Republic of the Philippines
Department of Finance
Securities and Exchange Commission
PICC Secretariat Building, PICC Complex, Pasay City

COMMISSION EN BANC

In the matter of:

CASH WHALE;
CASH 100;
CASHAFIN;
CASHFLYER;
CASHMAYA;
CASHOPE;
CASHWARM;
CASHWOW;
CREDITPESO;
ET EASY LOAN; and
PESO2GO.

SEC CDO Case No. 09-19-055

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 19 September 2019 by the Enforcement and Investor Protection Department (EIPD) praying to enjoin the operators and owners of the following online lending applications: **CASH WHALE; CASH 100; CASHAFIN; CASHFLYER; CASHMAYA; CASHOPE; CASHWARM; CASHWOW; CREDITPESO; ET EASY LOAN;** and **PESO2GO** (*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.

Based on the findings of the Corporate Governance and Finance Department (CDFD), the Online Lending Operators and the persons/entities operating them have not been issued Certificates of Authority to Operate as Lending Companies or Financing Companies (Annex "A" of the Motion).

Investigations conducted by the EIPD show and confirm the existence and operation of the Online Lending Operators which do not have the requisite license from the Commission. The Online Lending Operators offer loans to the public through their respective online applications/platforms. This is shown in the screenshots of the Online Lending Operators' websites (where the online applications can be publicly accessible) which were printed and presented by the EIPD to the Commission in support of the allegations in the Motion. The lending businesses and related activities of the Online Lending Operators are being advertised and promoted on Facebook and results in people actually availing of the loans offered by the unlicensed Online Lending Operators (Annex "B" of the Motion).

The EIPD commenced and carried out the investigation process involving the Online Lending Operators after it received numerous complaints from the public who alleged that Online Lending Operators committed unreasonable and abusive lending and collection practices which subjected debtors/complainants to public humiliation and ridicule. The complaints also allege that Online Lending Operators impose and charge high interest rates, unilaterally implement onerous and unreasonable terms and conditions, make misrepresentations as to non-collection of charges and fees, and violate the right to privacy of debtors/complainants (Annex "C" of the Motion).

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 mobile phones of the debtor which includes contact numbers, Facebook accounts, e-mail addresses of all persons saved/stored therein. The Online Lending Operators use the foregoing information to exact prompt payment by the debtors of the amount due as determined by the Online Lending Operators. The Online Lending Operators do this by sending a text blast to the persons in the contact list of the debtors' 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 declared that these abusive collection practices of the Online Lending Operators, their agents and representatives, have caused depression, sleepless nights, shame and humiliation, ruined reputation and adversely affected their health and well-being. One debtor-

complainant even claimed that his father suffered a heart attack after he received the call of one agent of one of the Online Lending Operators.

It is on the basis of the foregoing factual antecedents and the evidence presented by the EIPD, in support of its Motion, that this Commission will determine if the issuance of the CDO is warranted.

We find the Motion to be impressed with merit.

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

The continued operation of the Online Lending Operators constitutes a clear violation of Republic Act No. 9474, otherwise known as the *Lending Company Regulation Act of 2007,* which punishes any person who engages in or carries out a lending business without a permit/license from the Commission. Section 4 of RA No. 9474 provides:

> *"**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."*

Section 12 of the said law states:

> *"**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."*

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 and 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."

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 which are required by R.A. No. 9474, the Online Lending Operators cannot offer and provide loans to the public.

This Commission is the administrative agency authorized and empowered to impose administrative sanctions for violations of R.A. No. 9474. Moreover, the Commission is authorized to issue Cease and Desist Orders to ensure among others, that acts and/or activities which are in violation of the provisions of RA No. 9474 are immediately stopped. Considering that the 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 have to be stopped immediately by this Commission.

The Commission also takes this opportunity to remind financing companies, lending companies, Online Lending Operators and the owners of their hosting sites, as well as their directors, officers, third-party service providers, agents, representatives and promoters of those engaged in lending activities, that under SEC Memorandum Circular No. 18, Series of 2019 *(Prohibition on Unfair Debt Collection Practices of Financing Companies and Lending Companies)* which took effect recently, the following conduct 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: **CASH WHALE; CASH 100; CASHAFIN; CASHFLYER; CASHMAYA; CASHOPE; CASHWARM; CASHWOW; CREDITPESO; ET EASY LOAN;** and **PESO2GO**, their 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 Section 4-3(b), Rule IV 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 within five (5) days from date of posting or publication.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Pasay City, Philippines, 20 September 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*