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

IN THE MATTER OF:
UPSYS DAILY TRADING/UPSYS DAILY TRDING MANAGEMENT OPC/UPSYS DAILY TRDING MANAGEMENT CONSULTANCY

SEC CDO CASE NO. 03-23-100
Promulgated: 04 April 2023

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.
x----------x

CEASE AND DESIST ORDER

This resolves the *Motion for Issuance of A Cease and Desist Order*[1] (the "Motion") dated 17 March 2023 filed by the Enforcement and Investor Protection Department (EIPD), praying that a Cease and Desist Order (CDO) be issued: (a) directing UPSYS DAILY TRADING, UPSYS DAILY TRDING MANAGEMENT OPC and UPSYS DAILY TRDING MANAGEMENT CONSULTANCY (hereinafter collectively referred to as the "UPSYS Group") together with its owner and agent John Rey Baldenas Villarino ("Mr. Villarino"), its single stockholder, director, and president, Mark Uy Contreras ("Mr. Contreras"), its nominee and alternate nominee Misters Michael Reyes Puente ("Mr. Puente") and June Mendoza Samson ("Mr. Samson") and its operators, directors, officers, representatives, salesmen, agents, promoters, uplines, influencers, and any and all persons, conduit entities and subsidiaries (collectively referred to as the "Agents") who are claiming and acting for and its behalf, 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 statement is duly filed with and approved by the Securities and Exchange Commission (the "Commission"), and the license to offer/sell securities is issued; and (b) prohibiting the UPSYS Group, Mr. Villarino, Mr. Contreras, Mr. Puente, and Mr. Samson, and its Agents from transacting any and all business involving the funds in its depository banks, and from transferring, disposing, or conveying in any other

[1] Filed on 20 March 2023.

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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 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 (CDO) whenever warranted by the circumstance.[2]

UPSYS Daily Trading is an entity that is not registered with the Commission either as a partnership or corporation.

UPSYS Daily Trding Management OPC is a registered One-Person Corporation (UPSYS Daily OPC) having been issued a Certificate of Incorporation with SEC Registration No. 2023020086789 on 18 February 2023. Its principal place of business is at Room 3 Maregato Commercial Bldg., Mayor Gil Fernando St., Barangay Santa Elena, Marikina City. Its single stockholder is Mr. Contreras, a resident of San Roque, Marikina City. Its designated nominee is Mr. Puente, a resident of Barangay 100, Pasay City, while his alternate nominee is Mr. Samson, a resident of Poblacion, Pateros.

Based on the Articles of Incorporation ("AoI")[3] of UPSYS Daily Trading, its primary purpose is:

> "To act as managers or managing agency of persons, firms, associations, corporations, partnerships and other entities; to provide management and technical advice for commercial, industrial, manufacturing and other kinds of enterprises; and to undertake, carry on, assist or participate in the promotion, organization, management, liquidation or reorganizations or corporations, partnerships and other entities, except the management of funds, securities, portfolio or similar assets of the managed entities or corporations.
>
> **Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts."** (Emphasis supplied)

[2] SEC Office Order No. 512, series of 2013
[3] *Motion.* Annex "I"

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UPSYS Daily Trding Management Consultancy is an entity registered with the DTI under the name of Mr. Villarino. Its principal address is located in Barangay Magallanes, Makati City.

RELEVANT FACTS

Beginning January of 2023, the EIPD received email reports/complaints[4] from the public on the investment-taking activities of the UPSYS Group, where a number inquired into the legitimacy of these entities and their operations. This prompted the EIPD to conduct an investigation on the transactions and activities of the UPSYS Group for possible violation(s) of the Securities Regulation Code ("SRC"), the Revised Corporation Code (RCC), and other rules and regulations administered and implemented by the Commission.

Based on the investigation conducted, and the information gathered online[5] from the UPSYS Group's Facebook page, the EIPD was able to confirm that the UPSYS Group is selling/offering unregistered securities, by enticing the public to invest and earn passive income through its investment plans. Specifically, UPSYS Group sells/offers four (4) packages, each of which has a specific rate of return, but all of which matures in three (3) months. Under the investment scheme of the UPSYS Group, an investor can invest and earn by buying any of the available packages below:

PACKAGE	CASH OUT	RATE OF RETURN	DAILY RETURN	RETURN AFTER THREE MONTHS
UPSYS 1	₱500.00	2%	₱10.00	₱900.00
UPSYS 2	₱5,000.00	2.5%	₱125.00	₱11,250.00
UPSYS 3	₱50,000.00	3%	₱1,500.00	₱135,000.00
UPSYS 4	₱150,000.00	4%	₱6,000.00	₱540,000.00

In addition to the guaranteed returns provided above, an investor will also earn a fifty percent (50%) direct referral bonus for his/her first level (direct) recruits, and one percent (1%) uni-level bonus for the second (2nd) to the tenth (10th) level recruits.

To support its finding that UPSYS DAILY TRADING is engaged in unauthorized sale of unregistered securities, the EIPD submitted in evidence the Certifications issued by the Company Registration and Monitoring Department (CRMD), the Markets and Securities Regulation

[4] *Motion*. Annex "A"
[5] *Ibid.* Annex "B"

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Department (MSRD), and the Corporate Governance and Finance Department (CGFD) of the Commission which all showed that UPSYS Group 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.

On 26 January 2023, the Commission issued an Advisory[6] informing the public that UPSYS Group, its CEO/Founder John Villarino, its director, 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 the UPSYS Group and/or exercise caution in dealing with the latter.

Despite the issuance of the Advisory, the UPSYS Group nonetheless continued to sell/offer unregistered securities and carried out its unauthorized investment-taking activities. It also tried to discredit the Commission's Advisory by stating that it was registered as an OPC with the Commission.[7]

Hence, the instant *Motion.*

ISSUE

Whether the evidence presented by the EIPD in the instant *Motion* warrants the issuance of a CDO against the UPSYS Group, Mr. Contreras, Mr. Villarino, and their Agents.

DISCUSSION

The instant *Motion* is impressed with merit.

The evidence presented by the EIPD substantially showed that the UPSYS Group is offering and/or selling unregistered securities to the public in the form of investment contracts without the requisite license from the Commission.

Section 3 of the SRC defines "securities" as follows:

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[6] *Id.* Annex "G"
[7] *Id.* Annex "H"

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"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**:

xxx

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

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 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.

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 relation 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

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prospective purchaser." (Emphasis and underscoring supplied)

In the case of *Power Homes Unlimited v. Securities and Exchange Commission,*[8] the Supreme Court applied the afore-quoted provision and 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 markets depend on the investing public's level of confidence in the system." (Underscoring supplied)

The concept of an investment contract in the Philippines is of American origin. It traces its roots from the US Supreme Court case entitled *Securities and Exchange Commission v. W.J. Howey Co.*[9] where the Court held 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. On this basis, transactions or schemes where individuals invest their money in a common enterprise with the expectation of earning a profit through the efforts of the promoter or of someone other than themselves were consistently been considered as investment contracts.[10]

This concept of investment contract was thereafter adopted and used in *Power Homes Unlimited Corporation v. Securities and Exchange Commission,*[11] 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

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[8] Note 24, *Supra.*
[9] 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244, 163 A.L.R. 1043 (1946).
[10] *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 SRC IRR 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.
[11] G.R. No. 164182, 26 February 2008.

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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.[12]

Applying the parameters established under the Howey Test, the Commission agrees with the EIPD's finding, and so holds that the UPSYS Group 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***, the investment scheme of the UPSYS Group involves or requires persons to invest money ranging from PhP500.00 to PhP150,000.00 by purchasing any of the four (4) packages that are being offered to the public.[13] In the instant case, the EIPD was able to present evidence showing that people actually invested in the UPSYS Group.[14] 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***, the investment scheme of the UPSYS Group involves the pooling of the investors' money/funds which are used to pay the guaranteed returns of existing investors to ensure their continued operation. This is the common enterprise that is being sustained by the investments received by the UPSYS Group from the public;
>
> ***Third***, the UPSYS Group promises investors guaranteed returns based on the investment plans that they purchase. Necessarily, member-investors expect to receive passive income ranging from two percent (2%) to four percent (4%) per day where the payout is given on the end of the three (3) month period; and
>
> ***Fourth***, the profits which member-investors expect to receive are generated by the efforts of the UPSYS Group, who carry out extensive marketing activities to ensure the coming-in of new investors, the receipt of investments, and

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[12] Investment Co. Institute v. Camp, 274 F. Supp. 624 (D. D.C. 1967).
[13] *Id.* Annex "B"
[14] Screenshots of actual investments were included in the Annex "B" submitted by the EIPD.

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> payment of the guaranteed returns to early investors. Thus, we find in the marketing/advertising materials of the UPSYS Group an implied assurance that after investors part with their money, all they need to do is wait for the maturity date.

Moreover, the Commission also finds that the unauthorized investment scheme of the UPSYS Group is a Ponzi scheme which is likewise proscribed by law as the same constitutes fraud upon the investing public, thus:

> "To be sure, Ponzi scheme is a type of investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors. Its organizers often solicit new investors by promising to invest funds in opportunities claimed to generate high returns with little or no risk. In many Ponzi schemes, the perpetrators focus on attracting new money to make promised payments to earlier-stage investors to create the false appearance that investors are profiting from a legitimate business. **It <u>is not an investment strategy but a gullibility scheme</u>, which works only as long as there is an ever increasing number of new investors joining the scheme.** It is difficult to sustain the scheme over a long period of time because the operator needs an ever larger pool of later investors to continue paying the promised profits to early investors. The idea behind this type of swindle is that the "con-man" collects his money from his second or third round of investors and then absconds before anyone else shows up to collect. xxx.".[15] (Emphasis supplied)

Furthermore, the Commission also holds that the UPSYS Group 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

[15] *People vs. Palmy Tibayan and Rico Z. Puerto* (G.R. Nos. 209655-60, 14 January 2015)

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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**;"[16] (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 UPSYS Group 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 before a CDO can be validly issued:

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.[17]

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[16] Rule 3.1.17 of the Implementing Rules and Regulations of the SRC.
[17] *Securities and Exchange Commission vs. Performance Foreign Exchange Corporation*, G.R. No. 154131, July 20, 2006.

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In the instant case, the foregoing requisites were complied with. First, the records disclose that the EIPD conducted a formal investigation and presented sufficient evidence in support of its *Motion* i.e. Certifications from the CRMD, CGFD and MSRD,[18] Affidavit of the EIPD[19] investigating officers on the conduct of their investigation; screenshots of Facebook postings, Facebook live videos showing the presentations made by Mr. Villarino of the investment schemes offered by the UPSYS Group.

Second, this Commission is convinced that the evidence presented which showed the unauthorized investment-taking activities of the UPSYS Group 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. This finding is supported by the fact that in relation to UPSYS Daily OPC, its authorized capital stock is only One Million Pesos (P1,000,000.00). The same cannot simply sustain an investment scheme which promises its investors a guaranteed return ranging from 2% to 4% daily.

Finally, this Commission cannot overemphasize the fact borne by the records that UPSYS Group's act of selling/offering unregistered securities in the form of an 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 vs. CJH Development Corp.*[20] where the Supreme Court categorically held, thus:

> "**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**

[18] *Motion*. Annexes "D" to "F"
[19] *Ibid.* Annex "C"
[20] G.R. No. 210316, November 28, 2016.

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> **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, directing UPSYS DAILY TRADING, UPSYS DAILY TRDING MANAGEMENT OPC and UPSYS DAILY TRDING MANAGEMENT CONSULTANCY, its DTI-registered owner and agent John Rey Baldenas Villarino, its single stockholder, director, and president Mark Uy Contreras, its nominee and alternate nominee Michael Reyes Puente and June Mendoza Samson, its officers, operators, administrators, promoters, representatives, salesmen, agents, investment team planners, mentors, enablers, influencers, assigns, conduit entities, subsidiaries, and any and all persons claiming and/or acting for and in their behalf, are hereby ordered to **IMMEDIATELY CEASE AND DESIST** from engaging in the unlawful/unauthorized solicitation, offer and/or sale of securities in the form of investment contracts and/or any other similar or related acts, until the requisite registration statement is duly filed with and approved by the Commission.

UPSYS DAILY TRADING, UPSYS DAILY TRDING MANAGEMENT OPC and UPSYS DAILY TRDING MANAGEMENT CONSULTANCY, DTI-registered owner and agent John Rey Baldenas Villarino, its single stockholder, director, and president Mark Uy Contreras, its nominee and alternate nominee Michael Reyes Puente and June Mendoza Samson, its officers, operators, administrators, promoters, representatives, salesmen, agents, investment team planners, mentors, enablers, influencers, assigns, conduit entities, subsidiaries, and any and all persons claiming and/or acting for and in their behalf are likewise directed to immediately **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.

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Finally, the Commission hereby **PROHIBITS** UPSYS DAILY TRADING, UPSYS DAILY TRDING MANAGEMENT OPC and UPSYS DAILY TRDING MANAGEMENT CONSULTANCY, DTI-registered owner and agent John Rey Baldenas Villarino, its single stockholder, director, and president Mark Uy Contreras, its nominee and alternate nominee Michael Reyes Puente and June Mendoza Samson, its officers, operators, administrators, promoters, representatives, salesmen, agents, investment team planners, mentors, enablers, influencers, assigns, conduit entities, subsidiaries, and any and all persons claiming and/or acting for and in their behalf from transacting any business involving the funds in its depository banks and/or in any non-bank financial institution, and from transferring, disposing, or conveying in any manner, any and all assets, properties, real or personal, including bank deposits, if any, of which the named persons herein may have interest, claim or participation, whether directly or indirectly, under their custody, to ensure the preservation of the assets of the investors.

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

1) Serve this *Cease and Desist Order* to UPSYS DAILY TRADING, UPSYS DAILY TRDING MANAGEMENT OPC and UPSYS DAILY TRDING MANAGEMENT CONSULTANCY, its single stockholder/director/president, its nominee and alternate nominee, and DTI-registered owner; or if impracticable;[21]

2) Cause the posting of this *Cease and Desist Order* in the Commission's website.

The EIPD is **FURTHER DIRECTED** to submit a formal compliance report, by way of pleading, to the Commission *En Banc* within ten (10) days from receipt of this ***Cease and Desist Order***.

Let a copy of this Order be furnished to the Company Registration and 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, the Department of Information and Communications Technology, and the relevant local government unit(s) for their information and appropriate action.

[21] Due to Declaration of State of Public Health Emergency throughout the Philippines as declared by President Rodrigo Duterte under Presidential Proclamation No. 922. S. 2020 dated 8 March 2020.

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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 Respondent 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

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

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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 THIRTEEN (13) pages, pertaining to SEC CDD 03-23-100

GIPSY C. DAYAUN
SEC Administrative Officer II

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