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

In the matter of:
BATIS LOAN; HAPPY CREDIT; EASY CASH; WAHANA CREDIT & LOAN CORP.; PESOMAMA; and **LIGHT KREDIT**

SEC CDO Case No. 10-19-058

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),

Movant.

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CEASE AND DESIST ORDER

This resolves the *Motion for Issuance of a Cease and Desist Order* (Motion) filed on 22 October 2019 by the Enforcement and Investor Protection Department (EIPD) praying to enjoin the operators and owners of the following online lending applications: **BATIS LOAN; HAPPY CREDIT; EASY CASH; WAHANA CREDIT & LOAN CORP.; PESOMAMA** and **LIGHT KREDIT** (*collectively referred to as the "Online Lending Operators"*), their agents, representatives and promoters, as well as the owners of the hosting sites of the Online Lending Operators, from operating, engaging in, carrying out and/or promoting lending/financing business.

RELEVANT FACTS

The present case stemmed from a memorandum received by the EIPD from the Corporate Governance and Finance Department (CGFD) referring the above-named Online Lending Operators who are operating without the necessary Certificate of Registration and/or Certificate of Authority to operate as a Lending/Financing Company.

According to the Affidavit[1] attached to the Motion, the affiant was able to verify the existence of these online lending websites/mobile applications/Facebooks pages that were reported to the CGFD. The affiant took screenshots of what was presented on the Facebook pages of these Online Lending Operators.

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[1] Annex "A".

Evidence forwarded by the CGFD and as confirmed and shown by the investigations conducted by the EIPD, these Online Lending Operators offer loans to the public through their respective online applications/platforms. The EIPD presented in its Motion[2] screenshots of the Online Lending Operators' websites where the online applications can be publicly accessed. The screenshots reveal that the lending businesses and related activities of these Online Lending Operators are being advertised and promoted on Facebook. Through these advertisements and promotions on Facebook, people are actually availing of the loans being offered by these Online Lending Operators.

The information and evidence gathered and presented by EIPD show that before a person can apply for a loan from the Online Lending Operators, he/she has to download/install their online lending applications on his/her mobile phone. By downloading/installing the online lending application, the Online Lending Operators gain access to personal information contained in the debtors' mobile phones which includes: contact numbers; Facebook accounts; and e-mail addresses of all persons saved/stored therein.

Online Lending Operators use this information to exact prompt payment of the amount due, which they determine, from the debtors. This is done by sending a text blast to the persons in the contact list of the debtor's mobile phone and informing them that the debtor obtained a loan and refuses to pay the amount due. The Online Lending Operators also threaten debtors-complainants that a case will be filed before the proper barangay and/or that the matter will be posted in social media if payment is not made.

A number of debtor-complainants have complained of these abusive collection practices of the Online Lending Operators, their agents and representatives, which have caused depression, sleepless nights, shame and humiliation, ruined reputation and adversely affected their health and well-being.

The EIPD also made verification with the Commission's Company Registration and Monitoring Department (CRMD) to determine whether these Online Lending Operators were issued the necessary Certificate of Registration and a Certificate of Authority to operate as a lending company.

The CRMD issued certifications[3] stating that these Online Lending Operators, specifically: **BATIS LOAN; HAPPY CREDIT; EASY CASH;**

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[2] Annexes "B" to "B-24".
[3] Annexes "C" to "C-5".

WAHANA CREDIT & LOAN CORP.; PESOMAMA and **LIGHT KREDIT**, are not registered with the Commission either as a corporation or partnership. Further, the certifications attest that these Online Lending Operators were not issued a secondary license as a lending company, broker and/or dealer of securities, dealer in government securities, investment adviser or an investment company, investment house and transfer agent nor do they have any pending application with the CRMD.

ISSUE

Whether or not the issuance of a Cease and Desist Order is warranted?

DISCUSSION

The Commission En Banc finds the Motion meritorious.

The pieces of evidence presented sufficiently support the allegations of the EIPD that these Online Lending Operators are ***actually engaged in the business of offering and providing loans to the public***, and are carrying out transactions proper to a lending company ***without a validly subsisting Certificate of Authority to Operate*** as Lending Companies or Financing Companies from the Commission.

Their continued operation without the Certificate of Authority ***constitutes a clear violation of the Lending Company Regulation Act of 2007 (Republic Act No. 9474***) which punishes any person who engages in or carries out a lending business without a permit/license from the Commission. Sections 4 and 12 of RA No. 9474 provide:

> "Sec. 4. Form of Organization. - A lending company shall be established only as a corporation. xxx.
>
> **No lending company shall conduct business unless granted an authority to operate by the SEC."**
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> Section 12 of the said law states:
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> "Sec. 12. Penalty. - A fine of not less than Ten Thousand Pesos (P10,000.00) and not more than Fifty Thousand Pesos (P50,000.00) or imprisonment of not less than six (6) months but not more than ten (10) years or both, at the discretion of the court, shall be imposed upon:
>
> **1. Any person who shall engage in the business of a lending company without a validly subsisting authority to operate from the SEC.**
>
> xxx." (emphasis supplied)

The Lending Company Regulation Act of 2007 was enacted to prevent and mitigate, as far as practicable, practices prejudicial to public interest. The abusive collection practices, misrepresentations, and unreasonable terms and conditions imposed by the Online Lending Operators, their agents and representatives exemplify the practices that as a matter of policy, the State seeks to prevent. Section 2 of RA No. 9474 provides that:

> "Sec. 2. Declaration of Policy. – It is hereby declared the policy of the State to regulate the establishment of lending companies and to place their operation on a sound, efficient and stable condition to derive the optimum advantages from them as an individual source of credit; to prevent and mitigate, as far as practicable, practices prejudicial to public interest and to lay down the minimum requirements and standards under which they may be established and do business." (underscoring supplied)

The afore-quoted policy has been relentlessly emphasized by no less than President Rodrigo R. Duterte himself who has ordered a crackdown of informal lenders in the country who have been perennially the scourge of the poor and the underprivileged.

Without the Certificate of Incorporation and/or the Certificate of Authority to Operate as Lending Companies or Financing Companies, required by R.A. No. 9474, these Online Lending Operators cannot offer and provide loans to the public.

The Commission is the administrative agency authorized and empowered to impose administrative sanctions for violations of RA No. 9474. Moreover, it is authorized to issue Cease and Desist Orders to ensure, among others, that acts and/or activities violating RA No. 9474 are immediately stopped. Considering that these ***Online Lending Operators are not incorporated entities or have no Certificate of Authority to Operate as Lending Companies or Financing Companies, the lending activities and transaction are illegal and must be immediately stopped by this Commission.***

Moreover, ***the abusive collection practices engaged in by these unlicensed online lending companies constitute unfair debt collection practices*** which are ***expressly prohibited*** under SEC Memorandum Circular No. 18, Series of 2019 (*Prohibition on Unfair Debt Collection Practices of Financing Companies and Lending Companies*). The Circular provides that the following conducts constitute unfair collection practices:

> **" a. The use or threat of use of violence or other criminal means to harm the physical person, reputation or property of any person;**

b. The use of threats to take any action that cannot legally be taken;

c. The use of obscenities insults, or profane language the natural consequence of which is to abuse the borrower and/or which amount to a criminal act or offense under applicable laws;

d. Disclosure or publication of the names and other personal information of borrowers who allegedly refuse to pay debts except as may be allowed under Section 2 hereof (exceptions to the confidentiality of information);

e. Communicating or threatening to communicate to any person loan information, which is known, or which should be known, to be false, including the failure to communicate that the debt is being disputed, except as may be allowed under Section 2 hereof (exceptions to the confidentiality of information);

f. The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a borrower; and

g. Making contact at unreasonable/inconvenient times or hours, which shall be defined as contact before 6:00 AM or after 10:00 PM, unless the account is past due for more than fifteen (15) days, or the borrower has given express consent that the said times are the only reasonable or convenient opportunities for contact.

Such consent which shall be evidenced by written, electronic or recorded means, may be given prior to, during or after the execution of the loan agreement.

h. Notwithstanding the borrower's consent, contacting the persons in the borrower's contact list other than those who were named as guarantors or co-makers shall also constitute unfair debt collection practice."

WHEREFORE, premises considered, the operators and owners of the following online lending applications: **BATIS LOAN; HAPPY CREDIT; EASY CASH; WAHANA CREDIT & LOAN CORP.; PESOMAMA** and **LIGHT KREDIT**, their operators, agents, representatives and promoters, as well as the owners of the hosting sites of these Online Lending Operators and all persons acting for and on their behalf are hereby ordered to **IMMEDIATELY CEASE AND DESIST UNDER PAIN OF CONTEMPT** from engaging in, promoting and facilitating such unauthorized lending activities/transactions.

The Online Lending Operators are likewise directed to **CEASE** from offering and advertising their lending business through the internet and to delete or remove the promotional presentations and offerings of such lending business from the internet including the lending applications that they operate.

Finally, the Commission hereby directs any and all persons and entities who are carrying out, abetting or promoting lending business or similar activities without the requisite authority/license from this Commission to immediately **CEASE AND DESIST** from engaging in such lending activities until they have incorporated and have secured from this Commission the requisite Certificate of Incorporation and Certificate of Authority to Operate as Lending Companies or Financing Companies.

Let a copy of this Order be posted in the Commission's website, be published in two (2) newspapers of general circulation and a copy be furnished to the Company Registration and Monitoring Department, Corporate Governance and Finance Department and the Information and Communications Technology Department of this Commission, the Bangko Sentral ng Pilipinas, the Department of Trade and Industry, the National Privacy Commission and the Department of Information and Communications Technology for their information and appropriate action.

In accordance with Part II, Rule IV, Section 4-3(b) of the 2016 Rules of Procedure of the SEC, the parties subject of this Cease and Desist Order (CDO) may file a verified motion to lift the CDO to the Commission En Banc thru the Office of the General Counsel, within five (5) days from date of posting or publication.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.
Pasay City, Philippines; 24 October 2019.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

*** JAVEY PAUL D. FRANCISCO**
Commissioner

***KELVIN LESTER K. LEE**
Commissioner

KARLO S. BELLO
Commissioner

*On Official Business