Republic of the Philippines
Department of Finance
Securities and Exchange Commission

In the Matter of:

XINAGASIA MARKETING CORP.

SEC-CDO CASE NO. 04-14-170
FOR: Issuance of Permanent Cease and Desist Order

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,

Movant.

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RESOLUTION

Pending consideration before the Commission *En Banc* is a *Motion for Issuance Permanent Cease and Desist Order* (Motion for Issuance of Permanent CDO) filed on 9 July 2014 by the Enforcement and Investor Protection Department (EIPD) of this Commission against, among others, XINAGASIA MARKETING CORPORATION (Xinagasia Marketing) praying that the Cease and Desist Order (CDO) issued on 22 May 2014 be declared permanent.[1]

To recall, the Commission *En Banc* issued the CDO on 22 May 2014, against, among others, Xinagasia Marketing finding the latter to be acting as a broker/dealer with regard to its public offering of bonds denominated as "Corporate Bond Notes",[2] through the latter's advertising on its website. Such offering of securities is in violation of Section 28 of the Securities Regulation Code (SRC)[3] since Xinagasia Marketing is not registered with the Commission as a broker/dealer. In which case, the CDO was issued since such offering of securities operates as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public, pursuant to Section 64.1 of the SRC.[4] Thus, the CDO directed, among others, Xinagasia Marketing to immediately cease and desist

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[1] Motion for Issuance of Permanent CDO dated 7 July 2014.

[2] Supposedly issued by Xinagasia Lending & Investors Corp. and Xinagasia Invest & Trust Bank Corp.

[3] Section 28 of the SRC, known as Republic Act No. 8799 (2000), provides that no person shall engage in the business of buying or selling securities in the Philippine as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.

[4] Section 64.1., SRC. The Commission, after proper investigation or verification, *motu propio*, or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

from further acting as a broker/dealer, and offering bonds denominated as "Corporate Bond Notes".[5]

Further, the CDO directed the EIPD to: (a) serve this Order on the President, General Manager, Corporate Secretary, Treasurer or In-House Counsel of Xinagasia Marketing; (b) post copies of the Order at the entrance of the main office and/or branches, if any, of Xinagasia Marketing.[6]

On 9 July 2014, the EIPD filed this instant Motion for Issuance of Permanent CDO stating that it posted the CDO at the main door of the principal office of Xinagasia Marketing. Further, the EIPD stated that it proceeded to serve the CDO on Macaria Leonardo, who is the Corporate Secretary of Xinagasia Marketing, at her residential address, and was received by a person residing therein.[7]

However, to date, the parties subject to the CDO have not filed any motion or request to lift the CDO. Thus, the EIPD prays that an order be issued making the CDO permanent.[8]

Section 64.3 of the SRC provides the following:

> "64.3. **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.** Said request shall be set for hearing by the Commission not later than fifteen (15) days from its filing and the resolution thereof shall be made not later than ten (10) days from the termination of the hearing. If the Commission fails to resolve the request within the time herein prescribed, the cease and desist order shall automatically be lifted."

In the case at bar, to date, the parties subject to the CDO failed to file a motion or formal request to lift the said CDO, pursuant to such order and Section 64.3 of the SRC. Thus, the Commission is constrained to render the CDO issued on 22 May 2014 as PERMANENT.

WHEREFORE, premises considered, the *Motion for Issuance Permanent Cease and Desist Order* is hereby **GRANTED** and the CEASE AND DESIST ORDER issued on 22 May 2014 against XINAGASIA MARKETING CORPORATION, its officers, directors, agents, representatives, conduits, assigns, and any and all persons claiming and acting for and in behalf and under their authority, is hereby **MADE PERMANENT**.

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[5] CDO, p. 5.
[6] *Id*, p. 6.
[7] Motion for Issuance of Permanent CDO, par. 3.
[8] *Id.*, p. 4.

The Enforcement and Investor Protection Department is hereby **DIRECTED** to: (a) serve this *Resolution* to the President, General Manager, Corporate Secretary, Treasurer, Incorporator/Director or In-House Counsel of XINAGASIA MARKETING CORPORATION; and (b) post copies of the *Resolution* at the entrance of the main office and/or branches, if any, of XINAGASIA MARKETING CORPORATION.

Let a copy of this Order be also posted in the Commission's website; published in a national newspaper of general circulation and furnished to the other Operating Departments of the Commission for their information and appropriate action.

The **Enforcement and Investor Protection Department of the Commission** is hereby **FURTHER DIRECTED** to submit a FORMAL COMPLIANCE REPORT, by way of a pleading, to the Commission *En Banc* WITHIN FIVE (5) DAYS from receipt of this *Order.*

SO ORDERED.

Pasay City; 6 September 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner