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

OFFICE OF THE GENERAL COUNSEL

In the Matter of

PRIMANILA PLANS, INC.

S.E.C. Case No. 06-09-010

ENFORCEMENT AND PROSECUTION DEPARTMENT
[Formerly COMPLIANCE AND ENFORCEMENT DEPARTMENT]
Petitioner/Movant.

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ORDER

This resolves the Comment/Opposition to *Motion for Issuance of Permanent Cease and Desist Order with Motion to Lift Cease and Desist Order* ("Comment and Motion to Lift CDO ") filed on 10 August 2009 by Primanila Plans, Inc. ("Primanila").

In its Comment and Motion to Lift CDO,[1] Primanila alleged that:

On June 25, 2009, this Commission issued a Cease and Desist Order ("CDO") against Primanila, the dispositive portion of which reads:

> "**WHEREFORE, PREMISES CONSIDERED**, there having been a *prima facie* evidence that respondent sold, encumbered, conveyed, or disposed any of its properties and other assets, without prior written consent from this Commission, Respondent, its respective officers, directors, representatives, agents and any and all persons, conduit entities and subsidiaries, claiming and acting for and in behalf of respondent, are hereby ordered to immediately CEASE AND DESIST[2] from further selling, encumbering, conveying, or disposing any of its properties and other assets without prior written consent from this Commission.xxx"

On July 28, 2009, the Commission's Enforcement and Prosecution Department ("EPD") filed a *Motion for Issuance of Permanent Cease and Desist Order* wherein the EPD stated in paragraph 4 that:

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[1] Par. 2.

[2] R. A. 8799 SECTION 64. Cease and Desist Order. — 64.1. The Commission, after proper investigation or verification, *motu proprio*, 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.

"... to date, it appears that respondent still has not filed any formal request or motion for the lifting of the said Cease and Desist Order within 5 business days as provided under Section 10-3 of the 2006 Rules of Procedure of the Securities and Exchange Commission. Hence, the Cease and Desist Order can now be made permanent pursuant to Section 10-5 of the same Rules."

Primanila also alleged that:

"On August 3, 2009, Primanila received a copy of the *Motion for Issuance of a Permanent Cease and Desist Order* dated 27 July 2009 which alleges among others that an Order dated 25 June 2009 was issued by the Honorable Commission to which respondent did not file any formal request or motion to lift the same within an inextensible (sic) period of five (5) days from receipt thereof;"[3]

Despite this, however, Primanila continued to deny receipt of the *Cease and Desist Order* dated 25 June 2009 citing that there is actually no proof of service and thus, there was denial of due process. It prayed "...that the instant Motion be DENIED for lack of merit and the assailed Order dated 25 June 2009 be RECALLED and SET ASIDE for being null and void."[4]

In its *Reply* filed on 8 September 2009 to Primanila's *Comment and Motion to Lift CDO,* EPD contended that Respondent's claim of denial of due process deserves scant consideration because a *CDO* may be issued by the Commission without a prior hearing, pursuant to Section 64 of the Securities Regulation Code ("SRC") [5] and Section 10-2 of the 2006 Rules of Procedure of the Commission ("2006 Rules").[6] On the allegation of Primanila that it had not received a copy of the Order dated 25 June 2009, EPD claimed that it will not affect the validity of the Order.[7]

The Commission takes cognizance of the fact that the CDO dated 25 June 2009 was delivered by personal service to the last known address of Primanila in its records, but Primanila moved out.[8] In addition, the same CDO was published on page 2 of the June 27, 2009 issue of the *Manila Bulletin,* pursuant to Section 10-6

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[3] *Op. cit.*, par. 1.

[4] *Id.,* Prayer, p. 5.

[5] Republic Act No. 8799 (2000).

[6] SEC. 10-2. Issuance of a CDO. - The Commission, through the OGC, after proper investigation or verification by the CED, *motu proprio,* or upon verified complaint, may issue a CDO 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.
For other cases however, the Commission *En Banc* may issue an order for the grant of a CDO as it may deem necessary and warranted in accordance with its powers under existing laws. The CDO shall also be available in the case of anonymous complaints or based on information that has come to its attention which requires immediate action to protect the interests of the public.

[7] Reply [To Comment/ Opposition] dated 1 September 2009 par.5.

[8] Proof of Service dated 26 June 2009, delivered by Anthony Glenn C. Paggao, moved out, per Ms. Mel Ang.

of the 2006 Rules.[9] Moreover, the fact that its counsel filed the *Comment/Opposition to Motion for Issuance of Permanent Cease and Desist Order with Motion to Lift Cease and Desist Order* dated 10 August 2009 proves that the allegation of Primanila that it was deprived of due process is without basis. As pronounced by the Supreme Court in *Jesus C. Ocampo vs. Office of the Ombudsman and Maximino Eclipse,*[10]

> "The essence of due process is an opportunity to be heard. One may be heard, not solely by verbal presentation but also, and perhaps even many times more creditably and practicable than oral argument, through pleadings. *In administrative proceedings, moreover, technical rules of procedure and evidence are not strictly applied; administrative due process cannot be fully equated to due process in its strict judicial sense.*"

WHEREFORE, PREMISES CONSIDERED, Primanila Plans Inc.'s *Comment/Opposition to Motion for Issuance of Permanent Cease and Desist Order with Motion to Lift Cease and Desist Order* dated 10 August 2009, is hereby **DENIED** and the *Motion for Issuance of Permanent Cease and Desist Order* dated July 28, 2009 filed by the Commission's Enforcement and Prosecution Department is hereby granted thus making the Cease and Desist Order dated 25 June 2009 **PERMANENT**.

SO ORDERED.

City of Mandaluyong, 5 August 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE *
Commissioner

ELADIO M. JALA
Commissioner

*on leave

[9] SECTION 10-6.Dissemination of the CDO. — Upon the issuance of a CDO, the CED shall (a) serve it on the respondent/s or any of its authorized representatives; (b) post copies of the order at the entrance of the main office and/or branches, if any, of the respondent/s, and (c) post it in the Commission's Internet website The CDO may, as determined by the Director of the CED and at the discretion of the Commission, be published in newspapers of general circulation or other media outlets.

[10] G.R. No. 114683. January 18, 2000.