Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

In the Matter of:

CACERES LENDING INVESTOR CO., GLOBAL MONEY UNLIMITED, ECC-LIVELIHOOD SOCIAL SERVICES, INC. **SEC-CDO Case No. 04-12-003**

ENFORCEMENT AND PROSECUTION DEPARTMENT
Petitioner
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ORDER

Pending consideration by the Commission is a *Motion for Issuance of a Cease and Desist Order* (CDO) dated 10 April 2012 by the Enforcement and Prosecution Department (EPD) of this Commission against **CACERES LENDING INVESTOR CO., GLOBAL MONEY UNLIMITED** and **ECC-LIVELIHOOD SOCIAL SERVICES, INC.**

CACERES LENDING INVESTOR CO. (CACERES) is a partnership registered with the SEC on 14 June 1999[1] under SEC Registration No. A199909295. The names and addresses of CACERES' partners are listed under Article III of its Articles of Partnership.[2] The term of existence of CACERES is ten (10) years as provided under Article IV of its Articles of Partnership.[3] Thus, its registration had expired on 14 June 1999.[4]

Based on Article V of its Articles of Partnership, CACERES was granted by the Commission a primary license to operate as a partnership for the following purpose:

> "To engage in a business of lending investors lending money to person and entities under terms and conditions allowed by law provided that the company

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[1] Motion For Issuance of Cease and Desist Order, Annex "B".
[2] The names and addresses of the partners are as follows: **Edmundo C. Caceres Jr.**, 95 Mercado St., Platero, Binan, Laguna; Redante M. Barredo, Chrisantenum St., Sta. Rosa, Subd. Tagap, Sta. Rosa, Laguna; and Roberto A. Caparas, 435 Barangay Bigaa, Cabuyao, Laguna.
[3] *Id.*
[4] *Id.*, Annex "A".

shall not engage in financing activities under R.A. 5980 and pawnbrokering under P.D. 114."[5]

The Corporation Finance Department (CFD), upon request of the EPD, issued a Certificate to the effect that CACERES has not been issued a Certificate of Authority to Operate a Lending Company (CA) as required by R.A. 9474, *An Act Governing The Establishment, Operation And Regulation Of Lending Companies*, otherwise known as the Lending Company Regulation Act of 2007 (R.A. No. 9474).[6]

GLOBAL MONEY UNLIMITED (GLOBAL MONEY) is not registered with the Commission but has applied for name reservation. As certified by the Company Registration and Monitoring Department (CRMD), GLOBAL MONEY's name reservation had expired on 2 March 2012.[7]

ECC-LIVELIHOOD SOCIAL SERVICES, INC. (ECC) is a non-stock, non-profit corporation duly registered with the Commission on 16 March 2012 with Company Registration No. CN201205430.[8] The names, addresses and nationalities of its incorporators and first Trustees are provided under the Article V of its Articles of Incorporation.[9]

The purposes of ECC as stated under Article II of its Articles of Incorporation are:

"To promote camaraderie and uplift the living conditions of every members of the association by assisting them in the establishment of livelihood facilities, services, enterprise, loan and insurance privilege.

To encourage the members in the effective utilization of local resources in the livelihood activities and thereby improve the living condition in the community.

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[5] *Id.*, Annex "B".
[6] *Id.*, par. 5, p. 2.
[7] *Id.*, Annex "E".
[8] *Id.*, Annex "F".
[9] The names of the incorporators are as follows: **Edmundo C. Caceres Jr.**, Marlon C. Caceres, Celia E. Romero, Celso O. Cabrera and Monaliza C. Brendia. All the incorporators reside at 2nd Level Margarita Commercial Center, Dita, City of Sta. Rosa, Laguna and are all Filipino.

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To develop and harness the people's participation in every economic activity toward the development of the community through self-help and self reliance.

To develop cooperation, assistance, harmony and understanding, among the members to advance their economic and social status, as well as spiritual, cultural and moral well being.

To do and perform all other acts and deed as maybe necessary, convenient and appropriate for the accomplishment of the foregoing purposes."[10]

EPD claims that on 1 February 2012, a letter addressed to Chairperson Teresita J. Herbosa was sent by a concerned citizen named Edwin. In the said letter, the Chairperson was informed of the lending and investment-taking activities of CACERES and GLOBAL MONEY.[11] Subsequently, some officers from the SEC Extension Offices conveyed to EPD reports that such activities drew massive interest from the public.[12]

On 8 March 2012, the EPD posted an Advisory on the website of the Commission which reads:

ADVISORY
March 6, 2012

The Commission advises the public that the registration of **CACERES LENDING INVESTOR COMPANY** with SEC Registration No. A199909295, as a partnership, has already expired in 2009. Moreover, it has NOT been issued a **Certificate of Authority (CA) to Operate as a Lending Company** pursuant to R.A. 9474 or the Lending Company Regulation Act of 2007 and is therefore, NOT ALLOWED to engage in the business of lending anywhere in the Philippines.

Furthermore, the records of the Commission do not show the registration of **GLOBAL MONEY UNLIMITED INC.** and **CACERES GLOBAL FOUNDATION INC.** as corporations or partnerships.

The public is advised to **not** to enter into any lending or other transactions with the above-named entities.

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[10] *Id.*
[11] Motion For Issuance of Cease and Desist Order, par. 13, p. 4.
[12] *Id.*, page 4, par. 14.

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If anyone has any information relative to the unauthorized lending or other activities of **CACERES LENDING INVESTOR COMPANY, GLOBAL MONEY UNLIMITED and CACERES GLOBAL FOUNDATION, INC.,** please call the Enforcement and Prosecution Department at telephone numbers 584-6337 (Office of the Director) and 584-7652 (Complaints and Investigation Division) or send an email to ced@sec.gov.ph. [13]

In reaction to the Advisory, members/investors and prospective recruits flooded the EPD with inquiries as to the status of registration and the authenticity of the SEC Advisory.[14] Some informants/complainants provided details of the entities' operation, as follows:[15]

"a. That free business seminars are conducted in the main office, in branch offices and in any other place as requested in order to attract members to CACERES/GLOBAL MONEY;

b. That membership fee to the scheme is P1,000.00;

c. That each member is required to recruit 2 down-lines, member A and member B;

d. That the Php 2,000.00 paid by members A and B is divided into four segments, segments A1 and A2 and segments B1 and B2, each segment representing Php 500.00 of the membership fees paid. Allocation of the fees collected is as follows: A1 to CACERES, A2 to the business owner-up-line, B1 segment to CACERES (for operational expenses and insurance premiums) and B2 to the direct recruiter. B1, which should go to CACERES, is further broken down as follows: Php 100.00 for payment of insurance premium, likewise Php 100.00 for operational expenses and the remaining Php 300.00 to CACERES. [16]

e. That the unlimited income of CACERES shall come from all the A1 and B1 segments of all membership fees paid;

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[13] *Id,* page 4, par. 16.
[14] *Id,* page 4, par. 17.
[15] *Id,* Annexes "J", "J1", "J2", "J3", "J4" and "J5".
[16] *Id,* Annex "I".

f. That insurance coverage begins after 6 months and 1 day of membership;

g. That the amount of interest-free loan available to each member escalates as one's network widens at the bottom;

h. That members are encouraged to recruit family members as their first down-lines and were promised additional bonuses by bringing more people to the business seminars."

On 9 and 12 March 2012, Edmundo Caceres Jr., on his own volition, appeared before the investigating team and explained the major components of the Marketing Plan of CACERES and GLOBAL MONEY.[17] Under oath, he explained the modus operandi of earning unlimited income under the scheme, stating among others that:

"a. CACERES has Php 18 million capital fund for interest-free lending activities;

b. Part of the capital fund was derived from the regular lending operation of CACERES since it started interest-free lending in 2009.

c. **Regular public seminars are conducted to entice people to participate in the scheme. Flyers and brochures containing the details of the scheme are also distributed during these seminars.**

d. **Updates on CACERES/GLOBAL MONEY are posted on the company website http://www.globalmoneyws.com/.**

e. **The CACERES marketing plan promises unlimited income through recruitment of 2 down-lines at a time.**

f. **The investments of Php 1,000.00 paid by each of 2 the new recruits are to be DIVIDED between 1) CACERES, 2) the direct recruiter, 3) the business center owner and 4) the operational expenses and insurance premiums.**[18]

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[17] *Id,* page *5,* par. 18.
[18] *Id,* Annex "K".

g. Recruitment of 2 down-lines entitles the member to Php 5,000.00 interest free loan. The loanable amount increases as the recruitment base of the member widens at the bottom. Additionally, the loans are supposed to be granted without conditions, collateral, co-maker nor credit investigation.

h. Members are also promised the following benefits:
   i. Free Insurance on Accidental Death/Disability (Php 100,000.00)
   ii. Free Total and Permanent Disability Pay (Php 100,000.00)
   iii. Burial Assistance due to Accidental Death (Php 10,000.00)
   iv. Free Insurance on unprovoked murder and assault (Php 25,000.00)
   v. Monthly cash allowance (Php 2000.00 x 12 months)
   vi. Monthly Hospitalization Allowance (Php 500.00-2500.00)
   vii. Death benefit from compulsory donation of Php 50.00 from all members nationwide." (emphasis ours)

On 15 March 2012, assigned investigators conducted surveillance in the Cubao branch office of CACERES.[19] From the surveillance, it was learned that an individual may also invest in the Php 500,000.00 investment plan. This plan, according to Branch Manager Edwin Pulido, offers the following returns:

a. The right to operate a Caceres branch office as a "business center owner", rental, utilities and maintenance charged to the account of CACERES;

b. Php 500.00 of membership fees paid by every two recruits of branch down-lines;

c. 20 slots of the same level as the investor/business center owner and these same slots shall earn income for itself, for the center and for CACERES in the same manner as would any other Php 1,000.00-paying member.

On 20 March 2012, unnamed individuals have reported in person and over the telephone that CACERES has started using the name of ECC, which was registered on 16 March 2012, in the alleged lending and investment-taking activities, in order to evade the controversy caused by the posting of the Advisory.[20] This was confirmed in a Field Investigation Report[21] prepared by the EPD investigator. In one poster, it was

[19] *Id,* page 6, par. 19.
[20] *Id,* page 7, par. 21.
[21] *Id,* Annex "M".

explained that the change of name was due to the negative effect of the SEC Advisory to their operations.[22] It was further stated in the Field Investigation Report that ECC has assumed the unauthorized lending and investment-taking business of CACERES and GLOBAL MONEY at their common office at 2nd flr. Margarita Commercial Center, Brgy. Dita, Sta. Rosa, Laguna.[23]

On 29 March 2012, the EPD Investigators conducted surveillance at the Cubao Branch Office located at the Upper Ground Floor, Dona Consolacion Bldg., Araneta Center, Cubao, Quezon City. It was confirmed that ECC is engaged in the same business as CACERES. The investigators attended the business seminar and were handed the following: a) CACERES brochure, b) ECC Recruitment Genealogy Chart, c) ECC membership forms and d) ECC ID form.[24]

A "lending company" is defined under Section 3(a) of Republic Act No. 9474 as the following:

> "Sec. 3. *Definition of Terms* – For the purposes of implementing this Act, the following definitions shall apply:
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> (a) **LENDING COMPANY shall refer to a corporation engaged in granting loans from its own capital funds or from funds sourced from not more than nineteen (19) persons.** It shall not be deemed to include banking institutions, investment houses, savings and loans associations, financing companies, pawnshops, insurance companies, cooperatives and other credit institutions already regulated by law. The term shall be synonymous with lending investors." (Emphasis ours)

Based on the facts and evidence gathered consisting of marketing plans, flyers, and the statements made by Mr. Caceres and by some of the members/investors, CACERES is clearly engaged in lending money using an expired registration with the Commission.

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[22] *Id.*
[23] *Id.*, page 7, par. 24.
[24] *Id,* par. 25, Annexes "N", "N1", "N2", "N3", "N4" and "N5".

Moreover, Section 4 of R.A. 9474 provides that a lending company must operate as a corporation, not as a partnership, and must have an authority to operate issued by the Commission. Section 4 of R.A. 9474 provides the following:

> "Sec. 4. *Form of Organization.* - **A lending company shall be established only as a CORPORATION**: *Provided* that existing lending investors organized as single proprietorships or partnerships shall be disallowed from engaging in the business of granting loans to the public one year after the date of effectivity of this Act.
>
> **No lending company shall conduct business unless granted an authority to operate by the SEC.**" (Emphasis ours)

Thus, the business of lending money can no longer be carried on under a partnership but must be done through a corporation. In this case, CACERES was registered with the Commission as a partnership. To reiterate, the Articles of Partnership of CACERES had already expired on 14 June 2009. CACERES has not even attempted to establish nor has been established as a corporation.

Further, CACERES does not have authority from this Commission to operate as a lending company, as certified by the CFD.[25] In a Memorandum dated 21 February 2012, CFD informed EPD that CACERES was apprised of this requirement through a Show Cause Order.[26]

CACERES has likewise engaged in the sale of unregistered securities in violation of the Securities Regulation Code (SRC).[27]

Such sale of securities was in the form of investment contracts and certificates of interest or participation in a profit sharing agreement, as defined under SRC, Section 3.1 as follows:

> "Sec.3. *Definition of Terms.* – 3.1. "Securities" are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture

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[25] *Id.,* Annex "C"
[26] *Id.,* Annex "D".
[27] RA 8799.

evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes:

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(b) **Investment contracts, certificates of interest or participation in a profit sharing agreement**, certificates of deposit for a future subscription;" (emphasis ours)

An "investment contract" has been defined under Rule 3 paragraph 1, subparagraph (G) of the Amended Implementing Rules and Regulations of the SRC as follows:

> **"G. 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.**
>
> **1. An investment is presumed to exist whenever a person seeks to use the money or property of others on the promise of profits.**
>
> **2. 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."**

To be a security subject to regulation by the SEC, the Supreme Court, in *Power Homes Unlimited Corporation v. Securities and Exchange Commission*,[28] held that an investment contract in our jurisdiction must be proved to be (1) an investment of money, (2) in a common enterprise, (3) with expectation of profits, (4) primarily from efforts of others, *viz*–

> "An investment contract is defined in the Amended Implementing Rules and Regulations of R.A. No. 8799 as a 'contract, transaction or scheme

[28] G.R. No. 164182, 26 February 2008.

(collectively "contract") whereby a person invests his money in a common enterprise and is led to expect profits **primarily** from the efforts of others.'

"It behooves us to trace the history of the concept of an investment contract under R.A. No. 8799. Our definition of an investment contract traces its roots from the 1946 United States (US) case of *SEC v. W.J. Howey Co.*, 328 U.S. 293, 66 S. Ct. 1100, 163 A.L.R. 1043, 90 L. Ed. 1244 (1946). In this case, the US Supreme Court was confronted with the issue of whether the **Howey** transaction constituted an 'investment contract' under the Securities Act's definition of 'security'. The US Supreme Court, recognizing that the term 'investment contract' was not defined by the Act or illumined by any legislative report, held that 'Congress was using a term whose meaning had been crystallized' under the state's 'blue sky' laws in existence prior to the adoption of the Securities Act. Thus, it ruled that the use of the catch-all term 'investment contract' indicated a congressional intent to cover a wide range of investment transactions. It established a test to determine whether a transaction falls within the scope of an 'investment contract'. Known as the **Howey Test,** it requires a transaction, contract, or scheme whereby a person (1) makes an investment of money, (2) in a common enterprise, (3) with the expectation of profits, (4) to be derived **solely** from the efforts of others. Although the proponents must establish all four elements, the US Supreme Court stressed that the Howey Test 'embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.' Needless to state, any investment contract covered by the **Howey Test** must be registered under the Securities Act, regardless of whether its issuer was engaged in fraudulent practices.

After Howey came the 1973 US case of *SEC v. Glenn W. Turner Enterprises, Inc. et al.* 474 F. 2d 476, 414 U.S. 821, 94. In this case, the 9thCircuit of the US Court of Appeals ruled that the element that profits must come 'solely' from the efforts of others should not be given a strict interpretation. It held that a literal reading of the requirement 'solely' would lead to unrealistic results. It reasoned out that its flexible reading is in accord with the statutory policy of affording broad protection to the public. Our R.A. No. 8799 appears to follow this flexible concept for it defines an investment contract as a contract, transaction or scheme (collectively 'contract') whereby a person invests his money in a common enterprise and **is led to expect profits not solely but primarily from the efforts of others.** Thus, **to be a security subject to regulation by the SEC, an investment contract in our**

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jurisdiction must be proved to be: (1) an investment of money, (2) in a common enterprise, (3) with expectation of profits, (4) primarily from efforts of others." (Emphasis supplied)

In this case, a member becomes a participant of the scheme and thereby authorized to recruit more people as down-lines in order to recover his investment and to earn profits from the efforts of these down-lines. CACERES also lures people into the scheme by the promise of shares in the profits. Edmundo C. Caceres Jr. has personally explained that by recruiting more people, the scheme guarantees income to the recruiter, to the business owner and to CACERES – proceeds having been earmarked for each participant in the scheme.

As to the first element, an investment of money occurs when an investor commits money to an enterprise or venture in a manner that subjects himself to financial loss (*SEC v. International Mining Exchange, Inc.*, 515 F. Supp. 1062). In the instant case, an investor invests his money by paying a membership fee of Php 1,000.00. The said investor subjects himself to financial loss in case he cannot recruit two (2) other investors or down-lines. On the other hand, the said investor will receive a return on his investment under the CACERES marketing plan which promises unlimited income through the recruitment of additional down-lines according to Edmundo Caceres Jr on 9 and 12 March 2012. In other words, the said investor will receive Php 500.00 as a direct recruiter for every two (2) down-lines. The same applies in the case of business center investors. Thus, the payment of the membership fee of Php 1,000.00 is considered an investment of money.

The second element requires that a common enterprise exists between the said investor and the down-lines. To reiterate, a common enterprise is deemed created when two (2) or more investors "pool" their resources. Several tests have evolved to determine what constitutes "common enterprise".[29] One of these tests is the horizontal commonality approach. Under this test, the determination of whether a transaction satisfies the commonality element of the modified Howey test involves an inquiry into whether said transaction involves the joint participation of more than one investor in

[29] *In the Matter of Octopus Network, Inc.*, SEC-PED Case No. 98-2220, 22 May 1998.

the investment of funds or the sharing of profits.[30] Furthermore, joint participation by investors in the same investment enterprise, achieved by pooling the invested funds for a common purpose, is required in order to satisfy the common enterprise element.[31]

In this instant case, common enterprise exists where the said investor is made to recruit two (2) additional down-lines. These down-lines are authorized to recruit two (2) down-lines each. In other words, there is a joint participation by the said investor and the down-lines in the same enterprise. Thus, a common enterprise exists by the pooling of resources when the down-lines each pay the membership fees of Php 1000.00.

The third element is that the said investor is lead to anticipate profits. By profits, the court has meant either capital appreciation resulting from the development of the initial investment, or participation in earnings resulting from the use of investors' funds. In such cases, the said investor is "attracted primarily by the prospects of a return on his investment."[32] In this case, members flock to CACERES primarily for the income opportunity and not for the insurance and social protection package that are mere add-ons. In fact, not one of the complainants had raised the legitimacy of the insurance company that was contracted by CACERES as well as the manner by which the members may claim proceeds from the insurance policy when the need had arose. In the case of business center investors, the involvement in the scheme is primarily motivated by quick returns and unlimited income potential – all these, if the scheme works correctly, should come from membership fees paid and direct recruitment.

The last element is the anticipation of profits from the efforts of others. Under the CACERES scheme, definite amounts are earmarked from membership fees paid. Without the down-lines who continuously supply the enterprise with fresh funds, the whole scheme would have collapsed in no time. On the other hand, the central selling point of the scheme is the ability to convince people of the viability, sustainability and the stability of the enterprise. In other words, the members are dependent on the

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[30] *Id.,* citing 69 Am Jur 2d citing Stenger v. R.H. Love Galleries, Inc. 741 F2d 144.
[31] *Id.,* citing Wasnowic v. Chicago Bd. of Trade 352 F Supp 1066.
[32] *Power Homes Unlimited Corporation v. Securities and Exchange Commission.*

efforts of the CACERES and the said investors to create an appealing, profit-laden image for the enterprise and for the scheme CACERES seeks to propagate. This requires some managerial efforts at fund collection, proper computation and distribution of profits, promotions and advertisements, and loans and benefits administration.

Furthermore, the investment contract is presumed to exist since CACERES seeks to use the membership fees of the investors on the promise of unlimited income once the latter has secured additional down-lines.

Thus, CACERES is engaged in the sale of securities without proper registration. The SRC is explicit that as a general rule, securities must be registered with the Commission before being offered or sold to the public in order to protect the investing public from worthless securities. SRC, Section 8 provides:

> "Sec. 8 – *Requirements 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 with and approved by the Commission**. x x x" (emphasis ours)

Thus, CACERES has engaged in the sale of securities by enticing people to pay and collecting from them Php 1000.00 membership fee and by engaging them in a scheme that involves continuous recruitment with the promise of unlimited income. Such activity was done without a registration duly filed with and approved by the Commission.

WHEREFORE, premises considered, there being a *prima facie* evidence that respondents CACERES LENDING INVESTOR CO., GLOBAL MONEY UNLIMITED and ECC-LIVELIHOOD SOCIAL SERVICES, INC. are engaged in the unauthorized business of lending money to the public without being established as a corporation and in the unauthorized business of selling securities without the proper registration issued by this Commission, in violation of Section 4 of R.A. No. 9474 and Section 8 of SRC, respectively, the respondents, their respective partners, representatives, agents, and any and all persons, claiming and acting for and in behalf of respondents, are hereby

ordered to immediately **CEASE and DESIST**[33] from further engaging in the business of lending and selling securities, until they have complied with the requirements of law and its implementing rules and regulations.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Mandaluyong City, 17 May 2012

TERESITA J. HERBOSA*

Chairperson

MA. JUANITA E. CUETO *

Commissioner

RAUL J. PALABRICA

Commissioner

MANUEL HUBERTO B. GAITE

Commissioner

ELADIO M. JALA

Commissioner

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[33] **SRC, Section 5.** ***Powers and Functions of the Commission*** – 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902.A, Corporation Code, the Investment Houses Law, the Financing Company Act and the other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:

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(i) Issue cease and desist orders to prevent fraud or injury to the investing public.

*On official business.