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

In the Matter of:
Second Pay Financing Inc.
(CS201909038 C.A. No. 1217)
Unit 904 One Global City,
5ht Ave. Cor. 25th St.
Fort Bonifacio, Taguig City
Petitioner.

SEC En Banc Case No. 07-24-007
FLCD CDO Case No. 4 Series of 2024
For: Violation of the SEC Memorandum Circular No. 03, Series of 2022, Memorandum Circular No. 19, Series of 2019, FINLEND Order dated 07 February 2024, FINLEND Order No. 06. 2023, FINLEND Order dated 08 June 2023.
PROMULGATION: 18 December 2024

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RESOLUTION

For consideration of the Commission En Banc is the *Verified Motion for Lifting of Cease and Desist Order Ad Cautelam* dated 01 July 2024 (the "Motion to Lift") filed on 02 July 2024 by Second Pay Financing, Inc. ("Movant" or "Second Pay"), praying that the Commission lifts the Cease and Desist Order dated 07 June 2023 (the "Assailed CDO") issued by the Commission's Financing and Lending Companies Division (FLCD), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, SECOND PAY FINANCING, including its owners, operators, promotors, 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 transaction(s).
> **SO ORDERED.**"

Second Pay is domestic corporation organized and existing under Philippine laws, having been issued a Certificate of Incorporation with Company Registration Number CS201908038 on 14 October 2019. Second Pay is also a grantee of a license to engage in lending business, having secured from the Commission a Certificate of Authority No. 1217.

Its principal office address is located at 3F Abano Building, Blk 10, Lot 4 MRT Avenue, Central Signage Village, Taguig City.

On 07 June 2024, the FLCD issued the Assailed CDO, directing Second Pay to immediately cease and desist from engaging in, carrying out, or 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 Second Pay to comply with the following Memorandum Circulars (MCs) and Orders for purposes of preventing fraud, injury or harm to the public and financial consumers, to wit:

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

In its Motion to Lift, Second Pay maintained that the lifting of the Assailed CDO is warranted considering that based on its corporate records, it has actually complied with the requirements prescribed under (a) MC3, (b) MC 19, (c) the February Order, and (d) the July Order.[1] As regards MC 28 and the June Order, Second Pay submitted in evidence its updated GIS, and the Complaints and Handling Mechanism, respectively, in compliance thereto.[2] Movant agrees with the need to fully comply with the requirements prescribed under applicable laws, rules and regulations, and manifested that its failure to receive the relevant notices from the Commission, prevented it from timely informing the latter of its compliance.[3]

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[1] Motion to Lift dated 1 July 2024. Par. 4.
[2] *Ibid.* Pars. 4.2 and 4.4.
[3] *Ibid.* Par. 7.

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In its Comment on the Verified Motion for lifting of Cease and Desist Order *Ad Cautelam*,[4] the FLCD supported the position of Second Pay and prayed for the lifting of the Assailed CDO. While the FLCD raised a procedural issue relating to the failure of Second Pay to timely file its Motion to Lift, the FLCD nonetheless acknowledged and accepted the compliance made by Second Pay. According to the FLCD, Second Pay's compliance with the relevant regulations and orders have resulted in the cessation of the grave or irreparable injury or prejudice to financial consumers which the Assailed CDO sought to prevent. The FLCD however maintained that the lifting of the Assailed CDO should be without prejudice to Second Pay's possible administrative liability(ies).

The procedural issue raised by the FLCD relative to the belated filing of the Motion to Lift by Second Pay is not fatal to warrant the denial of the Motion to Lift. 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") requires a person subject of a CDO to file a request or motion to lift the same within five (5) days from receipt thereof, time and again, this Commission has 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.[5] 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 proceeding brought before the Commission and to carry out the objectives of the laws it is mandated to implement."

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[4] Dated 31 July 2024.

[5] "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. v Philippine Shoe Expo Marketing Corporation.*, G.R. No. 194307, November 20, 2013].

Anent the substantive issue presented in the Motion to Lift, this Commission agrees with both Second Pay and FLCD that the lifting of the Assailed CDO is warranted by the circumstances attendant in the evidence on record.

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. We find the foregoing reiterated in *SEC v CJH Development Corporation*[6] as follows:

> "In the present case, it is clear from the dispositive portion of the CDO that its issuance is based on the findings of the SEC that there exists *prima facie* evidence that respondents are engaged in the business of selling securities without the proper registration issued by the Commission. *Prima facie* means a fact presumed to be true unless disproved by some evidence to the contrary. Applied to the instant case, it means that the findings of the SEC, as contained in the assailed CDO, can still be refuted and disproved by contrary evidence. **This only means that the CDO is not final, is just provisional, and that the prohibition thereunder is merely temporary, subject to the determination of the parties' respective evidence in a subsequent hearing**. It is, therefore, clear that the subject CDO, being interlocutory, may not be the subject of an appeal." (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.*[7] 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)

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[6] G.R. No. 210316. November 28, 2016.
[7] G. R. No. 240835, 29 March 2023.

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. *Primanila Plans, Inc. v SEC*[8] emphasized that the purpose for the prompt issuance of a CDO is to protect investors (or consumers, as the case may be), to wit:

> "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 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."[9] (Emphasis supplied)

In the instant case, the Assailed CDO was issued on the basis of a finding that Second Pay allegedly failed to comply with the requirements

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[8] G.R. No. 193791, August 6, 2014.
[9] *SEC v CJH Development Corporation*. G.R. No. 210316. November 28, 2016.

of the relevant Memorandum Circulars and Orders of the FLCD. Considering that the compliance by Second Pay was already recognized and affirmed by the FLCD, We agree that the reasons/grounds for the issuance of the Assailed CDO has 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 Second Pay has already committed in relation to the relevant Memorandum Circulars and Orders.

WHEREFORE, premises considered, the *Verified Motion for Lifting of Cease and Desist Order Ad Cautelam* filed by Second Pay Financing, Inc. is hereby **GRANTED.** The **CEASE AND DESIST ORDER** dated 07 June 2024 issued against Second Pay Financing is hereby **LIFTED.**

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