REPUBLIC OF THE PHILIPPINES
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills
Mandaluyong City

In the Matter Of:

CED Case No. 03-2760

CITICAPITAL INC.
x----------x

O R D E R

This resolves respondent's Motion to Lift the Cease and Desist Order issued by the Commission against Citicapital Inc. ("Citicapital") on March 31, 2004 for its offering, soliciting and selling of securities to the public without the requisite registration statement.

The facts are as follows:

Petitioner herein is the Compliance and Enforcement Department ("CED"), the Prosecuting Department of this Commission.

Respondent Citicapital is a duly registered corporation which was incorporated on May 18, 1993 under SEC Registration No. ASO-93-03782, with the following primary purpose:

> *" To engage in the business and act as a lending investor through direct lending, in connection therewith, to offer and extend credit facilities to consumers and business enterprises in accordance with the implementing rules and regulations imposed on lending investor without however engaging in financing activities and pawnbroking activities as embodied in P.D. 114."*

Its principal office is located at 7/F Jafer Place, Eisenhower St., Greenhills, San Juan, Metro Manila.

On November 5, 2002, Citicapital filed a registration statement ("RS") with the Corporation Finance Department (CFD) of this Commission. Sometime in December 2002 while the RS was still pending, Citicapital sold 11,500 preferred shares to its five (5) majority stockholders. In January 2003, those stockholders resold their preferred shares to more than nineteen (19) persons. The CED conducted an audit investigation on respondent corporation. The audit yielded a schedule of investors which was voluntarily provided the SEC auditors by respondent corporation. Citicapital also admitted that they sold preferred shares to more than 19 persons.

On August 11, 2003, the CED sent a Deficiency Notice to Citicapital assessing it a fine of One Million Four Hundred Ten Thousand Pesos (P1,410,000.00), which to date, has not yet been complied with.

On February 2, 2004, the SEC, after due notice and hearing, rejected the registration statement of Citicapital due to its failure to comply with the requirements of SRC Rules 8 and 12.

On March 30, 2004, the SEC issued a Cease and Desist Order against Citicapital, which provides in part, thus:

> *"**PREMISES CONSIDERED**, Citicapital, its officers, directors, agents, representatives, conduits, assigns and any and all persons claiming and acting for and in its behalf and under its authority are hereby ordered **to immediately CEASE AND DESIST**, under pain of contempt, from further offering, soliciting or otherwise selling securities to the public until the requisite registration statement is duly filed and approved by the SEC and the corresponding permit to offer/sell securities is issued and **to SHOW CAUSE** within a non-extendible period of five (5) days from receipt hereof, why the Cease and Desist Order should not be made permanent.*
>
> *x x x "*

Respondent Citicapital filed its Motion to Lift alleging the following as grounds therefor:

A. The finding that Citicapital admitted that [it] sold preferred shares to more than nineteen person is erroneous. Nowhere in the pleadings of the respondent to this Commission was this admission made as it would be an erroneous version of what transpired. The Order itself found that "x x x In January 2003,

the said stockholders resold their preferred shares to more than nineteen persons." Accordingly, it was the stockholders who resold their shares and not Citicapital. At worst, Citicapital merely facilitated the sale of these shares for the account of the shareholders.

B. The Deficiency Notice is anchored on the reselling of their preferred shares allegedly in violation of the one-year holding period. The one-year holding period mandated by CFD-SEC Circular No. 002-2001 has already lapsed. The stockholders therefore, are already free to re-sell their respective shareholdings on an isolated basis. Expressed in another way, if the sell-off was done outside the one-year holding period, no violation would have been noted against Citicapital.

C. There was no intent to violate the law or SEC regulations. The act was done in good faith. In fact, a reading of the Securities Regulation Code show there was no violation of the provisions therein. The corporation tried to seek a secondary license to be able to sell the same and in the process complied with all provisions of the Code and paid the substantial filing fee.

On June 10, 2005, CED filed a Motion praying that: (1) Citicapital's untitled pleading dated April 5, 2005 be denied for lack of merit; (2) the CDO issued against Citicapital be made permanent and (3) Citicapital be ordered to pay immediately the fine imposed in the Deficiency Order dated August 11, 2003, in the amount of P1,410,000.00. In support thereof, CED argues that:

1. Citicapital's untitled pleading dated April 5, 2005 is not verified as required by Part 3, Rule 1, Article 4 of SEC Circular No. 4, series of 2001, and thus can not interrupt the running of the period for the filing thereof.

2. Citicapital's allegations as contained in its request for the lifting of the CDO is so contrary to the established facts. Contrary to the allegations of Citicapital that the original five (5) shareholders sold their preferred shares to the public and that Citicapital only facilitated the sale, the records would bare (sic) out that the preferred stocks owned by the original five (5) stockholders are not yet fully paid. Under the law these stockholders cannot sell or transfer the said

shares in part or in portions thereof in view of the indivisible nature of a subscription contract.

3. Whatever grounds or allegations Citicapital may make as to the sale of its preferred shares, the fact of the matter is that the sale of unregistered securities is in the nature of a malum prohibitum, and as such, good faith or lack of knowledge is not a defense. Intent to abide with the law is non-availing when its fulfillment is required.

4. Citicapital's settlement offer of P50,000.00 is well below the imposable fine for the offense committed. Consequently, it needs no iota of consideration from the Commission.

Section 8.1 of the Securities Regulation Code provides:

> *"Sec. 8. Requirement of Registration of Securities. – 8.1. Securities shall not be sold or offered for sale or distribution within the Philippines,* ***without a registration statement duly filed 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 purchaser.*** *"*

Citicapital's violation in the instant case is very clear. It sold securities to more than twenty (20) persons without complying with the registration requirements under the aforequoted law. Citicapital justifies its action by saying that the stockholders fully disclosed to the purchasers the nature, risks and benefits of the securities. Moreover, it argues that the securities were not offered to the public per se, but to associates of the selling stockholders, mostly employees of respondent who are knowledgeable of the nature of the instruments being sold.

Respondent must be reminded that the SRC mandatorily requires registration first before it can be allowed to offer or sell its securities. It is not sufficient that a registration statement was filed by respondent. It is also essential that such registration statement be duly approved by the Commission before respondent may be allowed to conduct its offer and sale of its securities. This is to ensure that the corporation has fully disclosed all material and relevant information pertinent to the securities to be offered and that there is consistency in such disclosures made by the corporation, for the protection of the investing public.

Further, respondent Citicapital argues that it has not violated the SRC considering that it was the stockholders, not Citicapital, who resold their respective shares of stock, which exceeded nineteen (19) investors. Citicapital invokes Section 10.1 of the SRC as a justification for its exemption from the registration requirement under Section 8.1 of the said law. Section 10.1 of the SRC provides:

> *"Sec. 10. Exempt Transactions. – 10.1. The requirement of registration under Subsection 8.1 shall not apply to the sale of any security in any of the following transactions:*
>
> *x x x*
>
> *(k) The sale of securities by an issuer to fewer than twenty (20) persons in the Philippines during any twelve-month period.*
>
> *(l) The sale of securities to any number of the following qualified buyers:*
>
> *x x x*
>
> *(vi) Such other person as the Commission may by rule determine as qualified buyers, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial and business matters, or amount of assets under management.*
>
> *x x x "*

It appears however that the corporation intended to offer its securities to the public when it filed its registration statement with the Commission. And when it was unable to comply with the additional directive of the Commission, it utilized its stockholders to indirectly sell the shares to the public in order for it to raise their much-needed financing to support its operations. This fact was admitted by respondent Citicapital in its pleadings. The Schedule of Investment as of May 16, 2003, submitted by Citicapital shows that the corporation sold preferred shares to 141 persons, inclusive of its five (5) original stockholders of record from December 2002 up to May 2003.

Further, even assuming that the securities involved are exempt under the aforequoted provision, still, there are requirements that need to be complied with in relation to SEC-CFD Memorandum Circular No. 002-2001. Citicapital itself admitted in its letter dated November 19, 2003, addressed to Atty. Eloisa Gan of the Compliance and Enforcement Department, that in violation of Item II (1)(b) of the said circular, the stockholders resold their stockholdings within the 1-year holding period in order to settle the corporation's cashflow problem.

Citicapital can not invoke good faith in this instance because the requirement of the law is clear: that the corporation must register its securities first before the same can be offered and sold to the public.

WHEREFORE, premises considered, respondent Citicapital's untitled pleading praying that the Cease and Desist Order issued by the Commission on March 30, 2004 is hereby **DENIED**. Accordingly, the Cease and Desist Order issued by the Commission on March 30, 2004 is hereby made **PERMANENT**. Hence, Citicapital, its officers, directors, agents, representatives, conduits, assigns and any and all persons claiming and acting for and in its behalf and under its authority, are hereby ordered **NOT** to undertake further offering, soliciting or otherwise selling of securities to the public until the requirements of the law have been complied with.

SO ORDERED.

July 12, 2005, Mandaluyong City, Philippines.

By Authority of the Commission:

VERNETTE G. UMALI-PACO
General Counsel