

Republic of the Philippines  
Department of Finance  
Securities and Exchange Commission

**ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT**

In the Matter of:

For: Revocation of Certificate of  
Incorporation/Registration

**TOGACHAT ACADEMY  
PHILIPPINES INC.  
SEC Registration No. CS201628323**

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**ORDER OF REVOCATION**

**TOGACHAT ACADEMY PHILIPPINES INC. ("TOGACHAT")** was registered with the Securities and Exchange Commission (SEC) on 07 December 2016 under Company Registration No. CS201628323 with the following primary purpose:

*"To promote the TogaChat Social Messaging Application and Technology Platform of TogaCapitalSdnBhd and Toga Ltd., and all of its related products and services by way of educating the public, marketing the products through any and all possible means allowed by law via any media such as TV, radio, print, CD, DVD, websites, internet, electronic facilities such as use of any gadgets, or memory device, telecommunication facilities such as video, voice and data and conducting meetings, seminars, training and agreements and partnerships, with other private or public companies."*

On 29 April 2018, the EIPD received an e-mail through the SEC I-Message Mo Facility that TOGACHAT is apparently engaged in investment-solicitation activities, by way of selling stocks in the form of Toga Points, without being legally authorized, quoted herein verbatim:

*"SEC registered name TOGACHAT ACADEMY PHILIPPINES INC.*

*Yippi a chat software used by TOGACHAT to **sell stocks in the form of TP (Toga Points)**. The company is listed not authorized nor approved by BNM (Central Bank of Malaysia)*

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***Toga Limited has a MLM system of which the upline will receive 50% income from downline signup.***

*Malaysian Base company is registered in USA and selling TP points in Philippines, America, Indonesia and reportedly in Thailand. Please check TOGACHAT if its doing business according in Philippines Laws."*

It appears from several emails received by the Commission on separate dates that the respondent is widely operating nationwide and even abroad. In one of the e-mails sent through SEC I-message Mo Facility, the sender attached an e-mail/inquiry quoted as follows:

*"I would like to know if Toga Capital Limited is a scam, my parents are giving up everything and inviting their friends too for this company and I would like to know if they're genuine.*

*What they do is employ a sort of multi-level marketing strategy, embedded in an app (trading software sort of) that makes you invest stocks using "toga points".*

*Here's the scheme:*

- 1. Vision- They want to be the best messaging app they made called "Toga Chat", by reaching 500 M users by 2019 and being listed in NASDAQ where they said they will gain \$2Billion.*
- 2. To catalyze this- They recruit "agents"-each agent invests \$100-\$3000 in a multi-level marketing scheme, and recruits others (they get half of their recruit's investment as commission) this "investment" is converted into "Toga Points".*
- 3. The "Toga Points" can be used to buy "STOCKS" shares in their created Binary Options platform (trading software) called "TOGA Options".*
- 4. They promise that if they are able to buy 100 shares using the "TOGA points", they just sit back and it will become \$820,000 by 2019 (once they become listed in NASDAQ as IPO).*
- 5. They have legitimate looking sites: <https://www.togacapital.com/> and is in Bloomberg <https://bloomberg.com/research/stocks/private/snapshot.asp?privcapid=207422249>*

*This is very critical since they're recruiting a lot of people to invest in their promise. When they buy stocks using the "toga points" they don't get any certificate, but the company says that they will have the certificate once it's in IPO in NASDAQ2019.*

*Please let us know if this is legitimate, we know nothing about this field, and I don't want my parents to risk everything they worked hard for."*

As part of its investigation, the Enforcement and Investor Protection Department (EIPD) requested the Company Registration and Monitoring Department (CRMD) a confirmation on whether TOGACHAT is a SEC-registered entity and whether it has been issued a secondary license by the Commission.

In reply to EIPD's request, the CRMD certified that records of **TOGACHAT ACADEMY PHILIPPINES INC.** with SEC Reg. Number CS201628323 on file with the Commission show that the corporation was registered on 07 December 2016 with a term of existence of fifty (50) years.

Further, CRMD certified that records of the Commission show that TOGACHAT 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 it has not filed nor has any pending application for a secondary license with the Department.

The EIPD likewise inquired with the Markets and Securities Regulation Department (MSRD) and the Corporate Governance and Finance Department (CGFD) if TOGACHAT has been issued or has a pending application for a registration/permit to sell securities and license to offer or sell securities to the public.

Based on a Certification dated 17 May 2018, the MSRD certified that as per records on file with the Department, **TOGACHAT ACADEMY PHILS., INC.** has not registered any securities pursuant to Sections 8 and 12 of the Securities Regulation Code (SRC). Likewise, the Department has not issued a Permit to Sell Securities in favor of **TOGACHAT ACADEMY PHILS., INC.** Further, said entity has not filed nor has any pending application for registration/permit to sell securities.

Meanwhile, the CGFD certified that based on records on file with the Commission, **TOGACHAT ACADEMY PHILIPPINES INC.** is not a registered issuer of mutual funds, exchange traded funds, proprietary/non-proprietary shares or membership certificates, timeshares pursuant to Sections 8 and 12 of the SRC and therefore not licensed to offer or sell such securities to the public.

On 04 July 2018, further investigation was conducted by the EIPD's investigating team. The team went to the office of respondent TOGACHAT to conduct an ocular inspection and surveillance of its operations.

During the said surveillance operation, the EIPD investigators were able to talk to a certain Mr. Aries Balingo and his male associate who introduced themselves as agents of TOGACHAT. Mr. Balingo discussed the company profile and compensation plan as follows:

TOGACHAT has seven (7) available packages with each corresponding Toga Credit:

PACKAGE	AMOUNT in \$	Toga Credits
Bronze	100	200
Silver	300	750
Gold	1,000	3,000
Platinum	3,000	10,500
Titanium	10,000	40,000
Palladium	30,000	135,000
Rose Gold	100,000	500,000

The packages shall be paid in US dollars or the equivalent conversion in US dollars. As can be seen in the illustration shown by Mr. Balingo during his discussion, the more the Toga credits, the higher the ceiling of Toga Points. Said points will be used to buy shares of Toga Limited. It was further discussed that even if the agent/member has recruited several downlines, if he/she has only availed of the Bronze package, he/she will only be able to purchase a maximum of 200 shares of Toga Limited.

It was emphasized that one will only earn Toga Points once he/she has recruited another investor. Mr. Balingo explained to the team that through the recruitment of another, a member will receive 50% Toga Credit for each referral depending on the package availed of by the recruited person. Aside from the direct referral, there is also a pairing bonus, where the agent/member earns additional Toga credit for every pair in the binary structure. It was also mentioned that the Toga stocks are being traded in Toga Exchange which is an internal platform of Toga Limited where the buying and selling of stocks occur.

It became more evident that the respondent TOGACHAT is operating an investment scam when the SEC Zamboanga Extension Office informed the EIPD that there were two (2) Orders posted in the US SEC website in connection with TOGACHAT. The first Order stated that Toga Capital Limited "Toga" (CIK No. 1586227) is a revoked Nevada corporation located in Kuala Lumpur, Malaysia with a class of securities registered with US SEC. The Second Order refers to the show cause order against Toga Capital Limited.

On 01 October 2018, a joint test-buy operation was conducted by the EIPD investigators and the Philippine National Police – Criminal Investigation and Detection Group (PNP-CIDG) operatives. The team attended the seminar conducted by respondent TOGACHAT, which was attended by at least fifteen (15) persons. The test-buy operation was completed when one of the operatives invested the amount of Php5,600.00, equivalent to a bronze package.

On 25 April 2019, another joint surveillance operation with PNP-CIDG was conducted where it was found out that respondent TOGACHAT continued with its fraudulent activities, enticing more investors and even foreigners.

On 17 July 2019, an Advisory against TOGACHAT was posted at the SEC website stating the abovementioned schemes and informing the public that the subject entity is registered with the Commission as a corporation, however, it is NOT authorized to solicit investments from the public, not having secured prior registration and/or license to sell securities or solicit investments as prescribed under Section 8 of the SRC. Said Advisory likewise advised the public to stop investing in the investment scheme being offered by TOGACHAT.

Subsequently, on 14 August 2019, a Show Cause Order was issued by the EIPD against respondent TOGACHAT, addressed to all its incorporators directing it to show-cause why its Certificate of Incorporation should not be revoked.

In a letter dated 05 September 2019, the President/CEO of TOGACHAT, Ms. Reymelyn M. Cortes, wrote:

*"xxx 2. On the allegations of soliciting/enticing the public to invest into our company, our reply are as follows:*

- 2.1 We vehemently deny any allegation that our company was involved either directly or indirectly in soliciting/enticing the public to invest or pay any amount in exchange for a promise of high monetary rewards;*
- 2.2 We never associate with any program or scheme to offer any investment package/scheme to members of the public;*
- 2.3 We deny any involvement with any investment activity, recruitment program, share offering or any other activity in violation to the Securities Regulation Code (SRC) or any other laws.*
- 2.4 There is no direction/ or authorization from our company to any individual or party to sell any package/share/point/credit or stake whatsoever on our behalf.*

2.5 *We are aware that there are certain individual/party using our company name without our authorization/our knowledge to mislead the public. They take advantage of our good name and reputation for their own benefit. We never condone such act we will not hesitate to take legal action against any party who use our company name/logo/emblem to carry out any illegal activity.*

3. *In order to clear our company name, we had circulated notice in local newspapers to deny any involvement with illegal activity as well as to caution the public not to involve with such activity. We urged the public to contact us if they ever encounter any scheme using our name. For your reference, we attached herewith our notice in the newspaper dated 29 August 2019.*

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5. *We want to stress that we are law abiding company and will not tolerate with any action in contrary to laws. We are now taking extra measures in order to ensure our company name not to be used/manipulated as to mislead the public. The measures including taking stern action against any of our officers or employees who involved in any suspicious activity that can prejudice our company name/reputation and issuing warning/ caution to all our customers and public at large for them to avoid any investment offer using our name.*

xxx”

On 17 December 2019, the Commission issued a Cease and Desist Order (CDO) ordering the following:

- a. *TOGACHAT, its officers, its directors, representatives, salesmen, agents and ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND IN THEIR BEHALF, are hereby **ORDERED** to immediately **CEASE AND DESIST , UNDER PAIN OF CONTEMPT**, from further engaging in activities of selling and/or offering for sale of securities or any others of the same nature as discussed in the ORDER, until the requisite registration statement is duly filed with and approved by the Commission and the corresponding permit to offer/sell is issued;*
- b. *To forestall grave damage and prejudice to all concerned, and to ensure the preservation of assets for the benefit of investors, TOGACHAT, or any of their representatives, or any person/s acting for and in their behalf, and such other persons directing or controlling the activities of such corporation, officers, representatives, salesmen, agents, are all **ENJOINED from (a) transacting any and all business involving the funds in its depositary banks, and (b) transferring, disposing, or conveying in any other manner any and all assets and properties, real or personal, including bank deposits, if any, under their custody**, of which the named persons herein may have any interest, claim or participation whatsoever, whether directly or indirectly, immediately upon receipt of the ORDER; and*
- c. *TOGACHAT, the above named directors and officers, salesmen, agents, representatives and any and all persons claiming and acting for and in their behalf, are directed to immediately **CEASE AND DESIST** from conducting their investment-taking activities using the internet and/or any social media*

*platforms. The Commission will institute appropriate administrative and/or criminal action against any person/s or entities found to act as solicitors, information providers, salesmen, agents, brokers, dealers or the like for and in behalf of respondent TOGACHAT.*

We now resolve the instant proceedings on the basis of the documents submitted and the available evidence.

Section 8 paragraph 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 Commission.”

Based on the evidence gathered, respondent TOGACHAT is engaged in offering, solicitation and sale of securities to the public without the required registration statement duly filed and approved by the SEC.

In the instant case, the investment scheme of respondent TOGACHAT, where an investor places a minimum amount of money according to the package he availed of to be invested in the shares of stock of Toga Capital Limited, falls within the definition of “**securities**” under **Section 3.1 of the Securities Regulation Code** which are “**shares, participation or interest 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 stocks***, 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.”

In relation thereto, Rule 26.3.5 of the 2015 Implementing Rules and Regulations of the SRC defines an investment contract and a common enterprise 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.”*

In *SEC vs. Howey Co.* (66 S.Ct.1100 27 May 1946), the U.S. Supreme Court concluded that arrangements whereby the investors’ interest are made manifest involve investment contracts, regardless of the legal terminology in which such contracts are clothed.

Further, the elements of an investment contract were enumerated in the case of *Power Homes Unlimited Corporation vs. SEC* (G.R. No. 164182, 26 February 2008) citing the so-called Howey Test enunciated in *Howey* and was later modified in the case of *SEC vs. Glenn W. Turner Enterprises, Inc.* (474 F.2d476 1 February 1973), as follows:

- A contract, transaction or scheme;
- An investment of money;
- A common enterprise;
- Expectation of profits; and
- Profits arises primarily from the entrepreneurial and managerial efforts of others.

Applying the foregoing, the investment scheme of respondent TOGACHAT falls within the ambit of an investment contract. By investing in the scheme offered by the respondent TOGACHAT, the investor **enters into a contract**. There is a placement of money wherein for a certain amount of capital invested, there will be a high return of money in the form of a commission. **The money invested is placed in a common enterprise and the investor expects to derive profits.** Finally, the investor **expects to earn profits from the entrepreneurial and managerial efforts of others.** The investor need not do anything in order to earn the said return on their investment. The direct referral commissions and the pairing bonus are employed for the investor to earn additional shares to his account.

In the case of *SEC vs. CJH DEVELOPMENT CORPORATION (G.R. No. 210316, 28 November 2016)* the Supreme Court held that:

“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.”

Said investment contract, being in the nature of securities, is required under Section 8 of the SRC to be registered before being offered or sold to the general public. However, based from the records of the Commission, no application for registration has been filed by respondent TOGACHAT in violation of the provisions of Sections 8 and 12 of the SRC.

Moreso, the act of respondent TOGACHAT in allowing its members to discuss, orient and make the public familiar with its schemes and inviting them to join the company through its Facebook account posts constitutes **public offering** as defined under Rule 3.1.17 of the Implementing Rules and Regulations of the SRC, which provides:

“**Public Offering**” is any means offering of securities to the public or to anyone, whether solicited or unsolicited. Any solicitation or presentation of securities for sale through any of the following modes shall be presumed to be a public offering:

3.1.17.1 Publication in any newspaper, magazine or printed reading material which is distributed within the Philippines or any part thereof;

3.1.17.2 Presentation in any public or commercial place;

**3.1.17.3 Advertisement or announcement** on radio, television, telephone, **electronic communications, information communication technology or any other forms of communication;** or

3.1.17.4 Distribution and/or making available flyers, brochures or any offering material in a public or commercial place, or to prospective purchasers through the postal system, **information communication technology and other means of information distribution.**" (Emphasis supplied)

Public offering is evident in this case because representatives of respondent TOGACHAT conducts seminars in order to entice the public to invest, which was witnessed by the SEC investigators and the PNP-CIDG personnel. Likewise, there are also posts and group discussions in the social media, particularly in Facebook, where the people actively advertise and encourage their friends to invest in respondent TOGACHAT.

Likewise, the investment scheme of respondent TOGACHAT has the characteristics of a Ponzi scheme. A **Ponzi scheme** is an investment program that offers impossibly high returns and pays these returns to early investors out of the capital contributed by later investors. Named after Charles Ponzi who promoted the scheme in the 1920s, the original scheme involved the issuance of bonds which offered 50% interest in 45 days or a 100% profit if held for 90 days. Basically, Ponzi used the money he received from later investors to pay extravagant rates of return to early investors, thereby inducing more investors to place their money with him in the false hope of realizing this same extravagant rate of return themselves.

In the case of *People of the Philippines vs. Palmy Tibayan and Rico Z. Puerto* (G.R. Nos. 209655-60, 14 January 2015), the Supreme Court held that:

"To be sure, a 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 is not an investment strategy but a gullibility scheme, 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. Necessarily, Ponzi schemes only last weeks, or months at the most." (Underscoring added for emphasis)

The finding of the EIPD that respondent TOGACHAT is engaged in the sale, solicitation, and/or offering of securities, in the form of investment contract, to the public which required a registration statement duly approved by the Commission, was affirmed by the Commission in the abovementioned CDO. It was emphasized that the necessity for the issuance of the CDO was triggered because respondent TOGACHAT was in effect defrauding the public. Likewise, the Commission agreed with the finding of the EIPD that the investment scheme of respondent TOGACHAT is a Ponzi scheme which is a type of an investment fraud. Pertinent discussions in the CDO are quoted below:



*“Based on the foregoing, the Commission affirms the finding of EIPD that respondent TOGACHAT is engaged in the sale, solicitation and/or offering of securities, in the form of investment contract, to the public which required a registration statement duly approved by the Commission. When respondent TOGACHAT carried out its investment scheme as presented by Mr. Balingo without the registration statement, the necessity for the issuance of the Cease and Desist Order was triggered because respondent TOGACHAT was in effect defrauding the investing public.*

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*In the same manner, the act of respondent TOGACHAT of allowing its members to promote and market to prospective investors its products and investment scheme through seminars, public presentations or in the social media, and subsequently entice them to invest their hard earned money is considered as “public offering” as defined under Rule 3.1.17 of the Implementing Rules and Regulations of the SRC xxx.*

*Moreover, records reveal that in order to entice and facilitate recruitment of new investors to invest their hard earned money with them, respondent TOGACHAT, claiming to be under TOGA CAPITAL LIMITED, also misrepresented to the public that by the year 2019, Toga Limited shares will be registered with NASDAQ and as a consequence thereof, the market value of Toga Limited shares may increase up to 10,000%. However, records reveal that contrary to its claims, respondent TOGACHAT's corporate license in Nevada, U.S.A. is already revoked and it has pending administrative cases before the US SEC. The foregoing serious misrepresentation which respondent TOGACHAT has been using as a tool to promote its unauthorized investment taking activities should be restrained.*

*Finally, the Commission agrees with the finding of EIPD, which is duly supported by evidence, that the investment scheme of respondent TOGACHAT is a Ponzi scheme which is a type of an investment fraud. The additional shares that will be used by existing investors to purchase Toga Points (or stocks of Toga Capital Limited) would come from the investments of later investors. This is the reason why respondent TOGACHAT is giving additional income for successful referrals. Considering that Ponzi schemes will work only as long as the number of new investors continue to increase which is in reality, unsustainable, the new investors will ultimately end up being victims of the investment scam perpetrated by respondent TOGACHAT.”*

Finally, Section 6 of Presidential Decree 902-A provides that the Commission has the power to suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships and associations, on the ground of serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public. Under the 2016 Rules of Procedure of the SEC, the EIPD shall exercise authority over persons and entities, whether under the primary authority of other Operating Departments, involved in the following:

- xxx "1. Investigations and administrative actions involving the following:
- xxx c) Selling, offering or transacting unregistered securities by entities without secondary license;
  - d) Ultra Vires acts committed in violation of the Revised Corporation Code;
2. Petitions for revocation<sup>1</sup> of corporate registration in all cases, except those which fall under the original authority of CRMD;
3. Administrative actions for fraudulent transactions involving securities;
4. Administrative actions for all other violations under PD 902-A, except those cases which fall under the original authority of other Operating Departments;
5. All other matters involving investor protection filed by the public, referred by self-regulatory organizations, or referred by other Operating Departments after initial evaluation or findings that there is a possible violation of laws, rules or regulations that the Commission implements but do not fall under their respective original authority."

When respondent TOGACHAT submitted its Reply to the Show Cause Order, the reply consisted of general denials. They denied the allegations that their company is involved in soliciting or enticing the public to invest or to pay any amount in exchange for a promise of high return. They denied any involvement with any investment activity, recruitment program, share offering or any other activity. Further, respondent TOGACHAT alleged that there is no direction or authorization from their company to any individual or party to sell any package/share/point/credit or stake on their behalf. They likewise alleged that they are aware that there are certain individual(s)/party(ies) using their company name without their authorization or knowledge in order to mislead the public. There is, therefore, nothing in their Reply that would refute the allegations of the complainants, as well as the results of the field investigations and online searches, against the unauthorized investment activity engaged into by the respondent company.

Considering that nowhere is it stated in the primary purpose of Togachat that it is authorized to engage in investment-solicitation activities through the offering or selling for public sale securities in the form of investment contracts, the activities of Togachat of offering or selling unregistered securities to the public and without the corresponding registration or license as a securities broker is considered an *ultra vires act* and therefore, constitutes serious misrepresentation as to what the corporation can do to the great prejudice or damage to the general public which is a ground for the revocation of a corporation's primary franchise or certificate of registration/incorporation under PD 902-A.

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<sup>1</sup> Revocation refers to involuntary dissolution of corporate registration pursuant to Section 138 of the Revised Corporation Code.

**WHEREFORE**, for violation of Section 45 of the Corporation Code of the Philippines [now, Section 44 of the Revised Corporation Code (R.A. No. 11232)] in relation to Sections 8.1 and 28.1 of the Securities Regulation Code and Section 6 (i)(2) of P.D. 902-A, the corporate registration or Certificate of Incorporation/Registration of **TOGACHAT ACADEMY PHILIPPINES, INC.** is hereby **REVOKED**.

Accordingly, let this Order be attached by the Corporate Filing and Records Division of the Company Registration and Monitoring Department (CRMD) to the records of the corporation on file with the Commission. Further, the Information and Communications Technology Department (ICTD) of the Commission is likewise requested to enter the "*revoked*" status of the subject corporation in the online database of the Commission.

**SO ORDERED**

Pasay City, 23 January 2020.



**OLIVER O. LEONARDO**  
Officer-in-Charge