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

In the matter of:
PERA4U.

SEC CDO Case No. 09-19-054

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.

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RESOLUTION

For consideration of the Commission En Banc is a Motion to Lift Cease and Desist Order[1] filed by Movant U-Peso.Ph Lending Corp. praying that the Cease and Desist Order[2] issued by the Securities and Exchange Commission against its online lending application Pera4u be lifted.

THE PARTIES

Movant Enforcement and Investor Protection Department ("EIPD") is the Department tasked to investigate, *motu propio* or upon complaint or referral, violations of the law and the rules and regulations of the Commission and to, among others, initiate the issuance of a Cease and Desist Order ("CDO") by the Commission. Pursuant to Section 4-1, Rule IV of the 2016 Rules of Procedure of the Securities and Exchange Commission ("SEC"), an action for the issuance of a CDO or injunction may be commenced upon the filing of an application with the Commission *En Banc*, through the Office of the General Counsel ("OGC"), by any operating department, either *motu propio* or upon a verified complaint by the public, after conducting a proper investigation or verification, if there is a finding that the grounds for the issuance of the CDO or injunction are present. Likewise, under Section 9(f) of Republic Act No. 9474, otherwise known as the Lending Company Regulation Act of 2007, the SEC is authorized to impose such administrative sanctions including suspension or revocation of the lending company's authority to operate and the imposition of fines for violations of the Act and regulations issued by the SEC in pursuance thereto. Moreover, Section 179(f) of the Revised Corporation Code of the Philippines (RCC) grants the

[1] Dated 20 September 2019
[2] Dated 12 September 2019

Commission among others, the power to issue CDOs ex parte to prevent imminent fraud or injury to the public and to enjoin an act or practice which is fraudulent or can reasonably be expected to cause significant, imminent, and irreparable danger or injury to public safety or welfare.

Movant U-Peso.Ph Lending Corp., on the other hand, is a corporation duly registered under the laws of the Republic of the Philippines with SEC Registration No. CS201814908 and authorized by the Commission to engage in lending activities on the basis of the Certificate of Authority No. 2718 issued on 24 July 2018 in its favor.[3]

ANTECEDENT FACTS

On 13 August 2019, EIPD received a Memorandum dated 07 August 2019 from the Corporate Governance and Finance Department ("CGFD") endorsing for its appropriate action a list of Online Lending Applications which have not been issued Certificates of Authority to Operate as Lending Companies or Financing Companies.[4] Included in the Memorandum are several complaints received by the CGFD against entities/online applications/platforms. Most of these complaints alleged that Online Lending Operators, as defined in the Memorandum, impose high interest rates, unilaterally implement onerous and unreasonable terms and conditions, make misrepresentations as to non-collections of charges and fees, and violate the right to privacy of their debtors and complainants.[5]

Acting on the said Memorandum, EIPD conducted its investigation where it was able to confirm the existence of the websites, Facebook Accounts and/or Google Applications of the subject Online Lending Operators.

The lending businesses and related activities of the Online Lending Operators are being advertised and promoted to entice people to avail of the loans they are offering. Most of these websites, Facebook Accounts and/or Google Applications, however, do not state the name of the corporations or entities who owns and/or operates them.[6] Moreover, the pieces of evidence and information gathered by the EIPD also disclosed that before a person can apply for a loan from the Online Lending Operators, the online lending applications must be downloaded and installed in the applicant's mobile phone. By downloading and installing the online lending application, the online lending operator gains access to the applicant's personal information contained in the mobile phone which also includes the contact list, Facebook

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[3] Annex "A" of U-Peso's Motion to Lift Cease and Desist Order dated 19 September 2019
[4] Annex "A" of the Motion for Issuance of Cease and Desist Order dated 11 September 2019
[5] Annex "C" of the Motion for Issuance of Cease and Desist Order dated 11 September 2019
[6] Annex "B" of the Motion for Issuance of Cease and Desist Order dated 11 September 2019

accounts, and email addresses of all individuals stored therein. This personal information is being utilized by the online lending operators to exact prompt and full payments from its debtors by sending a text blast to the persons contained in the latter's mobile phones informing the same that the person concerned obtained a loan from them but refuses to pay the amount due. Likewise, the Online Lending Operators threatens its debtors that cases will be filed before the proper barangay and/or the matter will be posted in the social media if payments of the amount due is not made.

Due to these abusive collection practices, debtors/complainants alleged to have suffered depression, sleepless nights, embarrassment, humiliation, and adversely affected their health and well-being.

In view of the foregoing, a CDO was issued by the Commission on 12 September 2019, enjoining the operators and owners of the subject online lending applications, their agents, representatives, promoters, and hosting sites from operating, engaging in, carrying out and/or promoting its lending/financing business.

U-Peso thereafter filed its Motion to Lift Cease and Desist Order dated 19 September 2019, through its counsel, on 23 September 2019. In its motion, U-Peso admitted that, as part of its operation, it conducts its operation and offers its services through its several online mobile applications, one of which is "Pera4u", which is accessible to its clients/borrowers by downloading the application.

U-Peso argued that the Commission committed reversible error when it held that "Pera4u" violates Republic Act No. 9474. U-Peso is of the position that as a grantee of a Certificate of Authority, it is, as the operator of Pera4u authorized to operate as a lending company in accordance with the law, through the mobile application which it developed and used.

U-Peso further argued that its failure to indicate the name of the mobile application "Pera4u", which it developed and used, is not a ground for the issuance of the CDO because it cannot be denied that "Pera4u" is owned, operated and managed by a company which has a Certificate of Authority. U-Peso should thus be considered as acting in good faith and has no intention not to disclose its corporate name in its mobile application.

U-Peso further argued that the Commission's ruling for the issuance of the Cease and Desist Order, which was based on Section 2 of Republic Act No. 9474 is erroneous because Declaration of Policies are merely aids or guides in the interpretation of what the law wants to achieve. It cannot be a basis for its cause of action.

On 24 September 2019, U-Peso filed a Manifestation dated 23 September 2019 praying that the Commission admits the same together with the attached Motion which contained proof of service.

On the same day, an Order was issued by the Commission directing U-Peso to Appear before the Office of the General Counsel ("OGC") for the hearing on the Motion to Lift CDO dated 19 September 2019 filed by it.

On 03 October 2019, a clarificatory hearing was conducted before the OGC. Both parties appeared through their respective counsels. On 07 October 2019, an Order was issued in relation to the 03 October 2019 hearing directing U-Peso to file its position paper within a period of ten (10) days from the date of hearing and to furnish EIPD with a copy of the same. Likewise, EIPD was directed to file its comment/opposition to U-Peso's position paper within the same period from receipt thereof. Both parties were directed to attach all the necessary documents to substantiate their respective claims.

On 14 October 2019, U-Peso filed its position paper dated 11 October 2019 where it reiterated its allegations in its Motion to Lift dated 19 September 2019. U-Peso further argued that it did not register its mobile application as a trade name because it is not required to be registered to be protected under Section 165 of Republic Act No. 8293 or the Intellectual Property of the Philippines. U-Peso also manifested that it is now in the process of complying with SEC Memorandum Circular No. 19.

EIPD, in its Comment/Opposition to the Motion to Lift Cease and Desist Order dated 24 October 2019 argued that the online lending application being used by a licensed lending company should be registered with the Commission as part of its company name if it intends to operate as a lending company using such lending application as it would be doing business under said name or style. The foregoing will enable the SEC, as a regulator, to know the operator(s) of such online lending application as it practically constitutes a virtual office of the lending company. Consistent with the policy on full disclosure, and the principle of transparency, licensed lending company should properly identify itself as the operator of a particular online lending application in order for the public to know the entity they are dealing with and for the SEC to properly monitor its operations for regulatory purposes and to ensure that the public is not defrauded.

EIPD also manifested that the continued practice of a lending company in operating an online lending application whose ownership cannot be determined or identified would likely cause significant injury to the public in a way that such lending application(s) could be used to commit violations of the Truth in Lending Act, Data Privacy Act, Unfair Collection Practices Rules and Regulations, and other relevant laws, rules and regulations.

DISCUSSION

We find the Motion devoid of any merit.

It bears emphasis that one of the grounds for the issuance of the Cease and Desist Order dated 12 September 2019 are the numerous complaints received by the CGFD and EIPD from the public alleging that Online Lending Operators, including Pera4u committed unreasonable and abusive lending and collection practices, imposed and charged high interest rates, unilaterally implemented onerous and irrational terms and conditions, misrepresented itself as to the non-collection of loan charges and fees, and the apparent violation of the right to privacy which subjected their debtors and/or complainants to public humiliation and ridicule.

On this note, Section 1 of SEC Memorandum Circular No. 18, Series of 2019, otherwise known as the Prohibition on Unfair Debt Collection Practices of Financing Companies (FC) and Lending Companies (LC), provides:

> "**SEC. 1. Unfair Collection Practices.** – FCs, LCs, 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 conduct shall constitute unfair collection practices, which shall be subject to the penalties provided herein:
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> a. **The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person**;
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> b. **The use of threats to take any action that cannot legally be taken**;
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> 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 refused to pay debts**, except as may be allowed under Section 2 hereof;

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;

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**;

g. **Making contact at unreasonable/inconvenient times or hours, which shall be defined a contact before 6:00 A.M or after 10:00 P.M.**, 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 practices**." (Emphasis supplied)

Section 2 of the same Memorandum Circular, provides:

"**SEC. 2. Confidentiality of Information.** – For purposes of collection, **FCs and LCs shall keep strictly confidential that data of the borrower**,"

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(Emphasis supplied)

A careful review of the evidence submitted by U-Peso reveals that it failed to refute allegations that it has not committed any unfair debt collection practices. U-Peso relied solely on the argument that it is an entity duly registered with, and authorized by the Commission to operate as a lending company, and for which reason, it can validly use its mobile lending application "Pera4u" in providing loan services to the public. Nothing in its position would evidently show that U-Peso disprove or deny the commission of unfair debt collection practices under the above-quoted provisions.

U-Peso's reliance on its Certificate of Authority as containing a grant of authority to operate and maintain an unregistered online lending application is misplaced and devoid of legal basis.

Section 1 of SEC Memorandum Circular No. 19, Series of 2019, otherwise known as the Disclosure Requirements on Advertisements of Financing Companies and Lending Companies and Reporting of Online Lending Platforms, provides:

> "**SEC. 1. Required Disclosures.** – FCs and LCs shall fully disclose in their Advertisements and Online Lending Platforms the following:
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> 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
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> B. **An advisory for their prospective borrowers to study the terms and conditions in the Disclosure Statement before proceeding with the loan transaction**." (Emphasis supplied)

U-Peso's refusal and/or failure to comply with SEC Memorandum Circular No. 19, Series of 2019 constitutes misrepresentation as it effectively deprived its borrowers important information relating to its Corporate Name, SEC Registration and Certificate of Authority to Operate Numbers in its advertisements and Online Lending Platforms.

Moreover, nothing in the records of this case show that U-Peso's borrowers were informed of the terms and conditions and the disclosure or privacy statement before proceeding with the loan transaction. Rule 6(b) of the Implementing Rules and Regulations of Republic Act No. 9474, provides:

> "**Rule 6.** ***Amount and Charges on Loans***
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> **xxx xxx xxx**
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> (b) In accordance with the Truth in Lending Act and prior to the consummation of the transaction, **a lending company**

shall furnish each debtor a disclosure statement, setting forth to the extent applicable, the following information:

i. The principal amount of loan;
ii. Rate of interest of the loan;
iii. Service or processing fee, if any;
iv. Amortization schedule;
v. Any penalty charge for late amortization payment;
vi. Collection fee, if any;
vii. Notarial fee;
viii. All other fees in connection with the loan transaction;
ix. Description of the collection and lien enforcement procedures; and
x. Method of calculating the total amount of obligation in case of default." (Emphasis supplied)

The foregoing shows that U-Peso deliberately violated both the SEC Memorandum Circular No. 19, Series of 2019 and the Lending Company Regulation Act of 2007,[7] its Implementing Rules and Regulations, specifically in the context of its position that its Certificate of Authority carried with it a grant of authority to establish and operate an online lending application.

Thus, when U-Peso established and operated Pera4u online application without prior approval of the Commission, it also committed serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public.[8] Such misrepresentation is so grave that it warrants the suspension or revocation of the Certificate of Registration of a corporation.

Section 3 of the same SEC Memorandum Circular, provides:

"**SEC. 3. Report to the Commission**. – FCs and LCs shall submit to the Corporate Governance and Finance Department (CGFD) of the Commission an Affidavit of Compliance (SEC Form 1 – Existing Online Lending Platforms) containing a report of all their existing Online Lending Platforms, within **ten (10) days** from the effectivity of this Circular. Said report shall include, but shall not be limited to the following information:

1. Name of Online Lending Platform/s;
2. Proof of compliance with Section 2 hereof;
3. Images of the Online Lending Platform/s as they appear to the public; and

[7] Republic Act No. 9474
[8] Sec. 6(i)[2] of Presidential Decree No. 902-A

4. Illustrations of the Online Lending Platforms showing how the required Disclosure and Advisory are displayed."

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The records of the Commission reveal that to date, U-Peso has not yet complied with the provisions of Memorandum Circular No. 19, Series of 2019. On the basis of the foregoing, U-Peso's argument that its authority to operate and maintain "Pera4u" emanates from its Certificate of Authority and should be sustained, must fail.

Finally, U-Peso's position that the Commission erroneously based in the issuance of the CDO on Section 2 of Lending Company Regulation Act of 2007 does not persuade nor convince this Commission. Noteworthy is the fact that the Lending Company Regulation Act of 2007, was enacted to prevent and mitigate, as far as practicable, practices of lending companies that are prejudicial to public interest not just as a matter of policy but as a measure to deter informal lenders and those that take advantage the needs and sorry state of those who avail of their services.

Being the administrative and regulatory agency authorized and empowered to implement the provisions of, and to impose administrative sanctions for violations of Lending Company Regulation Act of 2007, its Implementing Rules and Regulations, SEC Memorandum Circulars, and other special laws, the Commission is authorized to issue Cease and Desist Orders to ensure that acts and/or activities violative of the said laws are immediately stopped.

In fact, the Commission, by reason of the numerous complaints it has received relating to the abusive means of collecting the amount due from their debtors has issued a number of CDOs to put an end to the unfair debt collection practices which are expressly prohibited under SEC Memorandum Circular No. 18, Series of 2019.

Section 156, paragraph 1 of the Revised Corporation Code,[9] provides:

> **"SEC. 156. *Cease and Desist Orders.*** – Whenever the Commission **has reasonable basis to believe that a person has violated, or is about to violate, this Code, a rule, regulation, or order of the Commission, it may direct such person to desist from committing the act constituting the violation**."

[9] Republic Act No. 11232

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(Emphasis supplied)

WHEREFORE, premises considered, the ***Motion to Lift Cease and Desist Order*** filed by U-Peso.Ph Lending Corp. is hereby **DENIED** for lack of merit. The CEASE AND DESIST ORDER issued against Pera4u is hereby **MADE PERMANENT**.

Let a copy of this Resolution be posted in the Commission's website; and published in a national newspaper of general circulation and furnished to all operating departments and offices of the Commission for their information and appropriate action.

Further, the CGFD is hereby directed to investigate the unfair debt collection practice of U-Peso and if necessary impose additional penalties, as applicable.

SO ORDERED.
Pasay City, 29 October 2019.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO*
Commissioner

*On Official Business