



Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills
Mandaluyong City



In the Matter of:

MULTITEL INTERNATIONAL HOLDINGS,
INC., ONEHEART MULTI-PURPOSE
COOPERATIVE, INC., STAR ENTERPRISE
MULTI-PURPOSE COOPERATIVE, INC. and
EVERFLOW GROUP OF COMPANIES, INC.

CED CASE NO. 02-2718

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CEASE AND DESIST ORDER

This resolves the motion of the Compliance and Enforcement Department ("CED") of this Commission for issuance of a Cease and Desist Order ("CDO") against Multitel International Holdings, Inc. ("MIHI") and its alleged conduits Oneheart Multipurpose Cooperative ("Oneheart"), Everflow Group of Companies, Inc. ("Everflow"), Star Enterprise Multi-Purpose Cooperative ("Star"). A copy of the said motion, its Annexes and other supporting documents, is attached and made an integral part hereof as Annex "A".

MIHI is a holding corporation registered with the Commission on September 3, 2001 under SEC Registration No. A200113093 with principal office at Unit 2, 8F, Enterprise Tower 2, Ayala Avenue cor. Paseo De Roxas, Makati City, whose primary purpose is:

"To invest in, purchase or otherwise acquire and hold, use, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of personal property of every kind and description, including shares of stock, bonds, debentures, notes, evidences of indebtedness, contracts and other securities and obligations of any corporation, partnership, company or association, whether domestic or foreign for whatever lawful purpose or purposes the same may have been organized; and to pay therefore (sic) in money or by exchanging therefore (sic) in stocks, bonds, indebtedness or securities, and while the owner or holder of such notes, evidence of indebtedness contracts and other securities and obligations of any corporation; to receive, collect and dispose of the interest, dividends and (sic) income arising from such property and investments and to possess privileges of ownership to the extent authorized by law, without however engaging in any banking or quasi-banking activities, nor shall the corporation engage in business as an investment company as defined in the Investment Company Act (RA 2629) without complying with the provisions of the said act provided it shall not engage in stock brokerage and dealer in securities"
(Emphasis supplied)

Everflow is also a corporation registered with the Commission in 1992 under SEC Registration No. ASO92-07398, with principal office at the Ground Floor, Electra House Bldg., 115-117 Esteban cor. Herrera Sts., Legaspi Village, Makati City, and whose primary purpose is:

"To carry on, in its own behalf and in behalf of others, whether an agent, consultants, advisers, independent contractors or otherwise a general management and investment consultant and advisory business relating to the operation of business, plants, properties and investments and to engage in consultancy and advisory work in connection with the organization, financing, management, operation and reorganization of industrial and commercial enterprises and to manage and provide management for and supervise all or party (sic) of any and every kind of business or investment enterprise, and to contract or arrange with any corporation, association, partnership, or individual for the management, conduct, operation and supervision of all kinds of businesses and consultants except management of funds, security and portfolio of (sic) management. Provided that the company shall not engage in the business of being securities advisor, stock broker/dealer, investment house, dealer in gov't securities and/or fund/portfolio manager." (Emphasis supplied)

Oneheart is a multi-purpose cooperative registered with the Cooperative Development Authority ("CDA") with office address at Unit 2504, 25th Floor, 88 Corporate Center, 141 Valero Street, Salcedo Village, Makati City. Its Articles of Cooperation state that Oneheart was formed for the following purposes:

- 1. To encourage thrift and savings mobilization among the members for capital formation;*
- 2. To engage in various income generating and self-liquidating livelihood projects;*
- 3. To create funds in order to grant loans for productive and providential purposes to each member;*
- 4. To promote the cooperative as a way of life (sic) for improving the social and economic well-being of the people;*
- 5. To do any related activity for the member's self-government, improve social and/or economic well-being under a truly just democratic society;*
- 6. To work with the cooperative movement, non-government and government organizations/entities in the promotion and development of cooperatives and in carrying out government policies; and*
- 7. To undertake other activities for the effective and efficient implementation of the provisions of the Cooperative Code."*

Star is also a multi-purpose cooperative registered with the CDA, with principal office at Unit 201, Citiland Condominium III, 105 Herrera St., Legaspi Village, Makati City, and which was formed for the following primary purposes:

- 1. To engage in any income generating activity in line with the cooperative interest;*
- 2. To encourage thrift and savings mobilization among the members;*
- 3. To create funds in order to grant loans for productive and providential purposes to its members;*
- 4. To provide quality consumer goods and other services needed by the members."*

MIHI, Everflow, Oneheart and Star have interlocking incorporators or cooperators, stockholders or members, directors and officers who are inextricably connected in one way or another to the ownership, management or operation of Multinational Telecom Investors Corporation ("Multitel"), a corporation against which a CDO has been issued by the Commission and which is now facing revocation proceedings before the Commission.

The Articles of Incorporation of MIHI reveal that a total of 99.99% of its subscribed capital stock, which is equivalent to P49,999,700.00, is held by Spouses Saturnino and Rosario Baladjay, who are also the controlling stockholders of Multitel, as reflected in the latter's General Information Sheet for the year 2000. Rosario Baladjay is also the Chairperson and President of both MIHI and Multitel. Conrado Ariola, an incorporator of Everflow, is also a stockholder, director and Corporate Secretary of Multitel. Julius Gonzalo Fuentebella and Marissa Castulo, both incorporators and nominal stockholders of MIHI, are cooperators and directors of Oneheart. Jose Rico, a first-degree cousin of Rosario Baladjay, is a cooperator and director of Star and one of the original investors of Multitel. He is also a director of SMB Security and Protective Agency, Inc., another corporation controlled by the Baladjay spouses, where Rodulfo Pagtalunan, an incorporator and director of MIHI, is also a director.

Records of the Commission show that Multitel became the subject of a CDO on March 8, 2001 after it was found in an earlier investigation conducted by the CED to have unlawfully solicited and accepted investments from the public, in violation of its franchise and the provisions of the Securities Regulation Code ("SRC"), particularly those which prohibit it from sourcing investments from more than nineteen (19) non-qualified buyers or lenders. This CDO was lifted after Multitel undertook to reduce the number of its investors to the required nineteen (19). However, a CDO was again issued against Multitel on January 15, 2002 after investigators discovered that Multitel persisted in soliciting and accepting investments from the public (i.e., more than 19 investors) through conduit entities, including Everflow, Oneheart and Star. To make it appear that its investors do not exceed 19, Multitel does not allow individual investors to invest directly. Instead, the conduit entities accept individual investments in Multitel for the account of their individual clients to whom they issue receipts of investments or fund receipts as evidence of indebtedness. The conduit entities then remit their collections to Multitel, which then issues postdated checks directly to the individual investors. The January 15, 2002 CDO became permanent on January 24, 2002.

To prevent the commission of further violations and to protect the investing public against grave or irreparable injury or prejudice, the Commission issued on January 15, 2002 a CDO enjoining Multitel from further accepting investments from the public. Everflow, Oneheart and Star, as conduits of Multitel, fell within the purview of the CDO, which was made permanent in an Order of the Commission dated January 24, 2002.

After the CDO was issued and made permanent, and even as it remains in force, the Commission received persistent reports that Multitel continues to offer and solicit investments from the public and to accept deposits and investment placements, albeit under another name, MIHI. The reports further indicated that most of Multitel's placements and accounts were transferred to MIHI.

These reports prompted the Commission to direct the CED to conduct another investigation of the operations and activities of MIHI as well as that of

Everflow, Oneheart and Star, which, according to the reports, persist in accepting and soliciting investments from the public on behalf and as conduits of MIHI.

Based on the documents gathered in the course of the investigation¹, the CED was able to verify that indeed, MIHI, under the stewardship of its Chairperson and CEO, Rosario Baladjay, is engaged in the offering and sale of investment contracts, and the solicitation and acceptance of deposits or placement of investments from the general public, for its own account or through the use of, in connivance with and facilitation by its conduit entities consisting of related corporations and cooperatives and other entities or individuals including Everflow, Oneheart and Star.

The trail of documents secured by the CED reveals a telling picture of the operations of MIHI and its conduits, including Everflow, Star and Oneheart:

As shown by the Fliers distributed to the public, MIHI attracts investors by offering a whopping 4% guaranteed monthly interest for a minimum investment of P10,000 or a "double-your-money" rate in case the investor opts to avail himself of the 18-month lock-in investment scheme. MIHI makes this offering to the public through its supposed "marketing institutions", like Everflow, Oneheart and Star, whose agents (designated as "Counselors") have executed a "Counselor's Accreditation Agreement with MIHI's Chairperson and CEO, Rosario Baladjay. Under the agreement, the individual counselor, who is nominated for accreditation by an institutional agent duly recognized by MIHI (like Everflow, Oneheart and Star), undertakes to, among others, offer and sell MIHI investment contracts to the public at the basic interest rate discussed above, keep confidential all information regarding MIHI, its investors and counselors, and agrees not to use the name of MIHI or that of the institutional agency without prior notice to or authorization by MIHI's Board of Directors or "to use any calling card, Ids, flyers, materials for facsimile distribution, or any form of advertising or marketing tool which have not been *pre-approved* by the Board of Directors" of MIHI.

After the investments are received from individual investors and remitted to MIHI, servicing of interest payments and the return of invested capital are accomplished likewise through the facilitation of the conduit entities. A Daily Termination Transmittal Report (the "Report"), which is actually a memorandum of a conduit entity to MIHI, is prepared whereby the names of the investors, their corresponding investments, the name of the individual counselors through which the investments were made, the dates their fund deposits were entered and the fund deposit numbers assigned to them are transmitted to MIHI. The Report is verified by a staff of the concerned conduit entity and duly noted by its authorized officer before it is finally sent to MIHI. Receipt of the Report is supposed to be acknowledged by MIHI but no official acknowledgement is made because the Chairperson and

¹ Refer to Annexes "E" and its sub-annexes "E-1" to "E-10", "F", "G" and its sub-annexes "G-1" to "G-7", "H", "I" and its sub-annexes "I-1" to "I-10", "J" and its sub-annexes "J-1" to "J-5", "K", "L", "M", "N", "O", "P", "Q" and its sub-annexes "Q-1" to "Q-9", "R" and its sub-annexes "R-1" to "R-6", "S" and its sub-annexes "S-1" to "S-2", "T", "U", "V", "W", "X" and its sub-annexes "X-1" to "X-2", "Y" and "Y-2", "Z", "AA" and "BB" of the CED Motion

President of MIHI, Rosario Baladjay, discouraged this practice to avoid paper trail.² In addition to the Report, Everflow in particular prepares for its own consumption a daily Summary of Termination for Payment to reflect the day's transactions relative to the payment of individual investments in conformity with the Report.

Upon receipt of the Report, MIHI issues the List of Terminated Investments (the "List"), which is a document validating and acknowledging for payment the terminated investments contained in the Report to facilitate the release of the amounts (principal and interest) due to investors to the conduit entity, which would in turn make the actual payment. The List is usually stamped "Approved for Payment" by MIHI's Chairperson and President, Rosario Baladjay, although it is MIHI's comptroller, Villa Inguillo, who signs for the former. Together with the List, MIHI issues a Peso Cash Transfer Slip or Dollar Cash Transfer Slip (the "Slip"), which authorizes the transfer of funds to the claiming conduit entity in accordance with the Report and the List. This used to be presented to MIHI's maintaining bank for payment. Lately however, clearing for payment is transacted on cash basis mainly at the residence of Rosario Baladjay at No. 309 San Antonio St., Ayala Alabang Village, Muntinlupa City.³ Upon receipt of the funds for payment, the conduit entity executes an Acknowledgment Receipt.

The investment of a certain Nancy Zabala is illustrative of this flow of transaction between MIHI and one of its conduit entity, Everflow. Ms. Zabala made an investment placement of \$884.00 with MIHI on December 26, 2001 through Everflow with Iris Z. Aquino as her counselor. The placement was remitted by Everflow to MIHI and was designated by the latter as Dollar Fund Deposit No. 3328. The investment, together with the interest due thereon (for a total of \$920.54), was due to mature on July 30, 2002. Thus, the day before such date, or on July 29, 2002, MIHI included and entered Ms. Zabala's investment in the List of investments that are due for termination on July 30, 2002 through Everflow (Annex "I-9" of CED Motion), and approved the same for payment through the imprimatur of Villa Inguillo signing on behalf of Rosario Baladjay. To facilitate the release of funds, MIHI issued a Dollar Cash Transfer Slip on actual termination date (Annex "K" of CED Motion) of the said investment. Everflow thereafter received the funds for payment to Ms. Zabala on behalf of MIHI, as evidenced by the Acknowledgement Receipt it executed in favor of MIHI.

It is worth noting at this juncture that the documents gathered by the CED not only exposed the connivance between MIHI and its conduit entities, particularly Everflow and Oneheart, but also belied MIHI's assertions that it only begun operating in Fiscal Year 2002 as some of the investments in the various Lists reflected placements made with MIHI in 2001, mostly in the months of November and December, after Multitel already assumed an undertaking before the Commission that it will desist from sourcing investments from more than nineteen lenders.

² As confirmed by Atty. Danilo Ellacer, Everflow's corporate legal counsel on August 2, 2002 to CED Investigator Edwin Florida.

³ Ibid.

More importantly, the documents show that MIHI breached the 19-lender rule, as the names of investors with either Dollar or Peso deposits reflected in the Lists account for a total of one hundred nine (109) investments or Fund Deposits.

The use of related entities to channel funds from the individual investors to MIHI is evident from MIHI's admission that it utilizes "marketing institutions" to reach the investing public. In the Vol. 1 No. 1 issue of "The Rainmaker", the official newsletter of the Multitel Group of Companies, MIHI identified eleven (11) marketing institutions composed of cooperatives and corporations that are considered front ends for Multitel's investment transactions. Among those identified are Everflow, Oneheart and Star. The illustrations provided therein on the workings of MIHI's transaction system, Institution Front End System (IFES) for the tellers of the "marketing institutions" and Investment Tracking System (ITS) for MIHI, detail the process flow from solicitation of investments by counselors, to actual placements with MIHI and release of investment contracts until the servicing of interests and termination of investments (Annexes "G" to "G-7" of the CED Motion).

The employment by MIHI of conduits and the existence of a principal-conduit relationship between MIHI and Everflow is further confirmed by the exchange of correspondence between MIHI Chairperson and President Rosario Baladjay and Everflow Chairman Iris Z. Aquino. In a letter dated May 24, 2002, Rosario Baladjay informed Iris Aquino thus:

"Dear MS. IRIS AQUINO:

This is to formally inform you that effective immediately you will no longer be a conduit of Multitel thus we will not anymore honor any transactions you may have entered using Multitel's name.

From now on all terminations including those already submitted will be handled by the Alabang office and will only be given directly to the investors. No funds will be transferred to you until all investors' terminations/interests have been settled and audited.

xxxxx

Very truly yours,

(Sgd.) ROSE A. BALADJAY"

The following day, Iris Aquino wrote back thus:

"Dear Ms. Baladjay:

Thank you for the official termination of our business relation.

Please be informed that your unilateral intention of settling termination directly at your residence is not ACCEPTABLE to our investors, since they reason out that it is EVERFLOW they were transacting business with. If you will not settle

and/or pay terminations & interest filed by our end by Monday, you are complicating matters and this will blow up everything.

Your illegal nightly operation will come to fore and I will be very sorry if that will happen. You should not do to Everflow what you have done to MULTILINK.

Do remember that transactions were coursed thru Everflow and responsibility lies on our shoulders. You will be courting disaster if you miscomprehend this situation.

xxxxx (Underscoring supplied)

(Sgd.) IRIS Z. AQUINO"

From these admissions in the newsletter and in the letters of Rosario Baladjay and Iris Aquino, it is evident that: (a) the "marketing institutions", which include Everflow, Oneheart and Star, place investments in MIHI not for their own accounts but for the account and on behalf of individual investors recruited by their individual agents or counselors, (b) the "marketing institutions" are in fact the investment channels between MIHI and the individual investors and in fact act as agents for both, (c) both MIHI and the conduit entities are fully cognizant that MIHI's operations are tainted with illegality, and (d) the conduit entities, despite such knowledge, willingly allow themselves to be used by MIHI for its illegal operations.

The same issue of "The Rainmaker" validated the reports that MIHI took over the operations and activities of Multitel and used the same network or layer of related companies and cooperatives after the latter undertook to desist from committing further violations of the 19-lender rule, which was one of the pre-conditions of the Commission for the lifting of the earlier CDO issued against Multitel on March 8, 2001. The newsletter categorically stated that "Multitel International Holdings, Inc. or Multitel Holdings is the investment channel of Multinational Telecoms Investor Corporation, the Philippines' leading lending investor established and operating since the last quarter of 2000."

MIHI's assumption of investment contracts and transactions originally pertaining to Multitel is corroborated by statements made by Jose Rico, Chairman of Star, when he was interviewed by CED investigators on June 17, 2002. Jose Rico admitted that the Star's supposed investment in Multitel amounting to P716,000.00⁴ is still current, but this time with MIHI. Even the investments he placed with Multitel in the amount of P1,000,000.00 prior to the issuance of the CDOs against Multitel on March 8, 2001 and January 15, 2002 are still intact and current, only that these are also now in the name of MIHI. He even boasted that he was one of the pioneer counselor and prime-mover of Multitel, except that the counselors were dispersed to the different cooperatives in order to comply with the scheme of pooling together in several entities, in their case, a cooperative, the original 238 investors found to exist in the books of Multitel as of February 16, 2001, which was one of the bases for the issuance of the CDO of March 8, 2001.

⁴ See Annexes "VV", "WW" and "XX" of the CED Motion

Aside from the above-discussed transactions, the CED also discovered that MIHI is engaged in other questionable dealings and practices. These include:

- (a) *Misuse of corporate funds to finance the operation's and activities of purportedly related corporations and cooperatives, of which MIHI is actually not a stockholder*

Additional documents secured by CED investigators from MIHI⁵ disclosed that MIHI had been using corporate funds to finance and subsidize the operations and activities of purportedly related entities, Cellmode, Inc. and MMC Holdings, Inc. Based on these documents, MIHI paid for the services rendered by the accounting firm Diaz Murillo and Dalupan to Cellmode, Inc. for the year ending December 31, 2001. MIHI also paid for the rentals due on Room No. 907 of the National Life Insurance Building, which, the CED discovered, is occupied by MMC Holdings, Inc. These subsidies were made by MIHI notwithstanding that based on Cellmode, Inc.'s and MMC Holdings, Inc.'s corporate records, MIHI is not in fact a stockholder of either company nor is either company a shareholder of MIHI. Cellmode, Inc. even denied any connection with MIHI. Its Chairman of the Board, Jesper Frantzich, issued a Certificate dated June 26, 2002 stating that the present stockholders of Cellmode, Inc. are the original shareholders at the time of its incorporation, which do not include MIHI.

- (b) *Misrepresentation of investment of funds in MIHI's books of account.*

The Balance Sheet of MIHI as of May 31, 2002 (Annex "OO" of the CED Motion) listed as part of the company's assets its supposed "Investments to Subsidiaries" in the aggregate amount of P73,557,000.00. A cross-reference of the said entry in the Balance Sheet with the credit entry in MIHI's Trial Balance as of June 14, 2002 (Annex "PP" of the CED Motion) showed that these investments consist of the following:

Multitel Communications	-	P10,000,000.00
Multitel Consultancy	-	625,500.00
Richville Travel and Tours	-	625,000.00
Rosegold Hotel	-	5,000,500.00
RAB Realty	-	6,250,000.00
Cellmode	-	51,000,000.00

It should be noted, however, that pursuant to the list of Corporations Under the Multitel Group of Companies, which MIHI itself furnished the CED investigators (Annexes "MM" to "MM-2" of the CED Motion), MIHI holds investments or equities only in two domestic companies, namely, Multitel Consultancy Group, Inc. and Rosegold Hotel & Resort, Inc. This investments account for only P5,626,000 of the total investments entry in the Balance Sheet.

⁵ Refer to Annexes "CC", "DD", "EE", "FF", "GG", "HH", "II" and its sub-annexes "II-1" to "II-4", "JJ" and its sub-annexes "JJ-1" to "JJ-2", and "KK", "LL", "MM" and its sub-annexes "MM-1" to "MM-2", and "NN" of the CED Motion

In the course of the CED investigators' interview with Atty. Edgard Smith, corporate legal counsel of MIHI, and Charito Mayapis, MIHI's Vice President for Finance, it was disclosed that MIHI paid for investments in Multitel Communications Corp., RAB Realty, Inc. and Richville Travel and Tours, Inc. in the aggregate amount of P16,875,000.00 in the name and for the account of Rosario Baladjay, MIHI's President and Chairperson.⁶ No document has however been presented to the CED investigator that Rosario Baladjay already transferred the ownership of these investments to MIHI as of the date of the entry in the Balance Sheet and the date of the entries in the Trial Balance.

Moreover, the P51,000,000.00 (the alleged Peso equivalent of \$1,000,000.00) investment in Cellmode International, Inc., a corporation incorporated and registered in the British Virgin Islands, appears to be spurious. A Letter Reply from the Registry of Companies, Trade Marks and Patents of the Government of the British Virgin Islands dated August 15, 2002, which was made in response to the CED's earlier request for information on the registration of Cellmode International, Inc., stated that as of such date, the authorized capital stock of Cellmode International, Inc. remains at \$50,000.00. MIHI could not have therefore legally made such an investment.

The foregoing shows that MIHI is unable to account for funds amounting to P67,875,000.00, which funds were generated from its operations- i.e., investments made by the public.

The foregoing body of evidence makes manifest the perpetration by MIHI, Everflow, Oneheart and/or Star of the following violations of law, rules and regulations that are being enforced by the Commission:

- (a) *Violation of Section 45 of the Corporation Code in relation to Section 5.1 (m) of the SRC and Section 6 (1) (2) of Presidential Decree No. 902-A*

Section 45 of the Corporation Code provides that "no corporation under this Code shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred".

It is evident from the primary purposes of the respective articles of incorporation of MIHI and Everflow that neither company is authorized to engage in the business of offering or selling investment contracts to the public. MIHI is registered as a holding company while Everflow is organized as a management consulting company. In fact, both MIHI and Everflow are explicitly and specifically proscribed by the terms of their respective primary purposes to engage in business as a stockbroker or dealer in securities. Since investments contracts are securities⁷ and considering that the offering and/or sale of securities are not germane to the primary purposes for which either MIHI or Everflow is organized, neither company can

⁶ Also refer to Annexes "QQ", "RR", "SS", "TT" and "UU" of the CED Motion

⁷ Section 3.1 of the Securities Regulation Code.

engage in the offering or sale of securities as a business without violating Section 45 of the Corporation Code. The above-discussed evidence culled by the CED clearly proves that MIHI and Everflow have been engaged in the business of offering for sale or selling investment contracts/securities to the public, either for its own account (in the case of MIHI) or for the account of another (in the case of Everflow), in utter disregard of the express prohibition in their articles of incorporation. Both have therefore committed not merely *ultra vires* but downright illegal acts in violation of Section 45 of the Corporation Code. These acts constitute fraud and misrepresentation perpetrated against the investing public, particularly on MIHI's investors who made placements with MIHI in the mistaken belief that MIHI is legally authorized to solicit and accept investments from them.

(b) *Violation of Sections 8.1, 26.1 and 26.3, 28.1 of the SRC*

Section 8.1 of the SRC specifically prohibits the sale or offer for sale or distribution of securities within the Philippines without a registration statement duly filed with and approved by the Commission. Further, the SRC, under Sections 26.1 and 26.2 makes it unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities to: (i) employ any device, scheme or artifice to defraud, or (ii) engage in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person. In addition, Section 28.1 of the SRC provides that "no person shall engage in the business of buying or selling securities in the Philippines 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".

Based on the records of the Commission, the investment contracts/securities that MIHI have been offering for sale and in fact selling to the investing public have not been duly registered with the Commission. Considering that MIHI's investment contracts/securities are neither exempt from the registration requirements of the SRC, as these are not considered exempt securities under SRC Section 9, nor are the same being offered for sale or sold pursuant to an exempt transaction in accordance with SRC Section 10 in relation to SRC Rule 10.1 (k), as MIHI has sold and continues to sell investment contracts to more than nineteen (19) non-qualified buyers⁸, it is evident that MIHI has violated Section 8.1 of the SRC.

Further, the Commission's records confirm that not one among Everflow, Oneheart and Star is a registered securities broker or dealer⁹ and yet, these entities offer for sale or sell MIHI's investment contracts to the public for MIHI's account and buy these securities for the account of the individual investors. The "counselors" that Everflow, Oneheart and Star has engaged to carry out the offering or sale to and purchase by the investing public of MIHI's investment contracts/securities are also not registered with the Commission as securities salesmen or associated persons. Everflow, Oneheart and Star have therefore violated Sections 28.1 and 28.2 of the SRC.

⁸ To know who are considered qualified buyers, refer to Section 10.1(l) of the SRC.

⁹ Refer to the negative certification by the Director of the Market Regulations Department of this Commission, attached as Annexes "ZZ", "AAA", "BBB" and "CCC" of the CED Motion

More importantly, MIHI, Everflow, Oneheart and Star have deceived the investing public in the course of offering for sale or selling MIHI's investment contracts by representing to its investors that they are legally authorized to solicit and accept investments from the public and to enter into investment contracts, despite knowing fully well that the securities they offer for sale or sell are unregistered and that they themselves are not authorized securities brokers or dealers and cannot be registered as such. These constitute a manifest violation of Sections 26.1 and 26.3 of the SRC.

It should be emphasized that the legal requirement to register with the Commission any sale, offer for sale or distribution of securities within the Philippines is premised on the need to prevent fraud on investors or grave or irreparable injury or prejudice to the investing public. The rigidity of securities registration requirements is intended to ensure full disclosure and to provide symmetry of information to investors thereby making the value of the securities as offered to investors accurate. During the registration process, the Commission, as regulator, is given the opportunity to: (a) evaluate whether the information provided for in the registration statement is sufficient to apprise the investors of the risks and prospects of a business venture, transaction, contract or undertaking, and (b) confirm whether the mechanisms that the law puts in place for the protection of the investors are observed. Thus, the sale, offer for sale or distribution in the Philippines of any securities required to be registered, without a registration statement duly approved by the Commission, creates information asymmetry and market distortion, and renders nugatory the legal mechanisms for investor protection thereby exposing the investing public to grave or irreparable injury and extreme prejudice.

Considering that the investment contracts that MIHI is offering for sale or selling to the public, through its conduit entities Everflow, Oneheart and Star, have not passed through this rigorous registration process, the soundness of these securities as investment instruments cannot be readily ascertained by MIHI's individual investors, which makes these investors vulnerable to fraud. This is precisely a situation that the Commission can never countenance.

Further, to allow MIHI and its conduits to continue to deliberately evade compliance with the SRC is to give it an unwarranted advantage and cause grave injustice to legitimate issuers and brokers or dealers of securities who take the painstaking effort to disclose material information to the investing public by undergoing the securities registration process of the Commission. Such would contravene the Commission's policy to provide and ensure a level playing field for the Philippine securities market.

(c) *Contempt of the Commission through refusal to comply and continued defiance of its lawful orders*

By continuing the business and operations of Multitel, after the same has been permanently enjoined by the Commission from soliciting and accepting

investments from the public, MIHI, Everflow, Oneheart and Star committed contumacy against the Commission, an act that is punishable under the SRC.

Based on the admissions contained in the documents that were gathered by the CED, particularly the pronouncements in the "Rainmaker", the "veiled threats" in the letter of Iris Aquino to Rosario Baladjay and the statements of Jose Rico, there is no question that MIHI was incorporated, organized and operated to serve as an alter-ego of Multitel to ensure continuity of the latter's business. It is noteworthy that MIHI was incorporated after the first CDO was issued against Multitel on March 8, 2001 and after Multitel undertook in June 2001 to reduce the number of its investors to less than nineteen. MIHI is owned lock, stock and barrel by the same interests that control Multitel. Further, MIHI's finances, policies and business practices are steered by the same hands that guided Multitel's - by Rosario Baladjay, the President and Chairperson of both companies. Her position enabled Rosario Baladjay to wield control over MIHI and facilitate the circumvention of the Commission's prohibitions against Multitel, as indicated by the perpetration of the same scheme and the employment of the same conduits to unlawfully solicit investments from the public through the offer for sale or sale of unregistered securities, thereby exposing the investing public to grave injury or prejudice.

Although MIHI and Multitel are corporations separately registered with the Commission, the law allows the latter to pierce the veil of corporate fiction when circumstances of fraud are evident. As held by the Supreme Court, "the corporate fiction of the notion of legal entity may be disregarded when it is used to defeat public convenience, justify wrong, *protect fraud*, or defend crime, in which instances the law will regard the corporation as an association of persons or in case of two corporations, *will merge them into one*." (*Remo, Jr. vs. Intermediate Appellate Court*, 172 SCRA 406, April 18, 1989). The corporate veil may also be pierced where it is used to "promote unfair objectives" (*Villanueva vs. Adre*, 172 SCRA 876). Based on the discussion above, this is one instance when piercing the corporate veil is an imperative.

Thus, by selling investment contracts to the public in continuation of Multitel's operations, MIHI, being but an extension of Multitel's personality, flouted the Commission's lawful orders for Multitel to cease and desist from accepting investments from the public.

Everflow, Oneheart and Star, by allowing themselves to be used as MIHI's marketing institutions, as borne out by the evidence, became willing instruments for the circumvention of the Commission's CDO against Multitel. They have thus defied the same CDO that also operates against them as conduits, and in the process made themselves liable for contempt of the Commission.

In the light of the foregoing, it is now incumbent upon the Commission to curtail these illegal activities and to protect the investing public from the machinations of MIHI, Everflow, Oneheart and Star.

WHEREFORE, pursuant to the authority vested in the Commission, Multitel International Holdings, Inc., its officers, directors, agents, representatives, conduits, assigns and any and all persons claiming to act and/or acting for and in its behalf or under its authority are hereby ordered to immediately CEASE AND DESIST from accepting investments from the public and to SHOW CAUSE why this CDO should not be made PERMANENT.

Considering that the CDO issued by this Commission enjoining Multitel from accepting investments from the public encompasses Oneheart Multipurpose Cooperative, Everflow Group of Companies, Inc. and Star Enterprise Multi-Purpose Cooperative as *conduits* of Multitel, and considering further that the said CDO has never been lifted and remains binding against these three entities, the said CDO is REITERATED against Oneheart Multipurpose Cooperative Everflow Group of Companies and Star Enterprise Multi-Purpose Cooperative. These entities are hereby PERMANENTLY ENJOINED, under pain of CONTEMPT, from offering, soliciting, accepting or facilitating the acceptance of investments from the public.

The Compliance and Enforcement Department of this Commission is hereby DIRECTED to ensure strict compliance by the aforementioned entities with this Cease and Desist Order. For this purpose, the CED is hereby AUTHORIZED to assign any of its personnel or agents or to deputize personnel of other agencies of the government to monitor compliance with this CDO by establishing physical presence within the premises of these entities.

In accordance with the provisions of Section 64.3 of Republic Act No. 8799, otherwise known as the Securities Regulation Code, Multitel International Holdings, Inc. may file a request for the lifting of this Cease and Desist Order within a non-extendible period of five (5) days from receipt hereof.

SO ORDERED.

Mandaluyong City, Metro Manila.

September 10, 2002.


LILIA R. BAUTISTA
Chairman


FE ELOISA C. GLORIA
Commissioner


MA. JUANITA E. CUETO
Commissioner

JOSELIA I. POBLADOR *
Commissioner


JESUS ENRIQUE Z. MARTINEZ
Commissioner

INITIALCDO.0910/AD-MULTITEL2378

*on official leave