
60,000	₱500,000 total invited investors for 90 days
75,000	₱650,000 total invited investors for 90 days

The investment scheme of Platinum Coin also involves three (3) investment tiers from which an investor can choose from, to wit:

[9] *Id.* Paragraph 5

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PAGE 3 OF 14 PAGES
BY:

TIER	BENEFITS
Tier 1	Monthly release of 15% payout for a 12-month contract
Tier 2	35% per month lock-in compounding for a 3-month contract; payout is released on the 3rd month
Tier 3	50% per month lock-in but not compounding for a 6-month contract; payout is released on the 6th month

To support its allegation that Platinum Coin is engaged in unauthorized sell/offer of unregistered securities in the form of investment contracts, the EIPD submitted in evidence the Certifications issued by the Company Registration and Monitoring Department (CRMD), the Corporate Governance and Finance Department (CGFD), and the Market and Securities Regulation Department (MSRD) of the Commission, which all showed that Platinum Coin is not registered as a corporation, partnership nor a One Person Corporation (OPC), and has not been issued a secondary license 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; and has not registered any securities under Sections 8 and 12 of the SRC; has not secured any permit to sell securities in its favor; has not filed an application for the registration and/or permit to sell securities; and is not a registered issuer of mutual funds, exchange traded funds and proprietary/non-proprietary shares or membership certificates and timeshares under Sections 8 and 12 of the SRC. [10]

To convince the public that Platinum Coin its lending business is legitimate, it posted in its Facebook account a scanned document of its purported DTI registration and Business Permit.[11]

On 10 February 2023, the Commission issued an *Advisory*[12] informing the public that Platinum Coin, Mr. Decenan, and their Agents are selling/soliciting investments from the public without the requisite authority, and warning the latter not to invest or to stop investing in Platinum Coin and/or exercise caution in dealing with the latter.

[10] *Id.* Paragraphs 7-8 and Annex "D"
[11] *Id.* Annex "G"
[12] *Id.* Paragraph 9 and Annex "F"

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THE DOCUMENTS ON RECORD
PAGE 4 OF 14 PAGES
BY:

Despite the Advisory, Platinum Coin continued to sell/offer securities, and carried out its unauthorized investment-taking activities, by actively posting pictures showing payouts received by its investors.[13]

Hence, the instant *Motion*.

ISSUE

Whether the allegations in the *Motion* and the evidence presented by the EIPD in support thereof warrants the issuance of a CDO against Platinum Coin.

RULING

The *Motion* is impressed with merit.

The EIPD was able to establish by substantial evidence that Platinum Coin is offering and/or selling unregistered securities to the public in the form of "investment contracts" without the requisite license from the Commission. Moreover, the post-dated checks issued by Platinum Coin to its investors to secure their investments are securities in the form of "evidence of indebtedness".

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

> "SEC. 3. Definition of Terms. –
>
> 3.1. "Securities" are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes:
>
> (a) Shares of stock, 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;
>
> xxx xxx xxx" (Emphasis supplied)

At the outset, it bears emphasis that the SRC has adopted a broad definition of securities with the intent of covering practically all forms

[13] *Id.* Paragraph 10 and Annex "G".

SEC – OGC
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THE DOCUMENTS ON RECORD
PAGE 5 OF 14 PAGES
BY:

and varieties thereof which are known or considered, or ought to be known or considered, to be such in the commercial/financial world. Thus, **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.**

Rule 26.3.5 of the 2015 Implementing Rules and Regulations of the SRC (the "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.
>
> **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."[14] (Emphasis supplied)

On the other hand, 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.[15] 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 an acknowledgment of an obligation to pay a fixed sum of money. It is usually used for the purpose of long-term loans.[16]

In the case of *Power Homes Unlimited v. Securities and Exchange Commission* (Power Homes Case),[17] the Supreme Court ruled that investment contracts are securities that are required to be registered with the Commission for the protection of the investing public, to wit:

> **"As an investment contract that is security under R.A. No. 8799, it must be registered with public respondent SEC, otherwise the SEC cannot protect the investing public from fraudulent securities.** The strict regulation of securities is founded on the premise that the capital

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[14] Rule 26.3.5 of the Implementing Rules and Regulations of the SRC.
[15] Decasa, Lucia M., *Securities Regulations Code Annotated with Implementing Rules and Regulations*, 2004, 1st ed., p.7.
[16] G.R. No. 93397, Traders Royal Bank vs. Court of Appeals, 3 March 1997.
[17] G.R. No. 164182, 26 February 2008.

SEC – OGC
CERTIFIED TRUE COPY OF
THE DOCUMENTS ON RECORD
PAGE 6 OF 14 PAGES
BY:

markets depend on the investing public's level of confidence in the system." (Emphasis supplied)

The concept of an investment contract in the Philippines is of American origin. It traces its roots from the US Supreme Court case *Securities and Exchange Commission v. W.J. Howey Co.*[18] where the Court stated that an investment contract is a transaction, contract, or scheme whereby a person (1) makes an investment of money, (2) in a common enterprise, (3) with the expectation of profits, (4) to be derived solely from the efforts of others. 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.[19]

This concept of investment contract was thereafter adopted and used in *Power Homes Unlimited Corporation v. Securities and Exchange Commission,*[20] where the Supreme Court ruled that in our jurisdiction, for transactions/schemes to be considered securities in the form of investment contracts, the following elements must be shown to exist: *(1) an investment of money; (2) in a common enterprise; (3) with expectation of profits, (4) primarily from the efforts of others.* The Supreme Court further ruled that whenever an investor relinquishes control over his or her funds and submits their control to another for the purpose of deriving profits from them, he or she is in fact investing in securities.[21]

Relative thereto, Section 8.1 of the SRC categorically provides that securities cannot be sold or offered for sale within the Philippines if the same are 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 and underscoring supplied)

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[18] 328 U.S, 293, 66 S. Ct. 1100,90 L. Ed. 1244, 163 A.L.R. 1043 (1946)
[19] *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.
[20] G.R. No. 164182, 26 February 2008.
[21] Investment Co. Institute v. Camp, 274 F. Supp. 624 (D. D.C. 1967).

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THE DOCUMENTS ON RECORD
PAGE 7 OF 14 PAGES
BY:

Applying the parameters established under the Howey Test, the Commission agrees with the EIPD's finding, and so holds that Platinum Coin is engaged in the sale and/or offer of unregistered securities in the form of investment contracts in violation of Section 8 of the SRC, because it has no license to carry out the same. This finding is supported by the fact that all the elements of the Howey Test are present in the instant case.

First, Platinum Coin's investment schemes requires the public to invest money. In the instant case, the posts in Platinum Coin's Facebook account showing pictures of money transfers made by its "shareholders" in amounts ranging from One Thousand Pesos (₱ 1,000.00) to Fifty Thousand Pesos (₱ 50,000.00), as well as profiles of its team leaders and the pictures which shows receipt of payouts confirm that that the public actually invested money. Moreover, considering that what is sought is the issuance of a CDO for the protection of the investing public, it is sufficient that the transaction merely requires the public to invest money in the target entity.

Second, Platinum Coin's investment scheme involves the pooling of investors' money which are used to satisfy and pay the guaranteed returns of its existing investors to ensure its continued operation. This is the common enterprise that is being sustained by the investments received from the public who believes that their investments yield lucrative returns generated from the lending business Platinum Coin.

Third, the investors expect guaranteed returns ranging from fifteen percent (15%) to fifty percent (50%) within a period of thirty (30) days. The same investors expect to receive additional benefits and bonuses everytime they bring in new investors.

Lastly, the profits expected by investors are derived primarily from the efforts of Platinum Coin, Mr. Decenan, and their Agents who carry out extensive marketing activities to ensure the coming-in of new investors, the receipt of investments, and payment of the guaranteed returns to early investors. Thus, We find in the marketing/advertising materials of the Platinum Coin an implied assurance that

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THE DOCUMENTS ON RECORD
PAGE 8 OF 14 PAGES
BY:

after investors part with their money, all they need to do is wait for the maturity date.

Moreover, We also hold that the post-dated checks issued to investors to secure their investments fall within the ambit of securities in the form of "evidence of indebtedness.

In *Gabionza v. Court of Appeals*[22], 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:

> "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)

Applying the foregoing to the instant case, the post-dated checks issued by Platinum Coin assume the character of evidence of indebtedness contemplated under the SRC because the same were issued in exchange for investments solicited from the public. It is clear that the post-dated checks are securities and is bolstered by the fact that investors are treated as "shareholders" or "co-owners" by Platinum Coin upon receipt of their investment.

The Commission thus finds and so holds that the post-dated checks were issued to its investors in lieu of shares or interest in Platinum Coin in an attempt to circumvent the law. The post-dated checks represents the investor's ownership interest in the lending business of Platinum Coin with an expectation of profits to be derived therefrom.

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

SEC – OGC
CERTIFIED TRUE COPY OF
THE DOCUMENTS ON RECORD
PAGE 9 OF 14 PAGES
BY:

Furthermore, the Commission also holds that Platinum Coin is engaged in the unauthorized offering of securities inasmuch as they are using the internet/social media platforms i.e. Facebook accounts to publish their investment scheme.

Rule 3.1.17 of the 2015 SRC IRR defines "Public Offering" as follows:

> "3.1.17. **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:
>
> x x x
>
> 3.1.17.3 Advertisement or announcement in radio, television, telephone, **electronic communications, information communication technology or any other forms of communication**;"[23] (Emphasis supplied)

The negative Certifications issued by the CRMD, MSRD and CGFD fully supported and affirmed the allegation and finding of the EIPD that the Platinum Coin is engaged in the unauthorized sale/offer of securities considering that they have no license to carry out such activities.

Relative to the issuance of a CDO, 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:

[23] Rule 3.1.17 of the Implementing Rules and Regulations of the SRC.

SEC – OGC
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THE DOCUMENTS ON RECORD
PAGE 10 OF 14 PAGES
BY:

1. There must be a conduct of a proper investigation or verification; and
2. There must be 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.[24]

In the instant case, the foregoing requisites were complied with. The EIPD conducted an independent investigation which resulted in the gathering and submission of evidence that supported the allegations in its *Motion* i.e. Certifications from the Commission's CRMD, MSRD and CGFD, screenshots of Facebook posts showing terms and conditions, different types of earnings, deposits of investments, team leader profiles, sample notarized agreements, DTI registration and business permit.

More importantly, this Commission is convinced that the evidence presented which showed the unauthorized investment-taking activities of Platinum Coin warrants the issuance of a CDO because the same will operate as a fraud on investors, or is likely to cause grave or irreparable injury or prejudice to the investing public, if not restrained.[25] This finding is supported by the fact that Platinum Coin represents itself to be lending company but it does not have the requisite license from the Commission to engage into the lending business. This is fraud, plain and simple.

Finally, this Commission cannot overemphasize the fact borne by the records that Platinum Coin's act of selling/offering unregistered securities in the form of investment contract constitutes fraud which should be promptly restrained for the protection of the investing public. This finds support in the case of *Securities and Exchange Commission v. CJH Development Corp.*[26] 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 a good reason for this provision, as any delay in the restraint of acts that yield such**

[24] Securities and Exchange Commission v. Performance Foreign Exchange Corporation, G.R. No. 154131, 20 July 2006.
[25] Section 64 of the SRC.
[26] G.R. No. 210316, 28 November 2016.

SEC – OGC
CERTIFIED TRUE COPY OF
THE DOCUMENTS ON RECORD
PAGE 11 OF 14 PAGES
BY:

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, **PLATINUM COIN / PLATINUM COIN PAWNSHOP,** together with its registered owner **JESSIEBOY MOMO DECENAN** and all persons, conduit entities and subsidiaries claiming and acting for and in its behalf, are hereby ordered to **IMMEDIATELY CEASE AND DESIST** from further engaging in activities of selling and/or offering for sale securities in the form of evidence of indebtedness or any others of the same nature, as discussed in this *Cease and Desist Order,* until the requisite registration statements are duly filed with and approved by the Commission and the corresponding permits to offer/sell securities are issued.

PLATINUM COIN / PLATINUM COIN PAWNSHOP, its operators, directors, officers, representatives, salesmen, agents and any and all persons claiming and acting for and in their behalf are likewise directed to **CEASE** their internet presence 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 in their behalf.

Finally, the Commission hereby **PROHIBITS PLATINUM COIN / PLATINUM COIN PAWNSHOP**, its owner and any and all persons, conduit entities and subsidiaries claiming and acting for and in its behalf or officers, representatives, salesmen, and 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 persons herein may have any interest, claim or participation whatsoever, whether directly or indirectly, under their custody, immediately to forestall grave damage and prejudice to all

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THE DOCUMENTS ON RECORD
PAGE 12 OF 14 PAGES
BY:

concerned and to ensure the preservation of the assets for the benefit of the investors without authority from the Commission.

The **EIPD** of the Commission is hereby **DIRECTED** to (a) serve a copy of this CDO to PLATINUM COIN / PLATINUM COIN PAWNSHOP, and their operators and officers including JESSIEBOY MOMO DECENAN (DTI registered owner); and (b) cause the posting of this CDO in the Commission's website.

The **EIPD** is **FURTHER DIRECTED** to (a) initiate the appropriate administrative proceedings against PLATINUM COIN / PLATINUM COIN PAWNSHOP, and their operators and officers including JESSIEBOY MOMO DECENAN (DTI registered owner) and impose the appropriate penalties, including revocation of Certificate of Incorporation, if warranted, and (b) submit a formal compliance report, by way of pleading, to the Commission *En Banc* within ten (10) days from receipt of this CDO.

Let a copy of this Cease and Desist Order be furnished to the Company Registration and Monitoring Department, Market and Securities Regulation 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, and the Department of Information and Communications Technology for their information and appropriate action.

In accordance with the provisions of Section 64.3 of the SRC and Part II, Rule IV, Section 4-3 of the 2016 Rules of Procedure of the SEC, the parties subject of this CDO may file a verified ***Motion to Lift the CDO*** to the Commission En Banc thru the Office of the General Counsel, within five (5) days from receipt of this Order.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

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PAGE 13 OF 14 PAGES
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JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

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PAGE 14 OF 14 PAGES
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Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC HEADQUARTERS, 7907 Makati Avenue
Salcedo Village, Bel-air, Makati City

April 11 2023
DATE

I HEREBY CERTIFY that the foregoing is a true and correct xerox reproduction of the official file (s) thereof in the custody of this Commission consisting of FOURTEEN (14) pages, pertaining to SEC CDD 03-23-101

GIPSY C. DAYAON
SEC Administrative Officer II

Verified By: _____ Fees: _____ Paid under
OR No. _____ Dated _____