REPUBLIC OF THE PHILIPPINES
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills
Mandaluyong City, Metro Manila

In the Matter of:

XINAGASIA MARKETING CORPORATION

SEC Administrative Case No. 04-14-170
For: Revocation of Corporate Registration with Issuance of a Cease and Desist Order

ENFORCEMENT & INVESTOR PROTECTION DEPARTMENT,
Petitioner/Movant.
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ORDER

For the consideration of the Commission *En Banc* is the *Motion for Issuance of Cease and Desist Order* (Motion for CDO) in the Petition for Revocation of Corporate Registration filed on 28 April 2014 by petitioner/movant Enforcement and Investor Protection Department (EIPD) praying for the issuance of a Cease and Desist Order against XINAGASIA MARKETING CORPORATION (Xinagasia Marketing), their respective officers, directors, representatives, salesmen, agents and any and all persons claiming and acting for and in their behalf.

Xinagasia Marketing is a corporation duly registered with the Commission on 28 December 2012 with SEC Registration No. CS201223348.[1] Its principal office address is located at Unit 603-3D Eiffel Building, Chateau Elysee, Doña Soledad Avenue, Better Living, Parañaque City.[2] The primary purpose of Xinagasia Marketing is to engage in the business of trading and marketing goods, manufactured or unmanufactured commodities, food products, and all kinds of merchandise which are lawful object of commerce on wholesale basis, and engage in or undertake the general management or promotion of product launches, events, exhibits, merchandising, marketing, and promotions of any enterprise similar in nature with the purposes for which this corporation was formed. However, its primary purpose and Certificate of Incorporation prohibited it from acting as broker or dealer in securities, government securities eligible dealer (GSED), investment adviser of an investment company, close-end or open-end investment company, investment house, transfer, commodity/financial futures exchange/broker/merchant, financing company.[3] The officers of Xinagasia Marketing are the following: Joselito Del Rosario (Chairman/President), Macaria Leonardo

[1] Petition, Annex "A" (Certificate of Registration of Xinagasia Marketing).
[2] *Id.*, Annex "B" (Third Article of the Articles of Incorporation of Xinagasia Marketing).
[3] *Id.*, Annex "B" (Second Article of the Articles of Incorporation of Xinagasia Marketing).

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(Treasurer/Secretary) and Martin G. Junio (Assistant Secretary).[4]

According to the EIPD, it received an email from Benjamin Wohlgemuth which alleges that Xinagasia Marketing is one of the corporations being used to solicit investments from the public.[5] Mr. Wohlgemuth attached in the said email a printed description of Xinagasia Marketing which offers investment vehicles for its clients or customers, such as company shares and corporate bonds for investment and offers short, medium and long term investment opportunities, at different rates, with payouts each month/quarter.[6] The EIPD went online and into the website of Xinagasia Marketing to investigate. The EIPD found an advertisement in said website wherein investment opportunities were being offered to the public, such as bonds described as "Cooperate Bond Notes" allegedly issued by Xinagasia Lending & Investors Corp. and Xinagasia Invest & Trust Bank Corp,[7] which are not registered as a corporation or partnership with the Commission.[8]

On 9 January 2014, investigators of the EIPD proceeded to the office of the building administrator of Effel Building, Chateau Elysee, where the principal office of Xinagasia Marketing is located. The investigators inquired from the building administrator whether or not Xinagasia Marketing is holding office at the said address. The building administrator stated that the Effel Building, Chateau Elysee, is purely residential and that the establishment of offices in the premises is prohibited. Moreover, the investigators were also informed that there was nobody inside the unit and there were no signs posted outside the unit to indicate that it is being used as an office by Xinagasia Marketing. Thereafter, the investigators served a letter on the building administrator requesting for a certification as to whether Xinagasia Marketing is an occupant or tenant of the building, among others.[9]

On January 13, 2014, the EIPD issued a *Subpoena DucesTecum Ad Testificandum* to the directors and officers of Xinagasia Marketing directing them to appear before the Commission on 21 January 2014 to testify on matters regarding its operation and business activities. However, on the date of the scheduled conference, nobody appeared.[10]

On January 23, 2014, the EIPD received a Certificate of Residency from Chateau Elysee Condominium Association certifying that Xinagasia Marketing's Macaria

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[4] Petition, Annex "C" (General Information Sheet for the year 2013).
[5] *Id.*, par. 8.
[6] *Id.*.
[7] *Id.*, par. 9 and Annex "D" to "D-34" (Website of Xinagasia Marketing).
[8] *Id.*, par. 10 and Annex "E" (Certificate of Non-Registration of Company issued by the Company Registration and Monitoring Department on 14 February 2014).
[9] *Id.*, par. 11 to 13, and Annex "F" (Letter of EIPD dated 9 January 2014).
[10] *Id.*, pars. 14 and 16.

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Leonardo is a resident of a unit in the Chateau Elysee Condominium.[11]

On 10 February 2014, the EIPD received a Letter of Ms. Leonardo alleging that appearance on the scheduled 21 January 2014 conference was not possible since the subpoena was received only on 23 January 2014.[12]

Another *Subpoena DucesTecum Ad Testificandum* was issued requiring the directors and officers of Xinagasia Marketing to appear before the Commission on 21 February 2014 to testify on matters regarding its operation and business activities.[13] Again, on the date of the scheduled conference, nobody appeared.[14]

On 5 February 2014, the Business Permits & Licensing Office of the City of Parañaque (BPLO-Paranaque) issued a Certification stating that Xinagasia Marketing "HAS NO BUSINESS RECORD ON FILE" per verification made with available records.[15]

Hence, this instant Motion for CDO.

The EIPD argues that Xinagasia Marketing has acted as a broker/dealer for Xinagasia Lending & Investors Corp. and Xinagasia Invest & Trust Bank Corp. by offering the latter's "Cooperate Bond Notes" in violation of Section 28 of the Securities Regulation Code (SRC). Moreover, the EIPD argues that such acts operate as a fraud on investors and will cause grave or irreparable injury or damage to the investing public. Thus, the EIPD prays that the Commission issue a CDO directing Xinagasia Marketing, their respective officers, directors, representatives, salesmen, agents and any and all persons claiming and acting for and in their behalf from engaging in activities of offering for sale securities in the form of bonds described as "Cooperate Bond Notes".

Section 3.1 of the SRC includes bonds within the definition of "securities", to wit:

"**SEC. 3.***Definition of Terms.* –

3.1. ***'Securities'*** are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character. It **includes**:

a) Shares of stock, **bonds**, debentures, notes, evidences of indebtedness, asset-backed securities; x xx" (Emphasis ours)

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[11] *Petition*, par. 17 and Annex "H" (Certificate of Residency issued on 20 January 2014).
[12] *Id.*, par. 18 and Annex "I" (Letter of Macaria J. Leonardo dated 29 January 2014).
[13] *Id.*, par. 19 and Annex "K" (Subpoena DucesTecum Ad Testificandum).
[14] *Id.*, par. 20.
[15] *Id.*, par. 21 and Annex "L" (Certificate of BPLO-Paranque).

In relation thereto, SRC Rule 3(1)(N) of the Amended Implementing Rules and Regulations of the SRC (IRR) provides for the definition of public offering and when a solicitation or presentation for sale of securities is presumed to be a public offering, as follows:

> "N. Public Offering means a random or indiscriminate offering of securities in general to anyone who will buy, whether solicited or unsolicited. **<u>Any solicitation or presentation of securities for sale through any of the following modes shall be presumed to be a public offering</u>**:
>
> xx x
>
> iii. **<u>Advertisement</u>** or announcement in any radio or television, or **<u>in any online</u>** or email **<u>system</u>**; x xx"
> (Emphasis supplied)

Section 28.1 of the SRC requires the registration of persons engaged in the selling of securities, to wit:

> "**SEC. 28.** *Registration of Brokers, Dealers, Salesmen and Associated Persons.*
> 28.1.No person shall engage in the business of buying or selling **securities** in the Philippines 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." (Emphasis ours)

Here, Xinagasia Marketing has acted as a broker/dealer with regard to its public offering of bonds denominated as "Corporate Bond Notes" issued by Xinagasia Lending & Investors Corp. and Xinagasia Invest & Trust Bank Corp. through the former's advertising in an online system such as its website.

When prospective online investors enter the website of Xinagasia Marketing, they will notice the following statements in the "Home" and "Products" pages:

- "***XINAGASIA MARKETING CORP.*** *is your alternative investment opportunity*".[16]
- "*Follow the big investors who have recognized the market a long time ago and* ***<u>invest where real value is realized from the real economy</u>***"; [17]
- "***<u>The value of your investment</u>*** *in us depends on the fact that the EUR/US-Dollar is trading in Asian currencies, thus halting values decline*";[18] *and*
- "***<u>Repayment of investment income</u>*** *and/or capital is converted into the*

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[16] *Petition*, Annex "D" ("Home" page of Xinagasia Marketing); and http://www.xinagasia.com/index-en.html, last accessed on 5 May 2014.
[17] *Id.*, Annex "D-2" ("Products" page of Xinagasia Marketing); and http://www.xinagasia.com/products.html, last accessed on 5 May 2014.
[18] *Id.*

desired currency of the investor at the time of repayment".[19]

The prospective online investors will then view the advertisements of "Corporate Bond Notes" from the "Products" page to "Financing/Shares/SPV's" to "Cooperate Bonds" or "Share Holding" and clicking "Xinagasia Lending & Investors Corp." or "Xinagasia Invest & Trust Bank Corp". In the "Xinagasia Lending & Investors Corp." and "Xinagasia Invest & Trust Bank Corp" pages, they will be able to view the advertisements regarding the bond offering such as the category of bond offered (i.e., Cooperate Bond Note), value of the share, yield, number of interest payments, etc.[20] It must be noted that the investment products available are "Cooperate Bonds Notes" which are located in the "Cooperate Bonds" and "Share Holding" tabs of the "Financing/Shares/SPV's" tab.

Clearly, Xingasia Marketing is offering securities issued by Xinagasia Lending & Investors Corp. and Xinagasia Invest & Trust Bank Corp. through its advertisements in its website such as in the "Home", "Product" and the "Xinagasia Lending & Investors Corp." or "Xinagasia Invest & Trust Bank Corp" pages. Such offering of securities is in violation of Section 28 of the SRC since Xinagasia Marketing is not registered with the Commission as a broker/dealer. The Commission has not issued a Certificate of Registration and/or license in favor of the Xinagasia Marketing to act as broker/dealer in securities, Dealer in Government Securities, Investment Adviser of an Investment Company, Investment House and Transfer Agent and to sell, offer for sale or distribute securities to the public. Moreover, Xinagasia Marketing has not filed nor is there any pending application for said Certificates of Registration and/or license to act as a broker and/or dealer of securities, Dealer in Government Securities, Investment Adviser of an Investment Company and to sell, offer for sale or distribute securities to the public.[21]

This will clearly operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public warranting the issuance of a CDO pursuant to Section 64.1 of the SRC.

WHEREFORE, premises considered, 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 are hereby ordered to **IMMEDIATELY CEASE AND DESIST,**[22] **UNDER PAIN OF CONTEMPT, from**

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[19] *Supra*, Note 17.
[20] *Id.*, Annexes "D-4", "D-6", "D-8", "D-10", "D-12", "D-15", "D-17", "D-19", "D-21" and "D-23" (Advertisements of the offer for "Cooperate Bond Notes" by Xinagasia Marketing).
[21] *Id.*, Annexes "N" (Certification issued by the Markets and Securities Regulation Department on 3 February 2013) and "N-1" (Memorandum of the Company Registration and Monitoring Department dated 20 January 2014).
[22] 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.

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further acting as a broker/dealer of, and offering, soliciting, or otherwise offering or selling securities in the form of, Bonds described as "Cooperate Bond Notes" allegedly issued by Xinagasia Lending & Investors Corp. and Xinagasia Invest & Trust Bank Corp, or any other securities, especially unregistered ones.

The Enforcement and Investor Protection Department is hereby **DIRECTED** to: (a) serve this Order on the President, General Manager, Corporate Secretary, Treasurer or In-House Counsel of Xinagasia Marketing Corporation, (b) post copies of the Order 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 and published in a national newspaper of general circulation.

Let a copy of this Order be furnished the Company Registration and Monitoring Department, the Corporate Governance and Finance Department and the Economic Research and Training Department for their information and appropriate action.

In accordance with the provisions of Sec. 64.3 of Republic Act 8799, otherwise known as the Securities Regulation Code and Sec. 10-3 of the 2006 Rules of Procedure of the Commission, the parties subject of this Cease and Desist Order may file a request for the lifting thereof within five (5) days from receipt hereof.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Mandaluyong City; 22 May 2014.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

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