desist order pursuant to Section 5.1 (i) of Republic Act No. 8799[11] against Nirankar is warranted under the foregoing circumstances.

WHEREFORE, premises considered, **NIRANKAR LENDING & ENT. CO.**, its partners, officers, representatives, agents, conduits, assigns, and any and all persons claiming and acting for and in behalf and under their authority, are hereby ordered to immediately **CEASE AND DESIST**, under pain of contempt, from further conducting business as a lending company.

All persons against whom this Cease and Desist Order is issued may, within a non-extendible period of five (5) business days from receipt of the Order, file a formal request or motion for the lifting thereof with the Commission.

Let this Order be (a) served on the respondents or any of its authorized representatives; (b) posted at the entrance of the main office and/or branches, if any, of the respondents; and (c) published in the Commission's website, in accordance with Sec. 10-6 of the 2006 Rules of Procedure of the Securities and Exchange Commission.

Moreover, let this case also bear the docket number SEC Admin. Case No. 05-12-157.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

City of Mandaluyong; 21 June 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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[11] Securities Regulation Code, SEC. 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, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto, the Commission shall have, among others, the following powers and functions: xxx xxx xxx

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

*on sick leave

On 11 July 2011, CED received a letter from the City Treasurer of Quezon City[4], stating that Nirankar paid their Mayor's Permit and License under Official Receipt No. 022-0002374 dated 10 February 2011, covering the whole year of 2011 2011. Attached to this letter was a copy of a certification that Nirankar has been granted a business permit to operate, valid until December 31, 2007[5], and a copy of said Official Receipt No. 022-0002374.[6]

On 25 July 2011, EPD sent a Notice of Conference[7] addressed to the partners of Nirankar at the address indicated in Nirankar's business permit, for them to appear before the Commission. The Notice was received by a certain Catequista, Jr. However, the partners failed to appear on the scheduled date of the conference.

On 15 August 2011, a second Notice of Conference[8] was again issued, but the partners still did not appear at the conference.

EPD then issued a *Subpoena Duces Tecum/Ad Testificandum*[9] dated 22 August 2011 and served it at Nirankar's principal office address. Entries on the *Subpoena* show that on 31 August 2011, a certain Romy Singh refused to receive the same when served.

On 21 October 2011, investigators from EPD conducted a surveillance operation at Nirankar's principal office address to determine if it is engaged in lending activities. Based on the Field Investigation Report[10], the investigators talked to a certain Jun Catequista, nephew of Ms. Lily Catequista, one of the partners. He informed the investigators that Ms. Catequista was not around, and Nirankar has ceased its lending operations a long time ago, but he failed to mention the exact period.

However, Nirankar's payment for the Mayor's Permit for the whole year of 2011 is prima facie proof that it engaged in lending.

Nirankar's continued existence as a partnership with the primary purpose of a lending is in violation of Section 4 of R.A. 9474, which mandates all entities engaged in lending activities or business to incorporate as a stock corporation and to secure a Certificate of Authority from the Commission. Thus, the continued operation of Nirankar without compliance with the requirements under R.A. 9474 may cause injury or fraud to the investing public. Accordingly, the issuance of a cease and

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[4] Annex "E" of the Petition.
[5] Annex "E-1" of the Petition.
[6] Annex "E-2" of the Petition.
[7] Annex "F" of the Petition.
[8] Annex "G" of the Petition.
[9] Annex "H" of the Petition.
[10] Annex "I" of the Petition.

under R.A. 5980 as amended, nor pawnbroking activities under P.D. 114, and likewise, borrowing shall be sourced or derived from not more than nineteen (19) lenders.

To carry on a general mercantile and commercial business of trading at a wholesale basis only, importing, exporing, and dealing all kinds of good wares and merchandise which are or may become the commerce of man."[2]

On 22 May 2007, Republic Act No. 9474, also known as the Lending Company Regulation Act of 2007 (R.A. 9474), was passed and signed into law mandating that all companies engaged in lending activities or business shall organize as a stock corporation and secure a Certificate of Authority from the Commission after complying with the minimum capital requirement of one million pesos (Php1,000,000.00), among others. Section 4 of said law states that:

"Section 4. Form of Organization. - **A lending company shall be established only as a corporation**: Provided that existing lending investors organized as sole 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 supplied.)

Rule 3 (a) (i) of the Implementing Rules and Regulations of R.A. 9474 requires existing lending companies organized as partnership, as in the case of Nirankar, to organize itself as a stock corporation within a period of one year from the effectivity of the law, *viz:*

"RULE 3. Requirements for Organization - (a) Form of Organization - A lending company shall be established as a stock corporation.

i. **Existing Lending Companies organized as single proprietorships or partnerships shall, within a period of one (1) year from the effectivity of the Act, organize themselves as a stock corporation** with the minimum capitalization prescribed under the Act and secure a Certificate of Authority to operate a lending company. Otherwise, they shall be disallowed from engaging in the business of granting loans to the public. xxx xxx xxx" (Emphasis supplied.)

On 23 June 2011, the Commission's Compliance and Enforcement Department *("CED")*, which eventually became the EPD, sent a letter to the Office of the City Treasurer of Quezon City, requesting for a certified true copy of Nirankar's business permit, as well as its supporting documents.[3]

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[2] *Ibid.*
[3] Annex "D" of the Petition.

Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

EN BANC

In the matter of

NIRANKAR LENDING & ENT. CO.

SEC Admin. Case No. 05-12-157
SEC CDO Case No. 05-12-005

ENFORCEMENT AND PROSECUTION DEPARTMENT,
Petitioner.

x----------x

ORDER

This resolves the prayer for the issuance of a Cease and Desist Order in the Petition For Revocation of the Certificate of Registration of **NIRANKAR LENDING & ENT. CO.** ("Nirankar") filed by the Enforcement and Prosecution Department ("EPD") of the Commission.

At the outset, it should be noted that the Petition was erroneously docketed as a mere CDO case, hence, the docket number SEC CDO Case No. 05-12-005. However, the Petition is primarily for Revocation, and as such, should be docketed as an SEC administrative case.

The relevant facts are narrated below.

Nirankar is a partnership duly registered with the SEC on 11 December 1997 under SEC Registration No. A199723371.[1] As indicated in its Articles of Partnership, Nirankar has the following purposes:

> "That the purpose for which said company is formed is to engage in the business of a lending investor, lending money to persons and entities under the terms and conditions allowed by the laws of the Republic of the Philippines, provided that the company shall not engage in financing activities

[1] Annex "A" of the Petition.