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

IN THE MATTER OF:

TEKWANG LENDING CORP. doing business under the name and style of TEKCASH (CS201911369),

Movant.

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SEC En Banc Case No. 07-24-008
(FLCD CDO Case No. 05, Series of 2024)

For: VIOLATION OF THE SEC MEMORANDUM CIRCULAR NO. 3, SERIES OF 2022, SEC MEMORANDUM CIRCULAR NO. 28, SERIES OF 2020, SEC MEMORANDUM CIRCULAR NO. 19, SERIES OF 2019, FINLEND ORDER DATED 07 FEBRUARY 2024, FINLEND ORDER DATED 06 JULY 2023, FINLEND ORDER DATED 08 JUNE 2023

Promulgated: 18 December 2024

RESOLUTION

For consideration of the Commission is the *Verified Motion to Lift* (the "Motion to Lift") filed by *Tekwang Lending Corp. doing business under the name and style of TEKCASH* on 12 July 2024, praying that the matter be set for summary hearing, and that the *Cease and Desist Order* issued on 07 June 2024 (the "Assailed CDO") by the Financing and Lending Companies Department ("FLCD ") be lifted. The dispositive portion of the Assailed CDO reads:

> "**WHEREFORE**, premises considered, **TEKWANG LENDING CORP. doing business under the name and style of TEKCASH,** including its owners, operators, promoters, representatives, agents, *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, which includes offering and advertising their lending business through the internet and/or any other media, and facilitating any lending activity(ies) or transactions(s)
>
> **SO ORDERED.**"

RELEVANT FACTS

Tekwang Lending (the "Movant") is a corporation duly organized and existing under Philippine laws, having been issued a Certificate of Incorporation with Company Registration No. CS201911369. Movant is also a grantee of a license to engage in lending business, having secured from the Commission a Certificate of Authority No. 3032. Its principal place of business is at Ignition Venture Studio, North Penthouse Unit, Marajo Tower 313, 26th cor. 4th Ave. 1634, Taguig City.

On 07 June 2024, the FLCD issued the Assailed CDO[1] directing Movant to immediately cease and desist from engaging in, carrying out, promoting/advertising its lending business through the internet and/or any other media, and/or facilitating any lending activity(ies). The FLCD anchored the need to issue the Assailed CDO on the failure of Tekwang Lending to comply with the following Memorandum Circulars and Orders (the "Subject Regulations") for purposes of preventing fraud, injury or harm to the public and financial consumers, to wit:

a. MC No. 03, Series of 2022[2] (MC No. 03), which requires the submission of the Impact Evaluation Report (IER) on or before January 15 of each year beginning 2023;
b. MC No. 28, Series of 2022[3] (MC No. 28), which requires the submission of an official e-mail and contact number;
c. MC No. 19, Series of 2019[4] (MC No. 19), which requires the disclosure of advertisements and reporting of Online Lending Platforms;
d. Order dated 07 February 2024[5] (February Order), which requires the submission of complaints handling mechanism;
e. Order dated 06 July 2023[6] (July Order), which requires registration with the Credit Information Corporation; and
f. Order dated 08 June 2023[7] (June Order), which requires the submission of the list of Third-Party Service Providers (TPSPs).

The FLCD ruled that Movant's failure to comply with the Subject Regulations placed the general public at risk because the Commission's supervisory powers are rendered useless.[8]

In its Motion to Lift, Movant averred that the lifting of the Assailed CDO is warranted since it already substantially complied with Subject Regulations, except the June Order which it undertook to comply with. Relative to the June Order, the Movant explained that it is currently undergoing acquisition and a change of management and is in the process of updating its submissions, including its IER for 2023, which requires a

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[1] Pursuant to Section 6(d)(4) of RA No. 11765 "Financial Products and Services Consumer Protection Act" (FCPA) and Rule 6, Section 1, Paragraph D (IV) of SEC's Implementing Rules and regulations of the Financial Products and Services Consumer Protection Act of 2022 (SEC – FCPA IRR).
[2] Implementation of Bangko Sentral ng Pilipinas Circular No. 1133 Series of 2021 on the Ceiling/s on Interest Rates and Other Fees Charged by Lending Companies, Financing Companies, and their Online Lending Platforms.
[3] Requirement for Corporations, Partnerships, Associations, and Individuals to Create and/or Designate E-mail Account Address and Cellphone Number for Transactions with the Commission.
[4] Disclosure Requirements on Advertisements of Financing Companies and lending Companies and Reporting of Online Lending Platforms.
[5] Submission of Financing and Lending Companies Complaints Handling Details and Mechanisms.
[6] Registration of Financing and Lending Companies to the Creidt Information Corporation and Submission of Related Documents.
[7] Submission of List of Third-Party Service Providers in Compliance with the Financial Products and Service Products and Services Consumer Protection Act of 2022 (R.A. No. 11765) and its Implementing Rules and Regulations (SEC FCPA IRR).
[8] See Assailed CDO, p.2

review of voluminous financial data, which account for the delay in its compliance with the same.[9]

In its Comment on the Verified Motion to Lift,[10] the FLCD raised Movant's failure to request for the lifting of the Assailed CDO within the prescribed period. Specifically, the FLCD pointed out that the Motion to Lift was filed twenty-one (21) days beyond the reglementary period i.e. it was filed only on 12 July 2024 instead of 26 June 2024. However, as regards the substantive aspect, the FLCD affirmed that Movant has complied with the Subject Regulations, albeit belatedly. Thus, the FLCD prayed for the partial grant of the Motion to Lift on the basis of a finding that Movant's partial/belated compliance with the Subject Regulations has ruled out the possible grave or irreparable injury that may befall on financial consumers.

We thus resolve.

Starting off with the procedural issue which the FLCD raised relative to the belated filing of the Motion to Lift by Movant, We hold that the same is not fatal to warrant the denial thereof. While both Sec. 6(d)(4) of the Financial Products and Services Consumer Protection Act (FCPA), and Rule IV, Section 4-3(b) of the 2016 Rules of Procedure of the Securities and Exchange Commission (the "2016 Rules") require a person subject of a CDO to file a request or motion to lift the same within five (5) days from receipt thereof, this Commission has, time and again, consistently implemented the established jurisprudential doctrine that in administrative proceedings, rules of procedure are liberally construed to facilitate the speedy and inexpensive disposition of the matter(s) presented herein.[11] We find this rule specifically contained in Section 1-4 Rule 1 Part I of the 2016 Rules, to wit:

> "Technical rules shall be liberally construed and administered to promote public interest, to secure a just, prompt, expeditious, and inexpensive determination of every action and proceedings brought before the Commission and to carry out the objectives of the laws it is mandated to implement."

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[9] Motion to Lift, par. 6.
[10] Filed on 06 August 2024.
[11] "It is well-settled that "the rules of procedure are mere tools aimed at facilitating the attainment of justice, rather than its frustration. **A strict and rigid application of the rules must always be eschewed when it would subvert the primary objective of the rules, that is, to enhance fair trials and expedite justice. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities**." "Indeed, the primordial policy is a faithful observance of [procedural rules], and their relaxation or suspension should only be for persuasive reasons and only in meritorious cases, to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed." **This is especially true with quasi-judicial and administrative bodies**, such as the IPO, **which are not bound by technical rules of procedure**. (Emphasis supplied) [Birkenstock Orthopaedie GMBH and Co. vs Philippine Shoe Expo Marketing Corporation., G.R. No. 194307, November 20, 2013]

Thus, in the interest of affording Movant the opportunity to present its defense(s), this Commission hereby admits the Motion to Lift.

Anent the substantive issue presented in the Motion to Lift, this Commission agrees with Movant that the lifting of the Assailed CDO is warranted by the facts and circumstances. In other words, this Commission is convinced that Movant's compliance with the Subject Regulations negates the probability that a violation of a regulation will result in irreparable damage/injury to consumers/investors which justifies the subsistence of the Assailed CDO. The fact that Movant is yet to comply with the February Order will not change this.

Section 6(d)(4) of the FCPA provides for the authority of the Commission to issue a CDO to prevent or restrain an act which amounts to fraud or a violation of its provisions, or may unjustly cause grave or irreparable injury or prejudice to financial consumers, thus:

> "**Section 6.** *Powers of the Financial Regulators.* - Financial regulations under this Act shall have the following powers:
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> xxx xxx xxx
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> (d) *Enforcement.* - Financial regulators shall have the authority to impose enforcement actions on their respective supervised financial service providers for noncompliance with this Act and other existing laws pertinent to the jurisdiction and authority of the respective financial regulators. Such enforcement actions may include the following:
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> xxx xxx xxx
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> (4) Issuance of a cease and desist order to the financial service provider without the necessity of a prior hearing if in the financial regulator's judgment, the act or practice, unless restrained, amounts to fraud or a violation of the provisions of this Act and its IRR, or may unjustly cause grave or irreparable injury or prejudice to financial consumers. The financial service provider shall be afforded an opportunity to defend its act or practice in a summary hearing before the financial regulator or its designated body, upon request made by the financial service provider within five (5) calendar days from its receipt of the order. If no such hearing is requested within the said period, the order shall be final. If a hearing is requested by the financial service provider, the proceedings shall be conducted summarily without adhering to the technical rules of evidence, and all issues shall be determined primarily on the basis of records, after which the financial regulator may either reconsider or finalize and execute its order; xxx."

In our jurisdiction, a CDO is considered to partake of the nature of an injunction, the issuance of which has consistently been justified and sustained to effectively prevent fraud, violation of a law, rule or regulation, or protect investors/ financial consumers from sustaining grave or irreparable injury or prejudice. The doctrine in *Securities and Exchange Commission v. CJH Development Corporation*[12] on the purpose of a CDO is instructive, to wit:

> "Lastly, the Court neither agrees with the ruling of the CA that there is nothing in the assailed CDO which shows that the acts sought to be restrained therein operate as a fraud on investors. **The SEC arrived at a preliminary finding that respondents are engaged in the business of selling securities without the proper registration issued by the Commission. Based on this initial finding, respondents' act of selling unregistered securities would necessarily operate as a fraud on investors as it deceives the investing public by making it appear that respondents have authority to deal on such securities**. As correctly cited by the SEC, Section 8.1 of the SRC clearly states 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 SEC and that prior to such sale, information on the securities, in such form and with such substance as the SEC may prescribe, shall be made available to each prospective buyer. **The Court agrees with the SEC that the purpose of this provision is to afford the public protection from investing in worthless securities**." (Emphasis and underscoring supplied)

Relative thereto, the Supreme Court explained the concept of "irreparable injury" in *"G" Holdings, Inc. .v Leonora De Mesa Hernandez et al.*[13] that would warrant an injunction, to wit:

> "**An irreparable injury** to authorize an injunction **consists of a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined**, or when the property has some peculiar quality or use, so that its pecuniary value will not fairly recompense the owner of the loss thereof." (Emphasis supplied)

It is the determination by the Commission that there is fraud, violation of a law, rule or regulation, or a probability that irreparable damage/injury would befall on consumers/investors which justifies the immediate issuance of an injunction. The doctrine in *Primanila Plans, Inc. v. Securities and Exchange Commission*[14] relating to the prompt issuance of a CDO for the protection of financial consumers may be applied, by analogy, to wit:

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[12] G.R. No. 210316. November 28, 2016.
[13] G. R. No. 240835, 29 March 2023.
[14] G.R. No. 193791. August 6, 2014.

> "The law is clear on the point that a cease and desist order may be issued by the SEC motu proprio, it being unnecessary that it results from a verified complaint from an aggrieved party. **A prior hearing is also not required whenever the Commission finds it appropriate to issue a cease and desist order that aims to curtail fraud or grave or irreparable injury to investors. There is good reason for this provision, as any delay in the restraint of acts that yield such results can only generate further injury to the public that the SEC is obliged to protect.**" (Emphasis supplied)

Prescinding from the foregoing, it is clear that the statutory grant of the power and authority to issue a CDO is intended to protect investors and/or financial consumers from acts or schemes that may defraud or cause grave or irreparable damage. From this perspective, a CDO is an effective regulatory tool that can prevent (further) damage or injury from befalling upon investors and/or consumers. This is the reason why the law and jurisprudence require certain conditions to be complied with before a CDO can be validly issued, to wit:

> "To equally protect individuals and corporations from baseless and improvident issuances, the authority of the SEC under this rule is nonetheless with defined limits. **A cease and desist order may only be issued by the Commission after proper investigation or verification, and upon showing that the acts sought to be restrained could result in injury or fraud to the investing public**. Without doubt, these requisites were duly satisfied by the SEC prior to its issuance of the subject cease and desist order."[15] (Emphasis supplied)

In the instant case, the Assailed CDO was issued on the basis of a finding that Movant allegedly failed to comply with the requirements of the Subject Regulations. Considering that the compliance by Movant was already recognized and affirmed by the FLCD, We agree that the reasons/grounds for the issuance of the Assailed CDO have effectively ceased. Consequently, the lifting of the Assailed CDO is in order. However, this should be without prejudice to the imposition of the appropriate penalty, after notice and hearing, for the violation(s) that Movant has already committed in relation to the Subject Regulations.

WHEREFORE, premises considered, the *Verified Motion to Lift* dated 26 June 2024 filed by Tekwang Lending Corp. doing business under the name and style TEKCASH is hereby **GRANTED**. The Cease and Desist Order dated 07 June 2024 issued against Tekwang Lending Corp. is hereby **LIFTED.**

[15] SEC v. CJH Development Corporation. G.R. No. 210316. November 28, 2016

Let a copy of this Resolution be posted on the Commission's website and furnished to all operating departments and offices of the Commission for their information and appropriate action.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

ROGELIO V. QUEVEDO
Commissioner