IN THE MATTER OF:

CASHAB; CASHOCEAN;
KWIKPESO; LITTLE CASH;
CASHAB LENDING CO.;
MIMOSA CREDIT LTD.; and
ZAMOYA CREDIT LTD.

SEC CDO Case No. 04-20-063

ENFORCEMENT AND
INVESTOR PROTECTION
DEPARTMENT (EIPD),

Movant.

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CEASE AND DESIST ORDER

This resolves the *Motion for the Issuance of Cease and Desist Order* (the "Motion") filed on 13 April 2020 by the Enforcement and Investor Protection Department ("EIPD") praying for the issuance of an order enjoining the operators and owners of the following online lending applications: CashAB, CashOcean, KwikPeso, and Little Cash (collectively referred to as "Online Lending Operators"), their agents, representatives, and promoters, as well as the owners of the hosting sites of the Online Lending Operators, from operating, engaging in, carrying out, and/or promoting lending/financing business.

RELEVANT FACTS

The EIPD of the Securities and Exchange Commission ("Commission") received a Memorandum dated 18 February 2020 (Memorandum) from the Corporate Governance and Finance Department ("CGFD") which referred the Online Lending Operators for appropriate action after a finding that they are operating and providing loans to the public without the requisite Certificates of Registration ("CR") and/or Certificates of Authority ("CA") to operate as a Lending/Financing Company.

As can be gathered from the initial assessment by the CGFD[1], the Online Lending Operators publicly declared that they are engaged in the business of lending or extending loans to the public. Moreover, the

[1] Annexes A – B of the *Motion*.

Memorandum clearly identified the entities which purportedly owned the Online Lending Operators, namely: CashAB Lending Corp., Mimosa Credit Ltd., and Zamoya Credit Ltd.

A review of the Affidavits[2] attached to the Motion will show that the affiants were able to verify the existence and the actual operation of the Online Lending Operators through the following: android mobile applications, their respective official websites, Facebook pages, and other websites hosting their online platforms.

Moreover, the affiants also submitted screenshots showing the hosting of the Online Lending Operators' mobile applications in the internet through the following websites: https://androidappsapk.co (CashOcean, KwikPeso), http://www.9apps.com (KwikPeso), and http://apk.plus (Little Cash), the existence of their own website (CashAB) and facebook page (CashOcean), and their mobile application as found in Google Play (CashAB, KwikPeso, and Little Cash).

The investigation initially conducted by the CGFD which was confirmed by the EIPD, shows and confirms the operation of a lending business and the conduct of lending activities by the Online Lending Operators through their respective mobile applications which are readily accessible via the internet through various hosting platforms or through a mobile phone by visiting the official application store at Google.

The pieces of evidence submitted by the EIPD show that the Online Lending Operators advertise, promote and actually carry out their online lending operations through the aforementioned platforms; they also show that before a person can apply for a loan from the Online Lending Operators, he/she has to download/install their online lending applications on his/her mobile phone. By downloading/installing the online lending application, the Online Lending Operators gain access to and collect the personal information stored in the debtors' mobile phones which includes, among others, contact numbers, Facebook accounts, and e-mail addresses of all persons saved/stored therein.

The Online Lending Operators then use these data or information to exact prompt payment of the amount due as determined by the former. The collection of debt is done by sending a text blast to the persons in the contact list of the debtor's mobile phone and informing them that the debtor obtained a loan and refuses to pay the amount due. The Online Lending Operators also threaten debtors-complainants that a case will be filed before the proper barangay and/or that the matter will be posted in social media if payment is not made.

Acting on the Memorandum dated 7 April 2020 of the EIPD requesting for certification on the status of the Online Lending Operators based on the

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[2] Annexes C – F-1 of the *Motion*.

data on record, the Company Registration and Monitoring Department (CRMD) issued a Certification dated 14 April 2020 which confirmed that the Online Lending Operators are not registered with the Commission as corporations or partnerships.

ISSUE

WHETHER OR NOT THE ISSUANCE OF A CEASE AND DESIST ORDER IS WARRANTED

RULING

The Commission *En Banc* finds the Motion meritorious.

The evidence submitted sufficiently substantiates the allegations of the EIPD that the Online Lending Operators are engaged in the business of offering and providing loans to the public, and are carrying out transactions or activities which are proper to a lending or financing company without a validly subsisting Certificate of Incorporation and Certificate of Authority to Operate as a Lending or Financing Company from the Commission.

Republic Act No. 9474, otherwise known as the Lending Company Regulation Act of 2007 ("LCRA"), prohibits in no uncertain terms the performance or conduct of a lending business without prior authority from the Commission, thus:

> "Sec. 4. *Form of Organization – x x x*
>
> **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**."
>
> x x x
>
> 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**. x x x" (Emphasis supplied)

Similarly, Republic Act No. 5980, otherwise known as the Financing Act of 1998 ("FCA"), punishes the act of engaging in the business of a financing company without the requisite authority from the Commission, to wit:

> "Section 6. *Form of Organization.* <u>Financing companies shall be organized in the form of stock corporations or general partnerships at least sixty per centum of the capital of which is owned by citizens of the Philippines and shall have a paid-up capital of not less than five hundred thousand pesos</u>: *Provided, however,* That financing companies duly existing and operating before the approval of this Act shall comply with the requirement that sixty (60%) per centum of the capital be owned by citizens of the Philippines within one year from the date of said approval.
>
> "Sec. 14. *Penalty* - A fine of not less than Ten thousand pesos (P10,000.00) and not more than One hundred thousand pesos (P100,000.00) or imprisonment for not more than six (6) months or both, at the discretion of the court, shall be imposed upon:
>
> > "(1) **Persons, associations, partnerships or corporations, including the managing officer thereof, that shall**:
> >
> > > "(a) **Engage in the business of a financing company without authority from the Securities and Exchange Commission**; x x x" (Emphasis supplied)

The foregoing provisions clearly require the existence of a valid certificate of incorporation and a certificate of authority to operate prior to engaging in the business of and operating a financing and/or lending company. Without the foregoing certificates from the Commission, a person or entity cannot operate and carry out a lending/financing business.

A review of the evidence presented by the EIPD reveals that the Online Lending Operators were offering/granting loans to the pubic, and were carrying out and operating a lending business without the requisite certificate of incorporation and certificate of authority. The foregoing sufficiently justifies the issuance of a cease and desist order, without prejudice to the criminal action that may be filed against the persons behind these Online Lending Operators.

Lest we forget, the Commission is duly authorized to impose administrative sanctions for violations of the LCRA and FCA, hence:

Section 9 of the LCRA states:

> "Sec. 9. *Authority of the SEC* – The SEC is hereby authorized to:
>
> x x x
>
> (f) **Impose such administrative sanctions including suspension or revocation of the lending company's authority to operate and the imposition of fines for violations of this Act and regulations issued by the SEC in pursuance thereto**." (Emphasis supplied)

On the other hand, Section 4 of the FCA provides:

> "Sec. 4. *Grant of Authority to Securities and Exchange Commission*. – **The Securities and Exchange Commission is hereby empowered to enforce the provisions implementing regulations** x x x." (Emphasis supplied)

More importantly, the Revised Corporation Code expressly empowers the Commission to issue cease and desist orders to prevent injury to the public, thus:

> "Sec. 179. *Powers, Functions, and Jurisdiction of the Commission.* – The Commission shall have the power and authority to:
>
> x x x
>
> (f) **Issue cease and desist orders *ex parte* to prevent imminent fraud or injury to the public**." (Emphasis supplied)

This Commission is the administrative agency authorized and empowered to impose administrative sanctions for violations of RA No. 9474 or RA No. 5980. Moreover, the Commission is authorized to issue Cease and Desist Orders to ensure among others, that acts and/or activities which are in violation the provisions of RA No. 9474 or RA No. 5980 are immediately stopped. Considering that the Online Lending Operators are not incorporated entities and have no Certificate of Authority to Operate as Lending or Financing Companies, the lending activities and transactions are illegal and have to be stopped immediately by this Commission.

The Lending Company Regulation Act of 2007 was enacted to prevent and mitigate, as far as practicable, practices prejudicial to public interest. 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. Section 2 of RA No. 9474 provides that:

> *"**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 individual 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."*

Moreover, the abusive collection practices engaged by these Online Lending Operators constitute unfair debt collection practices which are expressly prohibited under Memorandum Circular No. 18, Series of 2019 ("Circular"). The Circular enumerates the following actions which constitute unfair collection practices that merit the imposition of penalties:

> "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.

h. 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."

Finally, as substantiated by the evidence submitted to the Commission, the Online Lending Operators failed to disclose certain information in their advertisements and online platforms as mandated by Memorandum Circular No. 19, Series of 2019, which states:

"Sec. 1. *Required Disclosures*. – FCs and LCs shall fully disclose in their Advertisements and Online Lending Platforms the following:

A. Corporate Name, SEC Registration Number and Certificate of Authority to Operate a Financing/Lending Company (CA) Number in a conspicuous portion of their Advertisements and Online Lending Platforms; and

B. An advisory for their prospective borrowers to study the terms and conditions in the Disclosure Statement before proceeding with the loan transaction."

The foregoing sufficiently justifies the grant of the Motion and the issuance of the Cease and Desist Order prayed for by EIPD.

WHEREFORE, premises considered, the operators and owners of the following online lending applications: **CashAB; CashOcean; KwikPeso; and Little Cash**, **Cashab Lending Co., Mimosa Credit LTD., and Zamoya Credit LTD,** their operators, agents, representatives and promoters, as well as the owners of the hosting sites of these Online Lending Operators and all persons acting for and on their behalf are hereby ordered to **IMMEDIATELY CEASE AND DESIST UNDER PAIN OF CONTEMPT** from engaging in, promoting and facilitating such unauthorized lending activities/transactions.

The Online Lending Operators are likewise directed to **CEASE** from offering and advertising their lending business through the internet and to delete or remove the promotional presentations and offerings of such lending business from the internet including the lending applications that they operate.

Finally, the Commission hereby directs any and all persons and entities who are carrying out, abetting or promoting lending business or similar activities without the requisite authority/license from this Commission to immediately **CEASE AND DESIST** from engaging in such lending activities 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.

Let a copy of this Order be posted in the Commission's website, be published in two (2) newspapers of general circulation and a copy be furnished to the Company Registration and Monitoring Department, Corporate Governance and Finance Department and the Information and Communications Technology Department of this Commission, the Bangko Sentral ng Pilipinas, the Department of Trade and Industry, the National Privacy Commission and the Department of Information and Communications Technology for their information and appropriate action.

In accordance with Part II, Rule IV, Section 4-3(b) of the 2016 Rules of Procedure of the SEC, the parties subject of this Cease and Desist Order ("CDO") may file a verified motion to lift the CDO to the Commission En Banc thru the Office of the General Counsel, within five (5) days from date of posting or publication.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Pasay City, Philippines; 14 April 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner