



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



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OFFICE OF THE GENERAL COUNSEL

In the Matter of:

TIBAYAN GROUP INVESTMENT COMPANY, INC., TG ASSET MANAGEMENT CORPORATION, MATCOR HOLDINGS COMPANY, LTD., JETCOR EQUITY COMPANY, LTD., STA. ROSA MANAGEMENT AND TRADING CORPORATION, WESTAR ROYALTY MANAGEMENT AND TRADING CORPORATION, STARBOARD MANAGEMENT AND TRADING CORPORATION, UNITED ALPA MANAGEMENT AND TRADING CORPORATION, GLOBAL PROGRESS MANAGEMENT AND TRADING CORPORATION, ATHON MANAGEMENT AND TRADING CORPORATION, DIAMOND STAR MANAGEMENT & TRADING CORPORATION, AND TIBAYAN MANAGEMENT GROUP INTERNATIONAL HOLDINGS CO. LTD.

CED CASE NO. 02-2719

X-----X

March 11, 2003

TO:

TIBAYAN GROUP INVESTMENT COMPANY, INC.
Tibayan Group Business Gallery Bldg.,
318 Alabang Zapote Road

TG ASSET MANAGEMENT CORPORATION
Tibayan Group Business Gallery
Building 318, Alabang Zapote Road

MATCOR HOLDING COMPANY LTD.
Unit 402, 318 Interior Gallery Building
Alabang, Zapote

JETCOR EQUITY COMPANY LTD. Blk. 17 Lot 24 M. Consing
St., BERV, Las Pinas City, MM

**STA. ROSA MANAGEMENT AND
TRADING CORPORATION**
#1679 National Road, Sta. Rosa, Laguna

**WESTAR ROYALTY MANAGE-
MENT AND TRADING CORP.**
3rd Level Rosie's Mall
Capt. Nazareno St. Naic, Cavite

**STARBOARD MANAGEMENT AND
TRADING CORPORATION**
West City Plaza, Rm. 404
West Avenue, Quezon City

**UNITED ALPA MANAGEMENT
AND TRADING CORP.**
Suite 401, South Center Tower
2206 Market Avenue, Madrigal
Business Park, Alabang, Muntin-
lupa City

**GLOBAL PROGRESS MANAGEMENT
AND TRADING CORPORATION**
3rd Floor, J & M Mendoza Building
Dona Soledad Avenue, Betterliving
Subdivision, Paranaque City

**ATHON MANAGEMENT AND
TRADING CORPORATION**
U-10 Olivarez Plaza, NAIA Avenue
Sucat, Paranaque City

**DIAMOND STAR MANAGEMENT
AND TRADING CORPORATION**
Virgen Sang Barangay Building
6th and 7th Lacson Streets
Bacolod City

**TIBAYAN MANAGEMENT
GROUP INTERNATIONAL
HOLDINGS CO. LTD.**
318 Interior Gallery Building
Zapote-Alabang Road, Las Pinas,
Metro Manila

**COMPLIANCE AND ENFORCEMENT
DEPARTMENT, 5th Floor, SEC Building
EDSA, Mandaluyong City**

Greetings:

Please take notice that on February 24, 2003 an **ORDER** was issued by the Commission in the above-entitled case, the original of which is now on file in this Commission.

Very truly yours,



VERNETTE G. UMALI-PACO
General Counsel



Joni

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

In the Matter of

TIBAYAN GROUP INVESTMENT COMPANY, INC., TG ASSET MANAGEMENT CORPORATION, MATCOR HOLDINGS COMPANY, LTD., JETCOR EQUITY COMPANY, LTD., STA. ROSA MANAGEMENT AND TRADING CORPORATION, WESTAR ROYALTY MANAGEMENT AND TRADING CORPORATION, STARBOARD MANAGEMENT AND TRADING CORPORATION, UNITED ALPA MANAGEMENT AND TRADING CORPORATION, GLOBAL PROGRESS MANAGEMENT AND TRADING CORPORATION, ATHON MANAGEMENT AND TRADING CORPORATION, DIAMOND STAR MANAGEMENT & TRADING CORPORATION, AND TIBAYAN MANAGEMENT GROUP INTERNATIONAL HOLDINGS CO. LTD.

CED Case No. 02-2719

X-----X

ORDER

This resolves the *Motion to Lift Cease and Desist Order* (CDO) filed by Mr. Jesus T. Tibayan (hereinafter referred to as the Movant) on February 3, 2003 for and in behalf of the respondent companies and the *Motion to Declare Cease and Desist Order Permanent* filed by the Compliance and Enforcement Department (CED) on February 17, 2003.

The Cease and Desist Order dated December 23, 2003 is an offshoot of a painstaking and grueling investigation work conducted by an audit team on the Tibayan Group of Companies.¹ These companies are:

¹ Office Order No. 120 dated June 14, 2002.

- A. Tibayan Group Investment Company Inc. (TGICI)
- B. TG Asset Management Corporation (TG ASSET)
- C. Matcor Holdings Company Ltd. (MATCOR)
- D. Jetcor Equity Company, Ltd. (JETCOR)
- E. Sta. Rosa Management and Trading Corporation (STA. ROSA)
- F. Westar Royalty Management and Trading Corporation (WESTAR)
- G. Starboard Management and Trading Corporation (STARBOARD)
- H. United Alpa Management and Trading Corporation (ALPA)
- I. Global Progress Management and Trading Corporation (GLOBAL)
- J. Athon Management and Trading Corporation (ATHON)
- K. Diamond Star Management & Trading Corporation (DIAMOND)
- L. Tibayan Management Group International Holdings Co. Ltd. (TMGIHCL)

A perusal of the evidence on hand so far and presented to this Commission shows that the respondent companies, in concert and in connivance with each other, engaged in the offering and sale of investment contracts, and the solicitation and acceptance of deposits and placement of investments from the general public without the proper authority or license from this Commission.

All of the respondent companies are either owned or controlled by Jesus Tibayan or by TMGIHCL, which is also owned and controlled by Mr. Tibayan.²

Records show that Mr. Tibayan owns 99% or more of the subscribed capital stock of TGICI, MATCOR, TMGIHCL and JETCOR. On the other hand, TMGIHCL owns from 93% to 99% of the subscribed capital stock of TG ASSET, STA. ROSA, WESTAR, STARBOARD, ALPA, GLOBAL, ATHON, and DIAMOND.³

Mr. Tibayan, thus, owns and effectively controls the whole group of companies.

On 21 September 2001, TGICI was granted a secondary license to act as a mutual fund company by the Corporation Finance Department (CFD). However, instead of operating as a mutual fund, TGICI engaged itself in the

² See Annex UU of of CED's Motion for Issuance of CDO for the Articles of Incorporation of the respondent companies (hereinafter referred to as the CED's Motion.)

³ See Annex A to K of CED's Motion

selling of investment contracts without license from the Commission.⁴ The *modus operandi* of the company is as follows: prospective investors are either approached by representatives of TGICI or referred by other investors. Upon placement by the investor, TGICI will do any one or two of the following acts:

- a. issue to the investor at least seven (7) post dated checks representing the interest and principal;
- b. issue only one post dated check while the interest of the placement will be deposited directly to the bank account of the investor;
- c. issue transmittal receipt, acknowledgement receipt and schedule of dividends credit;
- d. give *Sunrise Magazine* to investors, which contains the affiliations of TGICI and impressive write-ups intended to entice the prospective investors to invest.

The post dated checks and transmittal receipts given to the investors indicate a term of placement ranging from six (6) months to one (1) year. The post dated checks and transmittal receipts also reflect an income/dividend rate ranging from 3 to 5.5% per month.⁵ If an incentive rate is given in addition to the income or dividend rate, TGICI will not issue a post dated check for the incentive rate but will deposit the amount upon maturity.⁶ The evidence submitted shows that pre-termination of investment is not allowed by the company. Documents submitted to this Commission show that Ms. Marites Fajardo, an investor, requested the pre-termination of her investment on December 10, 2002 but the request was denied. Instead, investors are made to wait for the maturity of the investment before the principal can be returned.⁷

The submitted documents clearly show that the company conducted activities other than those of a mutual fund. We are convinced that the company is offering and selling investment contracts. *First*, TGICI guarantees a fixed income rate to investors. On the other hand, investments returns for mutual funds are not guaranteed but dependent on a Net Asset Value Per Share of the fund. *Second*, the investments are not allowed to be pre-terminated by the investor, while investment shares in a mutual fund are allowed to be redeemed at any time.

⁴ Annex XX of the CED Motion

⁵ Annex Q, and O-44 to O-47, CED's Motion.

⁶ Annex O-42 to O-42C, CED's Motion.

⁷ Annex O-45E, CED's Motion.

TGICI's act of engaging in the business of issuing and selling investments/securities other than what is authorized, to more than nineteen (19) persons within any twelve-month period, is an open violation of Section 8.1 of the Securities Regulation Code which states that:

"Sec.8. Requirement of Registration of Securities.-8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without registration statement duly filed with and approved by the Commission. Prior to 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 buyer."(Underscoring ours.)

Records will also show that the company has repeatedly submitted reports to the Commission pregnant with false representations. After being directed by the CFD, Polymar M. Masuli, Chief Accountant of TGICI submitted the list of certificates/shares issued to its mutual funds holders for the period September 25, 2001 to December 5, 2002. The aforementioned list reveals names of stockholders/incorporators of the various subsidiaries and affiliates of the United Group of Companies Tibayan Group.⁸ The said submission, however, fails to reflect the names of at least thirty-five (35) investors who directly submitted their documents to this Commission showing that they are investors of the company.⁹ Worse, the monthly sales report submitted by TGICI declared it had no sales from January 2002 to August 2002. On the contrary, the stock certificates obtained by the audit team from the investors show that there were in fact sales made by the company from July 2002 to December 2002.¹⁰

The evidence against MATCOR shows that the company issued investments contracts without any secondary license from the CFD in violation of Section 8.1 of the SRC.¹¹ Presented to the Commission are "Pre-Transactional Business Partners Data" for investments in securities from forty-two (42) investors.¹² These investment transactions are misleadingly denominated as "Private Investment in a Mutual Fund" or "Capital Contributions." These investments are in fact investment in securities due to the presence of the following elements:

⁸ Annex N and N-1 of CED's Motion

⁹ Annex O-1 to O-59 of CED's Motion

¹⁰ Annex P of CED's Motion

¹¹ Annex AA of CED's Motion

¹² Annex Z-18 to Z-54 of CED's Motion

- a. A contract, transaction or scheme
- b. an investment of money
- c. investment is made in a common enterprise
- d. expectation of profits
- e. profits arise primarily from the efforts of others

These investments carry a return rate of between three (3) to five (5) percent per month and have term ranging from six (6) months to (12) twelve months.

TG ASSET, on the other hand, is authorized to act as an investment company adviser.¹³ The evidence however shows that TG ASSET did not act as an investment advisor but as a marketing arm of the MATCOR. This is apparent in the copies of the Pre-Transactional Business Partner Data between MATCOR and two (2) investors which were submitted as evidence by the CED.¹⁴ TG ASSET, thus, offered/sold securities, other than the registered security of TGICI, without obtaining the necessary secondary license from the CFD, in violation of Section 8.1 and Section 28.1 of the SRC. Section 28. 1 of the SRC reads:

“Sec.28. Registration of Brokers, Dealers, Salesmen and Associated Persons.-28.1 No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such by the Commission.”

Like TG ASSET, the other companies, JETCOR, STA. ROSA, WESTAR, STARBOARD, UNITED ALPA, GLOBAL, ATHON and DIAMOND all conducted investment taking activities for MATCOR. The abovementioned companies acted as MATCOR's marketing subsidiary, without any authority or license from the CFD in violation of Section 28.1 of the SRC.¹⁵

Evidence shows that JETCOR solicited investment contracts from two (2) investors.¹⁶ Like TGICI, JETCOR submitted to the Commission a

¹³ Annex R and R-1 of CED's Motion

¹⁴ See Annex V-1 to V-3 of Motion

¹⁵ See Annex DD, GG,II, KK, MM, OO, RR, TT of the CED's Motion for the negative certifications issued by the CFD to the effect.

¹⁶ Annex CC-a to CC-2 of CED's Motion

misleading and false letter dated 10 October 2002 stating that since its incorporation it has not started commercial operations.¹⁷ The two investment contracts submitted belie this statement.

STA. ROSA also acted as a marketing subsidiary for MATCOR. It entered into investment transactions for MATCOR with at least five (5) investors.¹⁸ As with JETCOR, STA. ROSA, through its President, Elizabeth C. Mendoza, submitted to the Commission a letter falsely stating that the company has no operation of any kind for the period August 20 to December 31, 2001.¹⁹

WESTAR engaged in investment taking activities for MATCOR with two (2) investors.²⁰

STARBOARD solicited investments from two (2) persons for MATCOR.²¹

UNITED ALPA undertook investment taking activities for MATCOR with at least two (2) investors.²²

Similarly, GLOBAL undertook investment taking activities for MATCOR with at least five (5) investors.²³ On 11 February 2002, Mr. Caesar Bryan D. Laxamana, President of Global Progress, submitted to the Commission an affidavit stating that the company has no operation of any kind for the period of August 9 to December 31, 2001.²⁴ However, the Pre-transactional Business Partner's Data submitted by an investor to the Commission dated 10 December 2001 indicates that the said corporation was actually operating, contrary to what was represented.

ATHON marketed investment in securities for MATCOR to at least four (4) investors.²⁵

The evidence submitted against TMGIHCL show that it is involved in the investment taking activities of WESTAR and TG ASSET. Records

¹⁷ Annex BB of CED's Motion

¹⁸ Annexes Z-19 to Z-19B, Z-25 to Z-25A, Z-36 to Z-36A, Z-37 to Z-37A, Z-40 and Z-47 to Z-47A of CED's Motion.

¹⁹ Annex FF of CED's Motion

²⁰ Annex HH-1 to HH-2 of CED's Motion

²¹ Annex JJ-1 to JJ-1C of CED's Motion

²² Annex Z-31 and Annex Z-43 to Z-43A of CED's Motion

²³ Annex Z-18 to Z-18B, Z-27, Z-29 and Z-30 to Z-30B

²⁴ Annex PP of CED's Motion

²⁵ Annex Z-21, 33, 34 and 42 of CED's Motion

submitted show that it is TMGIHCL that issued checks and business partnership receipts for the two companies. Bismarck Arvisu, an investor of WESTAR, was issued a business partner income receipt by TMGIHCL.²⁶ Edison Camacho and/or Cherie Amor, investors of WESTAR, were made to issue checks payable to TMGIHCL.²⁷ Orlando Yaneza, an investor of TMGIC/TG ASSET was issued checks by TMGIHCL.²⁸ TMGIHCL does not have any secondary license to act as a mutual fund, as an investment advisor, or to engage in investment taking activities.²⁹

Thus, based on the evidence gathered by the investigation and submitted to this Commission, it is manifest that the respondent companies, in concert and in connivance with each other, are engaged in the unlawful offering and sale of investment contracts, and unlawful solicitation and acceptance of deposits or placement of investments from the public. TGICI, MATCOR, and TMGIHCL offered investment contracts to the public without the proper authority from the CFD. The investment contracts are misleadingly denominated as "Private Investment in a Mutual Fund" or "Capital Contributions" when these are actually investments in securities, for which these companies do not have any license to offer to the public.

The investments contracts are marketed in connivance with the other Tibayan controlled companies, namely, TG ASSET, JETCOR, STA. ROSA, WESTAR, STARBOARD, UNITED ALPA, GLOBAL, ATHON and DIAMOND which acted as conduits or channels. This elaborate scheme of using the various subsidiaries is clearly employed as subterfuge to circumvent the 19-lender rule for investment taking activities without the necessary registration of securities or license with the CFD as prescribed under Section 10.1 (k) of the SRC and SRC Rule 10-1 (4)(c). Although these respondents are corporations separately registered, the law allows the Commission to pierce the veil of corporate fiction when circumstance of fraud are evident.³⁰ The corporate veil may also be pierced where it is used to "promote unfair objectives".³¹ Clearly, the evidence presented warrants that these companies should be treated as one, and thus, held collectively liable for the violations herein recited.

On 23 December 2003, this Commission, upon urgent motion of the CED issued the subject CDO directing the respondents, their respective

²⁶ Annex VV-1 to VV-7 of CED's Motion

²⁷ Annex VV-8 to VV-11 of CED's Motion

²⁸ Annex O-10, O-10A, O-10B of CED's Motion

²⁹ Annex WW of CED's Motion

³⁰ Remo, Jr. vs. Intermediate Appellate Court, 172 SCRA 406.

³¹ Villanueva vs. Andre, 172 SCRA 876.

officers, partners, representatives, agents and any and all persons acting for and/or in their behalf to “cease and desist from further offering, soliciting, issuing, receiving any amount in whatever guise, negotiating, distributing or otherwise dealing in securities using the “Private Investment in Mutual Fund” and “Capital Contribution” or other instruments.”

On 3 February 2003, or within five (5) days after respondents received the copy of the CDO, Mr. Tibayan filed for and in behalf of the respondent companies a *Motion for Reconsideration with request to lift CDO, and SHOW CAUSE not (sic) to permanent CDO*. Pursuant to Article 2, Rule III of SEC Circular No. 4 (2001), a hearing was immediately set on 12 February 2003. On 11 February 2003, movant filed a *Supplemental Motion*.

However, on the said scheduled hearing, movant failed to appear despite notice. During the said hearing, the CED moved that movant be declared as in default for his failure to appear despite due notice duly received. It also argued that as the pleadings filed by movant are not properly verified, these should be considered as not having been filed.

On 17 February 2003, the CED filed its *Motion to Declare Cease and Desist Permanent* which is actually an opposition to the motion of the respondents.

Article 4, Rule I, Part III of SEC Circular No. 4 (2001) reads:

“ART. 4. Motion to Lift CDO -- (a) The Motion to Lift CDO shall be verified, and three (3) copies shall be filed with the Central Receiving and Records Division, 1st Floor, SEC Building, within five (5) days from receipt of the CDO as stated in the registry return card or if the same was served personally, from the stamped receipt of the Commission process server. An unverified motion shall not interrupt the running of the five (5) day period.”(Underscoring ours.)

While the rules of procedure are liberally construed by this Commission, it can not ignore the fact that the pleadings submitted by the movant are not properly verified as required by the rules. There is thus no

assurance that the allegations in the pleadings are true and correct, and not the product of the imagination or a matter of speculation and that the pleadings have been filed in good faith.³² While the lack of verification is a mere formal defect that can be remedied during trial, the absence of the movant in the scheduled hearing for his Motion has defeated the possibility of immediate correction of the defective pleading.

Thus, this Commission is constrained to treat Mr. Tibayan's pleading as a mere scrap of paper not worthy of consideration. Not having been properly verified as required by the rules, the pleading submitted by the movant is deemed as an unsigned pleading³³, and is therefore treated as if not filed.

Nevertheless, even if we put aside the procedural requisites, the *Motion for Reconsideration* as well as the *Supplemental Motion* ought to be denied as both are so anemic and do not present any sufficient ground or basis to entitle the respondent companies to the reliefs sought. The Motion fails miserably to even set up a decent defense. Neither does it assert any specific denials nor sets forth the substance of the matters upon which movant relies to support his defense. The Motion also did not make any settlement offer in accordance with Section 55 of SRC and SRC Rule 55.1, and Part IV, Rule V of Circular No. 4 (2001).

Movant would like this Commission to believe that all the acts complained of that constituted violations of the rules were a by product of honest mistake and ignorance of the rules. [*In effect, movant relies on the supposed good faith of the respondent companies to extricate them from the indefensible pit hole that they deeply dug themselves in.*] Movant even asks for guidance and assistance from this Commission and depicts the respondents companies as victim of injustice and prejudice, and even claims that the CDO actually derailed the companies' efforts to institute recovery measures. Movant is implying that by reason of the CDO issued by this Commission, the existing investors suffered irreparable damage.

We are appalled by the temerity displayed by the movant, as well as by his blatant illusions of persecution. We hasten to add that while the respondent corporations' ignorance of the law is abysmal, their chronic dishonesty even surpassed the gravity of their offenses.

³² See *Oshita vs. Republic*, 19 SCRA 700.

³³ Sec. 4, Rule 7 of the New Rules on Civil Procedure applies in a suppletory manner.

In sum, the unrefuted evidence before this Commission can not help but clearly demonstrate that the respondent companies, acting as one, are guilty of flagrantly and continuously violating the SRC and the rules and regulations issued thereunder. The evidence have demonstrated respondents' disturbing and contemptible habit of repeatedly submitting false or misleading documents and records to this Commission.

Considering the gravity of the offenses committed, the multitude of affected investors, as well as the propensity of the respondent company to submit false declarations and misleading reports to this Commission, and in order to prevent further violations and protect the investing public from similar machinations and grave and irreparable damage in the future, it is imperative that the Cease and Desist Order dated 23 December 2002 be made permanent.

WHEREFORE, in view of the foregoing, the *Motion for Reconsideration with Prayer to Lift CDO* filed by Jesus B. Tibayan dated 3 February 2002 is hereby **DENIED**. The **CEASE AND DESIST ORDER** dated 23 December 2002 is hereby rendered **PERMANENT**.

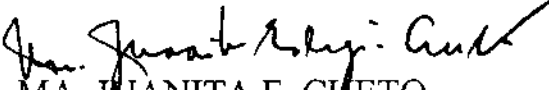
SO ORDERED.

Mandaluyong City, 24 February 2003.


LILIA R. BAUTISTA
Chairperson


FE ELOISA C. GLORIA
Commissioner


JOSELIA J. POBLADOR
Commissioner


MA. JUANITA E. CUETO
Commissioner


JESUS ENRIQUE G. MARTINEZ
Commissioner