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

In the matter of:

TACOLOAN;
VCASH;
365 CASH;
SWIPECASH; and
BOOTCASH.

SEC CDO Case No. 01-22-078

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),

Movant.

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CEASE AND DESIST ORDER

Presented for the consideration and resolution of the Commission is the *Motion for the Issuance of a Cease and Desist Order* (the "Motion") filed by the Enforcement and Investor Protection Department ("EIPD") on 25 January 2022 praying that a Cease and Desist Order ("CDO") be issued against **TACOLOAN, VCASH, 365 CASH; SWIPECASH;** and **BOOTCASH** (*collectively referred to as the "Online Lending Operators"*), their agents, representatives and promoters, as well as the owners and operators of the hosting sites of the Online Lending Operators, and any and all persons and entities involved, directly or indirectly, in their operations from (1) operating, engaging in, carrying out, abetting and/or promoting lending/financing business and related activities until they have incorporated and secured from the Commission the requisite Certificate of Incorporation and Certificate of Authority to Operate as Lending or Financing Companies, and (2) offering and/or advertising their lending business through the internet and any other media, and to delete or remove from the internet and social media platforms the promotional materials used to advertise their products and services.

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RELEVANT FACTS

On 21 July 2021, the Corporate Governance and Finance Department ("CGFD") issued a Memorandum[1] endorsing to the EIPD for investigation and appropriate action the activities and services of the Online Lending Operators that are available online through the relevant mobile applications, and which are published and offered in their respective websites and social media accounts. The CGFD initially found that the Online Lending Operators are engaged in the lending and/or financing business without being a corporation and the required Certificate of Authority to Operate as Lending or Financing Company. In support thereof, the CGFD submitted evidence showing that complaints have been filed against the Online Lending Operators relating to their alleged unreasonable and abusive lending and collection practices which subjected debtors/complainants to public humiliation and ridicule.[2]

Acting on the CGFD Memorandum, the EIPD conducted a formal investigation and as a result thereof, was able to confirm that the Online Lending Operators are actually engaged in lending business carried out online. Relative thereto, the EIPD was able show by substantial evidence that the Online Lending Operators offer and provide loans to the public online through their respective applications/platforms, imposing onerous and unreasonable terms and conditions, charging high interest rates, and performing acts which violate the right to privacy of debtors/complainants.[3] The EIPD was also able to show that the lending business and related activities of the Online Lending Operators are being advertised and promoted online through Facebook and other social media platforms which have resulted in the public actually availing of the loans offered and provided by the Online Lending Operators.

On 22 November 2021, the CGFD, in response to the request of the EIPD, issued a Certification[4] confirming that the lending applications of the Online Lending Operators are not included in the List of Financing and lending Companies with Online Lending Platforms (OLPs) reported

[1] Annex "A" of the Motion
[2] Annexes "B" to "B-4" of the Motion
[3] Annexes "C" to "C-4" of the Motion
[4] Annex "E" of the Motion

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to the Commission pursuant to SEC Memorandum Circular No. 19, Series of 2019[5].

It is on the basis of the foregoing factual antecedents and findings that the EIPD filed the instant Motion.

ISSUE

Whether the evidence on record presented by the EIPD warrants the issuance of a CDO against the Online Lending Operators.

RULING

We find the Motion to be impressed with merit.

The pieces of evidence presented sufficiently support the allegations of the EIPD that the Online Lending Operators are actually engaged in the business of offering and providing loans to the public, and are carrying out transactions proper to a lending company without a validly subsisting Certificate of Authority to Operate as Lending Companies or Financing Companies from the Commission.

The powers and authority, as well as the jurisdiction of the Commission is specifically provided in Section 5.1(a) of the Securities Regulation Code[6] (SRC), thus:

> "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, 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:**
>
> (a) Have jurisdiction and supervision over all corporations, partnerships or association who are the grantees of primary franchises and/or a license or a permit issued by the Government;
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[5] Disclosure Requirements on Advertisements of Financing Companies and Lending Companies and Reporting of Online Lending Platform
[6] Republic Act No. 8799

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(d) **Regulate, investigate or supervise the activities of persons to ensure compliance**;

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(n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purpose of these laws. (Emphasis and underscoring supplied)

In relation to the performance of its authority to investigate persons, and exact compliance with laws administered by it, the Supreme Court emphasized in *Provident International Resources Corp. vs Venus*[7] that the Commission has the concomitant duty to impose the appropriate sanctions/penalties for non-compliance, thus:

> "It can be said that the SEC's regulatory authority over private corporations encompasses a wide margin of areas, touching nearly all of a corporation's concerns. This authority more vividly springs from the fact that a corporation owes its existence to the concession of its corporate franchise from the state. Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and associations (excluding cooperatives, homeowners' association, and labor unions); compel legal and regulatory compliances; conduct inspections; and impose fines and other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted." (Emphasis supplied)

Among the existing laws that the Commission is mandated to implement is Republic Act No. 9474, otherwise known as the "Lending Company Regulation Act of 2007" (the "Lending Company Regulation Act"), Section 4 of which specifically requires that persons or entities operating as lending companies should be registered as a corporation and should have an authority to operate issued by the Commission, to wit:

[7] G.R. No. 167041, 17 June 2008

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"**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 and underscoring supplied)

The Lending Company Regulation Act penalizes any person who, without being registered as a corporation and without a subsisting authority to operate obtained from the Commission, engages in the business of a lending company, to wit:

"**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**:

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:

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

   b. Hold themselves out to be a lending company, either through advertisement in whatever form, whether in its stationary, commercial paper, or other document, or through other representations without authority;

   c. Make use of a trade or firm name containing the words "lending company" or "lending investor" or any other designation that would give the public the impression that it is engaged in the business of a lending company as defined in its Act without authority; and

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d. Violate the provisions of this Act." (Emphasis and underscoring supplied)

In relation to the lending business and industry, it bears emphasis that the Commission is mandated in Section 2 of the Lending Company Regulation Act to implement the policy of regulating lending companies to effectively prevent and mitigate, as far as practicable, the commission of practices prejudicial to public interest, thus:

> "**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 additional 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." (Emphasis supplied)

On the basis of the foregoing, the Commission finds that he continued operation of the Online Lending Operators constitutes a clear violation of and should be penalized pursuant to the Lending Company Regulation Act because it engages in or carries out a lending business without an authority/license from the Commission. Moreover, 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.

To ensure that the Commission is able to perform this mandate and to protect the public, section 179(f)and (p) of the RCC authorizes it to issue a cease and desist order and to perform such other powers which are incidental or necessary in carrying out its mandate, to wit:

> "**Section 179.** *Powers, Functions, and Jurisdiction of the Commission.* – The Commission shall have the power and authority to:
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> XXX XXX XXX
>
> (f) Issue cease and desist orders *ex parte* to prevent imminent fraud or injury to the public;
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(p) Exercise such other powers provided by law or those, which may be necessary or incidental to carrying out the powers expressly granted to the Commission. (Emphasis and underscoring supplied)

In the instant case, the Certification issued by the CGFD confirmed that the Online Lending Operators covered by the Motion are not registered with the Commission either as corporations, partnerships, OPC. Neither is there anything on the records of the Commission that will show that the Online Lending Operators have been issued the Certificate of Authority which is required to validly engage in lending activities. The act of the Online Lending Operators in engaging in the lending business sans the required registrations/licenses constitutes a clear violation of Section 4 of the Lending Company Regulation Act, which warrants the imposition of the appropriate penalties provided under Section 12 of the same Act.

Moreover, the evidence presented by the EIPD shows that the Online Lending Operators are illegally engaging in lending activities as the latter are not registered as corporations, and have no Certificate of Authority issued by the Commission. Thus, the act of these Online Lending Operators in offering and providing loans to the public constitutes actual fraud[8] which was intentionally employed to lead the public into the belief that they are legally authorized to engage in the lending business which is not and has never been the case. This, in fact resulted in the public actually taking loans from the Online Lending Operators as shown in the complaint and evidence presented by the EIPD.

Without the Certificate of Authority to Operate as Lending Companies or Financing Companies which is required under the Lending Company Regulation Act, the Online Lending Operators cannot offer and provide loans to the public.

Moreover, the abusive collection practices employed by the Online Lending Companies constitute unfair debt collection practices which is expressly prohibited under SEC Memorandum Circular No. 18, Series of 2019 (Prohibition on Unfair Debt Collection Practices of Financing Companies and Lending Companies). As provided in the said Circular, the following conduct constitute unfair collection practices:

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[8] "Fraud is of two kinds: actual or constructive. Actual or positive fraud proceeds from an intentional deception practiced by means of the misrepresentation or concealment of a material fact. Constructive fraud is construed as a fraud because of its detrimental effect upon public interests and public or private confidence, even though the act is not done with an actual design to commit positive fraud or injury upon other persons." *(Encinares vs Achero, G.R. No. 161419, 25 August 2009)*

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a. The use or threat of use of violence or other criminal means to harm the physical person, reputation or property of any person;

b. The use of threats to take any action that cannot legally be taken;

c. The use of obscenities insults, or profane language the natural consequence of which is to abuse the borrower and/or which amount to a criminal act or offense under applicable laws;

d. Disclosure or publication of the names and other personal information of borrowers who allegedly refuse to pay debts except as may be allowed under Section 2 hereof (exceptions to the confidentiality of information);

e. Communicating or threatening to communicate to any person loan information, which is known, or which should be known, to be false, including the failure to communicate that the debt is being disputed, except as may be allowed under Section 2 hereof (exceptions to the confidentiality of information);

f. The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a borrower; and

g. Making contact at unreasonable/inconvenient times or hours, which shall be defined as contact before 6:00 AM or after 10:00 PM, unless the account is past due for more than fifteen (15) days, or the borrower has given express consent that the said times are the only reasonable or convenient opportunities for contact.

Such consent which shall be evidenced by written, electronic or recorded means, may be given prior to, during or after the execution of the loan agreement.

Notwithstanding the borrower's consent, contacting the persons in the borrower's contact list other than those who were named as guarantors or co-makers shall also constitute unfair debt collection practice.

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On account thereof, the Commission finds and so holds that the issuance of a CDO is warranted in the instant case not only to stop the illegal act, but also to prevent the continued fraud on the public who are led by the Online Lending Operators to the belief that they are operating a legitimate business. This is a power that is expressly granted to the Commission under Section 179 (f) and (p), in relation to the SRC and the Lending Company Regulation Act.

The acts of these unregistered Online Lending Operators in illegally offering and providing loans to the public, charging high application fees and interest rates, and subjecting its debtors to unfair treatment through abusive and libelous languages, and even threatening to harm in collecting the loaned amount, have no place in a society that is governed by, and faithfully adheres to positive laws. The Commission is duty-bound to strictly implement the provisions of the Lending Company Regulation Act, ensure that public interest is at all times upheld, and that the public is protected from persons who carry out unauthorized or illegal lending activities.

WHEREFORE, premises considered, **TACOLOAN, VCASH, 365 CASH; SWIPECASH;** and **BOOTCASH**, its owners, operators, promoters, representatives, agents, AND ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND IN THEIR BEHALF are hereby **DIRECTED** to **IMMEDIATELY CEASE AND DESIST** from engaging in, carrying out, promoting and facilitating any lending activity/transaction 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.

TACOLOAN, VCASH, 365 CASH; SWIPECASH; and **BOOTCASH**, its owners, operators, promoters, representatives, agents and any and all persons acting for and, in their behalf, are directed to **CEASE** and **DESIST** from offering and advertising their lending business through the internet or any other media, and to delete or remove any and all materials involving or covering the same.

The **EIPD** is hereby **DIRECTED** to:

1.) Cause the posting of a copy of this CDO in the Commission's website, and the publication of the same in two (2) newspapers of general circulation;
2.) Coordinate with the appropriate cyber-criminal investigation and enforcement agency(ies) of the government in order to determine, identify, and apprehend the responsible persons involved in the illegal online operations of **TACOLOAN, VCASH, 365 CASH; SWIPECASH;**

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and **BOOTCASH**, including its author, creator, owner and its officers, or any person, agent, representative conniving with them. The EIPD is also directed to conduct an investigation to determine and recommend the filing of a criminal complaint, if warranted; and

3.) Submit a formal compliance report, by way of pleading, to the Commission *En Banc* within ten (10) days from receipt of this CDO.

In accordance with Section 64.3[9] of the SRC and Section 4-3, Rule IV, Part II of the 2016 Rules of Procedure of the Commission, the parties subject of the Cease and Desist Order may file a Verified Motion to lift thereof within five (5) days from date of its posting or publication.

SO ORDERED.

Pasay City, Philippines, 03 February 2022.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO*
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

*On Leave

[9] 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.

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