Republic of the Philippines
Department of Finance
Securities and Exchange Commission

In the Matter of:
STARJED MICRO FINANCING CORP.,

SEC-CDO CASE NO. 06-16-031
FOR: Issuance of Cease and Desist Order (CDO)

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

Pending consideration for the Commission *En Banc* is the *Motion for Issuance of Cease and Desist Order* (Motion for CDO) filed on 1 June 2016[1] by movant Enforcement and Investor Protection Department (EIPD) of the Commission praying that the Commission issue a Cease and Desist Order (CDO) against, among others, Starjed Micro Financing Corporation (Starjed).

Starjed incorporated with the Commission on 7 March 2005 with Company Registration No. CS200501646.[2] Its primary purpose is to engage in the business of micro financing.[3] Eugene G. Louca is its president.[4]

FACTS

In a letter received on 4 January 2016, Danilo V. Montalbo requested for the assistance of the EIPD regarding the alleged investment scam of Starjed. He stated that Starjed has not paid the promised interest on his investment, and its president thereof cannot be located. Attached to the letter is a copy of the "Certificate of Placement"[5] which provides for the following: (i) Mr. Montalbo and/or Irene B. Montalbo "placed" with Starjed the amount of One Million Two Hundred Thousand Pesos (Php 1,200,000.00); (ii) interest of 22% per annum; (iii) mode of interest payment is "monthly"; (iv) maturity on 4 June 2015; (v) investment shall not exceed Ten Million Pesos (Php 10,000,000.00); and (vi) signed by Eugene G. Louca and Maridel Y. Chua, who are the President and Cashier of Starjed, respectively.[6]

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[1] *Motion for CDO* dated 18 May 2016.
[2] *Id.*, par. 1 and Annex "A" (Certificate of Incorporation of Starjed).
[3] *Id.*, Annex "B" (General Information Sheet for the year 2014 of Starjed) and Annex "C" (Second Article of the Articles of Incorporation of Starjed).
[4] *Id.*
[5] Certificate of Placement issued on 9 June 2014.
[6] *Motion for CDO*, par. 6 and Annex "D" (Letter of Danilo V. Montalbo dated 11 December 2015).

On 11 January 2016, the EIPD referred the concern of Danilo V. Montalbo to the Cagayan de Oro Extension Office of the Commission (SEC CDO) for investigation.[7]

On 19 January 2016, the EIPD received a verified complaint from Bernard T. Mora alleging that he was issued several "Certificate[s] of Placement" by Starjed. The Certificates of Placement provides that Mr. Mora placed an amount ranging from Nine Hundred Thousand Pesos (Php 900,000.00) up to Four Million Pesos (Php 4,000,000.00). Mr. Mora alleges further that, upon maturity, he presented the Certificate of Placement before Starjed to claim his investment; but the latter refused to pay. Furthermore, he alleges that Starjed is accepting investments from the public without a registration statement issued by the Commission. He finally avers that Starjed classifies the funds received from the public in its Audited Financial Statements as investments. Thus, Mr. Mora prays that the Commission find probable cause to indict the officers and directors of Starjed with violation of the Securities Regulation Code[8] and/or estafa.[9]

As in the case of Danilo V. Montalbo, the Certificates of Placements issued to Bernard T. Mora likewise provide for the following: (i) the interest of 22% per annum; (ii) the mode of interest payment is "monthly"; (iii) the maturity date; (iii) a statement that the "investment shall not exceed Ten Million Pesos (Php 10,000,000.00)"; and (iv) the signature of Eugene G. Louca and Maridel Y. Chua, who are the President and Cashier of Starjed, respectively.[10]

On 12 February 2016, Eugene G. Louca appeared in a conference before Jesher M. Radaza, SEC Examiner – Finance In-charge. During the conference, Mr. Louca stated that Starjed has accepted "private placement" of more than two hundred (200) investors. Mr. Louca further stated that Starjed is not engaged in an investment scam and it is a legitimate company that is registered with the Commission. However, Mr. Louca was informed by Mr. Radaza that selling securities to more than nineteen (19) investors requires a registration statement to be filed and approved by the Commission. Furthermore, Mr. Louca stated that Starjed is recognized by government corporations, such as the National Livelihood Development Corporation (NLDC). Lastly, Mr. Louca stated it just obtained from NLDC a revolving credit line of Seventy Five Million Pesos (Php 75,000,000.00) and recently availed of a Twenty Million Peso (Php 20,000,000.00) loan from Nueva Segovia Consortium of Cooperatives. In response, Mr. Louca stated that Starjed will comply with the registration requirements.[11]

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[7] *Id.*, par. 7 and Annex "E" (Memo to SEC CDO dated 11 January 2016).
[8] Republic Act No. 8799 (2000).
[9] *Motion for CDO*, par. 9 and Annex "G" (Complaint of Bernardo T. Mora, Jr. dated 22 December 2015).
[10] *Id.*, Annexes "R", "R-1", "R-2", "R-3" and "R-4" (Certificates of Placement issued by Starjed).
[11] *Id.*, par. 13 and Annex "L" (Minutes of the Conference dated 12 February 2016).

On 4 March 2016, the EIPD received a Memorandum of the SEC CDO attaching the minutes of the conference, which was prepared and signed by Jesher M. Radaza. Eugene G. Louca and his counsel, Atty. Nelbert T. Poculan, likewise signed the minutes.[12]

On 11 March 2016, the EIPD received a Letter of Atty. Jose Expeditus B. Bayana, who is an alleged investor of Starjed, claiming that he was enticed "to put up investments" in the amount of more than One Million and Six Hundred Thousand Pesos (Php 1,600,000.00) by, among others, Eugene L. Louca. In which case, Atty. Bayana requested for a certified true copy of the minutes of the conference held on 4 March 2016. However, the request of Atty. Bayana was denied by the EIPD since the latter claims that the investigation is confidential.[13]

On 16 March 2016, the Markets and Securities Regulation Department (MSRD) issued a Certification stating that, per records, the Starjed has not been issued a license to act as a broker and/or dealer of securities, dealer in government securities, investment advisor of an investment company, investment house, and transfer agent. The certification further provides that Starjed has not filed nor has any pending application for said certificates of registration or licenses. Accordingly, Starjed is not authorized to engage in activities and/or solicit investments.[14]

On 18 March 2018, the Corporate Governance and Finance Department (CGFD) issued a Certification stating that Starjed is not a registered issuer of mutual funds, exchange traded funds, membership certificates, time shares and registered but unlisted equity securities.[15]

In a *Certification* dated 14 July 2016, the CRMD stated that Eugene G. Louca has not been issued a Certificate of Registration as a registered Associated Person, Compliance Officer, Salesman and/or Certified Investment Solicitor of a Broker Dealer in Securities Investment, Investment House, Underwriter of Securities, Investment Company Advisor, and/or Mutual Fund Distributor. Further, he has not filed nor has any pending application for any said Certificate of Registration.

ISSUE

Whether the certificate of placement issued by Starjed constitutes an investment contract, which requires a registration statement approved by the Commission.

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[12] *Id.*, par. 13 and Annex "K" (Memorandum of SEC CDO dated 22 February 2016).
[13] *Id.*, par. 15 and Annexes "N" (Letter dated 9 March 2016 of Atty. Jose Expeditus B. Bayana) and "O" (Letter-Reply of the EIPD dated 16 March 2016).
[14] *Id.*, par. 17 and Annex "P" (Certification dated 18 March 2016).
[15] *Id.*, par. 17 and Annex "Q" (Certification of the CGFD dated 18 March 2016).

RULING

Concept of securities and investment contract

Securities are "shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character".[16] It includes an investment contract,[17] which is defined as a "contract, transaction, or scheme whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others."[18] A presumption that a contract is an investment contract arises whenever a person seeks to use the money or property of others on the promise of profits.[19]

Elements of an investment contract

In *Power Homes Unlimited Corporation v. Securities and Exchange Commission*,[20] the Supreme Court stated that the following elements of an investment contract in our jurisdiction, in order to be a security subject to regulation by the Commission, are the following (1) an investment of money, (2) in a common enterprise, (3) with expectation of profits, (4) primarily from efforts of others.

In this case, Eugene G. Louca alleges that Starjed is not engaged in investment scam activities and they are a legitimate company registered with the Commission. He further stated that Starjed is recognized by government corporations, such as the NLDC. However, as can be seen below, the scheme of Starjed constitutes an investment contract considering all four (4) elements of an investment contract are present, to wit –

1. An investment of money

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.[21] In this case, there is an investment of money with Starjed as evidenced by the "Certificates of Placements" signed by Eugene G. Louca, its president, which acknowledges that investors, such as Danilo V. Montalbo and Bernard T. Mora, placed their investments with the former ranging from the amount of Nine Hundred Thousand Pesos (Php 900,000.00) up to Four Million Pesos (Php 4,000,000.00). The "Certificates of Placements" likewise provides that their investment shall not exceed Ten Million Pesos (Php 10,000,000.00).

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[16] Section 3.1., SRC.
[17] Section 3.1.(b), *Id.*
[18] SRC Rule 3(1)(G), Amended Implementing Rules and Regulations of the SRC.
[19] *Id.*
[20] G.R. No. 164182, 26 February 2008.
[21] *SEC v. International Mining Exchange, Inc.*, 515 F. Supp. 1062.

Further, Eugene G. Louca admits, during the Conference held on 12 February 2016 that Starjed accepted "private placements" or investments from more than two hundred (200) investors. Clearly, the first element is present since Starjed admitted that it has more than two hundred (200) investors, including Danilo V. Montalbo and Bernard T. Mora, who have placed investments with the corporation.

2. Common enterprise

As to the second element, there is a common enterprise. 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".[22] One of these tests is the horizontal commonality approach. Under this test, the determination involves an inquiry into whether the transaction involves the joint participation of more than one investor in (i) the investment of funds or (ii) the sharing of profits.[23] 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.[24]

In the case at bar, a common enterprise exists since there is a joint participation of the investors, including Danilo V. Montalbo and Bernard T. Mora, by the pooling of their funds with Starjed. The pooling of funds is for the purpose of receiving and sharing profits in the amount of an interest of 22% per annum on their "placement" or investment. Clearly, the second element is present in this case.

3. Expectation of profits

As to the third element, there must be an expectation of 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 investors are "attracted primarily by the prospects of a return on his investment."[25]

In this case, there is an expectation of profits on the part of investors, such as Danilo V. Montalbo and Bernard T. Mora, considering that they were promised an interest of 22% per annum on their "placement" or investment. This payment is to be made monthly as stated in their "Certificate of Placement". However, both investors allege they have not received their interest payment and that Eugene G. Louca cannot be found. As can be seen, the third element is present considering that they expected to receive profits from their investments.

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[22] *In the Matter of Octopus Network, Inc.*, SEC-PED Case No. 98-2220, 22 May 1998.
[23] *Id.*, citing 69 Am Jur 2d citing Stenger v. R.H. Love Galleries, Inc. 741 F2d 144.
[24] *Id.*, citing Wasnowic v. Chicago Bd. of Trade 352 F Supp 1066.
[25] *Power Homes Unlimited Corporation v. Securities and Exchange Commission.*

4. **Primarily from the efforts of others**

Lastly, as to the fourth element, there must be the expectation of profits primarily from the efforts of others. In this case, the operations and management of the "supposed" financing business rests upon Starjed and the investors do not participate in such operations or management thereof.

Requirement of the registration of securities, or as a broker, dealer, salesman or associated person

Section 8.1 of the SRC provides that 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. In connection therewith, Section 12.1 of the SRC states that all securities required to be registered under Section 8.1 shall be registered through the filing by the issuer in the main office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission shall prescribe.

As securities, the investment scheme of Starjed must be registered since they are offering and selling investment contracts to the general public, pursuant to Sections 8.1 and 12.1 of the SRC. However, the Certification issued by the MSRD indicates otherwise and provides that Starjed is not registered issuer of securities pursuant to Sections 8.1 and 12.1 of the SRC, and therefore, not licensed to issue or offer securities to the public.

As can be seen above, Starjed is engaged in the selling securities, in the form of investment contracts to the public, as evidenced by the certificates of placements, without the proper registration. Further, as admitted by Eugene G. Louca, Starjed already has more than two hundred (200) investors.

Further, Eugene G. Louca is prohibited from engaging in the business of buying or selling securities in the Philippines as a broker or dealer, or acting as a salesman, or an associated person of any broker or dealer, considering he is not registered as such with the Commission, as indicated by the Certification of the CRMD issued on 14 July 2016.[26]

[26] Section 28.1 of the SRC provides that no person shall engage in the business of buying or selling securities in the Philippine as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.

Justification for the Issuance of the CDO

In view of the foregoing, the issuance of a CDO is warranted pursuant to Section 64[27] of the SRC since the scheme offered by Starjed will operate as a fraud on investors or likely to cause grave or irreparable injury. It must be noted that Starjed is already operating on large scale since it has more than two hundred (200) investors as admitted by Eugene G. Louca. Further, the justification is warranted considering that the investments range from Nine Hundred Thousand Pesos (Php 900,000.00) up to Four Million Pesos (Php 4,000,000.00), and that the capitalization of Starjed is only Twenty Million Pesos (Php 20,000,000.00). Starjed will not have the resources to pay the principal of the investments as well as the monthly interest payments upon maturity. In fact, Starjed needs a revolving credit line of Seventy Five Million Pesos (Php 75,000,000.00) and recently availed of a Twenty Million Peso (Php 20,000,000.00). This loan may presumable be used to cover the expenses of operations as well as the interest payments for the investors.

WHEREFORE, premises considered, **STARJED MICRO FINANCING CORPORATION**, Eugene G. Louca, President, its partners, officers, directors, agents, representatives, conduits, assigns, AND ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND IN THEIR BEHALF are hereby ordered to **IMMEDIATELY CEASE AND DESIST[28], UNDER PAIN OF CONTEMPT**, from engaging in activities of selling and/or offering for sale securities in the form of investment contracts or any others of the same nature, as discussed in this *Cease and Desist Order*, until the requisite registration statement is duly filed with and approved by the Commission and the corresponding to offer/sell is issued.

Furthermore, the Commission will institute the appropriate administrative and criminal action against any persons or entities found to act as solicitors, information providers, salesmen, agents, brokers, dealers or the like for and in behalf of the subject corporation.

The **Enforcement and Investor Protection Department** of the Commission is hereby **DIRECTED** to: 1) serve this *Order* to STARJED MICRO FINANCING CORPORATION, Eugene G. Louca, President, its General Manager, Corporate Secretary, Treasurer, In-House Counsel or partners; and 2) post copies of the *Cease and Desist Order Order* at the entrance of the main office and/or branches, if any, of STARJED MICRO FINANCING CORPORATION.

Let a copy of this *Cease and Desist Order* be also posted in the Commission's website; published in a national newspaper of general circulation and furnished to all Operating Department and Offices of the Commission for their information and appropriate action.

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[27] Section 64.1. of the SRC provides that the Commission, after proper investigation or verification, *motu propio*, or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

[28] *Id.*

The **Enforcement and Investor Protection Department** of the Commission is hereby **FURTHER DIRECTED** to submit a FORMAL COMPLIANCE REPORT, by way of a pleading, to the Commission *En Banc* WITHIN FIVE (5) DAYS from receipt of this *Cease and Desist Order.*

In accordance with the provisions of Sec. 64.3[29] of SRC and Sec. 10-3 of the 2006 Rules of Procedure of the Commission, the parties subject of this *Cease and Desist Order* may file a request for the lifting thereof within five (5) days from receipt hereof.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Mandaluyong City; 19 July 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE *
Commissioner

ANTONIETA F. IBE **
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

* On Official Business
** On Leave

[29] SRC, Section 64.3. Any person against whom a cease and desist order was issued may, within five (5) days from receipt of the order, file a formal request for a lifting thereof. Said request shall be set for hearing by the Commission not later than fifteen (15) days from its filing and the resolution thereof shall be made not later than ten (10) days from the termination of the hearing. If the Commission fails to resolve the request within the time herein prescribed, the cease and desist order shall automatically be lifted.