Republic of the Philippines
Department of Finance
Securities and Exchange Commission
PICC Secretariat Building, PICC Complex, Pasay City

In the matter of:
CJH DEVELOPMENT CORPORATION
and CJH SUITES CORPORATION

SEC CDO Case No. 05-12-006
For: Issuance of Permanent CDO

ENFORCEMENT AND PROSECUTION DEPARTMENT,
Movant.
x--x

RESOLUTION

For the consideration of the En Banc is a **Motion for Issuance of Permanent Cease and Desist Order** filed on **9 July 2012** by the Enforcement and Prosecution Department (EPD)[1]. The Motion essentially stated that:

(1) A Cease and Desist Order (Order) against Respondents was issued by the Commission En Banc on 7 June 2012;

(2) The CDO was served on Respondent CJH DEVELOPMENT CORPORATION (CJH Devt) on 8 June 2012;

(3) The CDO was served on Respondent CJH SUITES CORPORATION (CJH Suites) on 13 June 2012;

(4) Neither of the Respondents filed a Motion to Lift filed within the 5-day period in the 2006 SEC Rules of Procedure.

On **13 July 2012**, Respondents filed a **Manifestation** stating that the EPD's Motion is superfluous, since the CDO was not issued by an Operating Department but rather by the En Banc itself, viz:

> [I]t must be emphasized that, assuming *in gratia argumenti* the validity of the CDO, **there is no need for the Movant to file the instant Motion for Issuance of Permanent Cease and Desist Order** dated 09 July 2012 inasmuch as the CDO dated 07 June 2012 was issued by no less than the SEC EN Banc itself.[2] (Emphasis supplied)
>
> **[T]here is a need for the filing of a motion to make the CDO permanent only if the same was initially issued by the Director of the EPD**, it being merely provisional in nature.[3] (Emphasis supplied)
>
> **With regard to the CDO issued by the SEC En Banc itself, however, nothing in the rules mentions the necessity for the filing of a corresponding motion to make the same**

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[1] Now known as the Enforcement and Investor Protection Department (EIPD).
[2] Par. **9** of Respondents' 13 July 2012 Manifestation.
[3] Par. **13** of Respondents' 13 July 2012 Manifestation.

> **permanent.** Apparently, based on the wordings of the rules, **if the respondent fails to move for the lifting of the CDO issued by the SEC En Banc, assuming *in gratia argumenti* the validity thereof, the same will already become final.**[4] (Emphasis supplied)

On **23 August 2012**, the En Banc issued an **Order** deferring the resolution of the Motion until after judicial review of the validity of the CDO by the Court of Appeals and later the Supreme Court.

On **28 November 2016**, the Supreme Court[5] declared the CDO valid. It also subsequently denied Respondents' Motion for Reconsideration.

On **13 July 2017**, Respondents filed a Comment/Opposition to the Motion for Issuance of Permanent CDO.[6]

Hence the instant Motion.

The Motion is superfluous because the CDO has become permanent upon the mere lapse of the 5-day reglamentary period.

Section 64.3 of the Securities Regulation Code provides that:

> 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.

Section 10-3 of the 2006 SEC Rules of Procedure similarly provides that:

> A party against whom a CDO was issued may, within a non-extendible period of five (5) business days from the receipt of the order, file a formal request or motion for the lifting thereof with the OGC.

Furthermore, the **2006 Rules**, under which the instant Motion was filed, specifies who may issue a CDO and on what basis:

> **RULE X. CEASE AND DESIST ORDER**
>
> **SEC. 10-4. Who May Issue a Provisional Remedy.** – A provisional remedy may be issued by the Director of the CED on the basis of his initial evaluation of the issue, or upon recommendation of the Hearing Panel or Officer, as the case may be.
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> The Commission En Banc, however, 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. (Emphasis supplied)

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[4] Par. **14** of Respondents' 13 July 2012 Manifestation.
[5] Docketed as **Herbosa v. CJH Devt and CJH Suites**, SC GR No. 210316.
[6] Respondents claim they received Notice from the Supreme Court denying their Motion for Reconsideration on **21 July 2017**.

Section 10-5 of the 2006 Rules provides that, "[i]f the respondent fails to file a motion to lift CDO within the prescribed period, the Director of the CED may file with the Commission a motion to make the CDO permanent." **There is no provision where the En Banc has to apply to itself to make permanent its own CDO.**

As correctly pointed out by Respondents in their 13 July 2012 *Manifestation*, the requirement of a motion-to-make-permanent only applies to a CDO issued by a Director, whose findings need to be confirmed. On the other hand, a CDO issued by the En Banc need not be confirmed by the En Banc. It is **already permanent**, subject only to a timely Motion to Lift, which was lacking in this case.

It must be mentioned that the **validity of the CDO** is again being assailed by Respondents in their more recent 2017 *Comment/Opposition*. This issue has already been ruled upon by the Supreme Court and *res judicata* applies, to wit:

> Even at the risk of occasional errors, judgment of the courts as well as administrative decisions should become final at some definite time fixed by law, and parties should not be permitted to litigate the same issues over again.[7]

Obviously, Respondents' 2017 *Comment/Opposition* is irreconcilable with their 2012 *Manifestation*. There is nothing that prevents the En Banc from deciding this case solely upon the EPD's *Motion* and the Respondents' *Manifestation*, which were both cited in the **23 August 2012 Order**, before the issue of validity was taken to the courts. As mentioned, the arguments against validity of the CDO in the 2017 Comment/Opposition is barred by *res judicata*.

The instant *Motion for the Issuance of Permanent CDO* **need not be given due course** because the En Banc does not need to confirm its own CDO issuance. In other words, the En Banc's CDO is already permanent, because a timely Motion to Lift was never filed.

WHEREFORE, premises considered, the En Banc hereby clarifies that the *Cease and Desist Order* issued by the En Banc on 7 June 2012 became **permanent** upon the lapse of the 5-day reglamentary period without the filing of a Motion to Lift.

SO ORDERED.

Pasay City, Philippines; 3 November 2017.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

EMILIO B. AQUINO
Commissioner

[7] **Crucillo v. Ombudsman**, 525 SCRA 636 (2007).