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

In the Matter of:

PESO TREE; PESOALO; and PINOY CASH LOAN.

SEC CDO Case No. 11-19-060

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.
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CEASE AND DESIST ORDER

This resolves the Motion for the Issuance of Cease and Desist Order[1] (*Motion*), filed by the Commission, ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (*"EIPD" for brevity*), praying that the Commission issues an order directing PESO TREE, PESOALO, and PINOY CASH LOAN (*collectively referred to as "Online Lending Operators"*), its owners, operators, promoters, agents, representatives, as well as the owners/operators of the hosting sites of the Online Lending Operators, from operating, engaging in, carrying out and/or promoting illegal lending/financing activities to the public.

THE PARTIES

Movant, EIPD is the Department tasked to investigate, *motu proprio* or upon complaint or referral, violations of the law and the rules and regulations of the Commission, and to initiate the issuance of a Cease and Desist Order (CDO) by the Commission.[2]

Under Section 4-1, Rule IV, Party II of *The 2016 Rules of Procedure of the Securities and Exchange Commission (SEC)*, an action for the issuance of a CDO or injunction may be commenced upon filing of an application with the Commission *En Banc*, through the Office of the General Counsel (OGC), by any Operating Department, either *motu proprio* or upon a verified complaint by the public, after conducting a proper investigation or verification and upon finding that the grounds for the issuance of the CDO or injunction are present. The Commission is authorized under Section 179(f) of the Revised Corporation Code of the Philippines (RCCP) to issue cease and desist orders *ex parte* to prevent imminent fraud or injury to the public and/or to enjoin an act or practice which is fraudulent or can reasonably be expected to cause significant, imminent, and

[1] Dated 24 October 2019.
[2] SEC Office Order No. 512, series of 2013.

irreparable danger or injury to public safety or welfare.

Respondents, the operators and owners of PESO TREE, PESOALO, and PINOY CASH LOAN, all of which are online lending applications, their agents, representatives and promoters, as well as the owners of the hosting sites of the Online Lending Operators are operating, engaging in, carrying out and/or promoting lending/financing business.

RELEVANT FACTS

The instant case stemmed from the Memorandum dated 11 November 2019 (the "Memorandum") issued by the Corporate Governance and Finance Department (CGFD) endorsing to EIPD for appropriate action the mobile lending services that are available and being offered through websites and/or mobile applications without the requisite Certificate of Registration and/or Certificate of Authority to Operate as a Lending/Financing Company. The Online Lending Operators were identified by the CGFD as potentially violating Republic Act No. 9474 (the "Lending Company Regulation Act of 2007") for operating without the requisite license. Based on the findings of the CGFD, 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.

Upon receipt of the Memorandum, the EIPD commenced and carried out the investigation process involving the Online Lending Operators. The EIPD found out that the *modus operandi* of the Online Lending Operators is to offer loan to the public through their respective webpages, mobile application, Facebook pages and other similar online platforms. The foregoing was substantiated by an Affidavit[3] from CGFD personnel and from the numerous complaints that were received from the public by CGFD against PESO TREE[4], PESOALO[5] and PINOY CASH LOAN[6], which were all submitted by EIPD in evidence. The EIPD was able to verify existence and operation of the Online Lending Operators through their respective websites (where the online applications can be publicly accessible), the screenshots of which were printed and presented by the EIPD to the Commission in support of its allegations in the *Motion*.

Moreover, the EIPD also found in the course of its investigation that based on the numerous complaints received from the public, the Online Lending Operators are employing abusive collection practices by imposing high interest rates, onerous and misleading terms and conditions, making misrepresentations as to non-collection of charges and fees and subjecting their debtors to public humiliation and ridicule to the extent of violating their right to privacy to ensure prompt and full collection of indebtedness.

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[3] Affidavit executed dated 5 November 2019 attached as Annex "A" of the Motion.
[4] Attached as Annex "A", "A-1" and Annex "B-1" to "B-7" of the Motion.
[5] Attached as Annex "C" of the Motion.
[6] Attached as Annex "C-1" and Annex "C-2" of the Motion.

The EIPD then requested for a certification from the Company Registration and Monitoring Department (CRMD) involving the Online Lending Operators. The Certifications[6] issued by the CRMD reveal that the Online Lending Operators are not registered with the Commission as a corporation or partnership, and they have not been issued secondary license to operate as a lending company.

ISSUE

Is the issuance of a Cease and Desist Order justified in the instant case?

DISCUSSION

Based on the facts and the evidence presented by movant EIPD, the Commission finds that the *Motion* is impressed with merit and hereby decides to grant the same.

Section 4 of Republic Act No. 9474[7] mandates that an entity engaged in the business of operating as a lending company is required to be organized and established as corporation, thus:

> "**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.
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> 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:*
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> *1. Any person who shall engage in the business of a lending company without a validly subsisting authority to operate from the SEC.*
>
> *2. The president, treasurer and other officers of the corporation, including the managing officer thereof, who shall knowingly and willingly:*

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[6] Attached as Annex "D-1" to "D-3" of the Motion.
[7] An Act Governing the Establishment, Operation and Regulation of Lending Companies. May 22, 2007.

> *a. Engage in the business of a lending company without a validly subsisting authority to operate from the SEC;*
>
> *xxx."*

Records reveal that EIPD was able to substantiate its allegation that the Online Lending Operators were engaged in the business of granting loans through the online applications without the requisite certificate of registration issued by the Commission. Moreover, records also show that the Online Lending Operators have no Certificate of Authority to Operate as Lending Company issued by this Commission which is required under the same law. The foregoing was duly substantiated by the Certifications issued by the CRMD which was submitted in evidence by EIPD.

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 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. The issuance of a CDO is thus in order.

This Commission is the administrative agency authorized and empowered to impose administrative sanctions for violations of RA No. 9474. Moreover, the Commission is authorized to issue CDO 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 and have no Certificate of Authority to Operate as Lending Companies or Financing Companies, the lending activities and transactions are

illegal and have to be stopped immediately by this Commission.

Finally, the Commission cannot turn a blind eye on the fact that the Online Lending Operator's violation in the instant case was aggravated by the fact that they conducted their business in an unscrupulous manner with evident bad faith, by charging their borrowers unconscionable interest rates, subjecting them to inhumane treatment using abusive and degrading language, and similar other harassment strategies in order to collect debts. This has to stop immediately.

WHEREFORE, premises considered, PESO TREE, PESOALO, and PINOY CASH LOAN, its owners, operators, promoters, representatives, agents AND ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND IN 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 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.

Finally, PESO TREE, PESOALO, and PINOY CASH LOAN, its owners, operators, promoters, representatives, agents and any and all persons acting for and in their behalf, are 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.

The EIPD is hereby **DIRECTED** to:

1.) coordinate to the appropriate cyber-criminal investigation and enforcement agency of the government in order to determine, unmask, apprehend and thereafter prosecute all the responsible persons including its author, creator, owner and its officers or any person, agent, representative conniving therewith in the online operation of PESO TREE, PESOALO, and PINOY CASH LOAN; and

2.) to submit a formal compliance report, by way of pleading, to the *Commission En Banc* WITHIN TEN (10) DAYS from receipt of this CDO.

Let a copy of this *Order* be also posted in the Commission's website, be published in two (2) newspapers of general circulation and a copy be furnished to the CRMD, CGFD 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 the provisions, of Sec. 64.3[8] of the SRC and Sec. 4-3, Rule IV, Part II of the 2016 Rules[9], the parties subject of *the Cease and Desist Order* may file a *Verified Motion* to lift thereof within five (5) days from the date of its posting or publication.

SO ORDERED.

Pasay City, Philippines; 21 January 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

[8] Section 64.3. Any person against whom a cease and desist order was issued may, within five (5) days from the receipt of the Order, file a formal request for a lifting thereof. Xxx.
[9] The 2016 Rules of Procedure of the Securities and Exchange Commission.