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

IN THE MATTER OF:

FESL LENDING INVESTOR CORP. WITH ONLINE LENDING PLATFORMS OPERATING UNDER THE NAME OF START LOAN, PONDO LOAN, AND FIRST CASH

SEC En Banc Case No. 07-23-004
(FLCD CDO Case No. 29, Series of 2023)

For: Violation of the SEC Memorandum Circular No. 18, Series of 2019, Financial Products and Services Consumer Protection Act and its Implementing Rules and Regulations, Lending Company Regulation Act of 2007, and SEC Memorandum Circular No. 19, series of 2019

Promulgated: 21 November 2023

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RESOLUTION

For consideration of the Commission En Banc is the *"Supplemental Motion to Lift"* dated 19 July 2023 (the "Motion to Lift") filed on 25 July 2023 by FESL Lending Investor Corp.[1], which owns and operates the online lending platforms *Start Loan*, *Pondo Loan*, and *First Cash* ("FESL"), praying that the Cease and Desist Order issued by the Commission's Financing and Lending Companies Division (FLCD) on 26 June 2023 (the "Assailed CDO") be lifted, the dispositive portion of the of which reads, in part, thus:

> "WHEREFORE, **FESL Lending Investor Corp.** including its branches, extension, satellite offices, units, and online lending platforms, together with its owners, operators, promoters, representatives, agents AND ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND, IN THEIR BEHALF, are hereby ORDERED to immediately **CEASE AND DESIST** from engaging in, carrying out, any unfair debt collection practices in connection to any lending activity/transaction.
>
> **SO ORDERED."**

FESL is a domestic corporation organized and existing under the laws of the Philippines with Company Registration No. CS202003612. Its principal office is at the Penthouse 1, One Corporate Center, Meralco Ave. cor. Julia Vargas Ave. Ortigas Center, San Antonio, City of Pasig, NCR, Second District, Philippines. It owns the following online lending platforms (OLPs): (a) *Start Loan*; (b) *Pondo Loan*; and (c) *First Cash*.

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[1] FESL Lending is a lending company registered with the Commission on 30 April 2020, with SEC Registration No. CS202003612 and Certificate of Authority No. 3271.

On 26 June 2023, the FLCD issued the Assailed CDO[2] directing FESL to immediately cease and desist from engaging in, carrying out, any unfair debt collection practices in connection to any lending activity/transaction. The Assailed CDO was issued on the basis of a finding that FESL employed unfair/abusive debt collection and recovery practices, through its collecting agent, Realm Shifters, in violation of the Financial Products and Services Consumer Protection Act (FCPA) and SEC Memorandum Circular No. 18, series of 2019 (MC No. 18).[3]

On 04 July 2023, FESL's President Juliet Torres filed a *Letter*, praying for the lifting of the Assailed CDO on the ground that it was not FESL's office, company, nor its employees that were the subject of the search warrant -WSSECD No. 2023-028-PSG[4] (the "Warrant"), which the FLCD used as the basis of the CDO. FESL also averred that the fact that it maintains a customer service department which processes customers' concerns further supports the lifting of the Assailed CDO.

On 25 July 2023, FESL filed the instant *Motion to Lift* essentially maintaining that no actual proof was submitted which will show that it violated the FCPA and MC No. 18. Specifically, FESL alleged in support of its Motion to Lift, that: (a) no violation of unfair debt collection practices was consummated or proven to have occurred before, during, and after the implementation of the Warrant;[5] (b) the drafts and *templated messages* found during the implementation of the Warrant do not fall under the definition and purview of the FCPA and MC No. 18;[6] and (c) the criminal complaint[7] filed against the employees of FESL Lending was dismissed by the City Prosecutor of Pasig.

On 13 September 2023, the FLCD submitted its *Comment/ Opposition* ("Comment") praying for the denial of the Motion to Lift on the ground, among others, that: (a) it was filed beyond the reglementary period; (b) FESL was shown to have engaged Realm Shifters which employed abusive debt collection and recovery practices, and is this solidarily liable under the FCPA; (c) a large number of complaints were filed against FESL for violation of MC No. 18 and are currently pending with the Commission;[8] (d) MC No. 18 and Memorandum Circular No. 5

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[2] 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).
[3] Prohibition on Unfair Debt Collection Practices of Financing Companies (FC), and Lending Companies (LC).
[4] issued on 10 May 2023 by the Regional Trial Court of Pasig City, Branch 159; implemented on 16 May 2023, at about 10:30 am at Unit 2, 5th Floor, Betheland Building, 10 Mercedes Avenue, San Miguel, Pasig City by PNP-Anti-Cybercrime Group, Eastern District Anti-Cybercrime Team, Digital Forensic Unit, Eastern Police District, Special Weapons and Tactics (SWAT), PNP Intelligence Group, SEC-EIPD, and the National Privacy Commission.
[5] Paragraph 6 of the Motion to Lift.
[6] Paragraph 9 of the Motion to Lift.
[7] PNP Anti Cybercrime Group, et al. v. Margarita Bermillo, Joyce Anne Sanchez, et al.; For violation of Section 4(A)(5)(I)(II) or Misuse of Devices and Violation of Section 5(A) or Aiding and Abetting the Commission of Cybercrime under RA 10175 (Cybercrime Prevention Act of 2012) with NPS Docket No. XV-14-INQ-23E-00668

series of 2023 (SEC Rules and Regulations of the Financial Products and Services Consumer Act of 2022) do not require that the unfair debt collection practices be committed in the place of business of the company for it to be held liable; and (e) the dismissal of the criminal case filed against FESL's employees is not a bar to the prosecution of the administrative case against FESL.

On 27 September 2023[9] and 04 October 2023, the parties filed their respective *Position Papers* essentially reiterating their previous arguments. Additionally, FESL averred in its *Position Paper* that: (a) it was not apprised of any complaints filed with the Commission; (b) the templated messages found during the search do not appear to have been sent and whose purported victims have never been presented; and (c) the burden of proof of the alleged unfair debt collection practice remains with the FLCD.

On 09 October 2023, the FLCD filed a *Supplemental Position Paper* reiterating its prayer for the denial of the Motion to Lift on the ground that the managerial employees of Realm Shifters who admitted to have been engaged by FESL Lending as TPSP were caught "in flagrante delicto" during the implementation of the Warrant; and this rendered FESL Lending solidarily liable.[10]

We find the Motion to Lift to be bereft of merit and basis.

The Commission is mandated under Section 2 of R.A. No. 9474 or the *Lending Company Regulation Act*, to exercise regulatory and supervisory authority over financing companies (FCs) and lending companies (LCs) with the objective, among others, of effectively preventing and addressing practices/transactions that are prejudicial to public interest pursuant, to wit:

> "SEC 2. Declaration of Policy. - <u>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 additional source of credit, to prevent and mitigate, as far as practicable, practices prejudicial to public interest</u>; and to lay down the minimum requirements and standards under which they may be established and do business." (Emphasis supplied)

The Assailed CDO was issued on the basis of the finding by the FLCD that FESL Lending (a) employed abusive collection and debt recovery

[9] A Supplemental Position Paper dated 05 October 2023 was submitted by FLCD via electronic mail.
[10] Supplemental Position Paper dated 09 June 2023. See page 2

practices in violation of Sec. 1 (B) and (H) of MC 18 in relation to Sec. 4.4. (B) and (H), Rule 8 of the SEC FCPA-IIR, and (b) engaged the services of Realm Shifters which equally employed abusive collection and debt recovery practices, thus resulting in its being solidarily liable for such violation under Sec. 13 of the FCPA. In support thereof, the FCLD essentially took into consideration the implementation of the Warrant where the managers/employees of Realm Shifters were actually caught in *flagrante delicto* to be employing abusive collection and debt recovery practices as seen in the messages on their respective monitors/screens.

Sec. 1 (B) and (H) of MC 18 provides:

"SEC. 1. Unfair Collection Practices. – FCs, and TPSPs hired by them may resort to all reasonable and legally permissible means to collect amounts due them under the loan agreement, provided that, in the exercise of their rights and performance of their duties, they must observe good faith and reasonable conduct and refrain from engaging in unscrupulous and untoward acts. Without limiting the general application of the foregoing, the following conducts shall constitute unfair collection practices, which shall be subject to the penalties provided herein:

xxx xxx xxx

b. The use of threats to take any action that cannot legally be taken;

xxx xxx xxx

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;"

Sec. 13 of the FPSCPA on the other hand, provides:

"Section 13. *Liability of a Financial Service Provider on the Acts or Omission of its Authorized Representatives.*- The financial service provider shall be responsible for the acts or omissions of its directors, trustees, officers, employees, or agents in marketing and transacting with financial consumers for its financial products or services. The financial service provider shall be solidarily liable with accredited third-party service providers for their acts or omissions in marketing `and transacting, which may include, but not limited to, debt collection, with financial consumers for its financial products and services."

In implementing the *Lending Company Regulation Act,* MC No. 18 was issued to effectively address and put a stop to the abusive, unethical, and unfair collection practices of lending and/or financing companies which have become notoriously pervasive, including and especially those who engage the services of third-party service providers who are known to be equally employing unfair collection practices to avoid liability for client harassment.[11] The issuance and implementation of MC 18 was made pursuant to a valid exercise of the regulatory and supervisory power of the Commission over lending and financing companies, to carry out its mandate, among others, of placing their operations on a sound, competitive, stable and efficient basis, and in preventing acts or practices prejudicial to the public interest.[12]

There is nothing in MC 18 which prevents LCs or FCs from enforcing, even by implication, a contractual obligation against its borrowers for debts lawfully made. MC 18 recognizes and implements the rule established both in law and jurisprudence[13] that a loan obligation should be paid. This is consistent with the State's policy which recognizes the critical role of lending and financing companies in providing medium and long-term credit for investments, and as an additional source of credit.[14] This notwithstanding, it should be emphasized that MC 18 is in place to ensure that the collection of loans by lending and/or financing companies is made within the bounds of law, and does not violate the privacy, dignity, and well-being of borrowers.

In the instant case, the evidence presented by FLCD consisting of numerous complaints, and the screenshots of the messages captured in the mobile phones which the complainants provided, shows that agents/employees of First Cash harassed, insulted, violated the privacy of, and threatened its borrowers.[15] These screenshots confirm, among others, that FESL's OLP First Cash was the entity complained of as employing and/or causing the employment of abusive collection and debt recovery practices, in violation of the FCPA and MC No. 18, to wit:

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[11] See First and Second WHEREAS Clauses of the MC No. 18
[12] See Section 2 of Republic Act No. 8556, otherwise known as the "Financing Company Act of 1998" and Section 2 of Republic Act No. 9474, otherwise known as the "Lending Company Regulation Act of 2007"
[13] "Jurisprudence tells us that one who pleads payment has the burden of proving it; the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. **Indeed, once the existence of an indebtedness is duly established by evidence, the burden of showing with legal certainty that the obligation has been discharged by payment rests on the debtor.**" (*Bognot vs RRI Lending Corporation*, G.R. No. 180144, September 24, 2014)
[14] Ibid
[15] Comment/Opposition. See. Annex "A" to "A-6"

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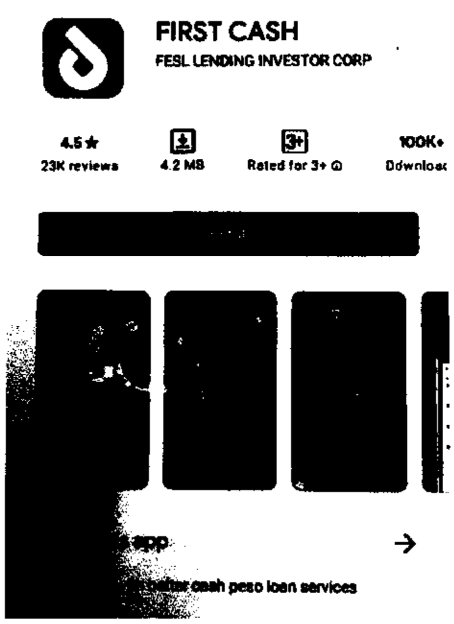

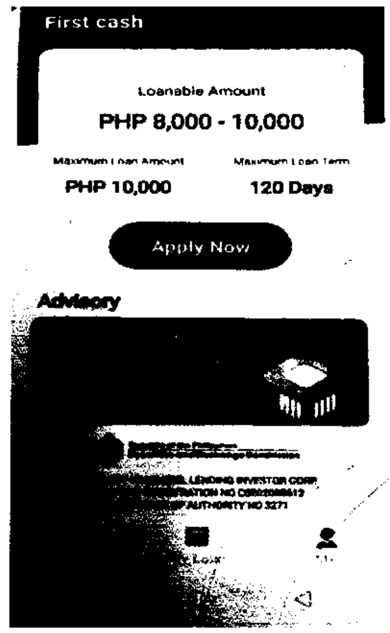

These complaints and their attachments constitute substantial evidence which jurisprudence considers sufficient to support the conclusion/finding made by the FLCD.[16] The requirement of substantial evidence is satisfied where there is reasonable ground to believe that the respondent is guilty of the act or omission complained of, even if the evidence might not be overwhelming.[17] Except for the bare allegations/denials of FESL Lending, which under existing jurisprudence is not considered evidence,[18] no controverting evidence was presented which trounced/negated the fact of violation by FESL Lending of FCPA and MC 18 established by the FLCD.

Relative thereto, We are cognizant of the admission made by the team leaders and managers of Realm Shifters in their Joint Counter-Affidavit that their company was engaged by FESL Lending as its third-party collection agent.[19] This, together with the evidence submitted by the FLCD showing that Realm Shifters was actually employing abusive collection and debt recovery practices, constitutes substantial evidence of violation of the FCPA and MC. 18. On this basis, we agree with the FLCD, and so hold that FESL Lending is solidarily liable with Realm Shifters under Sec. 13 of the FCPA and Rule. 13 of MC No. 5 which provides, thus:

> "A financial service provider shall be responsible for the acts or omissions of its directors, trustees, officers, employees, or agents in marketing financial products or services and in

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[16] "The quantum of proof in administrative proceedings necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The burden to establish the charges rests upon the complainant. The case should be dismissed for lack of merit if the complainant fails to show in a satisfactory manner the facts upon which his accusations are based." (NBI vs Najera. G.R. No. 237522. June 30, 2020)
[17] Diaz v. Ombudsman, G.R. No. 203217
[18] "It is axiomatic that under the Rules on Evidence a party who alleges a fact has the burden of proving it. A mere allegation is not evidence, and he who alleges has the burden of proving his allegation with the requisite quantum of evidence." (Spouses Ramos vs Obispo. G.R. No. 193804. February 27, 2013)
[19] *Supplemental Position Paper* dated 05 October 2023. Annex "B" (Joint Counter Affidavit. Par. 21)

> transacting with a financial consumer. **The financial service provider shall be solidarily liable with its authorized third-party service providers for acts or omissions in the marketing of products or services and/or in transacting with financial consumers, which may include, but is not limited to, debt collection.**"[20] (Emphasis supplied)

> "*Outsourcing of Collection.* – FCs and LCs may outsource the conduct of collection to a TPSP which shall be regarded as **agent** of the FCs and LCs. The ultimate responsibility for collection practices and compliance with this Circular remain with the FCs and LCs."[21]

Finally, We do not agree with the contention of FESL Lending that the Assailed CDO should be lifted on the alleged ground that the criminal complaint filed with the City Prosecutor of Pasig was dismissed in the Resolution dated 3 July 2023.[22] The case that was filed with the City Prosecutor of Pasig was a criminal complaint for violation of the Cybercrime Prevention Act of 2012. Any determination made therein is totally irrelevant and has nothing to do with the matter/issue presented in the instant case which involves the violation by FESL Lending of FCPA, its IRR, and MC No. 18, all of which are completely different pieces of legislation.

It is a fundamental principle in our jurisdiction that administrative cases are independent from criminal actions for the same act or omission.[23] Given the differences in the quantum of evidence required, the procedure observed, and the sanctions imposed, as well as in the objective of the two proceedings, the findings and conclusions in one should not necessarily be binding on the other. Thus, as a rule, exoneration in the administrative case is not a bar to a criminal prosecution for the same or similar acts which were the subject of the administrative complaint or *vice versa*.[24]

The foregoing principle was in fact recognized and applied in the Resolution[25] of the City Prosecutor of Pasig City when it ruled that the determination in the criminal complaint is without prejudice to the administrative action where FESL may be held liable, to wit:

> "Since U-Peso.Ph Lending Corp. and **FESL Lending Investor** Corp. are registered lending companies with the SEC, at best,

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[20] Section. 1, FCPA
[21] Section 3, MC. No. 18
[22] *Supplemental Motion to Lift.* Par. 10
[23] People v. Toledano, G.R. No. 110220, [May 18, 2000], 387 PHIL 957-965
[24] Jaca v. People, G.R. Nos. 166967, 166974 & 167167, [January 28, 2013], 702 PHIL 210-262
[25] See Annex "A" of the Motion to Lift.

they **could be held liable for administrative sanctions for illegal and harassing debt collection practices under Section 12(2)(d), in relation to Section 9(f) of the Lending Company Regulation Act.**" (emphasis supplied)

On account thereof, this Commission finds no compelling reason to lift the Assailed CDO. On the contrary, after a thorough and scrupulous review of the evidence on record, this Commission is convinced that the Assailed CDO should be made permanent to ensure that the consuming public is protected in a manner that is envisioned under the FCPA and MC 18.

WHEREFORE, premises considered, the *Supplemental Motion to Lift* filed by Respondent FESL Lending Investor Corp. is hereby **DENIED** for lack of merit. The **CEASE AND DESIST ORDER** dated 26 June 2023 is hereby made **PERMANENT**.

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

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

***JAVEY PAUL D. FRANCISCO**
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

***MCJILL BRYANT T. FERNANDEZ**
Commissioner

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