MANUAL OF REGULATIONS

FOR BANKS

FOREWORD

The 2008 Manual of Regulations for Banks (MORB) is an updated compilation of banking regulations and policy issuances of the Bangko Sentral ng Pilipinas (BSP). Available in hard and soft copies, it is a convenient reference and guide for banks in the conduct of their operations.

The updated MORB incorporates regulatory policies issued to align banking practices on risk management, good corporate governance, and capital adequacy, accounting and reporting with international standards. It also includes rules implementing legislative reform measures, the more significant of which are the *General Banking Law of 2000*, the *Anti-Money Laundering Act of 2001* and the *Special Purpose Vehicle Act of 2002*.

In providing banks and the banking public easy access to this information, the updated MORB seeks to facilitate compliance with the BSP's supervisory and regulatory requirements that will contribute to the enhancement of the partnership between BSP and the banking sector, and ultimately to the strengthening of the Philippine Banking System and the economy.

AMANDO M. TETANGCO, JR.
Governor

PREFACE
(2008 Revised Edition)

The 2008 Manual of Regulations for Banks (MORB) is the latest updated edition from the initial issuance in 1996 . The updates consist of the significant policy developments and changes in statutory laws. It shall serve as the principal source of banking regulations issued by the Monetary Board and the Governor of the BSP and shall be cited as the authority for enjoining compliance with the rules and regulations embodied therein.

To accomplish the work of proposing revision to the Old Manual, the Monetary Board of the BSP, in its Resolution No. 1203 dated December 7, 1994, directed the creation of a multi-departmental Ad Hoc Review Committee. The Committee was officially constituted under Office Order No. 2 Series of 1995 and was reconstituted several times thereafter. Under the aforesaid office order, the Committee is tasked to update the Manuals on a continuing basis (i) to incorporate relevant issuances (ii) propose revision/deletion of provisions which have become obsolete, redundant, irrelevant or inconsistent with laws/regulations (iii) reformulate provisions as the need arises and (iv) oversee printing of the Manuals/ Updates in coordination with the Corporate Affairs Office.

The present Committee, as reconstituted under Office Order No. 430, Series of 2007 dated 08 June 2007, is composed of: Mr. Alberto A. Reyes, Director, Central Point of Contact Department (CPCD) II, Chairman; Atty. Magdalena D. Imperio, Deputy Director, Office of the General Counsel and Legal Services (OGCLS), Vice Chairman; Ms. Ma. Corazon T. Alva, Acting Deputy Director, Examination Department (ED) I; Ms. Ma. Belinda G. Caraan, Acting Deputy Director/Head, Financial Consumer Affairs Group (FCAG); Atty. Lord Eileen S. Tagle, Legal Officer III, OGCLS; Ms. Maria Cynthia M. Sison, Bank Officer IV, Office of the Supervisory Policy Development (OSPD); Ms. Concepcion A. Garcia, Bank Officer IV, OSPD; Atty. Florabelle S. Madrid, Manager, CPCD I, members; and Mr. Nestor A. Espenilla, Jr., Deputy Governor, Supervision and Examination Sector, Adviser.

The Committee Secretariat is composed of Ms. Celedina P. Garbosa, Acting Manager, CPCD II, Head; Ms. Ma. Corazon B. Bilgera, Bank Officer II, OSPD; Ms. Ma. Cecilia U. Contreras, Supervision and Examination Specialist I, CPCD II, members.

The Bangko Sentral ng Pilipinas

INSTRUCTIONS TO USERS

(2008 Revised Edition)

The Manual of Regulations for Banks (the “Manual”) is divided into nine (9) Parts. For provisions common to all types of banks, the sections and subsections of each part is prefixed by the letter “X”. Special provisions do not contain the prefix “X” but instead, the section/subsection applicable only to universal/commercial banks (UBs/KBs), thrift banks (TBs) and rural banks (RBs) and cooperative banks (Coop Banks) are indicated by the first digit showing the numbers 1, 2, and 3 applicable to said banks, respectively. The second digit refers to the Part of the Manual. The third and fourth digits refer to the section number of the Part while the number/s after the decimal point, if any, refer to the subsection.

Thus, to illustrate, Subsection X143.1 and Section 1381 would indicate

Main Section - “Disqualification of Directors/Trustees and Officers”

Subsection - “Persons disqualified to become officers”

X 1 4 3 . 1

Part One on “Organization, Management and Administration”

Manual of Regulations for Banks (Common provision)

Main Section - “Investment in Non-Allied Undertakings”

1 3 8 1

Part Three - “Loans, Investments and Special Credits”

Manual of Regulations for Banks (special provision for UBs/KBs)

The runners in the upper-right or left hand corners of each page show the sections/ subsections and the cut-off date of the regulatory issuances included in the page of the Manual where the runner is shown.

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POWER OF THE BANGKO SENTRAL TO EXAMINE BANKS

(2008 - X658) Examination by the Bangko Sentral. Effective 14 August 2004 the term "examination" shall, henceforth, refer to an investigation of an institution under the supervisory authority of the BSP to determine compliance with laws and regulations. It shall include determination that the institution is conducting its business on a safe and sound basis. Examination requires full and comprehensive looking into the operations and books of institutions, and shall include, but need not be limited to, the following:

a. Determination of the bank's solvency and liquidity position;

b. Evaluation of asset quality as well as determination of sufficiency of valuation reserves on loans and other risk assets;

c. Review of all aspects of bank operations;

d. Assessment of risk management system, including the evaluation of the effectiveness of the bank management's oversight functions, policies, procedures, internal control and audit;

e. Appraisal of overall management of the bank;

f. Review of compliance with applicable laws, rules and regulations; and

g. Any other activities relevant to the above.

Regular or periodic examination shall be done once a year, with an interval of twelve (12) months from the last date thereof. Special examination may be conducted earlier, or at a shorter interval, when authorized by the Monetary Board by an affirmative vote of five (5) members.

In the full exercise of the supervisory powers of the BSP, examination by the BSP of institutions shall be complemented by overseeing thereof. In this regard, the term "overseeing" shall refer to a limited investigation of an institution, or any investigation/s that is limited in scope, conducted to inquire into a particular area/aspect of an institution's operations, for the purpose of overseeing that laws and regulations are complied with, inquiring into the solvency and liquidity of the institution, enforcing prompt corrective action, or such other matters requiring immediate investigation: *Provided*, That - (i) specific authorizations be issued by the *Deputy* Governor, Supervision and Examination Sector, and (ii) periodic summary reports on overseeings made be submitted to the Monetary Board.

(Circular No. 442 dated 20 July 2004)

PART ONE

ORGANIZATION, MANAGEMENT AND ADMINISTRATION

A. CLASSIFICATIONS AND POWERS OF BANKS

Section X101 Classifications, Powers and Scope of Authorities of Banks. The following are the classifications, powers and scope of authorities of banks, as well as the prerequisites for the grant of banking authorities.

a. *Classifications of banks.* Banks are classified into the following subject to the power of the Monetary Board to create other classes or kinds of banks:

(1) Universal banks (UBs);

(2) Commercial banks (KBs);

(3) Thrift banks (TBs), as defined in Republic Act (R.A.) No. 7906, which shall be composed of: (a) savings and mortgage banks, (b) stock savings and loan associations, and (c) private development banks;

(4) Rural banks (RBs), as defined in R. A. No. 7353;

(5) Cooperative banks (Coop Banks), as defined in R. A. No. 6938; and

(6) Islamic banks (IBs), as defined in R.A. No. 6848.

b. *Powers and scope of authorities* The following are the powers and scope of authorities of banks.

(1) *UBs.* A UB shall have the authority to exercise, in addition to the powers and services authorized for a KB as enumerated in Item *"b(2)"* and those provided by other laws, the following:

(a) the powers of an investment house (IH) as provided under existing laws;

(b) the power to invest in non-allied enterprises;

(c) the power to own up to one hundred percent (100%) of the equity in a TB, an RB, a financial allied enterprise, or a non-financial allied enterprise; and

(d) in case of publicly-listed UBs, the power to own up to one hundred percent (100%) of the voting stock of only one (1) other UB or KB.

A UB may perform the functions of an IH either directly or indirectly through a subsidiary IH; in either case, the underwriting of equity securities and securities dealing shall be subject to pertinent laws and regulations of the Securities and Exchange Commission (SEC): *Provided,* That if the IH functions are performed directly by the UB, such functions shall be undertaken by a separate and distinct department or other similar unit in the UB: *Provided, further,* That a UB cannot perform such functions both directly and indirectly through a subsidiary.

(2) *KBs.* In addition to the general powers incident to corporations and those provided in other laws, a KB shall have the authority to exercise all such powers as may be necessary to carry on the business of commercial banking, such as accepting drafts and issuing letters of credit; discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; accepting or creating demand deposits; receiving other types of deposits and deposit substitutes; buying and selling foreign exchange and gold or silver bullion; acquiring marketable bonds and other debt securities; and extending credit, subject to such rules as the Monetary Board may promulgate. These rules may include the determination of bonds and other debt securities eligible for investment, the maturities and aggregate amount of such investment.

It may also exercise or perform any or all of the following:

(a) invest in the equities of allied enterprises as provided in Sections 31 and 32 of R.A. No. 8791;

(b) purchase, hold and convey real estate as specified under Sections 51 and 52 of R.A. No. 8791;

(c) receive in custody funds, documents and valuable objects;

(d) act as financial agent and buy and sell, by order of and for the account of their customers, shares, evidences of indebtedness and all types of securities;

(e) make collections and payments for the account of others and perform such other services for their customers as are not incompatible with banking business;

(f) upon prior approval of the Monetary Board, act as managing agent, adviser, consultant or administrator of investment management/advisory/consultancy accounts;

(g) rent out safety deposit boxes; and

(h) engage in quasi-banking functions.

(3) *TBs*. In addition to the powers provided in other laws, a TB may perform any or all of the following services:

(a) grant loans, whether secured or unsecured;

(b) invest in readily marketable bonds and other debt securities, commercial papers and accounts receivable, drafts, bills of exchange, acceptances or notes arising out of commercial transactions;

(c) issue domestic letters of credit;

(d) extend credit facilities to private and government employees;

(e) extend credit against the security of jewelry, precious stones and articles of similar nature, subject to such rules and regulations as the Monetary Board may prescribe;

(f) accept savings and time deposits;

(g) rediscount paper with the Land Bank of the Philippines (LBP), Development Bank of the Philippines (DBP), and other government-owned or-controlled corporations;

(h) accept foreign currency deposits as provided under R.A. No. 6426, as amended;

(i) act as correspondent for other financial institutions;

(j) purchase, hold and convey real estate as specified under Sections 51 and 52 of R.A. No. 8791; and

(k) offer other banking services as provided in Section 53 of R.A. No. 8791.

With prior approval of the Monetary Board, and subject to such guidelines as may be established by it, TBs may also perform the following services:

(l) open current or checking accounts;

(m) engage in trust, quasi-banking functions and money market operations;

(n) act as collection agent for government entities, including but not limited to, the Bureau of Internal Revenue (BIR), Social Security System (SSS) and the Bureau of Customs (BOC);

(o) act as official depository of national agencies and of municipal, city or provincial funds in the municipality, city or province where the TB is located;

(p) issue mortgage and chattel mortgage certificates, buy and sell them for its own account or for the account of others, or accept and receive them in payment or as amortization of its loan; and

(q) invest in the equity of allied undertakings.

(4) *RBs*. In addition to the powers provided in other laws, an RB may perform any or all of the following services:

(a) extend loans and advances primarily for the purpose of meeting the normal credit needs of farmers, fishermen or farm families as well as cooperatives, merchants, private and public employees;

(b) accept savings and time deposits;

(c) act as correspondent of other financial institutions;

(d) rediscount paper with the LBP, DBP or any other bank, including its branches and agencies. Said banks shall specify the nature of paper deemed acceptable for rediscount, as well as the rediscount rate to be charged by any of these banks;

(e) act as collection agent;

(f) offer other banking services as provided in Section 53 of R.A. No. 8791.

With prior approval of the Monetary Board, an RB may perform any or all of the following services:

(g) accept current or checking accounts: *Provided*, That such RB has net assets of at least ₱5.0 million;

(h) accept NOW accounts;

(i) act as trustee over estates or properties of farmers and merchants;

(j) act as official depository of municipal, city or provincial funds in the municipality, city or province where it is located;

(k) sell domestic drafts; and

(l) invest in allied undertakings.

(5) *Coop Banks*. A Coop Bank shall be organized primarily to provide financial and credit services to cooperatives and may perform any or all of the services offered by RBs.

(6) *IBs*. In addition to the general powers incident to corporations and those provided in other laws, as well as in Circular No. 105 (*Appendix 44*), insofar as they are not inconsistent or incompatible with the provisions of R.A. No. 6848, an IB may perform any or all of the following services:

(a) open savings accounts for safekeeping or custody with no participation in profit and losses except unless otherwise authorized by the account holders to be invested;

(b) accept investment account placements and invest the same for a term with the IB's funds in Islamically permissible transactions on participation basis;

(c) accept foreign currency deposits from banks, companies, organizations and individuals, including foreign governments;

(d) buy and sell foreign exchange;

(e) act as correspondent of banks and institutions to handle remittances or any fund transfers;

(f) accept drafts and issue letters of credit or letters of guarantee, negotiate notes and bills of exchange and other evidence of indebtedness under the universally accepted Islamic financial instruments;

(g) act as collection agent insofar as the payment orders, bills of exchange or other commercial documents are exclusive of *riba* or interest prohibitions;

(h) provide financing with or without collateral by way of leasing, sale and leaseback, or cost plus profit sales arrangement;

(i) handle storage operations for goods or commodity financing secured by warehouse receipts presented to the bank;

(j) issue shares for the account of institutions and companies assisted by the bank in meeting subscription calls or augmenting their capital and/or fund requirements as may be allowed by law;

(k) undertake various investments in all transactions allowed by the *Islamic Shari'a* in such a way that shall not permit the *haram* (forbidden), nor forbid the *halal* (permissible);

(l) act as an official government depository, or its branches, subdivisions and instrumentalities and of government-owned or-controlled corporations, particularly those doing business in the autonomous region;

(m) issue investment participation certificates, *muquaradah* (non-interest-bearing bonds), debentures, collaterals and/or the renewal and refinancing of the same, with the approval of the Monetary Board to be used by the IB in its financing operations for projects that will promote the economic development primarily of the Autonomous Region;

(n) carry out financing and joint investment operations by way of *mudarabah* purchasing for others on a cost-plus financing arrangement, and invest funds directly in various projects or through the use of funds whose owners desire to invest jointly with other resources available to the IB on a joint *mudarabah* basis; and

(o) invest in equities of the following allied undertakings:

(1) Warehousing companies;

(2) Leasing companies;

(3) Storage companies;

(4) Companies engaged in the management of mutual funds but not in the mutual funds themselves; and

(5) Such other similar activities as the Monetary Board has declared or may declare as appropriate from time to time, subject to existing limitations imposed by law.

B. ESTABLISHMENT AND ORGANIZATION

Sec. X102 Basic Guidelines in Establishing Banks. In establishing a new banking organization and a Coop Bank, the basic guidelines shown in *Appendix 37* and *Appendix 38*, respectively, shall be observed.

§ X102.1 *(2008 - X101.2) Prerequisites for the grant of a universal banking authority*

a. *Compliance with guidelines*. A domestic bank seeking authority to operate as a UB shall submit an application to the appropriate department of the SES. The applicant shall comply with the guidelines for the issuance of a UB authority and shall submit all the documentary requirements enumerated in *Appendix 1*.

b. *Public offering of bank shares*. A domestic bank applying for a UB authority shall, as a condition to the approval of its application, make a public offering of at least ten percent (10%) of the required minimum capital and this condition must be complied with before it can be granted the license for authority to operate as a UB.

The term *public offering* shall mean the offer to sell equity shares to the public.

Public shall refer to all prospective stockholders, excluding the bank's directors, shareholders owning twenty percent (20%) or more of the bank's subscribed capital stock, together with those of their relatives within the fourth degree of consanguinity or affinity, and corporations controlled or affiliated with them.

A bank whose shares of stock are already listed in the Philippine Stock Exchange (PSE) at the time of filing of its application for UB authority shall be deemed to have complied with the public offering requirement. Likewise, an applicant bank may opt to have its shares listed in the PSE directly instead of passing through the process of public offering. In either case, at least ten percent (10%) of the applicant bank's capital stock should be held by public stockholders before it can be granted the license for authority to operate as a UB.

c. *Listing of bank shares in the stock exchange*. Domestic banks granted a UB license, existing or new, must list their shares in the PSE within three (3) years: *Provided*, That in the case of new UBs, the three (3) year period shall be reckoned from the date the license to operate as a UB was granted. In the case of existing UBs which have not listed their shares in the exchange, the three (3) year period lapsed on 27 December 1998.

The guidelines on public offering and listing of bank shares are enumerated in *Appendix 1*.

§ X102.2 *(2008 - X102.1) Suspension of the grant of new banking licenses on the establishment of new banks.* Pending completion of a study, there shall be an indefinite moratorium on the establishment of new banks, except in cities and municipalities where there are no existing banking offices.

The moratorium shall apply to all applications for establishment of new banks, including pending ones received prior to 16 August 1999.

However, approved but not yet opened banks shall be exempted from the moratorium. Requests for extension of the period within which to open approved but not yet opened banks shall, however, be evaluated on a case-to-case basis depending, among others, on the bank's substantial compliance with the pre-operating requirements.

In the case of KBs, the following rules shall govern:

a. No new KB shall be established within three (3) years from 13 June 2000 which is the date of effectivity of R.A. No. 8791 or until 12 June 2003. The moratorium as mandated by said law covers only KBs classified and defined as such under Sections 3.2(b) and 29 of R. A. No. 8791 as well as in Item *"b.2"* of Sec. X101 without prejudice, however, to existing or future moratoriums on other types of bank as has been or may be declared by the Monetary Board.

b. The moratorium under Section 8 of R.A. No. 8791 shall cover all applications for issuance of new commercial banking licenses as well as upgrading or conversion of old banking licenses into commercial banking licenses, the organization and incorporation by foreign banks of new commercial banking subsidiaries and any and all other transactions that may result in the issuance of new commercial banking licenses.

c. All such pending applications as of 13 June 2000, including those which have already been decided but with any incident thereto still unresolved or are on reconsideration or appeal, shall not be further acted upon by the BSP and shall be returned to the applicant banks without prejudice to the resubmission or re-filing thereof upon expiration of the moratorium at the option of the applicant banks. No such application shall be considered as automatically re-submitted or re-filed upon expiration of the moratorium.

d. The moratorium under Section 8 of R. A. No. 8791 shall not be applicable to:

(1) acquisition or purchase by foreign banks of up to 100% of the voting stock of existing domestic KBs;

(2) the transfer of license of an existing KB to another corporation, subject to prior approval of the Monetary Board;

(3) new KBs resulting out of mergers or consolidations where at least one (1) of the banks involved in such merger or consolidation is a KB; and

(4) downgrading or refocusing of UBs into KBs.

§ X102.3 ***(2008 - X102.2) Partial lifting of general moratorium on the licensing of new thrift banks and rural banks.*** The general moratorium on the licensing of new TBs and RBs is partially lifted to allow the entry of microfinance-oriented banks.

For this purpose, a microfinance-oriented bank is a bank that provides financial services and caters primarily to the credit needs of the basic or disadvantaged sectors such as farmer-peasants, artisanal fisherfolk, workers in the formal sector and migrant workers, workers in the informal sectors, indigenous peoples and cultural communities, women, differently-abled persons, senior citizens, victims of calamities and disasters, youth and students, children, urban poor and low income households for their microenterprises and small businesses so as to enable them to raise their income levels and improve their living standards. Microfinance loans are granted on the basis of the borrower's cash flow and are typically unsecured.

The guidelines on the establishment of a microfinance-oriented bank are as follows:

a. Microfinance-oriented banks may be established on a very selective basis, preferably in places not fully served by existing RBs or in areas not fully serviced by microfinance-oriented banks, subject to the following additional criteria (in addition to standard licensing requirements):

(1) That the microfinance-oriented bank to be established shall either be a TB or an RB;

(2) That the capital of the microfinance-oriented banks to be established should be owned by private persons, multilateral entities or a combination thereof;

(3) That in the case of an RB to be established as a microfinance bank, the minimum paid-in capital shall be ₱5.0 million or the applicable existing capitalization requirement for a new RB, whichever is higher. The capitalization requirement under existing regulations shall apply to TBs;

(4) That the organizers must have the capacity to engage in microfinancing, which may be indicated by the following:

(a) At least twenty percent (20%) of the paid-in capital of the proposed bank must be owned by persons or entities with track record in microfinancing.

(b) Majority of the members of the board of directors have experience in microfinancing with at least one (1) member having actual banking experience.

(c) The proposed bank must have as a minimum, an adequate loan tracking system that allows daily monitoring of loan releases, collection and arrearages, and any restructuring and refinancing.

(5) In addition to the requirements for the establishment of banks in *Appendix 37*, the application for authority to establish a microfinance-oriented bank must be accompanied by the following documents:

(a) A vision and mission statement with clear expression of the commitment to reach low-income clients.

(b) A written manual of operations, which shall include the administrative and credit program systems and procedures. The Manual must be consistent with the core principles, characteristics and features of microfinance indicated in Sec. X361.

(6) At least fifty percent (50%) of the bank's gross loan portfolio shall at all times consist of microfinance loans as defined in Sec. X361.

b. The requirement that the president, chief operating officer or general manager of a TB or RB must have at least two (2) years experience in banking and/or finance may be substituted with microfinance experience in cases of officers of a microfinance organization applying for authority to establish, or convert into a TB or RB: *Provided,* That the concerned officer is a college graduate.

c. Subject to the standard branching requirements, microfinance-oriented banks are also exempted from the general moratorium on the establishment of bank branches, under Sec. X151. After one (1) year of profitable operations, a microfinance-oriented bank may apply for establishment of a branch but the Monetary Board may require additional capital to be infused for every branch in addition to the minimum capital of the TB/RB.

d. Existing microfinance organizations applying for authority to establish, or convert into a TB or RB may also be allowed to convert their existing branches/offices into branches of the bank proposed to be established by simultaneously applying for authority for the purpose. However, the standard requirements for the establishment of branches, particularly the capitalization requirement, have to be complied with. Moreover, there must be a proof that the area is not fully served by any existing RB.

(As amended by Circular No. 624 dated 13 October 2008)

§ X102.4 *(2008 - X101.6) Conditions for the grant of authority to convert into a lower category*

a. That the bank must have complied with the end-2000 minimum capital requirement and other laws/regulations applicable to the lower bank category into which it is converting. For this purpose, the term *"capital"* shall be as defined under Sec. X111;

b. That the bank immediately upon receipt of notice of approval of conversion shall not engage in nor renew transactions under authorities not associated with those allowed for the lower bank category into which it is converting and within six (6) months from date of receipt of notice of approval of its application for conversion,the bank shall phase-out all inherent powers and activities under special authorities not normally associated to the lower bank category into which it is converting*: Provided,* That a TB (previously authorized by the Monetary Board to accept demand deposits) may be allowed to retain such authority when converting into an RB but may clear checks only through a correspondent bank and shall not be allowed to participate directly in the Philippine Clearing House Corporation (PCHC) and the BSP check clearing operations: *Provided, further,* That for failure to comply with these requirements, the following monetary and non-monetary penalties shall be imposed reckoned from the set deadline until the bank has fully complied with the said requirements

(1) *Monetary penalties*

From UB to KB	₱30,000/day
From KB to TB	15,000/day
From TB to RB	
Within Metro Manila	₱ 5,000/day
Outside Metro Manila	500/day

(2) *Non-monetary penalties*

(a) Suspension of branching privileges;

(b) Suspension of declaration of cash dividends;

(c) Restriction on lending to affiliates;

(d) Denial of access to BSP rediscounting facilities;

(e) Suspension of authority to accept or handle government deposits;

(f) Suspension of authority to engage in derivatives activities (for a UB converting into a KB); and

(g) Suspension of authority to invest in allied undertakings.

c. That a bank which has not corrected as of date of application the major findings/violations noted in its latest examination shall submit upon application a Memorandum of Understanding that it shall correct the same within a period of six (6) months from date of receipt of notice of approval of its application, otherwise, the same monetary and non-monetary penalties mentioned in Item *"b"* above shall be imposed;

d. That the bank shall submit the pertinent amended Articles of Incorporation and By-Laws duly registered with the SEC within six (6) months from date of receipt of notice of approval of its application;

e. That the bank shall fully disclose its new status in its signage, financial statements and stationeries; and

f. That the bank shall start operation in the lower category into which it is converting after approval by the SEC of the bank's amended Articles of Incorporation and By-Laws, its compliance with all the conditions of approval of the conversion and the issuance by the BSP of a certificate of authority to operate.

The same conditions and sanctions mentioned in Items *"a"* to *"f"* above shall apply to all banks which have downgraded or with approved downgrading prior to 13 March 2000: *Provided*, That the penalties mentioned in Items *"b" and "c"* above shall be reckoned from their respective prescribed deadlines or within six (6) months from 13 March 2000, if no such deadline is prescribed.

§ X102.5 *(2008 - X102.3) Conversion of microfinance-oriented thrift banks/ rural banks*

a. Microfinance-oriented TBs and RBs are disallowed from converting to regular TBs and RBs.

b. Microfinance-oriented branches of regular TBs and RBs may convert into regular branches, five (5) years after the start of the branch's operations, subject to the submission of the following:

(1) Certification signed by the president or officer of equivalent rank that:

(a) At least seventy percent (70%) of deposits generated by the branch to be established shall be actually lent out to microfinance borrowers; and

(b) The microfinance loans of said branch shall at all times be fifty percent (50%) of its gross loan portfolio

are no longer feasible due to changes in market condition in the locality where it is located. The certification shall be supported by a market study citing, among others, changes in demographic, social, and economic factors; and

(2) Certified true copy of the resolution of the bank's board of directors authorizing the conversion of the microfinance-oriented branch into a regular branch.

(CL-2008-075 dated 28 November 2008)

Sec. X103 Certificate of Authority to Register[1]. The SEC shall not register the articles of incorporation of any bank, or any amendment thereto, unless accompanied by a certificate of authority issued by the Monetary Board, under its seal. The certificate shall not be issued unless the Monetary Board is satisfied from the evidence submitted that:

a. All requirements of existing laws and regulations to engage in the business for which the applicant is proposed to be incorporated have been complied with;

b. The public interest and economic conditions, both general and local, justify the authorization; and

c. The amount of capital, the financing, organization, direction and administration, as well as the integrity and responsibility of the organizers and administrators reasonably assure the safety of deposits and the public interest.

Likewise, the SEC shall not register the by-laws of any bank, or any amendment thereto, unless accompanied by a certificate of authority from the BSP.

(As amended by CL-2008-078 dated 15 December 2008)

Sec. X104 *(2008 - X167)* Business Name[2]

a. *UBs/KBs*. Only a bank that is granted universal/commercial banking authority may represent itself to the public as such in connection with its business name.

b. *TBs*. TBs may be allowed to adopt and use any name: *Provided,* That the words *A Thrift Bank, A Savings Bank, A Private Development Bank* or *A Stock Savings and Loan Association,* as the case may be, are affixed after its business name.

c. *RBs/Coop Banks*. RBs/Coop Banks may adopt a corporate name or use a business name/style with the word Rural or *Coop*, as the case may be. Said banks may also adopt a name without such words: *Provided,* That the identifying phrase, *A Cooperative Bank* or *A Rural Bank,* as the case may be, is affixed after its business name: *Provided, further,* That where the name of the bank is shown on letterheads, billboards and other advertising materials, the size of the letters of such phrase shall be at least one-half (½) the size of the business name.

(As amended by CL Nos. 2008-053 dated 21 August 2008 and 2008-007 dated 21 January 2008)

§ X104.1 *(2008-X607) Bank Advertisements.* The following rules and regulations shall govern bank advertisements.

a. No bank shall publish, issue or distribute in any form, any advertisement

[1] See SEC Circular No. 3 dated 16 February 2006.
[2] See SEC Circular Nos. 5 dated 17 July 2008 and 14 dated 24 October 2000.

that shall degrade, deprecate or otherwise prejudice other banking and financial institutions.

b. No bank shall publish, issue or distribute in any form of advertisement (in newspapers, magazines, television, radio, billboards, brochures, prospectuses, or any other medium) or allow itself to be used/ mentioned in any form of advertisement unless such advertisement is in pursuance of its business or investment.

c. No bank shall place or cause to be placed any advertisement tending to mislead a depositor into believing that he will get more in benefits than what the bank is legally authorized to give. No bank advertisement shall contain any false claim or exaggerated representation as to its liquidity, solvency, resources, deposits and banking services.

d. No bank advertisement shall give the impression that the bank is engaged in a business other than banking.

e. Banks shall inform their depositors and other clients by advertisement or publication of the termination of benefits previously advertised or publicized.

f. Banks shall discontinue any advertisement whenever the same is deemed unethical/unwarranted or violative of the provisions of these regulations. The client banks and/or their advertising agencies shall incorporate in their contract/ agreement for time and space with media the condition that such contract/agreement for time and space can be cancelled/ terminated immediately whenever the client bank is directed by the BSP to desist or discontinue the particular advertisement in question.

g. Responsibility for compliance with the above rules and regulations rests with the bank officers or directors who caused the approval or placement of such advertisement.

Sec. X105 ***(2008 - X121)*** **Liberalized Entry and Scope of Operations of Foreign Banks.** The following rules shall govern the liberalized entry and scope of operation of foreign banks.

§ X105.1 ***(2008 - X121.1) Modes of entry of foreign banks.*** With prior approval of the Monetary Board, foreign banks may operate in the Philippines through any one (1) of the following modes:

a. By acquiring, purchasing or owning up to sixty percent (60%) of the voting stock of an existing domestic bank (including banks under receivership or liquidation, provided no final court liquidation order has been issued);

b. By investing in up to sixty percent (60%) of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines; or

c. By establishing branches with full banking authority.

Interested foreign banks shall file with the Office of the Governor, BSP, their application for authority to operate in the Philippines through any of the modes of entry mentioned above. The application must be submitted in the prescribed forms shown in *Appendix 2*.

§ X105.2 ***(2008 - X121.2) Qualification requirements***

a. *Investment in an existing domestic bank.* A foreign bank seeking to acquire, purchase or own up to sixty percent (60%) of the voting stock of an existing domestic bank needs only to meet the selection criteria under Subsec. X105.3.

b. *Establishment of subsidiary or branch.* Any foreign bank seeking to establish a new banking subsidiary or to establish branches with full banking authority, in addition to satisfying the criteria prescribed Subsec. X105.3, must be -

(1) Widely-owned and publicly-listed (listed in any stock exchange authorized by the government of the country of origin), unless more than fifty percent (50%) of the capital stock of said foreign bank applicant is owned by the government of its country of origin. The bank is considered as widely-owned if it has at least fifty (50) stockholders without any stockholder owning more than fifteen percent (15%) of its capital stock: *Provided,* That if the bank is owned/ controlled by a holding company, this requirement shall apply to the holding company; and

(2) Among the top 150 banks in the world or the top five (5) banks in its country of origin.

The determination of the top 150 banks in the world may be based on lists prepared and published by reputable organizations/publications.

The determination of the top five (5) banks in the country of origin shall be based on information supplied by the bank supervisory authorities in which country of origin as to the ranking of banks based on net worth. However, the Monetary Board may also use total assets as a criterion: *Provided,* That the same shall be based on book accounts only and on the consolidated balance sheet of the head office and all branches, excluding subsidiaries and affiliates.

In addition to the foregoing requirements, the foreign bank applicant must be in compliance with capital requirements as prescribed by the laws and regulations of its country of origin.

§ X105.3 *(2008 - X121.3) Guidelines for selection.* The following factors shall be considered in selecting the foreign bank which will be allowed to invest in majority of the voting stock of an existing domestic bank or to establish a subsidiary or branch in the Philippines.

a. *Geographic representation and complementation.* Representation from the different parts of the world and/or the international financial centers shall be ensured.

b. *Strategic trade and investment relationships between the Philippines and the country of incorporation of the foreign bank.* Consideration shall be given to the countries of origin of applicant foreign banks -

(1) With substantial financial assistance to, and loans and investments, past and present, in the Philippines; and

(2) With which the Philippines has significant volume of trade especially to those with which the country has substantial net exports.

c. *Relationship between the applicant bank and the Philippines.* Consideration shall be given to the capability of the foreign bank to promote trade with, and to bring foreign investments into, the Philippines. Long standing financial and commercial relationship with, and assistance extended to, the Philippines, shall likewise be taken into account.

d. *Demonstrated capacity, global reputation for financial innovations and stability in a competitive environment of the applicant.* Demonstrated capacity and stability may be indicated by the fact that the applicant ranks among the top 150 in the world or top five (5) in its country of origin. Global reputation may be measured by international presence, e.g., number of branches with full banking authority outside of its country of origin.

e. *Reciprocity rights enjoyed by Philippine banks in the applicant's country.* Philippine banks shall enjoy reciprocity rights in the applicant's country.

f. *Willingness to fully share technology.* The applicant bank shall submit an undertaking to this effect together with its application.

§ X105.4 ***(2008 - X121.4) Capital requirements***

a. *For locally incorporated subsidiaries* - The minimum capital required for locally incorporated subsidiaries of foreign banks shall be the same as that prescribed by the Monetary Board for domestic banks of the same category.

b. *For foreign bank branches with full banking authority* - A foreign bank authorized to establish branches with full banking authority in the Philippines shall inwardly remit and convert into Philippine currency, as permanently assigned capital, the U.S. Dollar equivalent of ₱210.0 million at the exchange rate prevailing on 05 June 1994 (the date of effectivity of R.A. No. 7721), i.e., ₱26.979 to US$1. The foreign bank shall thereby be entitled to establish three (3) branches in locations of its choice.

For purposes of this Subsection, the same foreign bank may open three (3) additional branches in locations designated by the Monetary Board by inwardly remitting and converting into Philippine currency, as additional permanently assigned capital the U.S. Dollar equivalent of ₱35.0 million for every additional branch, computed at the same exchange rate of ₱26.979 to US$1. The Monetary Board, in determining the location of the next three (3) branches established pursuant to the provisions of R.A. No. 7721, shall consider, among other things, development requirements of a region and the contribution of a bank branch may make to regional development, expansion of basic financial services and enhanced access to credit by small and medium-scale enterprises: *Provided,* That the total number of branches for each new foreign bank entrant shall not exceed six (6).

c. *For foreign banks with existing branches in the Philippines* -

(1) A foreign bank with existing branch or branches in the Philippines upon the effectivity of R.A. No. 7721 shall comply with the required permanently assigned capital by inwardly remitting and converting into Philippine currency the U.S. Dollar equivalent of ₱210.0 million computed at the same exchange rate of ₱26.979 to US$1, within a period of one and one-half (1½) years from 05 June1994.

The said foreign bank may establish up to six (6) branches in addition to its branch or branches existing as 05 June1994, the first three (3) additional branches in locations of its choice, and the next three (3) additional branches in locations designated by the Monetary Board: *Provided,* That upon establishing any additional branch, the bank shall comply immediately with the permanently assigned capital mentioned in the next preceding paragraph: *Provided, further,* That the said permanently assigned capital shall be the capital for the bank's first three (3) additional branches, including its existing branch or branches, and for each branch established in addition thereto, the U.S. Dollar equivalent of ₱35 million computed at the same exchange rate of ₱26.979 to US$1, shall be inwardly remitted and converted into Philippine currency.

If the permanently assigned capital of the existing branch/es of said foreign bank that has been converted to Philippine currency is sufficient to cover the above-mentioned amount of assigned capital required for the additional branches, no additional assigned capital shall be required; otherwise, the foreign bank shall comply immediately with the capital requirements under the above paragraphs.

(2) Foreign banks with existing branches in the Philippines on 5 June1994 shall have a period of one and one-half (1½) years from said date within which to comply with the ratio between the assigned capital and the *Net due to head office, branches, subsidiaries and offices outside the*

Philippines prescribed in Subsec. X105.6: *Provided,* That upon establishing any additional branch pursuant to the provisions of this Section, the bank shall comply immediately with the aforesaid ratio.

d. *Capital of Foreign Bank Branch Authorized to Operate as Expanded Commercial Bank* - The capital of a Philippine branch of a foreign bank which is authorized to operate as a UB may consist of its permanently assigned capital plus the *Net due to* account: *Provided,* That at no time shall the aggregate of said accounts fall below the amount required for UB authority under Subsecs. X111.1 and X111.2: *Provided, further,* That the amount of the *Net due to* which may be added to permanently assigned capital shall not exceed the equivalent of three (3) times the amount of the permanently assigned capital.

The *Net due to* as described in the preceding paragraph shall be net of the items enumerated in Subsec. X105.5d.

e. *Applicable Exchange Rate* - It is understood that the exchange rate of ₱26.979 to US$1 mentioned hereinabove is applicable only to the minimum capital requirements provided in Items *b* and *c* of this Subsection. For other purposes, the exchange rate prevailing at the time of remittance shall be applicable.

§ X105.5 *(2008 - X121.5) Composition of capital accounts; compliance with capital ratios*

a. Foreign bank branches shall comply with the same capital ratios applicable to domestic banks of the same category.

b. For Philippine branches of foreign banks, the term *capital* shall include permanently assigned capital which shall be inwardly remitted and converted to Philippine currency and *Net due to* up to an amount prescribed under Subsec. X105.6. Should there be any *Net due from* head office, branches, subsidiaries and other offices outside the Philippines, the same shall be deducted from the capital accounts for purposes of determining compliance with the required capital ratios.

c. Earnings not remitted to the head office shall constitute part of the *Net due to* of the local branch of a foreign bank: *Provided,* That said bank may elect to consider such earnings as part of the assigned capital, in which case said earnings may no longer be remittable to the head office.

d. The term *Net due to* shall be net of: (1) unbooked valuation reserves and other capital adjustments as may be required by the BSP; (2) total outstanding unsecured credit accommodations, both direct and indirect, to DOSRI; and (3) deferred income tax.

e. Where a foreign bank has more than one (1) branch or banking office in the Philippines, all its branches and banking offices shall be treated as a unit for purpose of determining compliance with the legal reserve requirement and with capital requirement prescribed in laws/regulations.

§ X105.6 *(2008 - X121.6) Prescribed ratio of net due to and permanently assigned capital.* The amount of *Net due to* which may be added to permanently assigned capital for purposes of determining compliance with capital ratios prescribed in laws/regulations shall not exceed the equivalent of four (4) times the amount of permanently assigned capital: *Provided,* That for the purpose of a foreign bank branch seeking to operate as a UB, the ratio shall not exceed three (3) times as provided in Item "*d*" of Subsec. X105.4.

At least fifteen percent (15%) of the *Net due to* required to comply with the prescribed capital ratio shall be inwardly remitted and converted into Philippine currency: *Provided,* That amounts invested in productive enterprises or utilized by Philippine companies for export activities, including foreign currency denominated loans granted to Philippine exporters and loans for productive purposes such as the following: agriculture, fisheries and forestry; manufacturing; mining; public utilities; construction; and home building, need not be subject to conversion into Philippine currency.

If there is non-compliance with the prescribed fifteen percent (15%) of *Net due to* required to be inwardly remitted and converted to pesos, the bank shall immediately inwardly remit and convert to Philippine currency the amount of the deficiency.

Branches of foreign banks shall submit the reports prescribed in Appendix 6 to show compliance with the requirement that at least fifteen percent (15%) of its *Net due to* shall be inwardly remitted and converted into Philippine currency.

§ X105.7 ***(2008 - X121.7) Head office guarantee.*** The head office of foreign bank branches shall guarantee prompt payment of all liabilities of its Philippine branches, as well as the observance of the constitutional rights of the employees of such branches.

§ X105.8 ***(2008 - X121.8) Scope of authority for locally incorporated subsidiaries of foreign banks as well as branches with full banking authority.*** Subsidiaries and branches of foreign banks established under Subsec. X105.1 shall be allowed to perform the same functions and enjoy the same privileges of, and be subject to the same limitations imposed upon, a Philippine bank of the same category. Privileges shall include the eligibility to operate under an expanded commercial banking authority subject to compliance with existing rules and regulations and the guidelines enumerated in *Appendix 3* on the matter: *Provided,* That foreign bank branches authorized to operate under an expanded commercial banking authority shall be exempted from the requirement of publicly offering at least ten percent (10%) of its shares. The limitations include, among other things, the single borrower's limit, the capital-to-risk assets ratio, and the capitalization and other requirements under R.A. No. 337, as amended, and other related laws.

§ X105. 9 ***(2008 - X121.9) Limitations***

a. *Limit on mode of entry for each foreign bank* - A foreign bank may avail itself of only one (1) mode of entry provided under Items "*a*" to "*c*" of Subsec. X105.1: *Provided,* That entry pursuant thereto shall not preclude investment in the equity of a domestic bank pursuant to the provisions of R.A. No. 337, as amended. A foreign bank that comes in via the establishment of branches under R.A. No. 7721 may still invest in the equity of a domestic bank subject to the provisions of R.A. No. 337, as amended.

b. *Limit on the number of foreign banks which may be allowed to establish branches.* The Monetary Board may authorize up to six (6) new foreign banks to establish branches. However, upon recommendation of the Monetary Board, the President of the Republic of the Philippines may approve, as the national interest may require, four (4) additional new foreign banks to establish branches, subject to compliance with provisions of this Section.

c. *Limit on the period for entry through establishment of branches.* Foreign banks shall be allowed entry under Item *"c"* of Subsec. X105.1 by establishing branches with full banking authority within five (5) years from 05 June 1994. The entry of foreign banks through the establishment of a new banking subsidiary and through investment in existing domestic banks shall not be subject to any time limitation.

d. *Control of the resources of the banking system.* The Monetary Board shall adopt such measures as may be necessary to ensure that at all times the control of seventy percent (70%) of the resources or assets of the entire banking system is held by domestic banks more than fifty percent (50%) of the subscribed capital of which is owned by Filipinos. Said measures may include review of, among other things, the existing policies on -

(i) the granting of authority to establish additional subsidiaries and branches;

(ii) the granting of authority to (aa) engage in expanded commercial banking and trust activities; (bb) open an FCDU; (cc) collect taxes and customs duties; and (dd) invest in the equity of other entities; and

(iii) access to rediscounting facilities.

§ X105.10 *(2008 - X121.10) Change from one mode of entry to another*

a. As a general rule, a foreign bank which has been authorized to operate in the Philippines through any one (1) of the allowable modes of entry may change to another mode by giving up the first mode it availed of.

b. A foreign bank which pursuant to Items *"a"* and *"b"* of Subsec. X105.1, has established or acquired a banking subsidiary may sell its stockholdings therein and may apply for authority to establish a branch subject to the provisions of Subsec. X105.9c and to the following conditions:

(i) that the disposition/sale of its stockholdings in the subsidiary is done within five (5) years from 05 June 1994;

(ii) that the foreign bank qualifies under the provisions of Subsec. X105.2b; and

(iii) that the limit of ten (10) foreign banks establishing branches as a mode of entry has not yet been reached.

c. Foreign banks with existing branches in the Philippines, as well as those that may be allowed to establish branches under R.A. No. 7721, may incorporate under Philippine laws, in which case said foreign banks may own up to sixty percent (60%) of the voting stock of the new bank.

§ X105.11 *(2008 - X121.11) Listing of shares with the Philippine Stock Exchange.* At least ten percent (10%) of the capital of banks in which foreign banks have invested under Subsec. X105.1a and b, shall be listed in the PSE within a reasonable period of time after the investment is made as may be determined by the Monetary Board.

§ X105.12 *(2008-X121.12) Applicability to Philippine corporations*

a. Any right, privilege or incentive granted to foreign banks or their subsidiaries or affiliates under R.A. No. 7721 shall be equally enjoyed by, and extended under the same conditions to, domestic banks.

b. Philippine corporations, whose shares of stocks are listed in the PSE, or which are of long standing for at least ten (10) years, as determined by the Monetary Board, shall have the right to acquire, purchase or own up to sixty percent (60%) of the voting stock of a domestic bank: *Provided,* That said corporations, as well as foreign banks may own up to sixty percent (60%) of the voting stock of only one (1) domestic bank.

Secs. X106 - X107 (Reserved)

C. MERGER AND CONSOLIDATION

Sec. X108 *(2008 - X111)* Merger or Consolidation to Meet Minimum Capital The merger or consolidation of banks and other financial intermediary(ies) to meet minimum capital requirements shall be allowed subject to the following regulations.

For purposes of merger and consolidation, the following definitions shall apply:

a. *Merger* - is the absorption of one (1) or more corporations by another existing corporation, which retains its identity and takes over the rights, privileges, franchises, and properties, and assumes all the liabilities and obligations of the absorbed corporation(s) in the same manner as if it had itself incurred such liabilities or obligations. The absorbing corporation continues its existence while the life or lives of the other corporation(s) is/are terminated.

b. *Consolidation* - is the union of two (2) or more corporations into a single new corporation, called the consolidated corporation, all the constituent corporations thereby ceasing to exist as separate entities. The consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities, franchises and properties, and assume all the liabilities and obligations of each of the constituent corporations in the same manner as if it had itself incurred such liabilities or obligations.

§ X108.1 *(2008 - X111.1) Requirement of Bangko Sentral approval.* Mergers and consolidations including the terms and conditions thereof shall comply with the provisions of applicable law and are subject to approval by the BSP.

§ X108.2 *(2008 - X111.2) Rules on exchange of shares.* As a general rule, the ratio of exchange of shares between or among the participants in a bank merger or consolidation shall be based on mutual agreement of the parties concerned. However, any appraisal increment reserve (revaluation reserve) arising from the revaluation of the fixed assets, as may be agreed upon by the parties shall be limited to premises, improvement, and equipment which are necessary for its immediate accommodation in the transaction of the bank's business. Such revaluation should be based on fair valuation of the property which shall be subject to review and approval by the BSP.

§ X108.3 *(2008 - X112) Merger or Consolidation Incentives.* In pursuance of the policy to promote mergers and consolidations among banks and other financial intermediaries as a means to develop larger and stronger FIs, constituent entities may, subject to BSP approval, avail themselves of any or all of the following incentives:

a. Revaluation of premises, improvements and equipment of the institutions: *Provided,* That such revaluation shall be based on fair valuation of the property conducted by a reputable appraisal company which shall be subject to review and approval by the BSP.

The following rules shall govern the revaluation of assets:

(1) The revaluation of the premises, improvements and equipment shall be allowed only to all institutions participating in a merger or consolidation if all of them belong to the same category, or at least two (2) of them belong to the highest category among the merging or consolidating institutions;

(2) In case the merging or consolidating institutions do not belong to the same

category or only one (1) of them falls under the highest category, all of them may be allowed to revalue their premises, improvements and equipment: *Provided,* That the amount of appraisal increment resulting from such revaluation shall be limited to the amount of the total resources of the institution belonging to the lower category or categories.

(3) The appraisal increment resulting from the revaluation shall form part of capital for purposes of determining the single borrower's limit and capital-to-risk assets ratio. The use of appraisal increment for cash dividend shall be governed by the provisions of the Corporation Code.

(4) The revaluation of premises, improvements, and equipment of the institution as well as the recognition of goodwill as an incentive to mergers or consolidations as provided in Item "e" hereof shall only be allowed if the following conditions are met:

(i) The surviving or consolidated entity will meet the existing capital requirements after all adjustments are taken up in the books of accounts of the merging or consolidating entities but before considering appraisal increments and goodwill, or there will be infusion of fresh capital to meet said existing capital requirements; and

(ii) The merger or consolidation will result in a more viable FI as a result of cost savings and improved competitive position.

In case of purchase or acquisition of the majority or all of the outstanding shares of stocks of a bank, the same conditions must be satisfied.

b. Unbooked valuation reserves based upon the BSP examination and other capital adjustments resulting from the merger or consolidation may be booked on staggered basis over a maximum period of five (5) years.

The following guidelines shall govern the staggered booking of valuation reserves:

(1) The booking on staggered basis over a maximum period of five (5) years of unbooked valuation reserves based upon examination by the BSP may be allowed to all institutions participating in a merger or consolidation if all of them belong to the same category, or at least two (2) of them belong to the highest category among the merging or consolidating institutions.

(2) In case the merging or consolidating institutions do not belong to the same category or only one (1) of them falls under the highest category, all of them may be allowed to book the required valuation reserves based upon examination by the BSP on a staggered basis over a maximum of five (5) years: *Provided,* That the aggregate amount of the required valuation reserves shall be limited to the amount of the total resources of the institution belonging to the lower category or categories.

c. Exemption from the forty percent (40%) and sixty percent (60%) ownership limits prescribed in Subsec. X126.1 in the new or surviving institution of any Filipino individual or domestic non-bank corporation: *Provided,* That this shall be allowed only if the bank that is being merged is distressed as may be determined by the Monetary Board and such merger is for the purpose of rehabilitating the bank: *Provided, further,* That whenever any of said stockholders exceed the prescribed limits, his holdings shall not be increased, but may be reduced and once reduced, shall not thereafter be increased beyond such limits.

In the case of purchase or acquisition of majority or all of the outstanding shares of a bank/QB by another bank/QB, the revaluation of the assets and the booking of the required valuation reserves based upon examination by the BSP over a period of five (5) years shall be allowed only if such purchase or acquisition is for the purpose of rehabilitating the former bank/QB: *Provided*, That the revaluation of assets and staggered booking of valuation reserves shall be allowed in full only if both banks/QBs belong to the same category. Otherwise, only the bank/QB being acquired/rehabilitated shall be allowed to recognize in full the appraisal increment resulting from revaluation of assets and to book valuation reserves on a staggered basis, while in the case of the acquiring bank/QB, the appraisal increment resulting from revaluation of assets and the privilege of staggered booking of valuation reserves shall each be limited to the amount of the total resources of the bank/QB being acquired/ rehabilitated.

The exemption from the ownership limits prescribed in Subsec. X126.1 on existing stockholdings of any Filipino individual or domestic non-bank corporation in a banking institution, as an incentive to purchase or acquisition of majority or all of the outstanding shares of stock of bank/QB shall be allowed only if the bank being purchased or acquired is distressed as may be determined by the Monetary Board and such merger is for the purpose of rehabilitating the bank/QB.

d. If by reason of merger or consolidation, the resulting bank is unable to comply fully with the prescribed net worth-to-risk assets ratio, the Monetary Board may, at its discretion, temporarily relieve the bank from full compliance with this requirement under such conditions as it may prescribe;

The recognition of goodwill as an incentive to mergers or consolidations shall only be allowed subject to the conditions in Item *"a (4)"*.

e. Conversion or upgrading of the existing head offices, branches and/or other offices of the merged or absorbed institutions into branches of the new or surviving FIs;

f. Condonation of liquidated damages and/or penalties on loan arrearages to the BSP of RBs which are parties to the merger or consolidation: *Provided,* That loan arrearages of RBs to the BSP are paid in full or covered by a plan of payment payable on an equal monthly amortization schedule over a period not exceeding ten (10) years;

g. Relocation of branches/offices may be allowed within one (1) year from date of merger or consolidation in cases where the merger or consolidation resulted in duplication of branches/offices in a service area, or in such other cases/circumstances as may be prescribed by the Monetary Board;

h. Outstanding penalties in legal reserve deficiencies and interest on overdrafts with the BSP as of the date of the merger or consolidation may be paid in installments over a period of one (1) year;

i. Rediscount ceiling of 150% of adjusted capital accounts for a period of one (1) year, reckoned from the date of merger or consolidation: *Provided*, That the merged/consolidated bank meets the required net worth-to-risk assets ratio and all of the other requirements for rediscounting;

j. UBs/KBs whose total outstanding real estate loans exceed twenty percent (20%) of total loan portfolio may be given a period of one (1) year within which to comply with the prescribed twenty percent (20%) ratio reckoned from the date of merger or consolidation;

k. Restructuring/plan of payment of past due obligations of the proponents with the BSP as of the date of merger/ consolidation over a period not exceeding ten (10) years;

l. In the case of RBs, grant of access to the rediscounting window of the BSP for a period of two (2) years from the date of merger or consolidation even if its past due ratio exceeds twenty five percent (25%) of loan portfolio but not exceeding thirty percent (30%): *Provided*, That the merged/consolidated bank meets all the other requirements. During said period of two (2) years, its rediscounting limit per application may also be increased to an amount equivalent to the total of the rediscounting limit per application of each of the constituent banks before merger or consolidation;

m. Subject to approval of the Monetary Board concurrent officerships between a merged or consolidated bank/FI and another bank/FI may be allowed;

Likewise, with prior approval of the Monetary Board, concurrent directorships may be allowed in cases where a bank acquires shares of stock of another bank for the purpose of merging or consolidating the two (2) banks regardless of whether the banks belong to the same category or both have quasi-banking functions;

n. Subject to other requirements on the establishment of branches, the merged/consolidated RBs may be allowed to establish a branch each in Cebu City and Davao City if it has put up the minimum capital requirement for these places;

o. Grant of automatic extension of five (5) years for retirement of government preferred shares to be reckoned from the date of merger or consolidation;

p. Training of officers and staff of the merging or consolidating RBs by the BSP; and

q. Any right or privilege granted a merging bank under a rehabilitation program previously approved by the Monetary Board or under any special authority granted by the Monetary Board shall continue to be in effect.

The revaluation of assets and staggered booking of valuation reserves shall be available for a period of two (2) years from 19 February1999 while the rest of the incentives enumerated under this Subsection shall be available for a period of three (3) years from 31 August 1998.

The foregoing incentives may also be granted in cases of purchases or acquisitions of majority or all of the outstanding shares of stock of a bank/QB.

(As amended by Circular 494 dated 20 September 2005)

Secs. X109 - X110 (Reserved)

D. CAPITALIZATION

Sec. X111 ***(2008 - X106)*** **Minimum Required Capital.** The following provisions shall govern the capital requirements for banks.

The term *capital* shall be synonymous to *unimpaired capital and surplus*, *combined capital accounts* and *net worth* and shall refer to the total of the unimpaired paid-in capital, surplus and undivided profits, less:

a. Unbooked valuation reserves and other capital adjustments as may be required by the BSP;

b. Total outstanding unsecured credit accommodations, both direct and indirect, to directors, officers, stockholders, and their related interests (DOSRI) granted by the bank proper;

c. Unsecured loans, other credit accommodations and guarantees granted to subsidiaries and affiliates;

d. Deferred income tax;

e. Appraisal increment reserve (revaluation reserve) as a result of appreciation or an increase in the book value of bank assets;

f. Equity investment of a bank in another bank or enterprise, whether foreign or domestic, if the other bank or enterprise has a reciprocal equity investment in the investing bank, in which case, the investment of the bank or the reciprocal investment of the other bank or enterprises, whichever is lower; and

g. In the case of RBs/Coop Banks, the government counterpart equity, except those arising from conversion of arrearages under the BSP rehabilitation program.

With respect to Item *"b"* hereof, the provision in Subsec. X326.1 shall apply except that in the definition of *stockholders* in said Subsection, the qualification that his stockholdings, individually and/or together with his related interest in the lending bank should at least amount to two percent (2%) or more of the total subscribed capital stock of the bank shall not apply for the purpose of this Item.

(As amended by Circular No. 560 dated 31 January 2007)

§ X111.1 ***(2008 - X106.1) Minimum capitalization.*** The minimum capital of banks shall be as follows:

a. UBs - P5.4 billion each

b. KBs - P2.8 billion each

c. TBs -

(1) With head offices within Metro Manila - P400.0 million each; and

(2) With head offices outside Metro Manila - P64.0 million each.

d. RBs -

(1) An RB may be established in any city or municipality, except in the cities of Manila, Kalookan, Quezon, Pasay, Mandaluyong, Makati, Parañaque, Malabon, Navotas and San Juan; and in the cities of Cebu and Davao, with minimum capital requirements as follows:

(a) In first, second and third class cities and in first class municipalities - P8.0 million each;

(b) In fourth, fifth and sixth class cities and in second, third, and fourth class municipalities - P4.8 million each; and

(c) In fifth and sixth class municipalities - P3.2 million each.

(2) Existing RBs within the excepted cities and municipalities shall maintain the following minimum capital requirements:

(a) In the cities of Manila, Kalookan, Quezon, Pasay, Mandaluyong, Makati, Parañaque, Malabon, Navotas and San Juan - P32.0 million each; and

(b) In the cities of Cebu and Davao - P16 million each.

e. Coop Banks -

Coop Banks that may be established shall have a minimum authorized capital of:

(1) P200.0 million for national Coop Banks divided into such number of shares with a minimum par value of P1,000 per share, with a private paid-in capital of at least P20.0 million; and

(2) P20.0 million for local Coop Banks divided into such number of shares, with a private paid-in capital of at least P1.25 million, except as follows:

(a) P20.0 million minimum private paid-in capital for Coop Banks to be established in Metro Manila;

(b) P10.0 million minimum private paid-in capital for Coop Banks to be established in the cities of Cebu and Davao; and

(c) P5.0 million minimum private paid-in capital for Coop Banks to be established in other cities: *Provided, however,* That for the first Coop Bank organized in the province, although it will be located in a city, the minimum private paid-in capital shall be P1.25 million.

The foregoing minimum capital requirements for UBs, KBs, TBs, and RBs shall immediately apply to applications filed after 12 March 1998.

§ X111.2 ***(2008 - X106.2) Capital build-up program***

a. UBs and KBs which are existing, or which are newly authorized but not yet operating, or banks from which completed applications to operate under an UB/KB authority have been received as of 12 March 1998 but pending action by the BSP, are hereby allowed the following time frame within which to meet the above minimum capital requirement:

(1) ₱4.5 billion for UBs and ₱2.0 billion for KBs on or before 24 December 1998;

(2) ₱4.95 billion for UBs and ₱2.4 billion for KBs on or before 31 December 1999; and

(3) ₱5.4 billion for UBs and ₱2.8 billion for KBs on or before 31 December 2000:[1] *Provided*, That for the ₱ 4.95 billion/₱2.4 billion and ₱5.4 billion/ ₱2.8 billion minimum capital, UBs/KBs shall submit to the BSP a capital build-up program for this purpose within three (3) months from 12 March 1998.

b. TBs which are existing, or which are newly authorized but not yet operating, or persons from whom completed applications to establish TBs have been received as of 12 March 1998 but pending action by the BSP, are allowed the following time frame within which to meet the above minimum capital requirement:

(1) With head office within Metro Manila:
- ₱250 million on or before 24 December 1998;
- ₱325 million on or before 31 December 1999; and
- ₱400 million on or before 31 December 2000;[1] and

(2) With head office outside Metro Manila:
- ₱52 million on or before 31 December 1999; and
- ₱64 million on or before 31 December 2000:[1]

Provided, That for the ₱325.0 million, ₱400.0 million, ₱52.0 million and ₱64.0 million minimum capital, TBs shall submit to the BSP a capital build-up program for this purpose within three (3) months from 12 March 1998.

c. RBs which are existing, or which are newly authorized but not yet operating, or persons from whom completed applications to establish RBs have been received as of 12 March 1998 but pending action by the BSP, are allowed the following time frame within which to meet the above minimum capital requirement:

(1) In the cities of Manila, Kalookan, Quezon, Pasay, Mandaluyong, Makati and Parañaque and in the municipalities of Malabon, Navotas and San Juan:
- ₱26 million on or before 31 December 1999; and
- ₱32 million on or before 31 December 2000;[1]

(2) In the cities of Cebu and Davao:
- ₱13 million on or before 31 December 1999; and
- ₱16 million on or before 31 December 2000;[1]

(3) In first, second and third class cities and first class municipalities:
- ₱6.5 million on or before 31 December 1999; and
- ₱8.0 million on or before 31 December 2000;[1]

(4) In fourth, fifth and sixth class cities and second, third and fourth class municipalities:
- ₱3.9 million on or before 31 December 1999; and
- ₱4.8 million on or before 31 December 2000;[1]

(5) In fifth and sixth class municipalities:
- ₱2.6 million on or before 31 December 1999; and
- ₱3.2 million on or before 31 December 2000:[1]

Provided, That RBs shall submit to the BSP a capital build-up program for this purpose within three (3) months from 12 March 1998: *Provided, further*, That if the prescribed minimum capital necessitates an increase in the authorized capital stock, the RB shall cause the corresponding amendments to its articles of incorporation and submit the same to the BSP together with its capital build-up program.

The deadline of the second phase (1st phase for TBs outside Metro Manila and RBs) of the capital build-up program of banks is extended from 31 December 1999 to 31 January 2000.[1]

For banks that have executed a Memorandum of Understanding (MOU) with the BSP, in compliance with Subsec. X111.3, the following guidelines shall apply:

(a) For banks with capital deficiency but with capital-to-risk assets ratio within the minimum prescribed and with no

[1] The target level of capitalization prescribed for banks as of end-2000 has been set aside. The level of required capitalizationas of end-2000 shall be the same as that prescribed as of end-1999.

weaknesses (i.e., high past due loans, DOSRI violations, etc.), the MOU may be set aside: *Provided,* That the bank will be able to comply with the minimum capital requirements as herein prescribed; and

(b) For banks with capital deficiency but with significant weaknesses (i.e., deficiency in capital-to-risk assets ratio, liquidity problems, high past due loans, etc.), the MOU, as executed, shall continue to be in full force and in effect until such time that it shall be amended by mutual consent of the parties; waived and/or terminated by the BSP.

Non-compliance with the above capital requirements shall subject the bank to sanctions/penalties provided under existing banking laws and BSP rules and regulations.

§ X111.3 ***(2008 -X106.3) Memorandum of Understanding; Prompt Corrective Action Program; sanctions.*** The following are the policy guidelines and the corresponding sanctions for banks failing to comply with the minimum capital requirements and the corresponding sanctions:

a. *Memorandum of Understanding; Prompt Corrective Action Program*

(1) The adoption of the Memorandum of Understanding (format shown in *Appendix 30)* between the bank and the BSP; and

(2) The implementation of the Prompt Corrective Action Program as detailed below:

(a) *For undercapitalized banks of up to twenty percent (20%)* -

(i) Require the bank to execute a Memorandum of Understanding (MOU) with the BSP, binding itself, among others, to implement a viable capital restoration plan acceptable to the BSP within thirty (30) days from date of notice;

(ii) Require the intensified monitoring by BSP of bank's financial condition; and

(iii) BSP to conduct a special examination of the bank.

(b) *For significantly undercapitalized banks of up to sixty percent (60%)* -

(i) BSP to call a meeting with bank directors/principal officers to discuss and agree on remedial measures to be taken and the timetable for implementation;

(ii) Intensify monitoring by the Supervision and Examination Sector (SES) of the bank's financial condition;

(iii) BSP to conduct immediately an extensive on-site examination;

(iv) Require the bank to execute an MOU with the BSP, binding itself, among others, to implement a viable capital restoration plan acceptable to the BSP within thirty (30) days from date of discussion. Among the options to be considered are:

- disposition of a majority shareholder's interest;
- sale of assets;
- issuance of additional stock/capital infusion;
- sale of bank to highest bidder subject to terms set by BSP; and
- merger (assisted or unassisted) or consolidation with a stronger bank;

(v) Require the creation of a separate unit in the bank - remedial asset management group which will take care of bank's bad assets and make progress reports to the BSP;

(vi) Appoint an external auditor at the expense of the bank to perform a financial or operational audit under the terms of reference provided by BSP; and

(vii) If necessary, appoint a consultant specialist to diagnose the problem and to recommend the appropriate remedial measures (i.e., introduce new profit opportunities, improve internal and accounting controls, etc.) to restore bank's viability.

(c) *For critically undercapitalized banks of more than sixty percent (60%)* -

(i) Place the bank under Prompt Corrective Action Unit since this requires more than normal bank supervision;

(ii) BSP to call a meeting with bank's principal shareholders/directors;

(iii) BSP to conduct immediately an extensive on-site examination;

(iv) BSP to conduct an intensive monitoring of bank's financial condition;

(v) Require the bank to execute an MOU with the BSP, binding itself, among others, to implement a viable capital restoration plan acceptable to the BSP within thirty (30) days from date of meeting. Among the options to be considered are:

- disposition of a majority shareholder's interest;
- sale of assets;
- issuance of additional stock/capital infusion;
- sale of bank to highest bidder subject to terms set by BSP; and
- merger (assisted or unassisted) or consolidation with a stronger bank;

(vi) Create a BSP Ad Hoc Committee to oversee the implementation of the action plan;

(vii) Require the creation of a separate unit in the bank - remedial asset management group to take care of bank's bad assets and make progress reports to the BSP;

(viii) Appoint an external auditor at the expense of the bank to perform financial or operational audit under the terms of reference of the BSP;

(ix) If bank's condition further deteriorates to the extent that depositors and creditors protection is at stake and its capital base is already deficient by more than eighty percent (80%), appoint/assist a resident examiner/comptroller or conservator, if legally feasible, to oversee/take over management of the bank; and

(x) If necessary, appoint a consultant specialist to diagnose the problem and to recommend the appropriate remedial measures (i.e., introduce new profit opportunities, improve internal and accounting controls, etc.) to restore bank's viability.

b. *Sanctions*. The following sanctions for non-compliance with the minimum capital requirements are hereby prescribed:

(1) *Monetary penalty*

For delayed or non-submission of the capital build-up program reckoned from the time bank was notified in writing up to the time the program has been submitted, per banking day of delay, a monetary penalty of:

Type of Bank	Amount of Penalty
(a) UBs/ KBs	₱ 10,000.00
(b) TBs	5,000.00
(c) RBs	1,000.00

(2) *Non-monetary penalty*

Non-monetary penalties shall depend on the degree of capital deficiency incurred by the bank as follows:

Penalty	UBs/ KBs	TBs	RBs/ Coop Banks
(a) Up to twenty percent (20%) -			
- Suspension of authority to invest in non-allied undertakings (for UBs only)	✓	NA	NA
- Suspension of authority to invest in allied undertakings	✓	NA	NA
- Suspension of securities and dealership functions (for UBs only)	✓	NA	NA
- Suspension of branching privileges	✓	✓	✓
- Suspension of declaration of cash dividends	✓	✓	✓
(b) Up to forty percent (40%) -			
- Suspension of authority to invest in non-allied undertakings (for UBs only)	✓	NA	NA
- Suspension of authority to invest in allied undertakings	✓	NA	NA
- Suspension of securities and dealership functions (for UBs only)	✓	NA	NA
- Restrictions on lending to affiliates	✓	✓	NA
- Suspension of branching privileges	✓	✓	✓
- Suspension of declaration of cash dividends	✓	✓	✓
- Restrictions on overall loan growth/investments (new loans to the extent of collections only)	✓	✓	✓
- Denial of access to BSP rediscounting facilities	✓	✓	✓

- Suspension of authority to accept or create demand deposits or operate NOW accounts	NA	✓	✓
- Suspension of authority to accept or handle government deposits	✓	✓	✓
(c) Up to sixty percent (60%) -			
- Suspension of authority to invest in non-allied undertakings (for UBs only)	✓	NA	NA
- Suspension of authority to invest in allied undertaking	✓	✓	✓
- Suspension of securities and dealership functions (for UBs only)	✓	NA	NA
- Suspension of branching privileges	✓	✓	✓
- Suspension of declaration of cash dividends	✓	✓	✓
- Restrictions on overall loan growth/investments (new loans to the extent of collections only)	✓	✓	✓
- Restrictions on lending to affiliates	✓	✓	NA
- Denial of access to BSP rediscounting facilities	✓	✓	✓
- Suspension of authority to accept or handle government deposits	✓	✓	✓
- Suspension of authority to engage in quasi-banking activities	✓	✓	NA
- Suspension of authority to engage in derivatives activities	✓	NA	NA
- Suspension of FCDU/EFCDU activities	✓	✓	NA
- Suspension of trust operations	✓	✓	NA
- Suspension of authority to accept or create demand deposits or operate NOW accounts	NA	✓	✓
(d) Up to eighty percent (80%) -			
- Suspension of authority to invest in non-allied undertakings (for UBs only)	✓	NA	NA
- Suspension of authority to invest in allied undertakings	✓	✓	✓
- Suspension of securities and dealership functions (for UBs only)	✓	NA	NA
- Suspension of branching privileges	✓	✓	✓
- Suspension of declaration of cash dividends	✓	✓	✓
- Denial of access to BSP rediscounting facilities	✓	✓	✓
- Suspension of authority to accept or create demand deposits or operate NOW accounts	NA	✓	✓
- Suspension of authority to accept or handle government deposits	✓	✓	✓
- Suspension of authority to engage in quasi-banking activities	✓	✓	NA
- Suspension of authority to engage in derivatives activities	✓	NA	NA
- Suspension of FCDU/EFCDU activities	✓	✓	NA
- Suspension of trust operations	✓	✓	NA
- Suspension of international banking activities	✓	NA	NA
- Suspension of lending activities	✓	✓	✓
- Suspension of issuance of domestic L/Cs	NA	✓	NA
(e) More than eighty percent (80%) -			
- Suspension of clearing privileges	✓	✓	✓
- Suspension of granting of bonuses/profit-sharing not covered by existing contracts or By-Laws	✓	✓	✓
- Cease and desist	✓	✓	✓

(As amended by Circular No. 585 dated 15 October 2007)

§§ X112 - X114 *(Reserved)*

E. RISK BASED CAPITAL

Sec. X115 Basel II Risk-Based Capital

The guidelines implementing the revised risk-based capital adequacy framework for the Philippine banking system to conform to Basel II recommendations is provided in *Appendix 63b*.

The risk-based capital ratio of a bank, expressed as a percentage of qualifying capital to risk weighted assets, shall not be less than ten percent (10%) for both solo basis (head office plus branches) and consolidated basis (parent bank plus subsidiary financial allied undertakings, but excluding insurance companies).

(The BSP's implementation plans for the new international capital standards or Basel 2 contained in the Basel Committee on Banking Supervision document "International Convergence of Capital Measurement and Capital Standards:

A Revised Framework", are shown in Appendix 63)

(Circular No. 538 dated 04 August 2006, as amended by M-2008-015 dated 19 March 2008, Circular Nos. 605 dated 05 March 2008, 588 dated 11 December 2007, M-2007-019 dated 21 June 2007, Circular No. 560 dated 31 January 2007 and M-2006-022 dated 24 Novemebr 2006)

§ X115.1 *Scope*

The Basel II guidelines apply to all UBs and KBs, as well as their subsidiary banks and QBs.

§ X115.2 *(Reserved)*

§ 1115.2 *(2008 - 1116.5) Market risk capital requirement.* UBs/KBs shall also measure and apply capital charges for market risk, in addition to the credit risk capital requirement in this Section, in accordance with the Guidelines to Incorporate Market Risk in the Risk-Based Capital Adequacy Framework in *Appendix 46*.

The capital treatment of market risk exposures arising from the holdings of Dollar-Linked Peso Notes (DLPNs) is indicated in *Appendix 46a*.

The instructions for accomplishing the report on computation of the Adjusted Risk-Based Capital Adequacy Ratio covering combined credit risk and market risk are shown in *Appendices 46b* (for UBs and KBs with expanded derivatives authority), *46c* (for UBs and KBs with expanded derivatives authority but without options transactions) and *46d* (for UBs and KBs without expanded derivatives authority).

§ 2115.2 *(Reserved)*

§ 3115.3 *(Reserved)*

§ X115.3 *(2008 - X116.8) Capital treatment of exposures/investments in certain products.* The guidelines on the capital treatment of bank's exposures/ investments in the following products are in Part VI:

a. Credit-linked notes in Sec. 1628 and its Subsections.

b. Structured products in Subsec. 1635.4.

c. EFCDU investments in Subsec. 1636.4.

d. Investment in securities overlying securitization structures in Subsec. 1648.4

Sec. X116 Basel I Risk-Based Capital. The risk-based capital ratio of a bank, expressed as a percentage of qualifying capital to risk weighted assets, shall not be less than ten percent (10%) for both solo basis (head office plus branches) and consolidated basis (parent bank plus subsidiary financial allied undertakings, but excluding insurance companies).

The ratio shall be maintained daily.

§ X116.1 *Scope.* TBs, RBs, as well as QBs that are not subsidiaries of UBs and KBs shall continue to be subject to the risk-based capital adequacy framework, as provided under Sec. X116, as well as Subsecs. X115.3 and X116.2 to X116.7.

§ X116.2 *(2008 - X116.1) Qualifying capital.* The composition of qualifying capital is shown in *Appendix 63a*.

(As amended by Circular Nos. 560 dated 31 January 2007, 528 dated 03 May 2006 and Memorandum to All Banks dated 23 March 2006)

§ X116.3 *(2008 - X116.2) Risk-weighted assets.* The risk-weighted assets shall be determined by assigning risk weights to amounts of on-balance sheet assets and to credit equivalent amounts of off-balance sheet items (inclusive of derivatives contracts): *Provided,* That the following shall be deducted from the total risk-weighted assets: (1) general loan loss provision (in excess of the amount permitted to be included in upper Tier 2 capital) and unbooked valuation reserves;

and (2) other capital adjustments affecting asset accounts based on the latest report of examination as approved by the Monetary Board.

a. *On-balance sheet assets*. The risk-weighted amount shall be the product of the book value of asset multiplied by the risk weight associated with that asset, as follows:

(1) *Zero percent (0%) risk weight* -

(a) Cash on hand;

(b) Claims on or portions of claims guaranteed by or collateralized by securities issued by -

i. Philippine National Government and BSP; and

ii. Central governments and central banks of foreign countries with the highest credit quality as defined in Subsec. X116.4;

(c) Claims on or portions of claims guaranteed by or collateralized by securities issued by multilateral development banks (MDBs);

(d) Loans to the extent covered by hold-out on, or assignment of, deposits/ deposit substitutes maintained with the lending bank;

(e) Loans or acceptances under letters of credit to the extent covered by margin deposits;

(f) Portions of special time deposit loans covered by Industrial Guarantee and Loan Fund (IGLF) guarantee;

(g) Real estate mortgage loans to the extent guaranteed by the Home Guaranty Corporation (HGC);

(h) Housing microfinance loans as provided under Subsec. X361.5 to the extent guaranteed by the HGC;

(i) Loans to the extent guaranteed by the Trade and Investment Development Corporation of the Philippines (TIDCORP);

(j) Foreign currency notes and coins on hand acceptable as international reserves; and

(k) Gold bullion held either in own vaults, or in another's vaults on an allocated basis, to the extent it is offset by gold bullion liabilities;

(2) *Twenty percent (20%) risk weight* -

(a) Checks and other cash items (COCIs);

(b) Claims on or portions of claims guaranteed by or collateralized by securities issued by non-central government public sector entities of foreign countries with the highest credit quality as defined in Subsec. X116.4;

(c) Claims on or portions of claims guaranteed by Philippine incorporated banks/QBs with the highest credit quality as defined in Subsec. X116.4;

(d) Claims on or portions of claims guaranteed by foreign incorporated banks with the highest credit quality as defined in Subsec. X116.4;

(e) Claims on Philippine incorporated private enterprises with the highest credit quality as defined in Subsec. X116.4;

(f) Claims on foreign incorporated private enterprises with the highest credit quality as defined in Subsec. X116.4;

(g) Loans to exporters to the extent guaranteed by Small Business Guarantee and Finance Corporation (SBGFC): *Provided,* That loans to exporters to the extent guaranteed by the Guarantee Fund for Small and Medium Enterprises (GFSME) outstanding as of the date of the effectivity of the merger of the SBGFC and GFSME shall continue to have a zero percent (0%) risk weight: *Provided, further,* That the zero percent (0%) risk weight shall not apply to loans renewed after the merger of the SBGFC and the GFSME; and

(h) Foreign currency checks and other cash items denominated in currencies acceptable as international reserves.

(3) *Fifty percent (50%) risk weight* -

(a) Loans for housing purpose, fully secured by first mortgage on residential property that is or will be occupied or leased out by the borrower, which are not classified as non-performing;

(b) Local government unit (LGU) bonds which are covered by Deed of Assignment of Internal Revenue Allotment of the LGU and guaranteed by the LGU Guarantee Corporation; and

(c) Housing microfinance loans under Subsec. X361.5 other than those guaranteed by the HGC.

(4) *Seventy five percent (75%) risk weight*

(a) Defined small and medium enterprise (SME) and microfinance loan portfolio that meets the following criteria:

(i) *For individual claims that may form part of the SME and microfinance loan portfolio*

(aa) Claim must be on a small or medium business enterprise as defined under existing BSP regulations; and

(bb) Claims must be in the form of:

- Direct loans; or
- Unavailed portion of committed credit lines and other business facilities such as outstanding guarantees issued and unused letters of credit: *Provided*, That the credit equivalent amounts thereof shall be determined in accordance with Subsec. X116.3.b.

(ii) *For the SME and microfinance portfolio* -

(aa) It must be a highly diversified portfolio, i.e., it has at least 500 borrowers that are distributed over a number of industries; and

(bb) The past due ratios of the defined SME and microfinance loan portfolio for each of the immediately preceding three (3) years do not exceed five percent (5%).

(iii) *For the bank* -

(aa) It must have adequate risk management process approved by the board of directors, including as a minimum, a rigorous credit approval process and an adequate loan tracking system that allows timely monitoring of loan releases, collection and arrearages, and any restructuring and refinancing; and

(bb) The bank must be financially sound and in compliance with major prudential requirements, particularly the following:

- CAMELS composite rating of at least "3" and management score of at least "3" in its latest BSP examination; and
- Minimum applicable capital adequacy ratio.

(b) Non-performing loans (NPLs) for housing purpose, fully secured by first mortgage on residential property that is or will be occupied or leased out by the borrower; *Provided,* That risk weighting for such loans shall be increased to 100% in 2007;

(5) *One hundred percent (100%) risk weight* –

All other assets including, among others, the following:

(a) Claims on central governments and central banks of foreign countries other than those with the highest credit quality;

(b) Claims on Philippine local government units;

(c) Claims on non-central government public sector entities of foreign countries other than those with the highest credit quality;

(d) Claims on government-owned or -controlled commercial corporations;

(e) Claims on Philippine incorporated banks/QBs other than those with the highest credit quality;

(f) Claims on foreign incorporated banks other than those with the highest credit quality;

(g) Claims on Philippine incorporated private enterprises and claims on foreign incorporated private enterprises other than those with the highest credit quality;

(h) Loans to companies engaged in speculative residential building or property development;

(i) Equity investments (except those deducted from capital);

(j) Bank premises, furniture, fixtures and equipment (net);

(k) Appraisal increment - bank premises, furniture, fixtures and equipment (net);

(l) Real and other properties owned or acquired (net);

(m) Foreign currency notes and coins on hand not acceptable as international reserves;

(n) Gold bullion held in either own vaults, or in another's vaults on an allocated basis, that is not offset by gold bullion liabilities;

(o) Foreign currency COCIs not denominated in foreign currencies acceptable as international reserves; except those which are deducted from capital, as follows:

(i) Unsecured credit accommodations, both direct and indirect, to DOSRI;

(ii) Unsecured loans, other credit accommodations and guarantees granted to subsidiaries and affiliates;

(iii) Deferred income tax;

(iv) Goodwill;

(v) Sinking fund for redemption of limited life redeemable preferred stock with the replacement requirement upon redemption;

(vi) Sinking fund for redemption of limited life redeemable preferred stock without the replacement requirement upon redemption (limited to the balance of redeemable preferred stock after applying the cumulative discount factor);

(vii) Equity investments in unconsolidated subsidiary banks and other financial allied undertakings, but excluding insurance companies;

(viii) Investments in debt capital instruments of unconsolidated subsidiary banks;

(ix) Equity investments in subsidiary insurance companies and non-financial allied undertakings;

(x) Reciprocal investments in equity of other banks/enterprises;

(xi) Reciprocal investments in unsecured subordinated term debt instruments of other banks/QBs in excess of the lower of:

(aa) an aggregate ceiling of five percent (5%) of total Tier 1 capital of the bank; or

(bb) ten percent (10%) of the total outstanding unsecured subordinated term debt issuance of the other bank/QB; and

(xii) Net due "from" head office, branches, subsidiaries and other offices outside the Philippines, if any (for foreign bank branches); and

(p) *Starting 2007, NPLs for housing purpose, fully secured by first mortgage on residential property that is or will be occupied or leased out by the borrower.*

(6) One hundred twenty five percent (125%) risk weight -

All NPLs (except NPLs for housing purpose, fully secured by first mortgage on residential property that is or will be occupied or leased out by the borrower) and all non-performing debt securities: *Provided*, That risk weighting for such exposures shall be increased to 150% in 2007.

NPLs, which are secured by eligible collaterals or guaranteed by eligible guarantors below, shall be assigned the risk weight of the collateral or guarantor: *Provided,* That in cases of guarantees, the bank is able to pursue the guarantor of any monies outstanding within the period of time stipulated in the guarantee contract. Otherwise, the loan in question shall be assigned the risk weight applicable for NPLs.

(a) List of eligible collaterals

(i) Securities issued by the Philippine national government and BSP, and central governments and central banks of foreign countries with the highest credit quality as defined in Subsec. X116.4;

(ii) Securities issued by multilateral development banks listed under Sec. X116.4;

(iii) Cash in the form of hold out on or assignment of deposits/deposit substitutes maintained with the lending bank, and margin deposits for loans or acceptances under letters of credit; and

(iv) Securities issued by non-central government public sector entities of foreign countries with the highest quality as defined in Subsec. X116.4.

(b) List of eligible guarantors

(i) Philippine national government and BSP, and central governments and central banks of foreign countries with the highest credit quality as defined in Subsec. X116.4;

(ii) Multilateral development banks listed under Sec. X116.4;

(iii) IGLF;

(iv) HGC;

(v) TIDCORP;

(vi) Non-central government public sector entities of foreign countries with the highest credit quality as defined in Subsec. X116.4;

(vii) Philippine incorporated banks/QBs with the highest credit quality as defined in Subsec. X116.4;

(viii) Foreign incorporated banks with the highest credit quality as defined in Subsec. X116.4;

(ix) SBGFC; and

(x) LGU Guarantee Corporation (LGUGC), but only those guaranteed loans covered by Deed of Assignment of Internal Revenue Allotment of the LGU.

b. *Off-balance sheet items*. The risk-weighted amount shall be calculated using a two (2)-step process.

First, the credit equivalent amount of an off-balance sheet item shall be determined by multiplying its notional principal amount by the appropriate credit conversion factor, as follows:

(1) *One hundred percent (100%) credit conversion factor -*

This shall apply to direct credit substitutes, e.g., general guarantees of indebtedness (including standby letters of credit serving as financial guarantees for loans and securities) and acceptances (including endorsements with the character of acceptances), and shall include -

(a) Outstanding guarantees issued - foreign loans;

(b) Outstanding guarantees issued - other than foreign loans and shipside bonds/ airway bills; and

(c) Export letters of credit - confirmed.

This shall also apply to sale and repo agreements and asset sales with recourse where the credit risk remains with the bank (to the extent not included in the balance sheet), as well as to forward asset purchases, forward forward deposits and partly-paid shares and securities which represent commitments with certain drawdown: *Provided*, That these items shall be weighted according to the type of asset and not according to the type of counterparty with whom the transaction has been entered into.

(2) *Fifty percent (50%) credit conversion factor -*

This shall apply to certain transaction-related contingent items, e.g., performance bonds, bid bonds, warranties and standby letters of credit related to particular transactions, and shall include -

(a) Standby letters of credit - domestic (net of margin deposit) established as a guarantee that a business transaction will be performed; and

(b) Standby letters of credit - foreign (net of margin deposit).

This shall also apply to -

(c) Note issuance facilities and revolving underwriting facilities; and

(d) Other commitments, e.g., formal standby facilities and credit lines with an original maturity of more than one (1) year. This shall include underwritten accounts unsold.

(3) *Twenty percent (20%) credit conversion factor -*

This shall apply to short-term, self-liquidating trade-related contingencies, e.g., documentary credits collateralized by the underlying shipments, and shall include -

(a) Outstanding guarantees issued - shipside bonds/airway bills;

(b) Domestic letters of credit outstanding (net of margin deposit);

(c) Sight import letters of credit outstanding (net of margin deposit);

(d) Usance import letters of credit outstanding (net of margin deposit);

(e) Deferred letters of credit (net of margin deposit); and

(f) Revolving letters of credit (net of margin deposit) arising from movement of goods and/or services.

(4) *Zero percent (0%) credit conversion factor* –

This shall apply to commitments with an original maturity of up to one (1) year, or which can be unconditionally cancelled at any time, and shall include committed credit line for commercial paper issues.

This shall also apply to those not involving credit risk, and shall include -

(a) Inward bills for collection;

(b) Outward bills for collection;

(c) Items held for safekeeping/ custodianship;

(d) Trust department accounts;

(e) Late deposits/payments received;

(f) Items held as collaterals; and

(g) Travelers' checks; etc.

Second, the credit equivalent amount shall be treated like any on-balance sheet asset and shall be assigned the appropriate risk weight, i.e., according to the obligor, or if relevant, the qualified guarantor or the nature of collateral.

c. *Derivatives contracts*. The credit equivalent amount shall be the sum of the current credit exposure (or replacement cost) and an estimate of the potential future credit exposure (or add-on): *Provided,* That the following shall not be included in the computation:

(1) Instruments which are traded on exchange where they are subject to daily receipt and payment of cash variation margin; and

(2) Exchange rate contracts with original maturity of fourteen (14) calendar days or less.

The current credit exposure shall be the positive mark-to-market value of the contract (or zero if the mark-to-market value is zero or negative). The potential future credit exposure shall be the product of the notional principal amount of the contract multiplied by the appropriate potential future credit conversion factor, as indicated below:

Residual Maturity	Interest Rate Contract	Exchange Rate Contract
One (1) year or less	0.0%	1.0 %
Over one (1) year to five (5) years	0.5%	5.0 %
Over five (5) years	1.5%	7.5 %

Provided, That for contracts with multiple exchanges of principal, the factors are to be multiplied by the number of remaining payments in the contract: *Provided, further,* That for contracts that are structured to settle outstanding exposure following specified payment dates and where the terms are reset such that the market value of the contract is zero (0) on these specified dates, the residual maturity would be set equal to the time until the next reset date, and in the case of interest rate contracts with remaining maturities of more than one (1) year that meet these criteria, the potential future credit conversion factor is subject to a floor of five tenths percent (0.5%): *Provided, furthermore,* That no potential future credit exposure shall be calculated for single currency floating/floating interest rate swaps, i.e., the credit exposure on these contracts would be evaluated solely on the basis of their mark-to-market value.

The credit equivalent amount shall be treated like any on-balance sheet asset, and shall be assigned the appropriate risk weight, i.e., according to the obligor, or if relevant, the qualified guarantor or the nature of collateral: *Provided*, That a fifty percent (50%) risk weight shall be applied in respect of obligors which would otherwise attract a 100% risk weight.

The extent to which a claim is guaranteed/collateralized shall be determined by the amount of guarantee coverage/current market value of securities pledged, in comparison with the book value of the on-balance sheet asset or the notional principal amount of the off-balance sheet exposure, except for derivatives contracts for which determination is generally made in relation to credit equivalent amount.

The capital treatment of investments in credit-linked notes (CLNs) and similar credit derivative products such as credit-linked deposits (CLDs) and credit-linked loans (CLLs) shall comply with the guidelines in Sec. 1628 and its Subsections. (*As amended by M-2008-015 dated 19 March 2008 and Circular No. 560 dated 31 January 2007*)

§ X116.4 ***(2008 - X116.3) Definitions***

a. *Amount due from the BSP*. This refers to all deposits of the reporting bank with the BSP.

b. *Appraisal increment reserve*. This shall form part of capital only if authorized by the Monetary Board.

c. *Bank premises, furniture, fixtures and equipment net of depreciation*. This refers to the cost of land and improvements used as bank premises, and furniture, fixtures and equipment owned by the bank.

d. *Cash on hand*. This refers to total cash held by the bank consisting of both notes and coins in Philippine currency.

e. *Central government of a foreign country*. This refers to the central government which is regarded as such by a recognized banking supervisory authority in that country.

f. *Claims*. This refer to loans or debt obligations of the entity on whom the claim is held, and shall include, but shall not be limited to, the following accounts, inclusive of accumulated market gains/(losses) and accumulated bond discount/(premium amortization), and net of specific allowance for probable losses:

(1) Due from BSP;

(2) Due from other banks;

(3) Interbank loans receivable;

(4) Loans and discounts;

(5) Agrarian reform and other agricultural credit loans - P.D. 717;

(6) Development incentive loans;

(7) Bills purchased;

(8) Customers' liability on bills/drafts under LCs/TRs;

(9) Customers' liability for this bank's acceptances outstanding;

(10) Restructured loans;

(11) Trading account securities - loans;

(12) Underwriting accounts - debt securities (for UBs);

(13) Underwriting accounts - equity securities (for UBs);

(14) Trading account securities - investments;

(15) Trading account securities - equity (for UBs);

(16) Available for sale securities;

(17) Investments in bonds and other debt instruments (IBODI); and

(18) Others, e.g., accounts receivable and accrued interest receivable.

Accruals on a claim shall be classified and risk weighted in the same way as the claim. Bills purchased shall be classified as claims on the drawee banks.

g. *Consolidated basis*. This refers to combined statement of condition of parent bank and subsidiary financial allied undertakings, but excluding insurance companies.

h. *Debt capital instruments*. This refers to unsecured subordinated term debt instruments qualifying as capital of banks.

i. *Equity investments*. This refers to investments in capital stock of companies, firms or enterprises, made for purposes of control, affiliation or other continuing business advantage.

j. *Exchange rate contracts*. This includes cross-currency interest rate swaps, forward foreign exchange contracts, currency futures, currency options purchased and similar instruments.

k. *Financial allied undertakings*. This refers to enterprises or firms with homogenous or similar activities/business/ functions with the financial intermediary and may include but not limited to leasing companies, banks, IHs, financing companies, credit card companies, FIs catering to small and medium scale industries (including venture capital corporations), companies engaged in stock brokerage/securities dealership, companies engaged in foreign exchange dealership/brokerage, holding companies (for UBs), and such other similar activities as the Monetary Board may declare as appropriate from time to time, but excluding insurance companies.

l. *Claims on foreign country and foreign incorporated bank/private enterprise and Philippine incorporated bank/quasi bank/private enterprise with the highest credit quality*. This refers to claims on a country, bank or private enterprise given the highest credit ratings by any of the following BSP-recognized credit rating agencies:

(1) International rating agencies:

	Rating Agency	Highest Rating
(1)	Moody's	"Aa3" and above
(2)	Standard and Poor's	"AA-" and above
(3)	FitchRatings	"AA-" and above
(4)	And such other as may be approved by the Monetary Board	

(2) Domestic rating agencies:

	Rating Agency	Highest Rating
(1)	PhilRatings	"PRS Aa" and above
(2)	And such other rating agencies as may be approved by the Monetary Board	

Provided, That for purposes of this Subsection:

(i) Any reference to credit rating shall refer to issue-specific rating; the issuer rating may be used only if the claim being risk-weighted is a senior obligation of the issuer and is of the same denomination applicable to the issuer rating (e.g., local currency issuer rating may be used for risk weighting local currency denominated senior claims), or in cases of guarantees;

(ii) For loans, risk weighting shall depend on either the rating of the borrower or the rating of the unsecured senior obligation of the borrower: *Provided,* That the loan is of the same denomination applicable to the borrower rating or rating of the unsecured senior obligation;

Domestic debt issuances may be rated by BSP-recognized domestic or international credit rating agencies who may use a national rating scale acceptable to the BSP, while international debt issuances should be rated by BSP-recognized international credit rating agencies only; and

If a claim has only one (1) rating by any of the BSP recognized rating agencies, that rating shall be used to determine the risk weight of the claim; in cases where there are two (2) or more ratings which map into different risk weights, the higher of the two (2) lowest risk weights should be used.

m. *Forward asset purchases*. This refers to a commitment to purchase a loan, security or other asset at a specified future date, usually on prearranged terms.

n. *Forward forward deposits*. This refers to an agreement between two (2) parties whereby one (1) will pay and the other will receive an agreed rate of interest on a deposit to be placed by one (1) party with the other at some predetermined date in the future.

o. *Gold bullion held in another's vault on an allocated basis*. This refers to gold bullion held by others to the order of the bank, and which is separately ascertainable.

p. *Goodwill*. This refers to an intangible asset that represents the excess of the purchase price over the fair market value of identifiable assets acquired less liabilities assumed in acquisitions accounted for under the purchase method of accounting.

q. *Interest rate contracts*. This includes single-currency interest rate swaps, basis swaps, forward rate agreements, interest rate futures, interest rate options purchased and similar instruments.

r. *Loans for housing purpose, fully secured by first mortgage on residential property that is or will be occupied or leased out by the borrower*. This shall not include loans to companies engaged in speculative residential building or property development.

s. *Loans or acceptances under letters of credit to the extent covered by margin deposits*. This shall not include the unnegotiated letters of credit or the unutilized portion thereof, or other items booked under contingent accounts. This shall also not include margin deposits against loans or acceptance accounts which are fully liquidated.

t. *Loans to the extent covered by hold-out on, or assignment of, deposits or deposit substitutes maintained in the lending bank*. A loan shall be considered as secured by a hold-out on, or assignment of deposit or deposit substitute only if such deposit or deposit substitute account is covered by a hold-out agreement or deed of assignment signed by the depositor or investor/placer in favor of the bank. This shall not include loans transferred to/carried by the bank's trust department secured by deposit hold-out/assignment.

u. *Multilateral development banks* These refer to the World Bank Group comprised of the International Bank for Reconstruction and Development (IBRD) and the International Finance Corporation (IFC), the Asian Development Bank (ADB), the African Development Bank (AfDB), the European Bank for Reconstruction and Development (EBRD), the Inter-American Development Bank (IADB), the European Investment Bank (EIB); the Nordic Investment Bank (NIB); the Caribbean Development Bank (CDB), the Council of Europe Development Bank (CEDB) and such others as may be recognized by the BSP.

v. *Non-central government public sector entity of a foreign country*. This refers to entities which are regarded as such by a recognized banking supervisory authority in the country in which they are incorporated.

w. *Note issuance facilities and revolving underwriting facilities*. This refers to an arrangement whereby a borrower may draw down funds up to a prescribed limit over an extended period by repeated issues to the market of promissory notes which the bank committed to underwrite.

x. *Other commitments*. This includes undrawn portion of any binding arrangements which obligate the bank to provide funds at some future date.

y. *Other commitments with an original maturity of up to one (1) year*. This includes any revolving or undated open-ended commitments, e.g., overdrafts or unused credit lines, providing that they can be unconditionally cancelled at any time and subject to credit revision at least annually.

z. *Partly-paid shares and securities* This arises where only a part of the issue price or nominal face value of a security purchased has been subscribed and the issuer may call for the outstanding balance (or a further installment), either on a date predetermined at the time of issue, or at an unspecified future date.

aa. *Perpetual preferred stock*. This refers to preferred stock that does not have a maturity date, that cannot be redeemed at the option of the holder of the instrument, and that has no provision that will require future redemption of the issue. Consistent with these provisions, any perpetual preferred stock with a feature permitting redemption at the option of the issuer may qualify as capital only if the redemption is subject to prior approval of the BSP.

bb. *Philippine local government units* This refers to the Philippine government units below the level of national government, such as city, provincial, and municipal governments.

cc. *Philippine national government.* This shall refer to the Philippine national government and their agencies such as departments, bureaus, offices, and instrumentalities, but excluding government-owned and controlled commercial corporations.

dd. *Private sector.* This refers to entities other than banks and governments. This shall also include commercial companies owned by the public sector, such as government-owned or controlled commercial corporations.

ee. *Redeemable preferred stock.* This refers to preferred stock which may be redeemed at the specific dates or periods fixed for redemption, only upon prior approval of the BSP and, where the conditions of the issuance specifically state, only if the shares redeemed or replaced with at least an equivalent amount of newly paid-in shares so that the total paid-in capital stock is maintained at the same level immediately prior to redemption: *Provided*, That redemption shall not be earlier than five (5) years after the date of issuance: *Provided, further,* That such redemption may not be made where the bank is insolvent or if such redemption will cause insolvency, impairment of capital or inability of the bank to meet its debts as they mature.

Banks which have issues of limited life redeemable preferred shares compliant with Subsec. X126.5 and outstanding prior to 01 July 2001 shall be allowed to redeem the same prior to the set redemption date, without the need for replacement with at least an equivalent amount of newly paid-in shares within one (1) year from 26 September 2003 (effectivity of Circular No. 397) upon prior BSP approval: *Provided,* That:

(i) The redeemable preferred shareholders will give consent;

(ii) The bank meets the required minimum risk-based CAR and minimum capital level for the bank category after such redemption; and

(iii) Such redemption will not cause the inability of the bank to meet its obligations as they mature.

ff. *Sale and repurchase agreements and asset sales with recourse.* This refers to arrangements whereby a bank sells a loan, security or fixed asset to a third party with a commitment to repurchase the asset after a certain time, or in the event to a certain contingency.

gg. *Solo basis.* This refers to combined statement of condition of head office and branches.

hh. *Subsidiary.* This refers to a corporation or firm more than fifty percent (50%) of the outstanding voting stock of which is directly or indirectly owned, controlled or held with the power to vote by a bank.

ii. *Treasury shares.* This refers to shares of the parent bank held by a subsidiary financial allied undertaking in a consolidated statement of condition.

jj. *Private enterprises.* This refers to all commercial companies whether organized in the form of a corporation, partnership, or sole proprietorship.

kk. *Non-performing debt securities.* This refers to debt securities as described below:

(i) For zero-coupon debt securities, and debt securities with quarterly, semi-annual, or annual coupon payments, they shall be considered non-performing when principal and or coupon payment is unpaid for thirty (30) days or more after due date.

(ii) For debt securities with monthly coupon payments, they shall be considered non-performing when three (3) or more coupon payments are in arrears: *Provided, however,* That when the total amount of arrearages reaches twenty percent (20%) of the total outstanding balance of the debt security, the total outstanding balance of the debt security shall be considered as non-performing.

§ X116.5 ***(2008 - X116.4) Required reports.*** Banks shall submit a report of their risk-based capital adequacy ratio on a solo basis (head office plus branches) and on a consolidated basis (parent bank plus subsidiary financial allied undertakings, but excluding insurance companies) quarterly to the appropriate department of the SES in the prescribed forms within the deadlines, i.e., fifteen (15) banking days and thirty (30) banking days after the end of reference quarter, respectively. Only banks with subsidiary financial allied undertakings (excluding insurance companies) which under existing regulations are required to prepare consolidated statements of condition on a line-by-line basis shall be required to submit report on a consolidated basis. The abovementioned reports shall be classified as *Category A-2* reports.

§ X116.6 ***Sanctions.*** Whenever the capital accounts of a bank are deficient with respect to the prescribed risk-based capital adequacy ratio (which for UBs/KBs shall pertain to adjusted capital adequacy ratio covering combined credit risk and market risk), the Monetary Board, after considering a report of the appropriate department of the SES on the state of solvency of the institution concerned, shall limit or prohibit the distribution of the net profits and shall require that part or all of net profits be used to increase the capital accounts of the bank until the minimum requirement has been met. The Monetary Board may restrict or prohibit the making of new investments of any sort by the bank, with the exception of purchases of readily marketable evidences of indebtedness issued by the Philippine National Government and BSP included in Item *"a(1)(b)i"* of Subsec. X116.3, until the minimum required capital ratio has been restored.

§ X116.7 ***Temporary relief.*** In case of a bank merger, or consolidation, or when a bank is under rehabilitation under a program approved by the BSP, the Monetary Board may temporarily relieve the surviving bank, consolidated bank, or constituent bank or corporations under rehabilitation from full compliance with the required capital ratio for a maximum period of one (1) year.

Secs. X117 - X118 (Reserved)

F. CAPITAL INSTRUMENTS

Sec. X119 Unsecured Subordinated Debt The guidelines for the issuance of unsecured subordinated debt (UnSD) eligible as Hybrid Tier 1 (HT1) and Tier 2 capital are as follows:
(As amended by Memorandum to All Banks dated 23 March 2006)

§ X119.1 ***Minimum features of unsecured subordinated debt***

a. *Form.* A UnSD that will be publicly distributed may either be scripless in form or evidenced by certificates such as: promissory note, debenture or other appropriate certificate of indebtedness. A UnSD in scripless form shall comply with the provisions of R.A. No. 8792, otherwise known as the "Electronic Commerce Act", particularly on the existence of an assurance on the integrity, reliability and authenticity of the UnSD in electronic form. An independent third party UnSD Registry shall maintain unissued UnSD certificates and the UnSD Registry Book, which must be electronic if the UnSD is scripless in form. A UnSD that will be issued privately or on a negotiated basis shall be evidenced by certificates.

All UnSD shall be registered in the name of individuals or entities and pre-numbered serially.

b. *Denomination*. The UnSD must be issued in minimum denominations of ₱500,000 or its equivalent if denominated in a foreign currency.

c. *Mandatory provisions*. If the UnSD is not scripless in form, the following provisions must appear in bolder prints on the face of every note, debenture or other certificate evidencing the same:

(1) This obligation is not a deposit and is not insured by the Philippine Deposit Insurance Corporation (PDIC);

(2) This obligation is neither secured nor covered by the guarantee of (name of bank) or its subsidiaries and affiliates, or other arrangement that legally or economically enhances the priority of the claim of any holder of the UnSD as against depositors and other creditors (for LT2); depositors, other creditors and holders of LT2 capital instruments (for UT2); and depositors, other creditors and holders of LT2 and UT2 capital instruments (for HT1);

(3) This obligation does not have a priority claim, in respect of principal and coupon payments in the event of winding-up of the (name of bank), which is higher than or equal with that of depositors and other creditors (for LT2); depositors, other creditors and holders of LT2 capital instruments (for UT2); and depositors, other creditors, holders of LT2 and UT2 capital instruments (for HT1); and

(4) The obligation is ineligible as collateral for a loan granted by (name of Bank), its subsidiaries and affiliates.

If the UnSD is scripless in form, the foregoing provisions/information shall be furnished every buyer/investor in a separate written instrument receipt of which must be duly acknowledged by him.

d. *Term*. The UnSD qualifying under HT1 capital shall be perpetual. The minimum maturity of a UnSD qualifying under UT2 and LT2 capital shall be ten (10) years and five (5) years, respectively.

(As amended by Memorandum to All Banks dated 23 March 2006)

§ X119.2 *Prior Bangko Sentral approval.* No UnSD shall be issued without the prior approval of the BSP.

§ X119.3 *Pre-qualification requirements of issuing bank.* A bank applying for authority to issue a UnSD shall comply with the following requirements:

a. It has complied with the minimum amount of capital required under Subsec. X111.1 or its paid-in capital is at least equal to the amount required therein.

b. It has established a risk management system appropriate to its operations characterized by clear delineation of responsibility for risk management, adequate risk measurement systems, appropriately structured risk limits, effective internal controls and complete, timely and efficient risk reporting system.

c. It is a locally incorporated bank.

§ X119.4 *Public issuance of unsecured subordinated debt.* Public issuance of UnSD is an issuance offered to the general public, which may or may not be qualified investors/buyers as hereinafter defined. The Issuing Bank must be rated by an independent credit rating agency recognized by the BSP and a Public Trustee shall be appointed for investor protection.

a. *Application for authority*

(1) The application shall be signed by the president or officer of equivalent rank of the applicant bank;

(2) The application for authority on each UnSD issue/issue program shall be filed with the appropriate department of the SES: *Provided*, That the period of an issue program of two (2) or more tranches shall not exceed one (1) year from date of approval; and

(3) The application shall be accompanied by:

(a) A certified true copy of the resolution of the Issuing Bank's board of directors authorizing the issuance of the UnSD indicating, among others, the issue size, terms and conditions, offering period, purpose or intended use of proceeds thereof, the names of the Underwriter/Arranger, UnSD Registry, Selling Agent(s) and Market Maker(s), and Public Trustee;

(b) A certification by the corporate secretary that the issuance of the UnSD has been approved by the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock of the Issuing Bank if the UnSD has convertibility feature;

(c) A written confirmation from the president or officer of equivalent rank of the Issuing Bank stating that all the conditions for UnSD under Item *"a(2)(a)"*, Item *"b(1)(h)"* or Item *"b(2)(c)"*, of *Appendix 63a* are complied with and that such conditions shall be contained in the UnSD Certificates if the UnSD is not in scripless form, in the Information Disclosure and Purchase Advice.

(d) A written undertaking from the president or officer of equivalent rank of the Issuing Bank not to support, directly or indirectly, by extending loans, issuing payment guarantees or otherwise, the buyer/holder of the UnSD of the Issuing Bank;

(e) A written confirmation from the president or officer of equivalent rank of the Issuing Bank stating that the designated Underwriter/Arranger, UnSD Registry, Selling Agent(s) and Market Maker(s) were provided with a complete list of subsidiaries and affiliates of the Issuing Bank including their subsidiaries and affiliates;

(f) A written undertaking from the president or officer of equivalent rank of the Issuing Bank to update the above-mentioned list within three (3) banking days from the date of change in composition thereof;

(g) Specimen of the UnSD; and

(h) A written external legal opinion that all the conditions for UnSD under Item *"a(2)(a)"*, Item *"b(1)(h)"* or Item *"b(2)(c)"*, of *Appendix 63a*, including the subordination (for HT1, UT2 and LT2) and loss absorption (for HT1 and UT2) features, have been met.

b**.** *Additional requirements for the issuance of UnSD*

After a bank's application to issue a UnSD has been approved, the applicant shall submit the following additional requirements to the appropriate department of the SES:

(1) At least fifteen (15) banking days before the date of offering:

(a) A written confirmation from the president or officer of equivalent rank of the Issuing Bank stating that the bank has been rated by an independent credit rating agency duly recognized by the BSP;

(b) Information disclosure of the UnSD issuance prepared by the Underwriter/Arranger;

(c) Promotional materials;

(d) Specimen of the proposed Purchase Advice and Registry Confirmation; and

(e) Copy of the agreements between the Issuing Bank and the Underwriter/

Arranger/UnSD Registry/Selling Agent(s)/ Market Maker(s), and Public Trustee.

The BSP reserves the right to suspend the date of offering, within the fifteen (15) banking day period from submission of the above-mentioned requirements.

(2) Within ten (10) banking days after issuance of the initial and subsequent tranches:

(a) A written notice of the actual date of issuance/offering of each initial and subsequent tranches.

c. *Requirements for other parties involved*

(1) Underwriter/Arranger

(a) It is either a UB or an IH: *Provided,* That if an offering is on a best effort basis, the Arranger may also be a KB: *Provided, further*, That if an offering is denominated in foreign currency, the Underwriter/ Arranger may also be any reputable international investment bank.

(b) It must be an independent third party that has no subsidiary/affiliate or any other relationship with the Issuing Bank that would undermine the objective conduct of due diligence.

(c) If Underwriter, it must have adequate risk management and must be well capitalized, which for a local Underwriter, shall be evidenced by compliance with the risk-based CAR prescribed under Sec. X116 for the past sixty (60) days immediately preceding the date of application where applicable.

(2) UnSD Registry

(a) It may be a UB, a KB, or such other specialized entity that may be qualified by the Monetary Board.

(b) It must be a third party that has no subsidiary/affiliate or any other relationship with the Issuing Bank that would undermine its independence.

(c) It must not be an Underwriter or a Market Maker of the UnSD.

(d) It must have adequate facilities and the organization to do the following:

(i) Maintain certificates of unissued UnSD and the Registry Book which must be electronic if the UnSD is in scripless form;

(ii) Deliver transactions within the agreed trading period; and

(iii) Issue Registry Confirmations and UnSD Certificates if they are not in scripless form to buyers/holders of UnSD.

(e) It must have a CAMELS composite rating of at least "3" in the last regular examination, where applicable.

(3) Selling Agent

(a) It may be any FI with dealership or brokering license and is under the supervision of the BSP.

(b) It must be a third party that has no subsidiary/affiliate or any other relationship with the Issuing Bank that would undermine its independence.

(4) Market Maker

(a) It must be a FI with a dealership or brokering license and is under the supervision of the BSP.

(b) It must be a third party that has no subsidiary/affiliate or any other relationship with the Issuing Bank that would undermine its independence.

(c) It must have adequate risk management and must be well capitalized as evidenced by compliance with the risk based CAR prescribed under Sec. X116 for the past sixty (60) days immediately preceding the date of application where applicable.

There is no need for a Market Maker if the UnSD is to be held on to maturity: *Provided,* That this condition is properly disclosed in the Purchase Advice, Registry Confirmation and Prospectus/Information Disclosure.

(5) Public Trustee

(a) It must be a FI authorized by the BSP to engage in trust and other fiduciary business.

(b) It must be a third party that has no subsidiary/affiliate or any other relationship with the Issuing Bank that would undermine its independence.

(c) It must have adequate risk management system and must be well capitalized as evidenced by compliance with the risk-based CAR prescribed under Sec. X116 for the past sixty (60) days immediately preceding the date of application where applicable. The sixty (60)-day compliance period with the risk-based CAR shall be waived in evaluating a bank's eligibility to act as Public Trustee for another bank's UnSD's Tier 2 offering, if the former bank has instituted remedial measure to its CAR deficiency by issuing Tier 2 capital.

(d) It may also be the UnSD Registry.

(e) A Public Trustee is mandatory if UnSD shall be offered to the general public and optional if offering will be limited to qualified investors/buyers.

d. *Functions/Responsibilities of other parties involved*

The respective parties shall have, among others, the following functions/ responsibilities:

(1) Underwriter/Arranger

(a) Conducts due diligence on the Issuing Bank and determines the valuation/ pricing of the primary issue;

(b) Prepares the prospectus/ information disclosure, including updates for multi-tranche UnSD issues;

(c) Formulates the distribution/ allocation plan for the initial offering and ensures proper and orderly distribution of the primary offering of the UnSD;

(d) Disseminates information to prospective investors of UnSD on the terms and conditions of the issue (including information of non pre-termination at the initiative of the holder and the liquidity mechanism in secondary trading) and the rights and obligations of the holder, issuer, Underwriter/Arranger, UnSD Registry, Selling Agent, Market Maker and Public Trustee; and

(e) When selling to its clients, it must perform the functions/responsibilities of the Selling Agent under Item *"d(3)"* hereof.

(2) UnSD Registry

(a) Keeps unissued UnSD certificates and maintains UnSD Registry book, which must be electronic if UnSD is scripless in form;

(b) Records initial issuance of the UnSD and subsequent transfer of ownership;

(c) Issues UnSD Certificates for primary offerings if UnSD is not scripless in form;

(d) Issues Registry Confirmation to buyers/holders;

(e) Functions as paying agent for periodic interest and principal payments;

(f) Monitors compliance with the prohibitions on holdings of UnSD, as prescribed under Subsec. X119.8 hereof; and

(g) Submits within ten (10) banking days from end of reference month, an exception report on Subsec. X119.8 to the appropriate department of the SES. This report shall be classified as a *"Category B"* report.

(3) Selling Agent

(a) Verifies identity of each investor to ascertain that Subsec. X119.8 is not violated and applies appropriate standards to combat money laundering as required under existing BSP regulations;

(b) Determines the suitability of the investor and ensures that he fully understands the features of the UnSD and the risk involved therein; and

(c) Issues the Purchase Advice for the primary offering of the UnSD to the buyer and sends a copy thereof to the UnSD Registry.

The sale or distribution of UnSD may also be performed by the issuer through its head office and branches subject to the following conditions:

(i) The in-house distribution shall not exceed fifty percent (50%) of the total issue;

(ii) The sale/distribution must be done under the supervision of an officer of the Issuing Bank who is capable of determining the suitability of the investor and ensuring that he fully understands the risk in UnSD;

(iii) All personnel assigned to distribute/sell UnSD must be capable of determining the suitability of the investor and ensuring that he fully understands the risk in UnSD; and

(iv) It must also perform the functions/ responsibilities of the Selling Agent.

(4) Market Maker

(a) Sets an independent pricing for the secondary trading of UnSD;

(b) Posts daily the bid and offer prices for the UnSD on the screen of at least one (1) of the information providers until the operation of a fixed income exchange for UnSD;

(c) Verifies identity of each investor to ascertain that Subsec. X119.8 is not violated and applies appropriate standards to combat money laundering as required under existing BSP regulations;

(d) Determines the suitability of the buyer and ensures that he fully understands the risk involved in a UnSD;

(e) Issues the Purchase Advice for the secondary trading of the UnSD to the buyer and sends a copy thereof to the UnSD Registry; and

(f) Ensures secondary market transfers and registration in coordination with the UnSD Registry.

(5) Public Trustee

(a) Monitors compliance of the Issuing Bank with the terms and conditions of the UnSD;

(b) Monitors compliance of the other parties with their functions and responsibilities prescribed under this Memorandum;

(c) Reports regularly to UnSD holders non-compliance of the Issuing Bank with the terms and conditions of the UnSD and such other developments that adversely affect their interest and advise them of the course of action they should take to protect their interest; and

(d) Act on behalf of the UnSD holders in case of bankruptcy of the Issuing Bank.

e. *Change of Underwriter/Arranger, UnSD Registry, Selling Agent(s), Market Maker(s).* After an application for authority to issue a UnSD has been approved by the BSP, the Issuing Bank cannot change its Underwriter/Arranger, UnSD Registry, Selling Agent(s), Market Maker(s) and Public Trustee without prior BSP approval.

f. *Agreements Between Issuing Bank and other parties involved.* The agreements between the Issuing Bank and the UnSD Registry/Selling Agent(s)/Market Maker(s)/ Public Trustee shall comply with the provisions of Sec. X162 on bank service contracts. The Issuing Bank shall be liable to investors for any damages caused by actions of the UnSD Registry, Selling Agent(s) and Market Maker(s), which are contrary to the agreements entered into.

g. *Purchase Advice and Registry Confirmation.* The Purchase Advice and Registry Confirmation shall contain all the terms and conditions on the issuance of UnSD and shall conspicuously state the following caveat:

(1) This UnSD is not a deposit and is not insured by the PDIC.

(2) This UnSD is neither secured nor covered by a guarantee of the Issuer/ Underwriter/Arranger or related party of the Issuer/Underwriter/Arranger or other arrangement that legally or economically enhances the priority of the claim of any holder of the UnSD as against depositors and other creditors (for LT2); depositors, other creditors and holders of LT2 capital instruments (for UT2); and depositors, other creditors and holders of LT2 and UT2 capital instruments (for HT1);

(3) This UnSD does not have a priority claim, in respect of principal and coupon

payments in the event of winding-up of the Issuing Bank, which is higher than or equal with that of depositors and other creditors (for LT2); depositors, other creditors and holders of LT2 capital instruments (for UT2); and depositors, other creditors, holders of LT2 and UT2 capital instruments (for HT1);

(4) This UnSD is ineligible as collateral for a loan granted by the Issuing Bank, its subsidiaries or affiliates;

(5) This UnSD cannot be terminated by the holder nor by the Issuing Bank (for HT1). This UnSD cannot be terminated by the holder nor by the Issuing Bank before (maturity date) (for UT2 and LT2).

However, negotiations/transfers from one (1) holder to another do not constitute pre-termination.

(Item "*g(5)*" above shall apply if the Issuing Bank commits no pre-termination of the UnSD. Otherwise, it shall read as follows):

This UnSD cannot be terminated by the holder (for HT1). This UnSD cannot be terminated by the holder before (maturity date) (for UT2 and LT2).

However, it may be pre-terminated at the instance of the Issuing Bank upon:

(a) Prior approval of the BSP subject to the following conditions:

(i) The repayment is in connection with call option after a minimum of five (5) years from issue date, or even within the first five (5) years from issue date when:

(aa) The UnSD was issued for the purpose of a merger with or acquisition by the Issuing Bank and the merger or acquisition is aborted;

(bb) There is a change in tax status of the UnSD due to changes in the tax laws and/or regulations; or

(cc) The UnSD does not qualify as HT1, UT2 or LT2 capital, as the case may be, as determined by the BSP; and

(ii) The debt is simultaneously replaced with the issues of new capital which is neither smaller in size nor of lower quality than the original issue, unless the Issuing Bank's capital adequacy ratio remains more than adequate after redemption; and

(b) Prior notice to holders on record.

Negotiations/transfers from one (1) holder to another do not constitute pre-termination.

In case there is a feature allowing one-time step-up in the coupon rate in conjunction with a call option, the step-up shall be after a minimum of ten (10) years for HT1 and UT2 and five (5) years for LT2 after the issue date, and shall not result in an increase over the initial rate that is more than:

(i) 100 basis points less the swap spread between the initial index basis and the stepped-up index basis; or

(ii) Fifty percent (50%) of the initial credit spread less the swap spread between the initial index basis and the stepped-up index basis.

The swap spread shall be fixed at the pricing date and reflect the differential in pricing on that date between the initial reference security or rate and the stepped-up reference security or rate;

(6) The holders/owners of this UnSD cannot set off any amount they owe to the Issuing Bank against this UnSD.

(7) All negotiations/transfers of this UnSD prior to maturity must be coursed through a Market Maker until the operation of a fixed income exchange.

(8) The payment of principal may be accelerated on this UnSD only in the event of insolvency of the Issuing Bank.

(9) The coupon rate, or the formulation for calculating coupon payments shall be fixed at the time of the issuance of the UnSD and may not be linked to the credit standing of the Issuing Bank;

(10) The payment of principal and coupon due on this UnSD shall not be made to the extent that such payment will cause

the Issuing Bank to become insolvent (for HT1 and UT2);

(11) The holders of the UnSD shall be treated as if they were holders of a specified class of share capital in any proceedings commenced for the winding-up of the Issuing Bank (for HT1 and UT2);

(Item *"g(11)"* above shall apply if such is the manner by which the UnSD is to be treated in loss situation. Otherwise, it shall read as follows):

This UnSD shall be automatically converted into common shares or perpetual and non-cumulative preferred shares (for HT1) or into common shares or perpetual and non-cumulative preferred shares or perpetual and cumulative preferred shares (for UT2) upon occurrence of certain trigger events as follows:

(a) Breach of minimum capital ratio;

(b) Commencement of proceedings for winding-up of the Issuing Bank; or

(c) Upon appointment of receiver for the Issuing Bank.

The rate of conversion shall be fixed at the time of the subscription of this UnSD.

(12) The amount and timing of coupons on this UnSD shall be discretionary on the Issuing Bank where the Issuing Bank has not paid or declared a dividend on its common shares in the preceding financial year, or determines that no dividend is to be paid on such shares in the current financial year; and the Issuing Bank shall have full control and access to waived payments (for HT1). The coupon payment on this UnSD shall be deferred where the Issuing Bank has not paid or declared a dividend on its common shares in the preceding financial year, or determines that no dividend is to be paid on such shares in the current financial year (for UT2);

(13) The coupon on this UnSD shall be non-cumulative. In case there is a feature allowing withheld cash coupon to be payable in scrip or shares of stock, the shares of stock to be issued shall not be of lower quality capital than the UnSD (for HT1); and

(14) The coupon to be paid on this UnSD shall be paid only to the extent that the Issuing Bank has profit distributable determined in accordance with existing BSP regulations (for HT1).

N.B.: The last five (5) items (i.e., 10, 11, 12, 13 and 14) are applicable only to UnSD qualifying under HT1 and UT2 capital, as the case may be. The foregoing information shall also be shown in the Prospectus/Information Disclosure.

h. *Pre-termination by the Issuer*

(1) The Issuing Bank may pre-terminate the UnSD subject to the following conditions:

(a) The Information Disclosure, Purchase Advice and Registry Confirmation shall include the information that the Issuing Bank has the option to pre-terminate the UnSD;

(b) Compliance with Items *"a(2)(a)vii", "b(1)(h)v" or "b(2)(c)iv"* as may be applicable, of *Appendix 63a*;

(c) Prior notification of thirty (30) banking days or more to holders of record; and

(d) Notwithstanding any agreement to the contrary, the Issuer shall shoulder the tax due, if any, on the interest income already earned by the holders.

(2) Within ten (10) banking days after the completion of the pre-termination transaction, the Issuing Bank must submit a written notice to the appropriate department of the SES of the following:

(a) Actual pre-termination date; and

(b) New capital composition.

i. *Primary offering/secondary trading*

(1) The primary offering of a UnSD shall be executed through an Underwriter under a firm commitment or through an Arranger on a best effort basis. Initial sale/distribution of UnSD shall be made by a Selling Agent, the Underwriter/Arranger or, to a limited extent, the Issuing Bank

itself. Subsequent negotiations in secondary trading must be executed through authorized Market Maker(s) until the operation of a fixed income exchange.

The primary offering as well as the secondary trading of a UnSD must be supported by Purchase Advice to be issued by the Selling Agent or the Market Maker, as the case may be, with the original given to the buyer and a second copy to the UnSD Registry. Upon presentation by the buyer of the original copy of Purchase Advice, the UnSD Registry shall:

(a) record the primary issuance in the Registry Book and issue a Registry Confirmation and the corresponding UnSD certificate to the buyer if it is not scripless in form; and

(b) register the transfer of ownership in the UnSD Registry Book and issue a Registry Confirmation to the buyer, in the case of secondary trading.

(As amended by Memorandum to All Banks dated 23 March 2006)

§ X119.5 *Private or negotiated issuance of unsecured subordinated debt*

a. *Private or negotiated issuance of UnSD* is the issuance of UnSD to qualified investors/buyers, whether individuals or institutions as defined under Subsec. X119.7. There is no limit on the number of qualified investors/buyers and on the sale or negotiation of the UnSD: *Provided*, That such sale or negotiation shall only be made to another qualified investor/buyer.

b. *Application for authority of the Issuing Bank*

(1) The application shall be signed by the president or officer of equivalent rank of the Issuing Bank.

(2) The application for authority on each negotiated UnSD issue shall be filed with the appropriate department of the SES.

(3) The application shall be accompanied by:

(a) A certified true copy of the resolution of the Issuing Bank's board of directors authorizing the private/negotiated issuance of UnSD indicating, among others, the amount, duration/maturity, interest rate, purpose or intended use of proceeds of the UnSD;

(b) A Certification by the corporate secretary that the issuance of the UnSD has been approved by the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock of the Issuing Bank if the UnSD has convertibility feature;

(c) A written confirmation from the president or officer of equivalent rank of the Issuing Bank stating that all the conditions for UnSD under Item *"a(2)(a)"* excluding Item *"(xiii)"* on underwriting provision or Item *"b(1)(h)"* excluding Item *"(xi)"* on underwriting provision or Item *"b(2)(c)"* excluding Item *"(ix)"* on underwriting provision of *Appendix 63a* are complied with and that such conditions shall be contained in the UnSD Certificates, Prospectus/Information Disclosure and Debt Agreement/Contract.

(d) An undertaking from the president or officer of equivalent rank of the Issuing Bank that the UnSD shall be issued only to qualified investors/buyers;

(e) A certification from the president or officer of equivalent rank of the Issuing Bank that the investor/buyer shall not be among those prohibited to hold UnSD under Subsec. X119.8 and that the Issuing Bank has applied appropriate standards to combat money laundering as required under existing BSP regulations;

(f) A written undertaking from the president or officer of equivalent rank of the Issuing Bank not to support, directly nor indirectly, by extending loans, issuing payment guarantees or otherwise, the buyer/holder of the UnSD of the Issuing Bank; and

(g) Specimen of the proposed Debt Agreement/Contract containing the terms and conditions of the UnSD issuance.

(h) A written external legal opinion that all the conditions for UnSD under Item *"a(2)(a)"*, Item *"b(1)(h)"* or Item *"b(2)(c)"*, of *Appendix 63a* including the subordination (for HT1, UT2 and LT2) and loss absorption (for HT1 and UT2) features, have been met.

c. *Additional Requirements for the Private Issuance of UnSD*. Within ten (10) banking days after issuance of the UnSD, the Issuing Bank shall submit the following additional requirements to the appropriate department of the SES:

(1) A written notice of the actual date of full receipt of proceeds, accompanied by a certification from the president or officer of equivalent rank of the Issuing Bank stating that the pre-qualification requirements under Subsec. X119.3 have been complied with up to the time of full receipt of proceeds;

(2) A copy of each of the duly signed Debt Agreements/Contracts between the Issuing Bank and the investor/buyer as specified in the application for authority to issue negotiated UnSD; and

(3) A copy of the income tax return of the investor/buyer in case of a natural person.

d. *Debt agreement/contract*

The Debt Agreement/Contract shall contain all the terms and conditions on the issuance of UnSD and shall conspicuously state the following *caveat:*

(1) This UnSD is not a deposit and is not insured by the PDIC.

(2) This UnSD is neither secured nor covered by a guarantee of the Issuer or related party of the Issuer or other arrangement that legally or economically enhances the priority of the claim of any holder of the UnSD as against depositors and other creditors (for LT2); depositors, other creditors and holders of LT2 capital instruments (for UT2); and depositors, other creditors and holders of LT2 and UT2 capital instruments (for HT1).

(3) This UnSD does not have a priority claim, in respect of principal and coupon payments in the event of winding-up of the Issuing Bank, which is higher than or equal with that of depositors and other creditors (for LT2); depositors, other creditors and holders of LT2 capital instruments (for UT2); and depositors, other creditors, holders of LT2 and UT2 capital instruments (for HT1);

(4) This UnSD is ineligible as collateral for a loan made by the Issuing Bank, its subsidiaries or affiliates.

(5) This UnSD cannot be terminated by the holder nor by the Issuing Bank (for HT1). This UnSD cannot be terminated by the holder nor by the Issuing Bank before (maturity date) (for UT2 and LT2).

Item *"d(5)"* above shall apply if the Issuing Bank commits no pre-termination of the UnSD. Otherwise, it shall read as follows:

This UnSD cannot be terminated by the holder (for HT1). This UnSD cannot be terminated by the holder before (maturity date) (for UT2 and LT2).

However, it may be pre-terminated at the instance of the Issuing Bank upon:

(a) Prior approval of the BSP subject to the following conditions:

(i) The repayment is in connection with call option after a minimum of five (5) years from issue date, or even within the first five (5) years from issue date when:

(aa) The UnSD was issued for the purpose of a merger with or acquisition by the Issuing Bank and the merger or acquisition is aborted;

(bb) There is a change in tax status of the UnSD due to changes in the tax laws and/or regulations; or

(cc) The UnSD does not qualify as HT1, UT2 or LT2 capital, as the case may be, as determined by the BSP; and

(ii) The debt is simultaneously replaced with the issues of new capital which is neither smaller in size nor of lower quality than the original issue, unless the Issuing Bank's capital adequacy ratio remains more than adequate after redemption; and

(b) Prior notice to investors/buyers.

In case there is a feature allowing one-time step-up in the coupon rate in conjunction with a call option, the step-up shall be after a minimum of ten (10) years (for HT1 and UT2) and five (5) years (for LT2) after the issue date, and shall not result in an increase over the initial rate that is more than:

(i) 100 basis points less the swap spread between the initial index basis and the stepped-up index basis; or

(ii) Fifty percent (50%) of the initial credit spread less the swap spread between the initial index basis and the stepped-up index basis.

The swap spread shall be fixed at the pricing date and reflect the differential in pricing on that date between the initial reference security or rate and the stepped-up reference security or rate;

(6) This UnSD may only be sold, transferred or negotiated to another qualified investor/buyer;

(7) The holders/owners of this UnSD cannot set off any amount they owe to the Issuing Bank against this UnSD.

(8) The payment of principal may be accelerated on this UnSD only in the event of insolvency of the Issuing Bank.

(9) The coupon rate, or the formulation for calculating coupon payments shall be fixed at the time of the issuance of the UnSD and may not be linked to the credit standing of the Issuing Bank;

(10) The payment of principal and coupon due on this UnSD shall not be made to the extent that such payment will cause the Issuing Bank to become insolvent (for HT1 and UT2);

(11) The holders of the UnSD shall be treated as if they were holders of a specified class of share capital in any proceedings commenced for the winding-up of the Issuing Bank (for HT1 and UT2);

(Item *"d(11)"* above shall apply if such is the manner by which the UnSD is to be treated in loss situation. Otherwise it shall read as follows):

This UnSD shall be automatically converted into common shares or perpetual and non-cumulative preferred shares (for HT1), or into common shares or perpetual and non-cumulative preferred shares or perpetual and cumulative preferred shares (for UT2) upon occurrence of certain trigger events as follows:

(a) Breach of minimum capital ratio;

(b) Commencement of proceedings for winding up of the Issuing Bank; or

(c) Upon appointment of receiver for the Issuing Bank.

The rate of conversion shall be fixed at the time of the subscription of this UnSD.

(12) The amount and timing of coupons on this UnSD shall be discretionary on the Issuing Bank where the Issuing Bank has not paid or declared a dividend on its common shares in the preceding financial year, or determines that no dividend is to be paid on such shares in the current financial year; and the Issuing Bank shall have full control and access to waived payments (for HT1). The coupon payment on this UnSD shall be deferred where the Issuing Bank has not paid or declared a dividend on its common shares in the preceding financial year, or determines that no dividend is to be paid on such shares in the current financial year (for UT2);

(13) The coupon on this UnSD shall be non-cumulative. In case there is a feature allowing withheld cash coupon to be payable in scrip or shares of stock, the shares of stock to be issued shall not be of lower quality capital than the UnSD (for HT1); and

(14) The coupon to be paid on this UnSD shall be paid only to the extent that

the Issuing Bank has profit distributable determined in accordance with existing BSP regulations (for HT1).

N.B.: The last five (5) items (i.e., 10, 11, 12, 13 and 14) are applicable only to UnSD qualifying under HT1 and UT2 capital, as the case may be.

e. *Pre-termination by the Issuer*

(1) The Issuing Bank may pre-terminate the negotiated UnSD subject to the following conditions:

(a) The Debt Agreement/Contract shall include the information that the Issuing Bank has the option to pre-terminate the UnSD;

(b) Compliance with Item *"a(2)(a)vii"*, Item *"b(1)(h)v" or* Item *"b(2)(c)iv"*, as may be applicable, of *Appendix 63a*;

(c) Prior notification of thirty (30) banking days or more to lender/investor; and

(d) Notwithstanding any agreement to the contrary, the Issuer shall shoulder the tax due, if any, on the interest income already earned by the holders.

(2) Within ten (10) banking days after the completion of the pre-termination transaction, the Issuing Bank must submit a written notice to the appropriate department of the SES of the following:

(a) Actual pre-termination date; and

(b) New capital composition.

f. *Functions/Responsibilities of the Issuing Bank*

(1) Prepares the Prospectus/Information Disclosure on the UnSD issues;

(2) Disseminates to prospective investors/buyers information on the terms and conditions of the UnSD (including information on no pre-termination at the initiative of the holder, and where applicable, the liquidity mechanism in secondary trading) and the rights and obligations of the holder and the issuer;

(3) Keeps unissued UnSD certificates and maintains UnSD Register;

(4) Records initial issuance of UnSD and subsequent transfer of ownership;

(5) Issues UnSD Certificates and Registry Confirmation to original investors/buyers;

(6) Issues Registry Confirmation to subsequent buyers/holders where applicable;

(7) Ensures compliance with Subsec. X119.8 and applies appropriate standards to combat money laundering as required under existing BSP regulations; and

(8) Determines suitability of the investors/buyers (original or subsequent) and assures that he fully understands the risk involved in a UnSD.

(As amended by Memorandum to All Banks dated 23 March 2006)

§ X119.6 *Issuance abroad of unsecured subordinated debt*. The overseas issuance of UnSD shall also be subject to the provisions of Sec. X119 except for the following:

a. Overseas issuance of UnSD may be allowed to be governed by the laws and applicable rules and regulations of the country where the UnSD is to be issued with respect to form, qualified investors/buyers and subsequent sale or negotiation;

b. The requirements under Subsecs. X119.1 c(1), X119.4 g(1), and X119.5 d(1) and d(6) may be allowed to be dispensed with in cases of overseas issuance of UnSD; and

c. The subsequent sale/negotiation in the Philippines of the UnSDs originally issued overseas shall not be allowed unless all the requirements for domestic issuance are complied with.

It is however understood that the applicant/issuer shall also secure the approval of the International Department (ID) of the BSP for the overseas issuance of foreign currency denominated UnSD.

(As amended by Memorandum to All Banks dated 23 March 2006)

§ X119.7 *Qualified investors/buyers* Qualified buyers of, or suitable investors in, a UnSD can be any of the following:

a. Banks;

b. Investment house (IH);

c. Insurance company;

d. Pension or retirement fund of other entities which have no subsidiary/affiliate or any other relationship with the Issuing Bank;

e. Investment company;

f. Funds managed by another bank or other entities duly authorized to engage in trust or other fiduciary business;

g. Domestic corporate or institutional investors with total assets of at least ₱100.0 million;

h. Foreign multilateral organizations such as, the ADB and IFC;

i. High net-worth individual investor/buyer who is sophisticated enough to understand and appreciate the significance of and the risk involved in UnSD as may be indicated by his/her educational background and/or employment/business experience; and

j. Stockholder, director or officer with the rank of at least a vice-president of the Issuing Bank.

§ X119.8 *Prohibitions on holdings of unsecured subordinated debt.* The following persons and entities are prohibited from purchasing/holding UnSD of the Issuing Bank:

a. Subsidiaries and affiliates of the Issuing Bank including their subsidiaries and affiliates; and

b. Common trust funds (CTFs) managed by the Trust Department of the Issuing Bank, its subsidiaries and affiliates or other related entities: *Provided,* That other funds being managed by the Trust Department of the Issuing Bank, its subsidiaries and affiliates or other related entities are allowed to purchase or invest in UnSD of the Issuing Bank subject to the following conditions:

(1) That the fund owners give prior authority/instruction to the Trust Department to purchase or invest in the UnSD of the Issuing Bank; and

(2) That the authority/instruction of the fund owner and his understanding of the risk involved in purchasing or investing in UnSD are fully documented.

For purposes of this Section, an *affiliate* refers to a related entity linked by means of ownership of at least twenty percent (20%) to not more than fifty percent (50%) of its outstanding voting stock.

§ X119.9 *Accounting treatment* Obligations arising from the issuance of UnSD (including the portion exceeding the allowable ceiling for purposes of determining the qualifying capital as provided in *Appendix 63a*) shall be booked under the following General Ledger account titles:

a. "Other Equity Instruments - Others" for HT1 capital which shall be presented in the equity accounts section of the Balance Sheet which shall be accounted for in accordance with the provisions of PAS 32; and

b. "Unsecured Subordinated Debt" for UT2 and LT2 capital, which shall be presented in the liability accounts section of the balance sheet.

However, only the proceeds actually received from the UnSD issues, (i.e., net of discounts, if any, and transaction costs) shall be considered as HT1, UT2 or LT2 capital.

The proceeds actually received from the UnSD issues, (i.e., net of discounts, if any, and transaction costs) eligible as UT2 or LT2 capital shall be considered in the computation of loanable funds for purposes of determining compliance with the mandatory allocation of funds for agri-agra credit required under P.D. No. 717, as amended.

A UnSD eligible as HT1, UT2 or LT2 capital shall be accounted for in accordance with PAS 32 and PAS 39.

A UnSD denominated in foreign currency eligible as HT1, UT2 or LT2 may be recorded in the regular banking unit (RBU) or foreign currency deposit unit (FCDU/EFCDU) of the issuing bank: *Provided*, That if booked in the FCDU/EFCDU, the following conditions shall be strictly observed:

a. The issuing bank shall indicate in its application that the UnSD shall be booked in its FCDU/EFCDU;

b. The UnSD shall remain in the FCDU/EFCDU books until full settlement; and

c. The UnSD shall be issued only to non-residents and offshore banking units (OBUs) in accordance with Section 72.2.e of CB Circular No. 1389, as amended.

(As amended by Memorandum to All Banks dated 23 March 2006)

§§ X119.10 - X119.12 *(Reserved)*

§ X119.13 *Sanctions.* Without prejudice to the other sanctions prescribed under Section 37 of R.A. No. 7653 and the provisions of Section 16 of R.A. No. 8791, sanctions shall be imposed on the Issuing Bank, UnSD Registry and other parties involved in the transaction for failure to perform their respective functions/responsibilities and for non-disclosure or misrepresentation of information, as follows:

a. *On the issuing bank*

(1) Suspension of its authority to issue remaining tranches, if any;

(2) Disqualification from future issuance of UnSD;

(3) Disqualification of all outstanding issues as eligible Tier 2 capital; and

(4) Monetary penalty of ₱30,000 for each violation.

b. *On the underwriter/arranger*

(1) Disqualification from being underwriter/arranger for three (3) years; and

(2) Monetary penalty of ₱30,000 for each violation.

c. *On the UnSD registry*

(1) Disqualification from being appointed as UnSD Registry for three (3) years; and

(2) Monetary penalty of ₱30,000 for each violation.

d. *On the selling agent/market maker*

(1) Disqualification from being appointed as selling agent or market maker for three (3) years; and

(2) Monetary penalty of ₱30,000 for each violation.

e. *On the public trustee*

(1) Disqualification from being appointed as public trustee for three (3) years; and

(2) Monetary penalty of ₱30,000 for each violation.

f. *On the certifying officer* - A fine of ₱5,000 per day from the time of required disclosure up to the time disclosure was made, or from the time misrepresentation was made up to the time the information was corrected, and a possible disqualification if warranted by the gravity of the offense committed.

g. *On the responsible officer* - A fine of ₱30,000 for participating in or tolerating the non-disclosure or misrepresentation of information, and a possible disqualification if warranted by the gravity of the offense committed.

(As amended by Circular No. 585 dated 15 October 2007)

Sec. X120 Interim Tier 1 Capital for Banks Under Rehabilitation. The following are the guidelines on the issuance of capital notes that will qualify as interim Tier 1 capital for banks under rehabilitation:

a. Banks under rehabilitation shall be allowed, upon prior BSP approval, to issue capital notes that shall qualify as interim Tier 1 capital: *Provided*, That the PDIC shall be the holder of the said capital notes: *Provided, further*, That any transter from PDIC of said capital notes shall require prior BSP approval.

b. The interim Tier 1 capital notes shall have the following minimum features:

(1) It must be perpetual, unsecured and subordinated;

(2) It must be issued and fully paid-up. Only the net proceeds received from the issuance shall be included as Tier 1 capital. The proceeds of the issuance must be immediately available without limitation to the bank;

(3) It must neither be secured nor covered by a guarantee of the issuer or related party or other arrangement that legally or economically enhances the priority of the claim of the PDIC as against depositors, other creditors of the bank and holders of LT2 and UT2 capital instruments;

(4) The PDIC, as holder of the interim capital notes must not have a priority claim, in respect of its principal and coupon payments of the interim Tier 1 capital notes in the event of winding up of the bank, which is higher than or equal with that of depositors, other creditors of the bank and holders of LT2 (e.g. limited life redeemable preferred stock) and UT2 (e.g. perpetual and cumulative preferred stock) capital instruments. The PDIC must waive its right to set-off any amount it owes the bank against any subordinated amount owed to it due to the interim Tier 1 capital notes;

(5) It must not be repayable without the prior approval of the BSP: *Provided,* That repayment may be allowed only in connection with a call option after a minimum of five (5) years from issue date: *Provided, however*, That a call option may be exercised within the first five (5) years from issue date upon entry of new investors: *Provided*, *further*, That such repayment prior to maturity shall be approved by the BSP only if it is simultaneously replaced with issues of new capital which is neither smaller in size nor of lower quality than the original issue, unless the bank's capital ratio remains more than adequate after redemption. It must not contain any clause, which requires acceleration of payment of principal, except in the event of insolvency. The agreement governing its issuance must not contain any provision that mandates or creates an incentive for the bank to repay the outstanding principal of the interim Tier 1 capital notes, e.g., a cross-default or negative pledge or a restrictive covenant, other than a call option, which may be exercised by the bank;

(6) The PDIC, as holder of the interim Tier 1 capital notes, shall have the right to convert, upon prior notice to the BSP, the interim Tier 1 capital notes into perpetual and non-cumulative preferred shares convertible into common shares which may be sold to new investors: *Provided,* That the rate of conversion shall be fixed at the time of subscription of the interim Tier 1 capital notes;

(7) The coupons must be non-cumulative;

(8) The bank must have full discretion over the amount and timing of coupon payments and it must have full control and access to waived payments;

(9) Any coupon to be paid must be paid only to the extent that the bank has profits distributable determined in accordance with existing BSP regulations. The coupon rate, or the formulation for calculating coupon payments must be fixed at the time of issuance of the interim Tier 1 capital notes and must not be linked to the credit standing of the bank;

(10) It must not have step-up provisions in the coupon rate in conjunction with the call option;

(11) All other transactions involving the capital notes shall require prior BSP approval.

c. The bank must submit a written opinion from its external auditor that the features of the interim Tier 1 capital notes

shall be accounted for as equity instruments in accordance with PAS 32.
(Circular No. 595 dated 11 January 2008)

Secs. X121- X125 (Reserved)

G. STOCK, STOCKHOLDERS AND DIVIDENDS

Sec. X126 Shares of Stock of Banks. The following shall govern transactions affecting shares of stock of banks and the limits on stockholdings in a single bank or in several banks.

§ X126.1 *Limits of stockholdings in a single bank.* The stockholdings of an individual, family, corporate or business group in any bank shall be subject to the limits prescribed in Sections 11, 12, 13 and 14 of R.A. No. 8791.

a. Foreign individuals and non-bank corporations may own or control up to forty percent (40%) of the voting stock of a domestic bank: *Provided*, That the aggregate foreign-owned voting stock owned by foreign individuals and non-bank corporations in a domestic bank shall not exceed forty percent (40%) of the outstanding voting stock of the bank. The percentage of foreign-owned voting stock in a bank shall be determined by the citizenship of the individual stockholders in that bank.

b. A Filipino individual and a domestic non-bank corporation may each own up to forty percent (40%) of the voting stock of a domestic bank. There shall be no ceiling on the aggregate ownership by such individuals and corporations in a domestic bank.

c. A natural person and a corporation or corporations which are wholly-owned, or a majority of the voting stock of which is owned, by him may own only up to a combined forty-percent (40%) of the voting stock of a domestic bank.

d. The right of Philippine corporations, however, under Section 8 of R.A. No, 7721, as implemented under Subsec. X105.12 shall continue to be in force and effect.

e. Stockholdings of family groups or related interests. Individuals related to each other within the fourth degree of consanguinity or affinity, whether legitimate, illegitimate or common-law, shall be considered family groups or related interests but may each own up to forty percent (40%) of the voting stock of a domestic bank: *Provided*, That said relationship must be fully disclosed in all transactions by such corporations or related groups or persons with the bank.

f. Two (2) or more corporations owned or controlled by the same family group of same group of persons shall be considered related interests but may each own up to forty percent (40%) of the voting stock of a domestic bank: *Provided*, That said relationship must be fully disclosed in all transactions by such corporations or related groups of persons with the bank.

g. Ceiling on stockholdings in a Coop Bank. The equity investment of any cooperative in any Coop Bank shall not exceed forty percent (40%) of the subscribed capital stock of such Coop Bank.

h. Stockholdings in excess of ceilings. Unless otherwise allowed under existing laws, rules or regulations, any or all, as the case may be, of the above-mentioned stockholders owning more than forty percent (40%) of the voting stock of a KB or a UB shall comply with said ceiling within thirty (30) days from 13 May 2002.

i. Determination of foreign-owned voting stock and citizenship of corporate stockholders in a bank as well as the relationship of stockholders of a bank.

(1) The percentage of foreign-owned voting stocks in a bank shall be determined by the citizenship of all the stockholders in that bank.

(2) The citizenship of the corporation, which is a stockholder of a bank shall follow the citizenship of the controlling stockholders of the corporation, irrespective of the place of incorporation. For purposes hereof, the term "controlling stockholders" shall refer to stockholders holding more than fifty percent (50%) of the voting stock of the corporate stockholders of the bank.

(3) The relationship of individuals who are stockholders of a bank shall be determined in accordance with the provisions of Articles 963 to 966 of the Civil Code of the Philippines.

§ X126.2 *Transfer of shares.* The following regulations shall govern transfer of voting shares of stocks in banks:

a. *Unlawful and void transactions involving voting stocks in banks.* The following transactions, to the extent of the excess over any of the prescribed ceilings are hereby declared unlawful.

(1) The sale or transfer of voting stock of a UB, a KB or an RB[1] to any individual, if such sale or transfer, in itself, or in relation with another previous sale or transfer shall result in the ownership by an individual in excess of forty percent (40%) of the voting stock of the bank.

(2) The sale or transfer of voting stock of banks to any individual or entity, if such sale or transfer, in itself, or in relation with another previous sale or transfer shall result in the ownership by foreign persons and/ or foreign non-bank corporations in excess of forty percent (40%) of the voting stock in a UB or a KB and sixty percent (60%) in case of a TB.

(3) The sale or transfer of voting stocks of UB or KB to any corporation, if such sale or transfer, in itself, or in relation with another previous sale or transfer shall result in the ownership by such corporation in excess of forty percent (40%) of the voting stock of the bank, unless allowed under R.A. No. 7721 and R.A. No. 8791.

(4) The sale or transfer of voting shares of stocks of UBs or KBs or RBs[1] to (a) any natural person; and (b) any corporation or corporations which are wholly-owned or a majority of the voting stock of which is owned by such natural person if such sale of transfer in itself, or in relation with another previous sale or transfer, shall result in the combined ownership by such natural person and such corporations in excess of forty percent (40%) of the voting stock of the bank, unless allowed under R.A. No. 7721 and R.A. No. 8791.

(5) Any arrangement, such as voting trust agreement or proxy, which vests in any person or corporation the right to vote or control voting stocks in banks, if such agreement in itself, or in relation with another previous similar agreement or previous sale or transfer shall result in the acquisition of control, in excess of the prescribed limitations.

b. *Duties of a corporate secretary.* In all transactions, which may lawfully come to the knowledge of the corporate secretary involving transfer of voting shares of stock or registration of voting trust agreements, or any form of agreement vesting the right to vote the voting shares of stock of the bank, the corporate secretary shall:

(1) ascertain the identity and citizenship of the transferee, voting trustee, proxy or person vested with the right to vote, and for this purpose, he should require the transferee, voting trustee, proxy or the person vested with the right to vote to submit proof of citizenship, which may consist, in case of a corporation, of a certified true copy of the articles of incorporation, accompanied by the affidavit of the corporate secretary of the corporation, certifying to the correctness and accuracy of the list of stockholders and the percentage of shares owned by them;

(2) require the transferee, voting trustee, proxy or person vested with the right to vote, at the time of the receipt of

[1] Effective 03 April 2002

the request for transfer or registration, or at any time thereafter, to disclose all information with respect to persons related to the transferee, voting trustee, proxy or person vested with the right to vote, within the fourth degree of consanguinity or affinity, whether legitimate, illegitimate or common-law, as well as corporations, partnerships or associations where the transferee, voting trustee, proxy or person vested with the right to vote has controlling interest, and the extent thereof;

(3) require the transferee to execute an affidavit (sample format shown in *Appendix 4*) stating, among other things, that the transferee is a *bona fide* owner of shares of stock and that he acknowledges full awareness of the requirements of the law and the prohibitions against exceeding ownership of voting stocks beyond the prescribed limitations.

If the request for transfer or the arrangement sought to be registered will patently cause the voting stocks of a person or a corporation, to exceed the limits prescribed by law, the corporate secretary shall deny the transfer or registration and forthwith inform the parties to the transaction in writing. Simultaneous with the notice to the parties, the corporate secretary shall submit a written report to the Governor of the BSP of the attempted illegal transfer or arrangements, together with the names, addresses of parties and other pertinent data with respect to the particular stock transaction.

In the event the corporate secretary has reason to doubt the legality of the transfer or of the arrangement sought to be registered, he may commence an action before the appropriate body;

(4) promptly inform stockholders who have reached any of the ceilings imposed by law, of their ineligibility to own or control more than the applicable ceiling; and

(5) disclose the ultimate beneficial owners of bank shares held in the name of Philippine Central Depository (PCD) Nominee Corporation in the quarterly report on Consolidated List of Stockholders and Their Stockholdings which report shall be made under oath by the authorized bank officers/signatories. Any violation of the provision of this Subsection shall be subject to a penalty of ₱30,000 per day until the correct report is submitted to the BSP.

c. *Transfers requiring prior Monetary Board approval*

(1) Prior approval of the Monetary Board shall be required on the following:

(a) Any sale or transfer or series of sales or transfers which will result in ownership or control of more than twenty percent (20%) of the voting stock of a bank by any person whether natural or juridical or which will enable such person to elect, or be elected as, a director of such bank; and

(b) Any sale or transfer or series of sales or transfers which will effect a change in the majority ownership or control of the voting stock of the bank from one (1) group of persons to another group: *Provided,* That in no case shall such sale or transfer be approved unless the bank concerned shall immediately comply with the prescribed minimum capital requirement for new banks, notwithstanding any approved capital build-up program.

(2) For purposes of these regulations, the sale or transfer of voting stock shall refer to sales or transfers of voting stock which are allowed under existing laws or BSP rules and regulations and which have not been registered/recorded in the transfer book/stock ledger or other records of banks.

(3) *Sanctions*. Any violation of the provisions under Items *"c(1)(a)" and "(b)"* above shall be subject to the sanctions prescribed under Sections 36 and 37 of R.A. No. 7653, without prejudice to the appropriate legal actions for the rescission and invalidation of the sale or transfer.

d. *Requirement for newly established banks.* Entities which may hereinafter apply for a license to engage in banking business shall, before being allowed to operate, submit -

(1) An alphabetical list of stockholders with the number and percentage of voting stock owned by them; and

(2) A separate list containing the names of persons who own voting stocks in banks and who are related to each other within the fourth degree of consanguinity or affinity, whether legitimate, illegitimate or common-law, with proper indication of the combined percentage of voting stocks held by them in the particular bank, as well as corporations which are wholly-owned or a majority of the stock of which is owned by any of such persons, including their subsidiaries.

§ X126.3 *Other foreign equity investment in domestic banks.* Except as otherwise covered under Sec. X105 and Subsec. X126.1, the following guidelines shall be observed on equity investments of foreigners in domestic banks:

a. The prior authority of the Monetary Board shall be obtained by foreign banks, including their subsidiaries and their holding companies having majority holdings in such foreign banks, whenever acquiring more than forty percent (40%) of the voting stock of a domestic bank, including foreign-owned shares outstanding and foreign-held as of 27 April 1973 and which continued to be held by the foreign stockholder up to the date of the acquisition by the foreign banks.

b. *(Deleted by Cir. No. 256 dated 15 August 2000)*

c. The prior authority of the Monetary Board is not required if the foreign investor is (1) an individual, (2) a non-financial entity, or (3) a non-bank financial entity which is not owned or controlled by a bank, its subsidiary or holding company, and the investor is acquiring foreign-owned shares in existing domestic banks: *Provided*, That said shares were outstanding and foreign-held as of 27 April 1973 and which continued to be foreign-held up to the date of acquisition by the foreign investor.

d. The maximum stockholdings foreigners may own in domestic banks shall continue to be governed by existing provisions of law.

e. Only foreign-owned shares directly funded by inward remittance of foreign exchange sold to the local banking system are qualified for registration with the BSP through its appropriate department for capital repatriation and remittance of profits/dividends privileges, in accordance with existing BSP rules and regulations.

§ X126.4 *Convertibility of preferred stock to common stock.* Out of the convertible preferred shares of stock which KBs/TBs may henceforth be authorized to issue, at least fifty percent (50%) of each such issue, shall be convertible into common stock at the option of the holders thereof after five (5) years from date of issue: *Provided, however,* That :

a. The bank concerned may allow the conversion of such preferred stock into common stock even before the lapse of five (5) years from date of issue;

b. At the time of the sale of the preferred stock, both classes thereof (one with convertibility feature and the other without convertibility feature) shall be offered to the purchasers, with the purchasers having the option to acquire either or both classes of preferred stock; and

c. Preferred shares of stock with a cumulative feature issued by banks shall automatically be convertible into common shares of stock at the option of the holders thereof whenever the right as may be acquired by the holders by virtue of such cumulative feature are not satisfied by the bank within a period of three (3) years from date of issue.

§ X126.5 *Issuance of redeemable shares: conditions; certification and report; sanctions*

a. *Conditions*. Banks may issue redeemable shares subject to the following conditions:

(1) The applicant bank prior to the approval of the amendment of articles of incorporation to issue redeemable preferred shares, has complied with the requirements under Items *"B1" to "B6", Appendix 5*.

The articles of incorporation of an applicant bank shall incorporate the conditions in Items *"a (3)(a)", "a(3)(b)", "a(3)(c)" and "a(3)(d)"* of this Subsection.

(2) The applicant bank prior to the issuance of redeemable shares shall comply with, in addition to the conditions in Item *"(1)"* above, the requirements under Items *"B7", "B8", and "B12" to "B16", Appendix 5*.

(3) The applicant bank after the issuance of redeemable shares shall comply with the following:

(a) Redemption of shares shall be allowed at the specific dates or periods fixed for redemption only upon prior approval of the BSP and, where the conditions of the issuance specifically state, only if the shares redeemed are replaced with at least an equivalent amount of newly paid-in shares so that the total paid-in capital stock is maintained at the same level immediately prior to redemption: *Provided,* That the redemption shall not be earlier than five (5) years after the date of issuance: *Provided, further,* That such redemption may not be made where the bank is insolvent or if such redemption will cause insolvency, impairment of capital or inability of the bank to meet its debts as they mature;

(b) A sinking fund for the redemption of preferred shares is to be created upon their issuance. This is to be effected by the transfer of free surplus to a restricted surplus account. The fund shall not be available for dividends. The guidelines for the establishment and administration/ management of sinking fund for the redemption of redeemable private preferred shares are shown in *Appendix 47*.

(c) The issuing bank shall not treat in any way redeemable preferred shares as time deposit, deposit substitute or other form of borrowings;

(d) No dividend shall be declared or paid on redeemable shares in the absence of sufficient undivided profits, free surplus and approval of the BSP;

(e) The issuing bank shall execute within ten (10) days after the first issuance a Deed of Undertaking (see *Appendix 42*), to be signed by its directors and principal officers, binding them to comply with the requisites and conditions set forth in Items *"(a)" to "(d)"* above; and

(f) The conditions in Items *"(3)(a)", "(3)(b)", "(3)(c)" and "(3)(d)"* above shall be incorporated in the certificates of stock.

(g) Shares issued with the replacement requirement upon redemption shall be eligible as Upper Tier 2 capital for purposes of computing qualifying capital as provided in Subsec. X116.2. Shares issued without such condition shall be eligible as Lower Tier 2 capital.

b. *Certification and report*. The bank shall submit within fifteen (15) days after every issuance of at least twenty percent (20%) of the redeemable shares whether issued in series or at one (1) time, a certification signed by its President/Chairman under oath, stating that the requirements under Items *"a(1)" and "a(2)"* above, including all other conditions that the BSP may impose, have been complied with.

The applicant bank shall, not later than ten (10) days from the end of reference year, submit a yearly report of issuances of preferred shares to the appropriate department of the SES indicating therein the name/s of the subscriber/s, the date the shares were issued and the number/ amount of shares issued.

c. *Sanctions*. Any violation of the foregoing provisions shall be subject to the following sanctions:

(1) *On the bank*:

(a) For failure to comply with Items *"a(3)(a)"* to *"a(3)(d)"* above:

i. Suspension of branching privilege;

ii. Prohibition against granting of new unsecured loans to DOSRI;

iii. Prohibition against declaration of dividends;

iv. Denial of access to BSP rediscounting facilities;

v. Revocation of authority to accept government deposits and to handle government funds as a result of agency agreements with the BIR, SSS, etc.

(b) For failure to infuse capital in an amount at least equivalent to amount of redeemed shares as required in Item *"a(3)(a)":*

i. Sanctions in Item *"(a)"* above;

ii. No new loans and investments, except in government securities;

iii. ₱1,000 fine per day until the required infusion is made.

(c) If the certification submitted by the bank required in these guidelines is found to be false, suspension of authority to issue preferred shares for one (1) year.

(d) For failure to submit report of issuance of redeemable preferred shares, a fine of ₱1,200 for UBs/KBs; ₱600 for TBs; and ₱180 for RBs/Coop Banks per day of default until the report is submitted.

(2) *On the directors and officers:*

(a) For violation of any of the terms of the Deed of Undertaking, the following shall be imposed against the officers and directors of the bank who signed the deed:

i. First offense - A fine of ₱500 per day for each violation from the time the violation was committed or up to the time the violation is corrected;

ii. Second and subsequent offenses - A fine of ₱5,000 per day from the time the violation was committed up to the time the violation is corrected.

(b) If the certification submitted by the bank as required in these guidelines is found to be false, a fine of ₱5,000 per day from the time the certification was made up to the time the certification was found to be false, shall be imposed against the certifying officer.

(As amended by Circular No. 585 dated 15 October 2007)

§ X126.6 *Stock options/warrants.* A bank may grant options/warrants to subscribe at par to its capital stock: *Provided,* That:

a. Provisions authorizing such options/warrants shall be embodied in its articles of incorporation and in its by-laws; and

b. Such options/warrants may be granted for a maximum period of three (3) years from the date such options/warrants become effective.

§§ X126.7 - X126.9 *(Reserved)*

§ X126.10 *Dealings with stockholders and their related interests.* Dealings of a bank with any of its stockholders and their related interests shall be upon terms not less favorable to the bank than those offered to others. Towards this end, every natural person acquiring shares cumulatively amounting to at least two percent (2%) of the total subscribed capital of a domestic bank must disclose all relevant information on all persons related to him within the fourth degree of consanguinity or affinity, whether legitimate, illegitimate or common law as well as corporations, partnership or associations where he has controlling interests. A corporation acquiring shares amounting to at least two percent (2%) of the total subscribed capital of a domestic bank must disclose its controlling stockholders or group of stockholders as well as the corporations, partnerships or association where such controlling stockholders or group of stockholders have controlling interest.

The foregoing information shall also be disclosed in cases of the following transactions: availment of credit facility from the bank; purchase or sale of asset from/to the bank; leasing property from or to the bank; providing janitorial, messengerial, security and other services to the bank; and such other transactions as may be required to be disclosed by the Monetary Board. Where the stockholdings of such individual/organization together with his/its related interests amount to at least two percent (2%) of the total subscribed capital stock of the bank, the foregoing transactions shall be subject to the procedural requirements and the reportorial requirements prescribed under Secs. X334 and X335, respectively.

Sec. X127 (Reserved)

Sec. 1127 Shares of Stock of Universal/ Commercial Banks. The following guidelines shall also govern shares of stock in UBs and KBs.

§ 1127.1 *Limits on stockholdings in several banks.* Stockholders affiliated to each other through a common interest herein termed a *business group* or any corporation or association majority or all of the equity of which is owned by a business group may not control more than one (1) KB nor more than one (1) UB or both.

Any natural person or a family group, who, together, with any corporation majority or all of the equity of which is owned by such person or family group, owns more than forty percent (40%) of the voting stock of any UB or KB may not acquire more than forty percent (40%) of the voting stock in any other UB or KB, even if the shares of stock are being acquired from a natural person in a single transaction and the stockholding is in excess of forty percent (40%) of the bank's voting stock.

For purposes of determining applicability of the limitations provided in this Section, stockholders shall be deemed as affiliated to each other through *common business interest* or a *business group* in cases where the holdings of such stockholders altogether constitute a majority or control in one (1) or more enterprises.

§§ 1127.2 - 1127.5 *(Reserved)*

Sec. 2127 Shares of Stock of Thrift Banks The following regulations shall also govern shares of stock in TBs.

§ 2127.1 *Moratorium on ownership ceilings.* Stockholdings in a TB shall be exempt from the ownership ceilings prescribed under Subsec. X126.1 until 16 March 2005.

§ 2127.2 *Preferred shares.* Private development banks may also issue ordinary preferred shares of stock to private persons, other than the preferred stock representing government counterpart capital contribution: *Provided*, That said preferred stock sold to private persons shall be governed by the pertinent BSP regulations for preferred stock issued to private investors.

Preferred shares of stock of private development banks held by DBP/LBP and sold thereafter to private persons may, at the option of the purchasers, be retained with the same rights as when such shares of stock were held by DBP/LBP, or converted at not less than par to common shares or to ordinary preferred shares of the class issued to private shareholders.

§§ 2127.3 - 2127.5 ***(Reserved)***

Sec. 3127 Shares of Stock of Rural Banks and Cooperative Banks. The following rules shall govern stockholdings in RBs and Coop Banks.

§ 3127.1 ***Moratorium on ownership ceiling.*** Individual stockholdings in RBs in excess of the forty percent (40%) ceiling as of 02 April 2002 and as provided in Section 11 of R.A. No. 8791 may be retained: *Provided*, That such excess stockholdings were approved by the Monetary Board: *Provided, further*, That such stockholdings shall not be further increased, but may be reduced and once reduced, shall not thereafter be increased beyond the forty percent (40%) ceiling prescribed under said Section 11.

Any request for exemption from the prescribed ownership ceilings of individual/non-bank/corporate stockholdings shall be submitted to the Monetary Board for approval through the appropriate department of the SES and the exemption shall be reflected in the required report on stock transactions. In cases where unsubscribed shares of stock are sold to any person other than the existing stockholders, the bank's corporate secretary shall execute a certificate under oath that all the pertinent requirements of the Corporation Code on a valid stock transfer/subscriptions have been complied with.

§ 3127.2 ***Government-held shares*** The articles of incorporation of RBs or the articles of cooperation of Coop Banks shall provide for: (a) common stock with the power to vote; (b) preferred stock to represent the counterpart capital of the LBP, DBP or any government-owned or controlled bank or financial institution, which shall be non-voting and preferred as to assets upon liquidation; and (c) preferred stock with such rights, voting powers, preferences and restrictions, as may be approved by the Monetary Board. Preferred and common stocks shall have a minimum par value of ten pesos (₱10) per share: *Provided*, That this requirement shall not apply to existing RBs whose par value per share of stock is less than ten pesos (₱10). An RB may not issue no-par value stock.

For Coop Banks, preferred and common shares shall have a minimum par value of ₱1,000 per share for national Coop Banks; and ₱100 per share for local Coop Banks: *Provided,* That a Coop Bank may not issue no-par value shares.

The LBP, the DBP, or any government-owned or controlled bank or financial institution, on representation of the said private shareholders but subject to the investment guidelines, policies and procedures of the bank or financial institution and upon approval of the Monetary Board, shall subscribe to the capital stock of any RB/Coop Bank, which shall be paid in full at the time of subscription in an amount equal to the fully paid subscribed and unimpaired capital of the private shareholders or such amount as the Monetary Board may prescribe as may be necessary to promote and expand rural economic development and/or cooperative movement.

§ 3127.3 ***Limits on stockholdings in several rural banks.*** Any individual and/or his wholly or majority-owned corporation or non-bank corporations may own up to 100% of the voting stock in three (3) RBs: *Provided,* That the individual and/or its subsidiary/ies, may thereafter own shares in any number of other RBs only to such an extent as would not enable this group of investors to elect by virtue of its shareholdings a director of each additional RB.

§ 3127.4 ***Convertibility of preferred stock to common stock.*** RBs may convert their unissued preferred shares into common stock.

In the case of sale by the DBP, LBP or any government-owned or controlled bank or financial institution of preferred stock to private persons, such stock may be converted into common stock: *Provided*, That pending amendment of the bank's articles of incorporation, if necessary for the purpose of reflecting the conversion, the transfer shall be recorded by the bank in its stock and transfer book and such shareholders shall thereafter enjoy all the rights and privileges appurtenant to the converted stock. The certificates for the government preferred stocks so transferred shall be surrendered and cancelled and the corresponding common stock certificates shall be issued.

The corporate secretary of the bank shall submit to the appropriate department of the SES and the SEC a report of every transfer of preferred stock from the LBP, DBP or any government-owned or controlled bank or financial institution to private shareholders within five (5) banking days from the date of such transfer.

When all the preferred shares of stocks held by the LBP, DBP or any government-owned or controlled bank or financial institution have been sold to private shareholders, the bank's articles of incorporation shall be amended to reflect the conversion, if any, of the preferred shares of stock into common stock.

For this purpose, a certificate that all preferred shares have been sold and transferred to private shareholders shall be issued, duly signed by the president, the corporate secretary, and a majority of the board of directors. The bank shall submit copies of such certificate and the amended articles of incorporation to the BSP for the issuance of a certificate of authority for the purpose of registering the amended articles with the SEC.

§ 3127.5 ***Equity investment by holding corporations.*** With the exception of shareholdings of non-bank corporations in the equities in RBs as provided for under Section 11 of R.A. No. 8791, and of Filipino-controlled domestic banks, the capital stock of any RB shall be fully owned and held directly or indirectly by citizens of the Philippines or corporations, associations or cooperatives qualified under Philippine laws to own and hold such capital stock.

The equity investment of any non-bank corporation in any RB shall not exceed forty percent (40%) of the voting stock of such RB.

A *holding corporation* for purposes of this Subsection shall refer to a corporation primarily organized to hold equities in RBs.

Secs. X128 - X135 (Reserved)

Sec. X136 Dividends. Pursuant to Section 57 of R.A. No. 8791, no bank shall declare dividends greater than its accumulated net profits then on hand, deducting therefrom its losses and bad debts. Neither shall the bank declare dividends if, at the time of declaration, it has not complied with the provisions of Subsec. X136.2.

§ X136.1 ***Definitions.*** For purposes of this Section, the following definitions shall apply:

a. *Bad debts* - shall include any debt on which interest is past due for a period of six (6) months, unless it is well secured and in process of collection.

A loan payable in installments with an automatic acceleration clause shall be considered a bad debt within the contemplation of this Subsection where installments or amortizations have become past due for a period of six (6) months, unless the loan is well secured and in process of collection. For a loan payable in installment without an acceleration clause, only the installments or amortizations that have become past due for a period of six (6) months and which are not well secured and in the process of collection shall be considered bad debts within the contemplation of this Section.

b. *Well secured* - A debt shall be considered *well secured* (or fully secured), if it is covered by collateral in the form of a duly constituted mortgage, pledge, or lien on real or personal properties, including securities, having a loan value sufficient to discharge the debt in full, including accrued interest and other pertinent fees and expenses.

c. *In process of collection* - A debt due to a bank shall be considered in process of collection when it is the subject of continuing extrajudicial or judicial proceedings aimed towards its full settlement or liquidation or otherwise to place it in current status.

The extrajudicial proceedings, such as the writing of collection or demand letters, must have been initiated by the bank and/or its lawyers before the interest or installments or amortizations on the debt have become past due and unpaid for a period of six (6) months.

The debt shall continue to be considered in process of collection for a period of six (6) months counted from date of the first collection or demand letter and if, within this period, the debtor fails to make a payment of at least twenty percent (20%) of the outstanding balance of the principal on his account, plus all interest which may have accrued thereon, the same shall automatically be classified as *bad debts* unless judicial proceedings are instituted.

The debt shall continue to be considered in process of collection during the pendency of the judicial proceedings. When judgment against the debtor has been obtained, the bank must be active in enforcing the judgment for the debt to continue to be considered in process of collection.

§ X136.2 *Requirements on the declaration of dividends.* At the time of declaration, banks shall have complied with the following:

a. Clearing account with the BSP is not overdrawn;

b. Liquidity floor requirement for government funds;

c. Minimum capitalization requirement and risk-based capital ratio;

d. Prescribed EFCDU/FCDU cover consisting of:

(1) Thirty percent (30%) liquidity cover; and

(2) 100% asset cover.

e. Statutory and liquidity reserves requirement;

f. No past due loans or accommodations with the BSP or with any institution;

g. No net losses from operations in any one (1) of the two (2) fiscal years immediately preceding the date of dividend declaration;

h. Has not committed any of the following major violations:

(1) Loans and other credit accommodations and guarantees granted in excess of the single borrower's limit;

(2) Loans and other credit accommodations granted/extended in excess of the ceilings on accommodations to DOSRI;

(3) Unsafe and unsound banking practice as defined under existing BSP regulations;

(4) Equity investments in excess of the prescribed ceilings;

(5) Investments in real estate, bank premises and equipment in excess of prescribed ceilings;

(6) Major violations/exceptions cited in the previous examination not duly acted upon or not yet corrected;

(7) Transactions or activities without prior approval or necessary license from the BSP such as, but not limited to, derivatives, trust and e-banking;

(8) Refusal to permit examination into the affairs of the institution or any willful making of a false or misleading statement to the Monetary Board or to the appropriate department of the SES; and

(9) Failure to comply with the capital build-up program approved by the Monetary Board.

On the other hand, banks which have committed any of the major violations under Item *"h"* above may only be allowed to declare dividends by the Monetary Board upon recommendation of the appropriate department of the SES that the bank has corrected the major violation/s that it has committed.

(As amended by Circular No. 571 dated 21 June 2007)

§ X136.3 *Net amount available for dividends.* The net amount available for dividends shall be the amount of unrestricted or free earned surplus and undivided profits less:

a. Bad debts against which valuation reserves are not required by the BSP to be set up;

b. Unbooked valuation reserves, and other unbooked capital adjustments required by the BSP, whether or not allowed to be set up on a staggered basis;

c. Deferred income tax;

d. Accumulated profits not yet received but already recorded by a bank representing its share in profits of its subsidiaries under the equity method of accounting;

e. Accrued interest as required to be excluded pursuant to Item *"d"* of Subsec. X305.4, net of booked valuation reserves on accrued interest receivable or allowance for uncollectible interest on loans; and

f. Foreign exchange profit arising from revaluation of foreign exchange denominated accounts.

For purposes of this Subsec., any balance of *Paid-in Surplus* account may be included in the amount available for stock dividends.

§ X136.4 *Reporting and verification* Declaration of dividends shall be reported by the bank concerned to the appropriate department of the SES in the prescribed form within ten (10) business days after date of declaration.

Pending verification of abovementioned report by the appropriate department of the SES, the bank concerned shall not make any announcement or communication on the declaration of dividends nor shall any payment be made thereon.

Banks, however, whose shares are listed with any domestic stock exchange may declare dividends and give immediate notice of such declaration to the SEC and the stock exchanges, in compliance with pertinent rules of SEC: *Provided,* That no record date is fixed for such dividend pending verification of the report on such declaration by the appropriate department of the SES.

In any case, the declaration may be announced and the dividends paid, if after thirty (30) banking days from the date the report required herein shall have been received by the BSP, no advice against such declaration has been received by the bank concerned.

§ X136.5 *Recording of dividends.* The liability for dividends declared shall be taken up in the books upon receipt of

BSP approval thereof, or if no such approval is received, after thirty (30) banking/business days from the date the required report on dividend declaration was received by the appropriate department of the SES , whichever comes earlier. A memorandum entry may be made to record the dividend declaration on the date of approval by the board of directors and for full disclosure purposes, the dividends declared may be disclosed in the financial statements by means of a footnote which should include a statement to the effect that the dividend declaration is subject to review by the BSP.

Dividends of all kinds, whether on common or on preferred shares of stock, should not be treated as interest expense, considering that as a general policy, only irredeemable stock may be issued by banks.

§ X136.6 ***Issuance of fractional shares*** Whenever the declaration of stock dividend results in the issuance of fractional shares, banks may observe the following guidelines:

a. The amount corresponding to the fraction should be given in the form of cash dividend; and

b. The certificate of stock issued should be in whole numbers, and the fractional shares shall be issued in the form of scrip certificates. In no case shall the certificate of stock be issued including such fractional share. The scrip certificate is temporary in nature and should be redeemed in cash when the bank is in a position to do so, or stockholders holding such scrip certificates may negotiate with other stockholders for the purchase or sale of such shares to convert them into full shares, subject to the limitations on stockholdings as provided by law.

Sec. X137 (Reserved)

Sec. 1137 (Reserved)

Sec. 2137 (Reserved)

Sec. 3137 Limitations/Amount Available on Dividends Declared by Rural Banks and Cooperative Banks. The following rules shall also govern the declaration of dividends by RBs and Coop Banks.

a. *RBs*. In addition to the requirements prescribed in Sec. X136, an RB may declare cash dividends only if the amount of its reserve for retirement of government preferred stock is at least equal to the amount which should have been accumulated had the bank transferred annually to the reserve account from its undivided profits an amount equal to at least an average of one-tenth (1/10) of the total amount of preferred stock.

In no case shall cash dividends be declared whenever any of the following circumstances is present:

(i) Arrearages in its obligations with the BSP amount to ₱1.0 million or more unless covered by an approved plan of payment which is being fully complied with: *Provided, however,* That cash dividends shall not exceed ten percent (10%) per annum; or

(ii) Past due loans comprise twenty-five percent (25%) or more of the total loan portfolio at any time during the last six (6) months prior to the dividend declaration.

b. *Coop Banks*

(1) Interest on share capital -

(a) Interest on share capital shall be declared only upon compliance with the requirements prescribed under *Item* "a" above.

(b) Government preferred shares shall be entitled to interest as enumerated in Subsec. 3137.1: *Provided,* That no cumulative interest shall be allowed for any kind or class of share issued by the Coop Bank.

Unless otherwise provided for in the by-laws of the Coop Bank, the share capital shall earn interest at the rate computed as follows:

Rate of Interest = X (Net Surplus less Statutory Reserves) ÷ (Total Average Share Month)

where:

(i) *"X"* shall be a percentage to be determined by the board of directors allocated for interest on share capital; and

(ii) *"Statutory Reserves"* shall refer to Article *87 of R.A. No. 6938.*

No allocation of interest on share capital shall be made without the approval of the general assembly which may increase or decrease any or both.

(2) Patronage refund -

(a) The amount allocated for patronage refund shall not be less than thirty percent (30%) of the net surplus after deducting the statutory reserves based on the principle of equity;

(b) The rate of patronage refund shall not be more than twice the rate of interest on share capital;

(c) The sum allocated for patronage refunds shall be made available at the same rate to all cooperative patrons of the Coop Bank in proportion to their individual patronage: *Provided,* That -

(i) In the case of a cooperative member patron with paid-up share capital contribution, its proportionate amount of patronage refund shall be paid unless it agrees to credit the amount to its account as additional share capital contribution;

(ii) In the case of a cooperative member patron with unpaid share capital contribution, its proportionate amount of patronage refund shall be credited to its share capital contribution;

(iii) In the case of a non-member patron, its proportionate amount of patronage refund shall be set aside in a general fund for such patrons and shall be allocated to non-member patrons only upon request and presentation of evidence of the amount of its patronage. The amount so allocated shall be credited to such patron toward payment of the minimum capital contribution for membership. When a sum equal to this amount has accumulated at any time within a period specified in the by-laws, such patron shall be deemed and become a member of the Coop Bank if it so agrees or requests and complies with the provisions of the by-laws for admission to membership; and

(iv) If within any period of time specified in the by-laws, any subscriber who has not fully paid his subscribed share capital or any non-member patron which has accumulated the sum necessary for membership but does not request nor agree to become a member or fails to comply with the provision of the by-laws for admission to membership, the amount so accumulated or credited to their account together with any part of the general fund for non-member patrons shall be credited to the reserve fund or to the education and training fund of the Coop Bank.

§ 3137.1 *Dividends on government shares*

a. *Held prior to 09 June 1992.* Whenever dividends of not less than fourteen percent (14%) are declared on common stock, government preferred stock shall be entitled to a cash dividend not to exceed two percent (2%) of total outstanding preferred stock. Should the dividends declared on common stock be less than fourteen percent (14%), the dividend on preferred stock shall be proportionately reduced.

b. *Held on or after 09 June 1992.* Shares held by the LBP, DBP, or by any government-owned or-controlled bank or FI shall share in dividend distributions from the date of issuance in the amount of four percent (4%) on the first and second years; six percent (6%) on the third and fourth years; eight percent (8%) on the fifth and sixth years; ten percent (10%) on the seventh and eighth years; and twelve percent (12%) on the ninth to the fifteenth years, which shall be cumulative: *Provided,* That the RB and the government-owned or-controlled bank are not precluded from entering into an agreement providing for rates of dividends other than those prescribed by law.

Secs. X138 - X140 (Reserved)

H. DIRECTORS, OFFICERS AND EMPLOYEES

Sec. X141 Definition and Qualifications of Directors; Responsibilities and Duties of Board of Directors. For purposes of this Section, the following shall be the definition and qualifications, responsibilities and duties of directors and board of directors, respectively.

§ X141.1 *Definition/limits*

a. *Definition of directors.* Directors shall include:

(1) directors who are named as such in the articles of incorporation;

(2) directors duly elected in subsequent meetings of the stockholders; and

(3) those elected to fill vacancies in the board of directors.

b. *Limits on the number of the members of the board of directors.* Pursuant to Sections 15 and 17 of R.A. No. 8791, there shall be at least five (5), and a maximum of fifteen (15) members of the board of directors of a bank at least two (2) of whom shall be independent directors: *Provided*, That in case of a bank/QB/trust entity merger or consolidation, the number of directors may be increased up to twenty-one (21).

An *independent director* shall mean a person who -

(1) Is not or has not been an officer or employee of the bank, its subsidiaries or affiliates or related interests during the past three (3) years counted from the date of his election;

(2) Is not a director or officer of the related companies of the institution's majority stockholder;

(3) Is not a majority stockholder of the institution, any of its related companies, or of its majority shareholders;

(4) Is not a relative within the fourth degree of consanguinity or affinity, legitimate or common-law of any director, officer or majority shareholder of the bank or any of its related companies;

(5) Is not acting as a nominee or representative of any director or substantial shareholder of the bank, any of its related companies or any of its substantial shareholders; and

(6) Is not retained as professional adviser, consultant, agent or counsel of the institution, any of its related companies or any of its substantial shareholders, either in his personal capacity or through his firm; is independent of management and free from any business or other relationship, has not engaged and does not engage in any transaction with the institution or with any of its related companies or with any of its substantial shareholders, whether by himself or with other persons or through a firm of which he is a partner or a company of which he is a director or substantial shareholder, other than transactions which are conducted at arms length and could not materially interfere with or influence the exercise of his judgment.

An independent director of a bank can be elected as an independent director of its: (a) parent or holding company; (b) subsidiary or affiliate; (c) substantial shareholder; or (d) other related companies, or vice-versa: *Provided*, That he is not a substantial shareholder of the bank or any of the said concerned entities.

The foregoing terms and phrases used in Items *"(1) to (6)"* of this Section shall have the following meaning:

(a) *Parent* is a corporation which has control over another corporation directly or indirectly through one (1) or more intermediaries.

(b) *Subsidiary* means a corporation more than fifty percent (50%) of the voting stock of which is owned or controlled directly or indirectly through one (1) or more intermediaries by a bank.

(c) *Affiliate* is a juridical person that directly or indirectly, through one (1) or more intermediaries, is controlled by, or is under common control with the bank or its affiliates.

(d) *Related interests* as defined under Sections 12 and 13 of R.A. No. 8791 shall mean individuals related to each other within the fourth degree of consanguinity or affinity, legitimate or common law, and two (2) or more corporations owned or controlled by a single individual or by the same family group or the same group of persons.

(e) *Control* exists when the parent owns directly or indirectly through subsidiaries more than one-half of the voting power of an enterprise unless, in exceptional circumstance, it can be clearly demonstrated that such ownership does not constitute control. *Control* may also exist even when ownership is one-half or less of the voting power of an enterprise when there is:

i. power over more than one-half of the voting rights by virtue of an agreement with other stockholders; or

ii. power to govern the financial and operating policies of the enterprise under a statute or an agreement; or

iii. power to appoint or remove the majority of the members of the board of directors or equivalent governing body; or

iv. power to cast the majority votes at meetings of the board of directors or equivalent governing body; or

v. any other arrangement similar to any of the above.

(f) *Related company* means another company which is: (a) its parent or holding company; (b) its subsidiary or affiliate; or (c) a corporation where a bank or its majority stockholder own such number of shares that will allow/enable him to elect at least one (1) member of the board of directors or a partnership where such majority stockholder is a partner.

(g) *Substantial or major shareholder* shall mean a person, whether natural or juridical, owning such number of shares that will allow him to elect at least one (1) member of the board of directors of a bank or who is directly or indirectly the registered or beneficial owner of more than ten percent (10%) of any class of its equity security.

(h) Majority stockholder or majority shareholder means a person, whether natural or juridical, owning more than fifty percent (50%) of the voting stock of a bank.

Non-Filipino citizens may become members of the board of directors of a bank to the extent of the foreign participation in the equity of said bank: *Provided,* That pursuant to Section 23 of the Corporation Code of the Philippines (BP Blg. 68), a majority of the directors must be residents of the Philippines.

The meetings of the board of directors may be conducted through modern technologies such as, but not limited to, teleconferencing and videoconferencing as long as the director who is taking part in said meetings can actively participate in the deliberations on matters taken up therein: *Provided,* That every member of the board shall participate in at least fifty percent (50%) and shall physically attend at least twenty-five percent (25%) of all board meetings every year: *Provided, further,* That in the case of a director who is unable to physically attend or participate in board meetings via teleconferencing or videoconferencing, the corporate secretary shall execute a notarized certification attesting that said director was given the agenda materials prior to the meeting and that his/her comments/decisions thereon were submitted for deliberation/discussion and were taken up in the actual board meeting, and that the submission of said certification shall be considered compliance with the required fifty percent (50%) minimum attendance in board meetings.

§ X141.2 *Qualifications of a director*

A director shall have the following minimum qualifications:

a. He shall be at least twenty-five (25) years of age at the time of his election or appointment;

b. He shall be at least a college graduate or have at least five (5) years experience in business;

c. He must have attended a special seminar on corporate governance for board of directors conducted or accredited by the BSP: *Provided*, That incumbent directors as well as those elected after 17 September 2001 must attend said seminar on or before 30 June 2003 or within a period of six (6) months from date of election for those elected after 30 June 2003, as the case may be; and

d. He must be fit and proper for the position of a director of the bank. In determining whether a person is fit and proper for the position of a director, the following matters must be considered: integrity/probity, competence, education, diligence and experience/training.

The foregoing qualifications for directors shall be in addition to those required or prescribed under R.A. No. 8791 and other existing applicable laws and regulations.

§ X141.3 *Powers/responsibilities and duties of directors*

a. *Powers of the board of directors.* The corporate powers of a bank shall be exercised, its business conducted and all its property shall be controlled and held by its board of directors. The powers of the board of directors as conferred by law are original and cannot be revoked by the stockholders. The directors hold their office charged with the duty to act for the bank in accordance with their best judgment.

b. *General responsibility of the board of directors.* The position of a bank director is a position of trust. A director assumes certain responsibilities to different constituencies or stakeholders, i.e., the bank itself, its stockholders, its depositors and other creditors, its management and employees, and the public at large. These constituencies or stakeholders have the right to expect that the institution is being run in a prudent and sound manner.

The board of directors is primarily responsible for the corporate governance of the bank. To ensure good governance of the bank, the board of directors should establish strategic objectives, policies and procedures that will guide and direct the activities of the bank and the means to attain the same as well as the mechanism for monitoring management's performance. While the management of the day-to-day affairs of the institution is the responsibility of the management team, the board of directors is, however, responsible for monitoring and overseeing management action.

c. *Specific duties and responsibilities of the board of directors*

(1) *To select and appoint officers who are qualified to administer the bank's affairs effectively and soundly and to establish adequate selection process for all personnel.* It is the primary responsibility of the board of directors to appoint competent management team at all times. The board of directors should apply fit and proper standards on key personnel. Integrity, technical expertise and experience in the institution's business, either current or planned, should

be the key considerations in the selection process. And because mutual trust and a close working relationship are important, the board's choice should share its general operating philosophy and vision for the institution. The board of directors shall establish an appropriate compensation package for all personnel which shall be consistent with the interest of all stakeholders.

(2) *To establish objectives and draw up a business strategy for achieving them*. Consistent with the institution's objectives, business plans should be established to direct its on-going activities. The board should ensure that performance against plan is regularly reviewed, with corrective action taken as needed.

(3) *To conduct the affairs of the institution with high degree of integrity*. Since reputation is a very valuable asset, it is in the institution's best interest that in dealings with the public, it observes a high standard of integrity. The board of directors should prescribe corporate values, codes of conduct and other standards of appropriate behaviour for itself, the senior management and other employees. Among others, activities and transactions that could result or potentially result in conflict of interest, personal gain at the expense of the institution, or unethical conduct shall be strictly prohibited. It should provide policies that will prevent the use of the facilities of the bank in furtherance of criminal and other illegal activities.

(4) *To establish and ensure compliance with sound written policies*. The board should adopt written policies on all major business activities, i.e., investments, loans, asset and liability management, business planning and budgeting. A mechanism to ensure compliance with said policies shall also be provided.

(5) *To prescribe a clear assignment of responsibilities and decision-making authorities, incorporating a hierarchy of required approvals from individuals to the board of directors*. The board should establish in writing the limits of the discretionary powers of each officer, committee, sub-committee and such other group for the purpose of lending, investing or committing the bank to any financial undertaking or exposure to risk at any time. The board should have a schedule of matters and authorities reserved to it for decision, such as: major capital expenditures, equity investments and divestments.

(6) *To effectively supervise the bank's affairs*. The board of directors should establish a system of checks and balances which applies in the first instance to the board itself. Among the members of the board, an effective system of checks and balances must exist. The system should also provide a mechanism for effective check and control by the board over the chief executive officer and key managers and by the latter over the line officers of the bank.

(7) *To monitor, assess and control the performance of management*. The board shall put in place an appropriate reporting system so that it is provided with relevant and timely information to be able to effectively assess the performance of management. For this purpose, it may constitute a governance committee.

(8) *To adopt and maintain adequate risk management policy*. The board of directors shall be responsible for the formulation and maintenance of written policies and procedures relating to the management of risks throughout the institution. The risk management policy shall include:

(a) a comprehensive risk management approach;

(b) a detailed structure of limits, guidelines and other parameters used to govern risk-taking;

(c) a clear delineation of lines of responsibilities for managing risk;

(d) an adequate system for measuring risk; and

(e) effective internal controls and a comprehensive risk-reporting process.

The board may constitute a committee for this purpose.

(9) *To constitute the following committees:*[1]

(a) Audit committee. The audit committee shall be composed of members of the board of directors, at least two (2) of whom shall be independent directors, including the chairman, preferably with accounting, auditing, or related financial management expertise or experience. The audit committee provides oversight of the institution's financial reporting and control and internal and external audit functions. It shall be responsible for the setting up of the internal audit department and for the appointment of the internal auditor as well as the independent external auditor who shall both report directly to the audit committee. It shall monitor and evaluate the adequacy and effectiveness of the internal control system.

Upon setting up the audit committee, the board of directors shall draw up a written charter or terms of reference which clearly sets out the audit committee's authority and duties, as well as the reporting relationship with the board of directors. This charter shall be approved by the board of directors and reviewed and updated periodically.

The audit committee shall have explicit authority to investigate any matter within its terms of reference, full access to and cooperation by management and full discretion to invite any director or executive officer to attend its meetings, and adequate resources to enable it to effectively discharge its functions.

The audit committee shall ensure that a review of the effectiveness of the institution's internal controls, including financial, operational and compliance controls, and risk management, is conducted at least annually.

The audit committee shall establish and maintain mechanisms by which officers and staff may, in confidence, raise concerns about possible improprieties or malpractices in matters of financial reporting, internal control, auditing or other issues to persons or entities that have the power to take corrective action. It shall ensure that arrangements are in place for the independent investigation, appropriate follow-up action, and subsequent resolution of complaints.

(b) Corporate governance committee. The corporate governance committee shall assist the board of directors in fulfilling its corporate governance responsibilities. It shall review and evaluate the qualifications of all persons nominated to the board as well as those nominated to other positions requiring appointment by the board of directors. The committee shall be composed of at least three (3) members of the board of directors, two (2) of whom shall be independent directors.

The corporate governance committee shall have a written charter that describes the duties and responsibilities of its members. This charter shall be approved by the board of directors and reviewed and updated at least annually.

The committee shall be responsible for ensuring the board's effectiveness and due observance of corporate governance principles and guidelines. It shall oversee the periodic performance evaluation of the board and its committees and executive management; and shall also conduct an annual self-evaluation of its performance. The committee shall also decide whether or not a director is able to and has been adequately carrying out his/her duties as director bearing in mind

[1] Mandatory for all banks effective 01 January 2005 under Circular 456 dated 04 October 2004

the director's contribution and performance (e.g., competence, candor, attendance, preparedness and participation). Internal guidelines shall be adopted that address the competing time commitments that are faced when directors serve on multiple boards.

The committee shall make recommendations to the board regarding the continuing education of directors, assignment to board committees, succession plan for the board members and senior officers, and their remuneration commensurate with corporate and individual performance.

The corporate governance committee shall decide the manner by which the board's performance may be evaluated and propose an objective performance criteria approved by the board. Such performance indicators shall address how the board has enhanced long term shareholders' value.

(c) Risk management committee. The risk management committee shall be responsible for the development and oversight of the institution's risk management program. The committee shall be composed of at least three (3) members of the board of directors who shall possess a range of expertise as well as adequate knowledge of the institution's risk exposures to be able to develop appropriate strategies for preventing losses and minimizing the impact of losses when they occur. It shall oversee the system of limits to discretionary authority that the board delegates to management, ensure that the system remains effective, that the limits are observed and that immediate corrective actions are taken whenever limits are breached.

The risk management committee shall have a written charter that defines the duties and responsibilities of its members. The charter shall be approved by the board of directors and reviewed and refined periodically.

The core responsibility of the risk management committee are:

(i) *Identify and evaluate exposures*. The committee shall assess the probability of each risk becoming reality and shall estimate its possible effect and cost. Priority areas of concern are those risks that are the most likely to occur and are costly when they happen.

(ii) *Develop risk management strategies*. The risk management committee shall develop a written plan defining the strategies for managing and controlling the major risks. It shall identify practical strategies to reduce the chance of harm and failure or minimize losses if the risk becomes real.

(iii) *Implement the risk management plan*. The risk management committee shall communicate the risk management plan and loss control procedures to affected parties. The committee shall conduct regular discussions on the institution's current risk exposure based on regular management reports and direct concerned units or offices on how to reduce these risks.

(iv) *Review and revise the plan as needed*. The committee shall evaluate the risk management plan to ensure its continued relevancy, comprehensiveness, and effectiveness. It shall revisit strategies, look for emerging or changing exposures, and stay abreast of developments that affect the likelihood of harm or loss. The committee shall report regularly to the board of directors the entity's over-all risk exposure, actions taken to reduce the risks, and recommend further action or plans as necessary.

(d) *(Deleted by Cir. 456 dated 04 October 2004)*

(10) *To meet regularly*. To properly discharge its function, the board of directors shall meet regularly. Independent views

in board meetings shall be given full consideration and all such meetings shall be duly minuted.

(11) *To keep the individual members of the board and the shareholders informed.* It is the duty of the board to present to all its members and to the shareholders a balanced and understandable assessment of the bank's performance and financial condition. It should also provide appropriate information that flows internally and to the public. All members of the board shall have reasonable access to any information about the institution.

(12) *To ensure that the bank has beneficial influence on the economy.* The board has a continuing responsibility to provide those services and facilities which will be supportive of the national economy.

(13) *To assess at least annually its performance and effectiveness as a body, as well as its various committees, the chief executive officer and the bank itself.* The composition of the board shall also be reviewed regularly with the end in view of having a balanced membership. Towards this end, a system and procedure for evaluation shall be adopted which may include, but not limited to, the setting of benchmark and peer group analysis.

(14) *To keep their authority within the powers of the institution as prescribed in the articles of incorporation, charter, by-laws and in existing laws, rules and regulations.* To conduct and maintain the affairs of the institution within the scope of its authority as prescribed in its charter and in existing laws, rules and regulations, the board shall appoint a compliance officer who shall be responsible for coordinating, monitoring and facilitating compliance with existing laws, rules and regulations. The compliance officer shall be vested with appropriate authority and provided with appropriate support and resources. It may also constitute a compliance committee.

d. *Specific duties and responsibilities of a director*

(1) *To conduct fair business transactions with the bank and to ensure that personal interest does not bias board decisions.* Directors should, whenever possible, avoid situations that would give rise to a conflict of interest. If transactions with the institution cannot be avoided, it should be done in the regular course of business and upon terms not less favorable to the institution than those offered to others. The basic principle to be observed is that a director should not use his position to make profit or to acquire benefit or advantage for himself and/or his related interests. He should avoid situations that would compromise his impartiality.

(2) *To act honestly and in good faith, with loyalty and in the best interest of the institution, its stockholders, regardless of the amount of their stockholdings, and other stakeholders such as its depositors, investors, borrowers, other clients and the general public.* A director must always act in good faith, with the care which an ordinarily prudent man would exercise under similar circumstances. While a director should always strive to promote the interest of all stockholders, he should also give due regard to the rights and interests of other stakeholders.

(3) *To devote time and attention necessary to properly discharge their duties and responsibilities.* Directors should devote sufficient time to familiarize themselves with the institution's business. They must be constantly aware of the institution's condition and be knowledgeable enough to contribute meaningfully to the board's work. They must attend and actively participate in board and committee meetings, request

and review meeting materials, ask questions, and request explanations. If a person cannot give sufficient time and attention to the affairs of the institution, he should neither accept his nomination nor run for election as member of the board.

(4) *To act judiciously.* Before deciding on any matter brought before the board of directors, every director should thoroughly evaluate the issues, ask questions and seek clarifications when necessary.

(5) *To exercise independent judgment.* A director should view each problem/situation objectively. When a disagreement with others occurs, he should carefully evaluate the situation and state his position. He should not be afraid to take a position even though it might be unpopular. Corollarily, he should support plans and ideas that he thinks will be beneficial to the institution.

(6) *To have a working knowledge of the statutory and regulatory requirements affecting the institution, including the content of its articles of incorporation and by-laws, the requirements of the BSP and where applicable, the requirements of other regulatory agencies.* A director should also keep himself informed of the industry developments and business trends in order to safeguard the institution's competitiveness.

(7) *To observe confidentiality.* Directors must observe the confidentiality of non-public information acquired by reason of their position as directors. They may not disclose said information to any other person without the authority of the board.

§ X141.4 *Confirmation of the election/ appointments of directors and officers* The election/appointment of directors and officers of banks shall be subject to confirmation by the:

Confirming Authority	Position Level
a. Monetary Board	Directors, Senior Vice President and above of UBs and KBs, as well as the Directors, President, Chief Executive Officer, Chief Operating Officer, Senior Vice President or quivalent rank of TBs, IBs, RBs and Coop Banks with total assets of at least P1.0 billion.
b. A Committee to be composed of: · The Deputy Governor - SES · Managing Directors of SE I and II · Directors of the concerned department of the SES	Directors, Senior Vice President and above orequivalent rank of TBs, IBs, RBs and Coop Banks whose election appointment is not subject to confirmation by the Monetary Board.

The election/appointment of all incumbent directors and officers of all types of banks as of 17 September 2001 not previously approved/confirmed by the Monetary Board shall be submitted to the BSP through the appropriate department of the SES for confirmation.

§ X141.5 *Place of board of directors' meeting.* Banks shall include in their by-laws a provision that meetings of their board of directors shall be held only within the Philippines.

§§ X141.6 - X141.8 *(Reserved)*

§ X141.9 *Reports required.* Banks shall furnish all of their directors with a copy of the specific duties and responsibilities of the board of directors prescribed under Items *"b"* and *"c"* of Subsec. X141.3 within thirty (30) banking days from 17 May 2001 in cases of incumbent directors and at the time of election in cases of directors elected after such date.

The directors concerned shall each be required to acknowledge receipt of the copies of such specific duties and responsibilities and shall certify that they fully understand the same.

Copies of the acknowledgment and certification herein required shall be submitted in accordance with *Appendix 6*.

§ X141.10 *Sanctions.* Without prejudice to the other sanctions prescribed under Section 37 of R.A. No. 7653 and to the provisions of Section 16 of R.A. No. 8791, any director of a bank who violates or fails to observe and/or perform any of the above responsibilities and duties shall for each violation or offense, be penalized as follows:

For directors of	Amount
UBs/KBs	₱ 30,000
TBs/IBs	15,000
RBs/Coop Banks (national)	5,000
Coop Banks (local)	1,000

Sec. X142 Definition and Qualifications of Officers. For purposes of this Section, the following shall be the definition and qualification of officers.

§ X142.1 *Definition of officers.* *Officers* shall include the president, executive vice president, senior vice-president, vice president, general manager, treasurer, secretary, trust officer and others mentioned as officers of the bank, or those whose duties as such are defined in the by-laws, or are generally known to be the officers of the bank (or any of its branches and offices other than the head office) either through announcement, representation, publication or any kind of communication made by the bank: *Provided*, That a person holding the position of chairman or vice-chairman of the board or another position in the board shall not be considered as an officer unless the duties of his position in the board include functions of management such as those ordinarily performed by regular officers: *Provided, further,* That members of a group or committee, including sub-groups or sub-committees, whose duties include functions of management such as those ordinarily performed by regular officers, and are not purely recommendatory or advisory, shall likewise be considered as officers.
(As amended by Circular No. 562 dated 13 March 2007)

§ X142.2 *Qualifications of an officer* An officer shall have the following minimum qualifications:

a. He shall be at least twenty-one (21) years of age; and

b. He shall be at least a college graduate, or have at least five (5) years experience in banking or trust operations or related activities or in a field related to his position and responsibilities, or have undergone training in banking or trust operations acceptable to the appropriate department of the SES: *Provided,* however, That trust officers shall have at least two (2) years of actual experience or training in trust operations or fund management or other related fields; and

c. He must be fit and proper for the position he is being proposed/appointed to. In determining whether a person is fit and proper for a particular position, the following matters must be considered: integrity/probity, competence, education, diligence and experience/training.

The foregoing qualifications for officers shall be in addition to those required or prescribed under R.A. No. 8791 and other existing applicable laws and regulations.

§ X142.3 *Appointment of officers*

The appointment of officers of UBs/KBs/TBs with the rank of senior vice president (SVP) and above, whether incumbent or proposed, shall not be subject to Monetary Board approval but rather to Monetary Board confirmation. Appointment of officers below the rank of SVP shall be subject neither to Monetary Board approval nor Monetary Board confirmation.

The appointment of abovementioned officers shall be deemed to have been confirmed by the BSP, if after sixty (60) banking days from receipt of the required reports, no advice against said appointment has been received by the bank concerned.

b. *(As amended by Cir. 434 dated 04 October 2004)*

Sec. X143 Disqualification of Directors and Officers. The following regulations shall govern the disqualification of bank directors and officers.

§ X143.1 ***Persons disqualified to become directors.*** Without prejudice to specific provisions of law prescribing disqualifications for directors, the following are disqualified from becoming directors:

a. *Permanently disqualified*

Directors/officers/employees permanently disqualified by the Monetary Board from holding a director position:

(1) Persons who have been convicted by final judgment of a court for offenses involving dishonesty or breach of trust such as, but not limited to, estafa, embezzlement, extortion, forgery, malversation, swindling, theft, robbery, falsification, bribery, violation of B.P. Blg. 22, violation of Anti-Graft and Corrupt Practices Act and prohibited acts and transactions under Section 7 of R.A. No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees);

(2) Persons who have been convicted by final judgment of a court sentencing them to serve a maximum term of imprisonment of more than six (6) years;

(3) Persons who have been convicted by final judgment of the court for violation of banking laws, rules and regulations;

(4) Persons who have been judicially declared insolvent, spendthrift or incapacitated to contract;

(5) Directors, officers or employees of closed banks who were found to be culpable for such institution's closure as determined by the Monetary Board;

(6) Directors and officers of banks found by the Monetary Board as administratively liable for violation of banking laws, rules and regulations where a penalty of removal from office is imposed, and which finding of the Monetary Board has become final and executory; or

(7) Directors and officers of banks or any person found by the Monetary Board to be unfit for the position of directors or officers because they were found administratively liable by another government agency for violation of banking laws, rules and regulations or any offense/violation involving dishonesty or breach of trust, and which finding of said government agency has become final and executory.

b. *Temporarily disqualified*

Directors/officers/employees disqualified by the Monetary Board from holding a director position for a specific/ indefinite period of time. Included are:

(1) Persons who refuse to fully disclose the extent of their business interest or any material information to the appropriate department of the SES when required pursuant to a provision of law or of a circular, memorandum, rule or regulation of the BSP. This disqualification shall be in effect as long as the refusal persists;

(2) Directors who have been absent or who have not participated for whatever reasons in more than fifty percent (50%) of all meetings, both regular and special, of

the board of directors during their incumbency, and directors who failed to physically attend for whatever reasons in at least twenty-five percent (25%) of all board meetings in any year, except that when a notarized certification executed by the corporate secretary has been submitted attesting that said directors were given the agenda materials prior to the meeting and that their comments/ decisions thereon were submitted for deliberation/discussion and were taken up in the actual board meeting, said directors shall be considered present in the board meeting. This disqualification applies only for purposes of the immediately succeeding election;

(3) Persons who are delinquent in the payment of their obligations as defined hereunder:

(a) Delinquency in the payment of obligations means that an obligation of a person with a bank where he/she is a director or officer, or at least two (2) obligations with other banks/FIs, under different credit lines or loan contracts, are past due pursuant to Sec. X306;

(b) Obligations shall include all borrowings from a bank obtained by:

(i) A director or officer for his own account or as the representative or agent of others or where he/she acts as a guarantor, endorser or surety for loans from such FIs;

(ii) The spouse or child under the parental authority of the director or officer;

(iii) Any person whose borrowings or loan proceeds were credited to the account of, or used for the benefit of a director or officer;

(iv) A partnership of which a director or officer, or his/her spouse is the managing partner or a general partner owning a controlling interest in the partnership; and

(v) A corporation, association or firm wholly-owned or majority of the capital of which is owned by any or a group of persons mentioned in the foregoing Items *"(i)", "(ii)" and "(iv)"*;

This disqualification shall be in effect as long as the delinquency persists.

(4) Persons who have been convicted by a court for offenses involving dishonesty or breach of trust such as, but not limited to, estafa, embezzlement, extortion, forgery, malversation, swindling, theft, robbery, falsification, bribery, violation of B.P. Blg. 22, violation of Anti-Graft and Corrupt Practices Act and prohibited acts and transactions under Section 7 of R.A. No. 6713, violation of banking laws, rules and regulations or those sentenced to serve a maximum term of imprisonment of more than six (6) years but whose conviction has not yet become final and executory;

(5) Directors and officers of closed banks pending their clearance by the Monetary Board;

(6) Directors disqualified for failure to observe/discharge their duties and responsibilities prescribed under existing regulations. This disqualification applies until the lapse of the specific period of disqualification or upon approval by the Monetary Board on recommendation by the appropriate department of the SES of such directors' election/reelection;

(7) Directors who failed to attend the special seminar for board of directors required under Item "c" of Subsec. X141.2. This disqualification applies until the director concerned had attended such seminar;

(8) Persons dismissed/terminated from employment for cause. This disqualification shall be in effect until they have cleared themselves of involvement in the alleged irregularity or upon clearance, on their request, from the Monetary Board after showing good and justifiable reasons, or after the lapse of five (5) years from the time they were officially advised by the appropriate department of the SES of their disqualification;

(9) Those under preventive suspension;

(10) Persons with derogatory records as certified by, or on the official files of, the judiciary, NBI, Philippine National Police (PNP), quasi-judicial bodies, other government agencies, international police, monetary authorities and similar agencies or authorities of foreign countries for irregularities or violations of any law, rules and regulations that would adversely affect the integrity of the director/officer or the ability to effectively discharge his duties. This disqualification applies until they have cleared themselves of the alleged irregularities/violations or after a lapse of five (5) years from the time the complaint, which was the basis of the derogatory record, was initiated;

(11) Directors and officers of banks found by the Monetary Board as administratively liable for violation of banking laws, rules and regulations where a penalty of removal from office is imposed, and which finding of the Monetary Board is pending appeal before the appellate court, unless execution or enforcement thereof is restrained by the court;

(12) Directors and officers of banks or any person found by the Monetary Board to be unfit for the position of director or officer because they were found administratively liable by another government agency for violation of banking laws, rules and regulations or any offense/violation involving dishonesty or breach of trust, and which finding of said government agency is pending appeal before the appellate court, unless execution or enforcement thereof is restrained by the court; and

(13) Directors and officers of banks found by the Monetary Board as administratively liable for violation of banking laws, rules and regulations where a penalty of suspension from office or fine is imposed, regardless whether the finding of the Monetary Board is final and executory or pending appeal before the appellate court, unless execution or enforcement thereof is restrained by the court. The disqualification shall be in effect during the period of suspension or so long as the fine is not fully paid.

(As amended by Circular Nos.584 dated 28 September 2007 and 513 dated 10 February 2006)

§ X143.2 *Persons disqualified to become officers*

a. The disqualifications for directors mentioned in Subsec. X143.1 shall likewise apply to officers, except those stated in Items *"b(2)"* and *"b(7)"*.

b. Except as may be authorized by the Monetary Board or the Governor, the spouse or a relative within the second degree of consanguinity or affinity of any person holding the position of chairman, president, executive vice president or any position of equivalent rank, general manager, treasurer, chief cashier or chief accountant is disqualified from holding or being elected or appointed to any of said positions in the same bank; and the spouse or relative within the second degree of consanguinity or affinity of any person holding the position of manager, cashier, or accountant of a branch or office of a bank is disqualified from holding or being appointed to any of said positions in the same branch or office.

c. In the case of UBs, KBs, and TBs, any appointive or elective official, whether full time or part time, except in cases where such service is incident to financial assistance provided by the government or government-owned or -controlled corporations (GOCCs) or in cases allowed under existing law.

d. In the case of Coop Banks, any officer or employee of CDA or any elective public official, except a barangay official.

e. Except as may otherwise be allowed under Commonwealth Act No. 108, otherwise known as "The Anti-Dummy Law", as amended, foreigners cannot be officers or employees of banks.

§ X143.3 ***Effect of non-possession of qualifications or possession of disqualifications.*** A director/officer elected or appointed who does not possess all the qualifications mentioned under Subsecs. X141.2 and X142.2 and/or has any of the disqualifications mentioned under Subsecs. X143.1 and X143.2 shall not be confirmed by the confirming authority under Subsec. X141.4 and shall be removed from office even if he/she assumed the position to which he/she was elected or appointed. A confirmed director/officer or officer not requiring confirmation possessing any of the disqualifications, enumerated in the abovementioned subsections shall be subject to the disqualification procedures provided under Subsec. X143.4. A director/officer, prior to assuming the position to which he/she was elected/appointed, must submit to the appropriate department of the SES a verified statement that he/she has all the aforesaid qualifications and none of the disqualifications. The submission of verified statement will apply to directors/officers elected/appointed after 14 March 2006.
(As amended by Circular No. 513 dated 10 February 2006)

§ X143.4 ***Disqualification procedures***

a. The board of directors and management of every institution shall be responsible for determining the existence of the ground for disqualification of the institution's director/officer or employee and for reporting the same to the BSP. While the concerned institution may conduct its own investigation and impose appropriate sanction/s as are allowable, this shall be without prejudice to the authority of the Monetary Board to disqualify a director/officer/employee from being elected/appointed as director/officer in any FI under the supervision of the BSP. Grounds for disqualification made known to the institution, shall be reported to the appropriate department of the SES within seventy-two (72) hours from knowledge thereof.

b. On the basis of knowledge and evidence on the existence of any of the grounds for disqualification mentioned in Subsecs. X143.1 and X143.2, the director or officer concerned shall be notified in writing either by personal service or through registered mail with registry return receipt card at his/her last known address by the appropriate department of the SES of the existence of the ground for his/her disqualification and shall be allowed to submit within fifteen (15) calendar days from receipt of such notice an explanation on why he/she should not be disqualified and included in the watchlisted file, together with the evidence in support of his/her position. The head of said department may allow an extension on meritorious ground.

c. Upon receipt of the reply explanation of the director/officer concerned, the appropriate department of the SES shall proceed to evaluate the case. The director/officer concerned shall be afforded the opportunity to defend/clear himself/herself.

d. If no reply has been received from the director/officer concerned upon the expiration of the period prescribed under Item *"b"* above, said failure to reply shall be deemed a waiver and the appropriate department of the SES shall proceed to evaluate the case based on available records/evidence.

e. If the ground for disqualification is delinquency in the payment of obligation, the concerned director or officer shall be given a period of thirty (30) calendar days within which to settle said obligation or, restore it to its current status or, to explain why he/she should not be disqualified and included in the watchlisted file, before the evaluation on his disqualification and watchlisting is elevated to the Monetary Board.

f. For directors/officers of closed banks, the concerned department of the SES shall make appropriate recommendation to the Monetary Board clearing said directors/officers when there is no pending case/complaint or evidence against them. When there is evidence that a director/officer has committed irregularity, the appropriate department of the SES shall make recommendation to the Monetary Board that his/her case be referred to the Office of Special Investigation (OSI) for further investigation and that he/she be included in the masterlist of temporarily disqualified persons until the final resolution of his/her case. Directors/ officers with pending cases/complaints shall also be included in said masterlist of temporarily disqualified persons upon approval by the Monetary Board until the final resolution of their cases. If the director/ officer is cleared from involvement in any irregularity, the appropriate department of the SES shall recommend to the Monetary Board his/her delisting. On the other hand, if the director/officer concerned is found to be responsible for the closure of the institution, the concerned department of the SES shall recommend to the Monetary Board his/her delisting from the masterlist of temporarily disqualified persons and his/ her inclusion in the masterlist of permanently disqualified persons.

g. If the disqualification is based on dismissal from employment for cause, the appropriate department of the SES shall, as much as practicable, endeavor to establish the specific acts or omissions constituting the offense or the ultimate facts which resulted in the dismissal to be able to determine if the disqualification of the director/officer concerned is warranted or not. The evaluation of the case shall be made for the purpose of determining if disqualification would be appropriate and not for the purpose of passing judgment on the findings and decision of the entity concerned. The appropriate department of the SES may decide to recommend to the Monetary Board a penalty lower than disqualification (e.g., reprimand, suspension, etc.) if, in its judgment the act committed or omitted by the director/ officer concerned does not warrant disqualification.

h. All other cases of disqualification, whether permanent or temporary shall be elevated to the Monetary Board for approval and shall be subject to the procedures provided in Items *"a","b","c"* and *"d"* above.

i. Upon approval by the Monetary Board, the concerned director/officer shall be informed by the appropriate department of the SES in writing either by personal service or through registered mail with registry return receipt card, at his/her last known address of his/her disqualification from being elected/appointed as director/ officer in any FI under the supervision of BSP and/or of his/her inclusion in the masterlist of watchlisted persons so disqualified.

j. The board of directors of the concerned institution shall be immediately informed of cases of disqualification approved by the Monetary Board and shall be directed to act thereon not later than the following board meeting. Within seventy-two (72) hours thereafter, the corporate secretary shall report to the Governor of the BSP through the appropriate department of the SES the action taken by the board on the director/ officer involved.

k. Persons who are elected or appointed as director or officer in any of the BSP-supervised institutions for the first time but are subject to any of the grounds for disqualification provided for under Subsecs. X143.1 and X143.2, shall be afforded the procedural due process prescribed above.

l. Whenever a director/officer is cleared in the process mentioned under Item *"c"* above or, when the ground for disqualification ceases to exist, he/she would be eligible to become director or officer of any bank, QB, trust entity or any institution under the supervision of the BSP only upon prior approval by the Monetary Board. It shall be the responsibility of the appropriate department of the SES to elevate to the Monetary Board the lifting of the disqualification of the concerned director/officer and his/her delisting from the masterlist of watchlisted persons.

(As amended by Circular No. 584 dated 28 September 2007)

§ X143.5 *Watchlisting.* To provide the BSP with a central information file to be used as reference in passing upon and reviewing the qualifications of persons elected or appointed as director or officer of a bank, QB or trust entity, the SES shall maintain a watchlist of persons disqualified to be a director or officer of such entities under its supervision under the following procedures:

a. *Watchlist categories.* Watchlisting shall be categorized as follows:

(1) Disqualification File "A" (Permanent) - Directors/officers/employees permanently disqualified by the Monetary Board from holding a director/officer position.

(2) Disqualification File "B" (Temporary) - Directors/officers/employees temporarily disqualified by the Monetary Board from holding a director/officer position.

b. *Inclusion of directors/officers/ employees in the watchlist.* Directors/ officers/employees disqualified under Subsec. X143.4 shall be included in the watchlist disqualification files "A" or "B".

c. *Confidentiality.* Watchlist files shall be for internal use only of the BSP and may not be accessed or queried upon by outside parties including banks, QBs and trust entities except with the authority of the person concerned and with the approval of the Deputy Governor, SES or the Governor or the Monetary Board.

BSP will disclose information on its watchlist files only upon submission of a duly accomplished and notarized authorization from the concerned person and approval of such request by the Deputy Governor, SES or the Governor or the Monetary Board. The prescribed authorization form to be submitted to the concerned department of SES is in *Appendix 76*.

Banks can gain access to information in the said watchlist for the sole purpose of screening their applicants for hiring and/ or confirming their elected directors and appointed officers. Banks must obtain the said authorization on an individual basis.

d. *Delisting.* All delistings shall be approved by the Monetary Board upon recommendation of the operating departments of SES except in cases of persons known to be dead where delisting shall be automatic upon proof of death and need not be elevated to the Monetary Board. Delisting may be approved by the Monetary Board in the following cases:

(1) Watchlist - Disqualification File "B" (Temporary) -

(a) After the lapse of the specific period of disqualification;

(b) When the conviction by the court for crimes involving dishonesty, breach of trust and/or violation of banking law becomes final and executory, in which case the director/officer/employee is relisted to Watchlist - Disqualification File "A" (Permanent); and

(c) Upon favorable decision or clearance by the appropriate body, i.e., court, NBI, BSP, bank, QB, trust entity or such other agency/body where the concerned individual had derogatory record.

Directors/officers/employees delisted from the Watchlist - Disqualification File "B" other than those upgraded to Watchlist - Disqualification File "A" shall be eligible for re-employment with any bank, QB or trust entity.

(As amended by CL-2007-001 dated 04 January 2007 and CL-2006-046 dated 21 December 2006)

Sec. X144 Bio-data of Directors and Officers

a. Banks shall submit to the appropriate department of the SES a bio-data of their directors and officers after their election or appointment, in a prescribed form and within the deadline indicated in *Appendix 6*.

The bio-data shall be updated in any of the following instances:

(1) Change in educational attainment, experience or additional qualifications in banking that will enhance the director's or officer's competence or will qualify him to his present position;

(2) Promotion; and

(3) Transfer to other banks.

The bio-data shall be submitted only once. For purposes of updating, only the pertinent sections and pages shall be submitted to the BSP.

b. Banks shall submit to the appropriate department of the SES for evaluation, a list of the incumbent members of the board of directors and officers (chief executive officers down the line) after the annual election of the board of directors as provided in the bank's by-laws. Any change in the composition of the board of directors shall also be reported to the BSP after the election or appointment of a member.

c. If after evaluation, the Monetary Board shall find grounds for disqualification, the director/officer so elected/appointed may be removed from office even if he/she has assumed the position to which he/she was elected/appointed pursuant to Section 9-A of R.A. No. 337, as amended.

In the case of the independent directors, the bio-data shall be accompanied by a certification under oath from the director concerned that he/she is an independent director as defined under Subsec. X141.1 that all the information thereby supplied are true and correct, and that he/she:

(1) Is not or has not been an officer or employee of the bank, its subsidiaries or affiliates or related interests during the past three (3) years counted from the date of his election;

(2) Is not a director or officer of the related companies of the institution's majority stockholder;

(3) Is not a majority stockholder of the institution, any of its related companies, or of its majority shareholders;

(4) Is not a relative within the fourth degree of consanguinity or affinity, legitimate or common-law of any director, officer or majority shareholder of the bank or any of its related companies;

(5) Is not acting as a nominee or representative of any director or substantial shareholder of the bank, any of its related companies or any of its substantial shareholders;

(6) Is not retained as professional adviser, consultant, agent or counsel of the institution, any of its related companies or any of its substantial shareholders, either in his personal capacity or through his firm; is independent of management and free from any business or other relationship, has not engaged and does not engage in any transaction with the institution or with any of its related companies or with any of its substantial shareholders, whether by himself or with other persons or through a firm of which he is a partner or a company of which he is a director or substantial shareholder, other than transactions which are conducted at arms length and could not materially interfere with or influence the exercise of his judgment; and

(7) Complies with all the qualifications required of an independent director and does not possess any of the disqualifications therefor; and has not withheld nor suppressed any information material to his or her qualification or disqualification as an independent director.

Sec. X145 Interlocking Directorships and/ or Officerships. In order to safeguard against the excessive concentration of economic power, unfair competitive advantage or conflict of interest situations to the detriment of others through the exercise by the same person or group of persons of undue influence over the policy-making and/or management functions of similar FIs while at the same time allowing banks, QBs and non-bank financial institutions (NBFIs) without quasi-banking functions to benefit from organizational synergy or economies of scale and effective sharing of managerial and technical expertise, the following regulations shall govern interlocking directorships and/or officerships within the financial system consisting of banks, QBs and NBFIs.

For purposes of this Section, QBs shall refer to investment houses, finance companies, trust entities and all other NBFIs with quasi-banking functions while NBFIs shall refer to investment houses, finance companies, trust entities, insurance companies, securities dealers/brokers, credit card companies, non-stock savings and loan associations (NSSLAs), holding companies, investment companies, government NBFIs, asset management companies, insurance agencies/brokers, venture capital corporations, FX dealers, money changers, lending investors, pawnshops, fund managers, mutual building and loan associations, remittance agents and all other NBFIs without quasi-banking functions.

a. *Interlocking directorships*

While concurrent directorship may be the least prejudicial of the various relationship cited in this Section to the interests of the FIs involved, certain measures are still necessary to safeguard against the disadvantages that could result from indiscriminate concurrent directorship.

(1) Except as may be authorized by the Monetary Board or as otherwise provided hereunder, there shall be no concurrent directorships between banks or between a bank and a QB.

(2) Without the need for prior approval of the Monetary Board, concurrent directorships between entities not involving an investment house shall be allowed in the following cases:

(a) Banks not belonging to the same category: *Provided,* That not more than one (1) Bank shall have quasi-banking functions;

(b) A bank and an NBFI;

(c) A bank without quasi-banking functions and a QB; and

(d) A bank and one (1) or more of its subsidiary bank/s, QB/s and NBFI/s.

For purposes of the foregoing, a husband and his wife shall be considered as one (1) person.

b. *Interlocking directorships and officerships*

In order to prevent any conflict of interest resulting from the exercise of directorship coupled with the reinforcing influence of an officer's decision-making and implementing powers, the following rules shall be observed:

(1) Except as may be authorized by the Monetary Board or as otherwise provided hereunder, there shall be no concurrent directorship and officership between banks or between a bank and a QB or an NBFI; and

(2) Without the need for prior approval of the Monetary Board, concurrent directorship and officership between a

bank and one (1) or more of its subsidiary bank/s, QB/s and NBFI/s, other than investment house/s, shall be allowed.

c. *Interlocking officerships*

A concurrent officership in different FIs may present more serious problems of self-dealing and conflict of interest. Multiple positions may result in poor governance or unfair competitive advantage. Considering the full-time nature of officer positions, the difficulties of serving two (2) offices at the same time, and the need for effective and efficient management, the following rules shall be observed:

As a general rule, there shall be no concurrent officerships, including secondments, between banks or, between a bank and a QB or an NBFI. For this purpose, *secondment* shall refer to the transfer/detachment of a person from his regular organization for temporary assignment elsewhere where the seconded employee remains the employee of the home employer although his salaries and other remuneration may be borne by the host organization.

However, subject to prior approval of the Monetary Board, concurrent officerships, including secondments, may be allowed in the following cases:

(1) Between a bank and not more than two (2) of its subsidiary bank/s, QB/s, and NBFI/s, other than investment house/s; or

(2) Between a bank and not more than two (2) of its subsidiary QB/s and NBFI/s; or

(3) Between two (2) banks, or between a bank and a QB or an NBFI, other than an investment house: *Provided,* That at least twenty percent (20%) of the equity of each of the banks, QBs or NBFIs is owned by a holding company or a bank/QB and the interlocking arrangement is necessary for the holding company or the bank/QB to provide technical expertise or managerial assistance to its subsidiaries/affiliates.

Aforementioned concurrent officerships may be allowed, subject to the following conditions:

(a) that the positions do not involve any functional conflict of interests;

(b) that any officer holding the positions of president, chief executive officer, chief operating officer or chief financial officer or their equivalent may not be concurrently appointed to any of said positions or their equivalent;

(c) that the officer involved, or his spouse or any of his relatives within the first degree of consanguinity or affinity or by legal adoption, or a corporation, association or firm wholly- or majority-owned or controlled by such officer or his relatives enumerated above, does not own in his/its own capacity more than twenty percent (20%) of the subscribed capital stock of the entities in which the bank has equity investments; and

(d) that where any of the positions involved is held on full-time basis, adequate justification shall be submitted to the Monetary Board; or

(4) Concurrent officership positions in the same capacity which do not involve management functions, i.e., internal auditor, corporate secretary, assistant corporate secretary and security officer, between a bank and one or more of its subsidiary QB/s and NBFI/s, or between bank/s, QB/s and NBFI/s, other than investment house/s: *Provided*, That at least twenty percent (20%) of the equity of each of the banks, QBs and NBFIs is owned by a holding company or by any of the banks/QBs within the group.

For purposes of this Section, members of a group or committee, including sub-groups or sub-committees, whose duties include functions of management such as those ordinarily performed by regular officers, shall likewise be considered as officers.

It shall be the responsibility of the Corporate Governance Committee to conduct an annual performance evaluation of the board of directors and senior management. When a director or officer has multiple positions, the Committee should determine whether or not said director or officer is able to and has been adequately carrying out his/her duties and, if necessary, recommend changes to the board based upon said performance/ review.

(As amended by Circular No. 592 dated 28 December 2007)

§ X145.1 *Representatives of government.* The provisions of this Section shall apply to persons appointed to such positions as representatives of the government or government-owned or controlled entities unless otherwise provided under existing laws.

(As amended by Circular No. 592 dated 28 December 2007)

Sec. X146 Profit Sharing Programs. Profit sharing programs adopted in favor of directors, officers and employees shall be reflected in the by-laws of the bank, subject to the following guidelines:

a. The base in any profit sharing program shall be the net income for the year of the bank as shown in its Consolidated Statement of Income and Expenses for the year, net of the following:

(1) All cumulative dividends accruing to preferred stock to the extent not covered by earned surplus;

(2) Accrued interest receivable credited to income but not yet collected, net of reserves already set up for uncollected interest on loans;

(3) Unbooked valuation reserves on loans or the amount required to update valuation reserves in accordance with the schedule approved by the Monetary Board, as well as all amortizations due on deferred charges;

(4) Provisions for current year's taxes;

(5) Income tax deferred for the year. *Provided, however,* That in case of reversal of deferred income taxes which were deducted from net income in computing for profit sharing of previous years, the deferred income tax reversed to expense shall be added back to net income to arrive at the base for profit sharing for the year during which the reversal is made;

(6) Accumulated profits not yet received but already recorded by a bank representing its share in profits of its subsidiaries under the equity method of accounting; and

b. The bank may provide in its by-laws for other priorities in the computation of net profits for purposes of profit sharing: *Provided,* That in no case shall profit sharing take precedence over any of the items in the preceding paragraph; and

c. Prior approval of the Monetary Board shall be necessary before a bank which has received financial assistance from the BSP may implement its profit sharing program. *Financial assistance* shall refer to emergency loans and advances and such other forms of credit accommodations which are intended to provide banks with liquidity in times of need.

Sec. X147 Compensation and Other Benefits of Directors and Officers. To protect the funds of depositors and creditors, the Monetary Board may regulate/restrict the payment by the bank of compensation, allowances, fees, bonuses, stock options, profit sharing and fringe benefits to its directors and officers in exceptional cases and when the circumstances warrant, such as, but not limited to, the following:

a. When the bank is under controllership, conservatorship or when it has outstanding emergency loans and advances and such other forms of credit accommodation from the BSP which are intended to provide it with liquidity in times of need;

b. When the institution is found by the Monetary Board to be conducting business in an unsafe or unsound manner;

c. When it is found by the Monetary Board to be in an unsatisfactory financial condition such as, but not limited to, the following cases:

(1) Its capital is impaired;

(2) It has suffered continuous losses from operations for the past three (3) years;

(3) Its composite CAMEL(S) rating in the latest examination is below "3"; and

(4) It is under rehabilitation by the BSP/ PDIC which rehabilitation may include debt-to-equity conversion, etc.

In the presence of any one (1) or more of the circumstances mentioned above, the Monetary Board may impose the following restrictions in the compensation and other benefits of directors and officers:

a. In the case of profit sharing, the provision of Sec. X146 shall be observed except that for purposes of this Section, the total amount of unbooked valuation reserves and deferred charges shall be deducted from the net income.

b. Except for the financial assistance to meet expenses for the medical, maternity, education and other emergency needs of the directors or officers or their immediate family, the other forms of financial assistance may be suspended.

c. When the total compensation package including salaries, allowances, fees and bonuses of directors and officers are significantly excessive as compared with peer group averages, the Monetary Board may order their reduction to reasonable levels: *Provided*, That even if a bank is in financial trouble, it may nevertheless be allowed to grant relatively higher salary packages in order to attract competent officers and quality staff as part of its rehabilitation program.

The foregoing provisions founded on Section 18 of R.A. No. 8791 shall be deemed part of the benefits and compensation programs of banks.

Sec. 1147 (Reserved)

Sec. 2147 (Reserved)

Sec. 3147 Bonding/Training of Directors, Officers and Employees. Officers and employees handling funds or securities amounting to ₱5,000 or more in any one (1) year shall be bonded in an amount determined by the Monetary Board.

Directors, officers and other personnel of RBs/Coop Banks shall undergo such training in banking as may be required by the BSP.

Sec. X148 (Reserved)

Sec. X149 Conducting Business in an Unsafe/Unsound Manner. Whether a particular activity may be considered as conducting business in an unsafe or unsound manner, all relevant facts must be considered. An analysis of the impact thereof on the bank's operations and financial conditions must be undertaken, including evaluation of capital position, asset condition, management, earnings posture and liquidity position.

In determining whether a particular act or omission, which is not otherwise prohibited by any law, rule or regulation affecting banks, may be deemed as conducting business in an unsafe or unsound manner, the Monetary Board, upon report of the head of the supervising or examining department based on findings in an examination or a complaint, shall consider any of the following circumstances:

a. The act or omission has resulted or may result in material loss or damage, or abnormal risk or danger to the safety, stability, liquidity or solvency of the institution;

b. The act or omission has resulted or may result in material loss or damage or abnormal risk to the institution's depositors, creditors, investors, stockholders, or to the BSP, or to the public in general;

c. The act or omission has caused any undue injury, or has given unwarranted benefits, advantage or preference to the bank or any party in the discharge by the director or officer of his duties and responsibilities through manifest partiality, evident bad faith or gross inexcusable negligence; or

d. The act or omission involves entering into any contract or transaction manifestly and grossly disadvantageous to the bank, whether or not the director or officer profited or will profit thereby.

The list of activities which may be considered unsafe and unsound is shown in *Appendix 48*.

§§ X149.1 – X149.8 *(Reserved)*

§ X149.9 *Sanctions.* The Monetary Board may, at its discretion and based on the seriousness and materiality of the acts or omissions, impose any or all of the following sanctions provided under Section 37 of R.A. No. 7653 and Section 56 of R.A. No. 8791, whenever a bank conducts business in an unsafe and unsound manner:

a. Issue an order requiring the bank to cease and desist from conducting business in an unsafe and unsound manner and may further order that immediate action be taken to correct the conditions resulting from such unsafe or unsound practice;

b. Fines in amounts as may be determined by the Monetary Board to be appropriate, but in no case to exceed ₱30,000 a day on a per transaction basis taking into consideration the attendant circumstances, such as the gravity of the act or omission and the size of the bank, to be imposed on the bank, their directors and/or responsible officers;

c. Suspension of interbank clearing privileges/immediate exclusion from clearing;

d. Suspension of rediscounting privileges or access to BSP credit facilities;

e. Suspension of lending or foreign exchange operations or authority to accept new deposits or make new investments;

f. Suspension of responsible directors and/or officers;

g. Revocation of quasi-banking license; and/or

h. Receivership and liquidation under Section 30 of R.A. No. 7653.

All other provisions of Sections 30 and 37 of R.A. No. 7653, whenever appropriate, shall also be applicable on the conduct of business in an unsafe or unsound manner.

The imposition of the above sanctions is without prejudice to the filing of appropriate criminal charges against culpable persons as provided in Sections 34, 35 and 36 of R.A. No. 7653.

Sec. X150 Rules of Procedure on Administrative Cases Involving Directors and Officers of Banks. The rules of procedure on administrative cases involving directors and officers of banks are shown in *Appendix 64*.

I. BANKING OFFICES

Sec. X151 Establishment/Relocation/ Voluntary Closure/Sale of Branches. The BSP shall promote healthy competition in the banking system and maximize the delivery of efficient banking services especially in underserved areas. Toward this end, the following are the rules and regulations that shall govern the establishment, relocation, voluntary closure and sale of local branches of domestic banks, including locally-incorporated subsidiaries of foreign banks and the establishment of branches of foreign banks in the Philippines shall continue to be governed by the provisions of Secs. X105 and X153.

For purposes of this Section and its Subsections, the following definitions shall apply:

Branch shall refer to any permanent office or place of business in the Philippines other than the head office where deposits are accepted and/or withdrawals are serviced by tellers or other authorized personnel. It maintains a complete set of books of accounts.

Extension office shall refer to any permanent office or place of business in the Philippines other than the head office or a branch, where deposits are accepted and/or withdrawals are serviced by tellers or other authorized personnel. It does not maintain a complete set of books of accounts as its transactions are taken-up directly in the books of the head office or a branch to which it is attached. It shall be treated as a branch for purposes of this Section and its Subsections.

Other banking office shall refer to any office or place of business in the Philippines other than the head office, branch or extension office, which primarily engages in banking activities other than the acceptance of deposits and/or servicing of withdrawals thru tellers or other authorized personnel. It shall include loan collection and disbursement points (LCDPs) of microfinance-oriented banks and microfinance/barangay micro business enterprise (BMBE)-oriented branches of banks which may accept deposits solely from existing microfinance/BMBE borrowers: *Provided*, That account openings and other banking transactions of said microfinance/ BMBE borrowers shall be done only at the head office/ branches/ extension offices or thru automated teller machines (ATMs), as may be applicable.

(As amended by Circular No. 624 dated 13 October 2008)

§ X151.1 *Prior Monetary Board approval.* No bank operating in the Philippines shall establish branches, extension offices or other banking offices or transact business outside the premises of its duly authorized principal office or head office without the prior approval of the Monetary Board.

(As amended by Circular No. 624 dated 13 October 2008)

§ X151.2 *Prerequisites for the grant of authority to establish a branch.* With prior approval of the Monetary Board, banks may establish branches subject to the following pre-qualification requirements:

a. The bank has complied with the minimum capital requirement under Subsec. X111.1, but not lower than P10 million, in the case of RBs and Local Coop Banks.

b. The bank's risk-based CAR at the time of filing the application is not lower than twelve percent (12%);

c. The bank's CAMELS composite rating in the latest examination is at least "3", with management component score not lower than "3";

d. The bank has established a risk management system appropriate to its operations, characterized by clear delineation of responsibility for risk management, adequate risk measurement system, appropriately structured risk limits, effective internal control system and complete, timely and efficient risk reporting system;

e. The bank has no major supervisory concerns outstanding on safety and soundness as indicated by the following during the period immediately preceding the date of application or as of the date of application:

(1)	No unbooked valuation reserves	as of date of application
(2)	No deficiency in regular and liquidity reserve requirements on deposits and deposit substitutes	12 weeks
(3)	No deficiency in asset and liquid asset cover for EFCDU/ FCDU liabilities	3 months
(4)	Compliant with ceilings on loans to DOSRI	12 weeks
(5)	No deficiency in liquidity floor on government deposits	3 months
(6)	Compliant with the single borrower's loan limit and limit on total investment in real estate and improvements including bank equipment	as of date of application
(7)	No past due obligation with the BSP or with any FI	as of date of application
(8)	No float items outstanding in the "Due From/To Head Office/Branches/Offices" and "Due from BSP" accounts exceeding one percent (1%) of the total resources as of end of the month	3 months
(9)	No uncorrected findings of unsafe and unsound banking practices	as of date of application
(10)	Has adequate accounting records, systems, procedures and internal control	as of date of application
(11)	Has generally complied with banking laws, rules and regulations, orders or instructions of the Monetary Board and/or BSP Management	as of date of application
(12)	Member in good standing of the PDIC	as of date of application

f. For purposes of evaluating branch applications, theoretical capital shall be assigned to each branch to be established, including approved but unopened branches, as follows:

			(In millions)
LOCATION/ TYPE OF BANK	UB/KB	TB/ NATIONAL COOP	RB/ LOCAL COOP
1) NCR and the Cities of Cebu and Davao	₱ 50	₱ 15	₱ 5.0
2) 1st to 3rd class cities	₱ 25	₱ 5.0	₱ 2.5
3) 4th to 6th class cities	₱ 25	₱ 5.0	₱ 1.5
4) 1st to 3rd class municipalities	₱ 20	₱ 5.0	₱ 1.0
5) 4th to 6th class municipalities	₱ 15	₱ 2.5	₱ 0.5

The assigned theoretical capital shall be deducted from existing qualifying capital as defined under Subsec. X116.2 for purposes of determining compliance with the ten percent (10%) risk-based CAR.

If the applicant bank's risk-based CAR after deducting the assigned capital for the proposed branch from the existing qualifying capital would be less than ten percent (10%), its application shall not be processed unless it infused such amount as may be necessary to maintain its risk-based CAR to at least ten percent (10%);

g. The bank has been operating profitably for the year immediately preceding the date of application, or in the case of newly-established banks, the submitted projection showed that profitability will be attained on the third year of operations, at the latest; and

h. Additional requirements for the establishment of microfinance/BMBE-oriented branches of banks which are not microfinance/BMBE-oriented are as follows:

(1) The branch shall have a manual of operations on microfinancing duly approved by the bank's board of directors;

(2) The branch shall have an adequate loan tracking system that allows daily monitoring of loan releases, collections and arrearages, and any restructuring and refinancing arrangements;

(3) The proposed branch shall be managed by a person with adequate experience or training in microfinancing activities; and

(4) At least seventy percent (70%) of the deposits generated by the branch to be established shall be actually lent out to qualified microfinance/BMBE borrowers and the microfinance/BMBE loans of said branch shall at all times be at least fifty percent (50%) of its gross loan portfolio.

A microfinance-oriented branch is a branch that provides financial services and caters primarily to the credit needs of basic or disadvantaged sectors such as those specified under the second paragraph of Subsec. X102.3, so as to enable them to raise their income levels and improve their living standards. Microfinance loans are granted on the basis of the borrower's cash flow and are typically unsecured.

A BMBE-oriented branch of a bank is a branch that caters primarily to the credit needs of BMBEs duly registered under R.A. No. 9178.

(As amended by Circular No. 624 dated 13 October 2008)

§ X151.3 *Application for authority to establish branches.* An application for authority to establish a branch shall be signed by the president of the bank or officer of equivalent rank and shall be accompanied by the following information/ documents:

a. Business plan detailing the primary banking activities/products and services to be offered; competition analysis to show that its application will not lead to over banking in the target market; and financial projections for the first three (3) years of operations showing sustained viability, as may be required by the appropriate department of the SES: *Provided*, That normally operating UBs, KBs, and TBs with total resources of P1 billion or more shall be exempt from the foregoing requirements, a bank is not considered normally operating if it is under PCA or is non-compliant with supervisory directives duly confirmed by the Monetary Board. In the evaluation of the business plan, due consideration shall be given to banks that are able or are committed to invest or deploy branch resources in their area of operations;

b. Certified true copy of the resolution of the bank's board of directors authorizing the establishment of the branch and indicating its proposed site;

c. Organizational set up of the proposed branch showing the proposed staffing pattern; and

d. Certification/Undertaking signed by the president of the bank or officer of equivalent rank that the bank has complied or will comply, as the case maybe, with the prerequisites for the grant of authority to establish a branch under Subsec. X151.2.

(As amended by Circular No. 624 dated 13 October 2008)

§ X151.4 *Branching guidelines* Branches may be established, subject to the following guidelines:

a. Only one (1) branch application may be submitted at any time except for banks with at least P100.0 million combined capital accounts, as defined under Sec. X111, which may be allowed a maximum of five (5) including approved but unopened branch applications, at any time;

b. Only applications submitted with complete documentary requirements enumerated in Subsec. X151.3 shall be accepted. Processing shall be on a first come, first-served basis;

c. Industry/market notice of application for authority to establish a branch shall be posted at the BSP website upon receipt thereof;

d. As a general rule, banks shall be allowed to establish branches anywhere in the Philippines, except in the cities of Makati, Mandaluyong, Manila, Parañaque, Pasay, Pasig, Quezon and San Juan (restricted areas): *Provided, however,* That RBs/local Coop Banks shall not be allowed to establish branches in Metro Manila: *Provided, further*, That -

(1) Branches of microfinance-oriented banks, microfinance/BMBE-oriented branches of banks which are not microfinance/BMBE-oriented may be established anywhere, subject to compliance with, among other requirements, the minimum capital requirement under Item *"a"* of Subsec. X151.2 and the following conditions:

(a) A microfinance-oriented TB or RB may be allowed to establish a branch in Metro Manila, including in the restricted areas, if it has combined capital accounts of at least P325.0 million in case of a TB, or at least P100.0 million in case of an RB; and

(b) A TB or RB/local Coop Bank may be allowed to establish a microfinance/ BMBE-oriented branch in Metro Manila, including in the restricted areas, if it has combined capital accounts of at least P325.0 million in case of a TB, or at least P100.0 million in case of an RB/local Coop Bank.

(2) Subject to the submission of the specific business purpose for establishing the branch, among other justifications:

(a) A TB or RB with head office located outside the restricted areas with combined capital accounts of at least P500.0 million may be allowed to establish one (1) branch anywhere within the restricted areas if it has no existing branch/es in said areas; and

(b) An RB with head office located outside Metro Manila with combined capital accounts of at least P500.0 million may be allowed to establish one (1) branch anywhere in Metro Manila, including in the restricted areas, if it has no existing branch/es in Metro Manila.

(3) A TB with combined capital accounts of at least P325.0 million may establish branches in Metro Manila, except in the restricted areas.

(4) Subject to the restrictions in Items *"5", "6", "7"* and *"8"* hereof, an RB with combined capital accounts of at least P10.0 million, may establish branches in cities/ municipalities of higher classification and with corresponding higher capitalization requirements, except in Metro Manila: *Provided*, That where the majority of the RB's total assets and/or majority of its total deposit liabilities are regularly accounted for by branches located in such cities/ municipalities of higher classification, the RB shall comply with the capitalization requirement of that city/municipality within one (1) year from the BSP finding.

(5) An RB or a local Coop Bank shall only be allowed to establish branch/es if its combined capital accounts is at least P10.0 million;

(6) An RB or local Coop Bank with combined capital accounts of at least P10.0 million but less than P50.0 million may establish branch/es anywhere within two (2) - hour normal travel time by land/ sea public transport from the head office, except in Metro Manila; and

(7) An RB with combined capital accounts of at least P50.0 million but less than P100.0 million may establish branch/ es in any island group (Luzon, Visayas or Mindanao) where the head office is located, except in Metro Manila;

(8) An RB with at least P100.0 million capital accounts may establish branch/es anywhere in the Philippines, except in Metro Manila unless qualified under Items *"d(1)"* and *"d(2)"* above.

e. A maximum of two (2) branches shall be allowed in each of the 4^{th}, 5^{th} or 6^{th} class municipalities; and

f. The Monetary Board may decide to disapprove an otherwise qualified branch application if in its determination such branch application will lead to an overbanking situation in the specific market.
(As amended by Circular No. 624 dated 13 October 2008)

§ X151.5 *Branch processing fee* Branch processing fee shall be as follows:

a.	UBs/KBs/ Affiliated TBs	- P 200,000
b.	Non-affiliated TBs/ National Coop Banks	- P 100,000
c.	RBs/Local Coop Bank	- P 25,000
d.	Microfinance-oriented banks or microfinance/ BMBE-oriented branches of banks	- P 5,000

Provided, That branches of TBs, RBs and local Coop Banks to be established within the region where the head office is located shall be free from assessment.
(As amended by Circular No. 624 dated 13 October 2008)

§ X151.6 *Establishment of other banking offices.* Other banking offices may be established with prior Monetary Board approval, and subject to compliance with the following:

a. Minimum capital requirement under Subsec. X111.1 but not lower than P10.0 million in the case of RBs and local Coop Banks;

b. Ten percent (10%) risk-based CAR;

c. CAMELS composite rating not lower than "3", with management component score not lower than "3" in the latest examination of the bank; and

d. Ceiling on total investments of a bank in real estate and improvements thereon, including bank equipment.

The application to establish other banking offices shall be signed by the president of the bank or officer of equivalent rank and submitted to the appropriate department of the SES together with the following documents:

1. Certified true copy of the resolution of the bank's board of directors authorizing the establishment of the other banking office and indicating its proposed site;

2. Purpose statement indicating the bank's objective or reason for establishing the other banking office; and

3. Undertaking signed by the president of the bank or officer of equivalent rank that said other banking office shall not accept deposits and/or service withdrawals thru tellers or other authorized personnel. In the case of LCDPs of microfinance-oriented banks and microfinance/BMBE-oriented branches of banks, the undertaking shall state that the LCDP shall accept deposits thru tellers or other authorized personnel solely from existing microfinance/BMBE borrowers.

Other banking offices may be established only in areas where the bank is allowed to establish branches as provided under Subsec. X151.4.

Transitory provision. Other banking offices existing as of 01 November 2008, which are manned by less than three (3) officers/employees at any time, accepting deposits through tellers or other authorized personnel, and are located in areas where the banks concerned are allowed to establish branches under the guidelines prescribed in this Section may apply for the conversion of these other banking offices to branches or extension offices subject to compliance with the guidelines on the establishment of branches, otherwise, these other banking offices shall phase-out their deposit operations within one (1) year from 01 November 2008.
(As amended by Circular No. 624 dated 13 October 2008)

§ X151.7 *Date of opening.* Approved branches/other banking offices shall be opened within six (6) months from the date of approval thereof: *Provided,* That an

applicant bank may be given a final extension of another six (6) months by the Deputy Governor, SES, subject to the presentation of justification and valid reason for the failure to open the branch/ other banking office within the original six (6) - month period and proof that said branch/other banking office can be opened within the succeeding six (6) - month period.
(As amended by Circular No. 624 dated 13 October 2008)

§ X151.8 ***Requirements for opening a branch/other banking office.*** After a bank's application to establish a branch/ other banking office has been approved, it may open the same subject to its submission to the appropriate department of the SES of the following:

a. Within thirty (30) calendar days prior to the intended date of opening, personal information sheet (bio-data) of the proposed manager and other officers of the branch/other banking office; and

b. Within ten (10) banking days prior to the intended date of opening, a certification signed by the head of the Branches Department with the rank of a vice president, or its equivalent or by a higher ranking officer that the installation of the required security devices under Item *"b"* of Subsec. X181.4 has been complied with.

The bank shall likewise submit a written notice to the appropriate department of the SES of the actual date of opening of its branch/other banking office not later than five (5) banking days from such opening, together with a certification signed by the head of the branches department with the rank of a vice president, or its equivalent or by a higher ranking officer that the requirements enumerated under Subsecs. X151.2/X151.6 have been complied with as of the time of actual opening of the branch/other banking office.

A bank that fails to comply with any one (1) of the requirements in Subsecs. X151.2/X151.6 as of the date of the intended opening of the branch/other banking office shall refrain from opening the branch/other banking office on such date until it has complied with all of the requirements under Subsecs. X151.2/ X151.6: *Provided,* That if the branch/ other banking office, cannot open within six (6) months from the date of the original approval of the establishment of such branch/other banking office, the provisions of Subsec. X151.7 on the final extension to open the branch/other banking office shall be observed.
(As amended by Circular No. 624 dated 13 October 2008)

§ X151.9 ***Relocation of branches/other banking offices.*** Relocation of existing/ operating branches/other banking offices shall be allowed without prior Monetary Board approval in accordance with the following procedures:

a. Notice of relocation shall be sent to depositors and other creditors, where applicable, by registered mail or proof of delivery (POD) service of the Philippine Postal Corporation (PhilPost) or other mail couriers and posters shall be displayed in conspicuous places in the premises of the branch/other banking office to be relocated at least three (3) months prior to the relocation: *Provided*, That said notification period may be reduced to forty-five (45) calendar days under any of the following circumstances:

(1) as an incentive to merger or consolidation of banks;

(2) as an incentive to the purchase or acquisition of majority or all of the outstanding shares of stock of a distressed bank for the purpose of rehabilitating the same; or

(3) the proposed relocation site is within the same barangay of the branch/ other banking office to be relocated.

b. Within five (5) banking days from the date of relocation, a notice of relocation together with a certification signed by the head of the Branches Department with the rank of vice president or its equivalent rank or by a higher ranking officer that the notification requirement under Item *"a"* above has been complied with shall be submitted to the appropriate department of the SES. The certification shall be accompanied by a certified true copy of the resolution of the bank's board of directors authorizing the relocation;

c. Branches located in the restricted areas may be relocated anywhere;

d. Branches located in other areas may be relocated anywhere except in the restricted areas: *Provided,* That branches of TBs may be relocated in Metro Manila but outside the restricted areas if they have complied with the minimum capital requirement for TBs with head offices in Metro: *Provided further*, That branches of RBs and local Coop Banks may be transferred only in areas where they are allowed to establish branches: *Provided finally,* That existing branches of RBs and local Coop Banks in cities and municipalities of Metro Manila other than in the restricted areas may be relocated anywhere, except in the restricted areas; and

e. Other banking offices may be relocated only in areas where the bank's branches are allowed to be relocated as indicated in Items *"c"* and *"d"* above.

(As amended by Circular No. 624 dated 13 October 2008)

§ X151.10 *Voluntary closure/sale of branches/other banking offices*

a. *Voluntary closure of branches/ other banking offices*. Voluntary closure of branches/other banking offices may be effected only with prior approval of the Monetary Board in accordance with the following procedures:

(1) Request for Monetary Board approval of the closure of branches/other banking offices signed by the president of the bank or officer of equivalent rank, together with a certified true copy of the resolution of the bank's board of directors authorizing the closure and stating the justification/reasons therefor, shall be submitted to the appropriate department of the SES;

(2) Upon receipt of the notice of Monetary Board approval but at least three (3) months prior to the closure, notice of closure shall be sent to depositors and other creditors by registered mail or POD service of the PhilPost or other mail couriers and posters shall be displayed in conspicuous places in the premises of the branch/banking office to be closed: *Provided* that said notification period may be reduced to forty five (45) calendar days under any of the following circumstances:

(a) As an incentive to merger or consolidation of banks;

(b) As an incentive to the purchase or acquisition of majority or all of the outstanding shares of stock of a distressed bank for the purpose of rehabilitating the same; or

(c) The proposed relocation site is within the same barangay of the branch/ other banking office to be relocated; and

(3) Within five (5) banking days from date of closure, a notice of closure, together with a certification signed by the president of the bank or officer of equivalent rank, that the notification requirement in Item "2" above has been complied with, shall be submitted to the appropriate department of the SES.

Temporary closure of branches/other banking offices. Temporary closure of branches/other banking offices for the purpose of undertaking renovations/major repairs of branch/office premises/facilities may be allowed for a period not exceeding six (6) months subject to the prior approval of the Deputy Governor, SES, and compliance with the following conditions:

(1) Request for approval of the temporary closure of the branch/other banking office signed by the president of the bank or officer of equivalent rank shall be submitted to the appropriate department of the SES, together with a certified true copy of the resolution of the bank's board of directors authorizing said closure stating the justifications/reasons therefor. The request shall include information as to the timetable for said closure and the branch/other banking office that will handle the transactions of the branch/other banking office to be closed;

(2) Upon receipt of notice of approval by the Deputy Governor, SES, but at least three (3) months prior to the intended date of closure, notice of temporary closure shall be sent to depositors and other creditors, where applicable, by registered mail or POD service of the Philpost or other mail couriers, and posters shall be displayed in conspicuous places in the premises of the branch/other banking office to be closed. Information as to the duration of said closure and the address of the branch/other banking office that will handle the transactions of the branch/other banking office to be closed shall be indicated in the said notice/posters;

(3) The transactions of the branch/other banking office to be closed shall be handled by the branch/other banking office nearest to the branch/other banking office to be closed;

(4) Within five (5) banking days after the date of closure, a notice of such closure signed by the head of the branches department with the rank of a vice president, or its equivalent or by a higher ranking officer together with a certification that the notification requirement under Item "2" above has been complied with shall be submitted to the appropriate department of the SES.

(5) Within five (5) banking days after re-opening of the branch/other banking office, notice of such re-opening signed by the head of the branches department with the rank of a vice president, or its equivalent or by a higher ranking officer shall be submitted to the appropriate department of the SES.

b. *Sale of branches/other banking offices*. Sale of branches/other banking offices may be allowed with prior approval of the Monetary Board in accordance with the following procedures:

(1) In the case of sale of branches, the selling and acquiring banks shall secure the prior written consent of the PDIC in the transfer of assets and assumption of liabilities as provided under Section 21 of the PDIC Charter (R.A. No. 3591), as amended by R.A. No. 9302;

(2) Request for Monetary Board approval to close the branches/other banking offices to be sold signed by the president of the bank or officer of equivalent rank, together with a certified true copy of the resolution of the bank's board of directors authorizing the sale shall be submitted by the selling bank to the appropriate department of the SES;

(3) Upon receipt of the notice of Monetary Board approval but at least three (3) months prior to the closure, notice of sale shall be sent to depositors and other creditors, where applicable, by registered mail or POD service of the Philpost or other mail couriers, and posters shall be displayed in conspicuous places in the premises of the branch/other banking office to be sold: *Provided,* That said notification period may be reduced to forty-five (45) calendar days when there is no actual closure or disruption of operations. Depositors shall likewise be informed of their option to withdraw their deposits or to maintain the same with the acquiring bank;

(4) Within five (5) banking days from the date of closure, a notice of such closure, together with a certification signed by the president of the bank or officer of

equivalent rank that the notification requirement under Item "3" above has been complied with, shall be submitted to the appropriate department of the SES;

(5) Request for Monetary Board approval to acquire the branch/other banking office signed by the president of the bank or officer of equivalent rank, together with a certified true copy of the resolution of the bank's board of directors authorizing the acquisition shall be submitted by the acquiring bank to the appropriate department of the SES. The acquiring bank shall likewise comply with the following:

(a) Minimum capital requirement under Subsec. X111.1 but not lower than ten (P10) million in the case of of RBs and local Coop Banks;

(b) Ten percent (10%) risk-based CAR;

(c) CAMELS composite rating not lower than "3" with management component score not lower than "3" in the latest examination of the bank; and

(d) Ceiling on total investments of a bank in real estate and improvements thereon, including bank equipment.

A UB, KB or TB may purchase/acquire branches/other banking offices anywhere, including in Metro Manila and in the restricted areas: *Provided,* That a TB may purchase/acquire branches/other banking offices in Metro Manila, including in the restricted areas, if it has combined capital accounts of at least P325 million: *Provided, further*, That an RB/local Coop Bank may purchase/acquire branches/other banking offices only in areas where it is allowed to establish branches/other banking offices as provided under Subsec. X151.4;

(6) The acquiring bank shall pay a licensing fee per branch/other banking office acquired, as follows:

Type of Acquiring Bank	Location of Branch/Other Banking Office to be Acquired: Within Metro Manila	Outside Metro Manila
UBs and KBs	P 1.0 million	P 0.5 million
TBs	P 0.5 million	P 0.25 million

(7) Within thirty (30) calendar days prior to the intended date of opening of the acquired branch/other banking office, the personal information sheet (bio-data) of the proposed manager and other officers of the branch/other banking office shall be submitted by the acquiring bank to the appropriate department of the SES; and

(8) Within five (5) banking days from the date of opening of the acquired branch/other banking office, a written notice of such opening signed by the head of branches department with the rank of vice president or its equivalent rank or by a higher ranking officer shall be submitted by the acquiring bank to the appropriate department of the SES.

(As amended by Circular No. 624 dated 13 October 2008)

§ X151.11 *Relocation/Transfer of branch licenses of closed banks.* Buyers of closed banks shall be allowed to relocate/transfer acquired branches subject to the conditions stated under Items *"c"* and *"d"* of Subsec. X151.9.

(As amended by Circular No. 624 dated 13 October 2008)

§ X151.12 *Sanctions*

1. Any violation of the provisions of Subsecs. X151.1 - X151.11 shall be a ground for the cancellation of the franchise and closure of any branch/other banking office established hereunder without prejudice to the imposition of the applicable criminal and administrative sanctions prescribed under Sections 36 and 37, respectively, of R.A. No. 7653; and

2. If any part of any certification submitted by the bank as required in this Section is found to be false, the following sanctions shall be imposed:

a. *On the bank*. Suspension for one (1) year of the privilege to establish and/or open approved branches/other banking offices, and/or relocate branches/other banking offices.

b. *On the certifying officer*. A fine of P5,000 per day (P200 per day for RBs/Coop Banks) from the time the certification was made up to the time the certification was found to be false for each branch/other banking office opened, relocated, closed or sold without prejudice to the sanctions under Section 35 of R.A. No. 7653.

(As amended by Circular No. 624 dated 13 October 2008)

§§ X151.13 - X151.18 (*Reserved*)

§ X151.19 *(2008 - X155)* Tellering Booths. The following rules shall govern the establishment of tellering booths in BIR offices:

a. As a general policy, the establishment of tellering booths in BIR offices are not authorized. However, in cases where tellering booths in offices are needed as determined by the BIR, banks shall secure prior Monetary Board approval;

b. A bank's application shall be accompanied by a letter from the BIR Commissioner or Deputy Commissioner or other officer specifically authorized by the Commissioner to sign such letter, stating that the BIR has agreed to allow the applicant bank to establish a tellering booth in the specified BIR office;

c. The applicant bank has complied with the standard prequalification requirements prescribed in *Appendix 5;* and

d. Tax collections received shall be subject to rules on government deposits.

Sec. X152 Relocation of Head Offices Relocation of a bank's head office shall require prior approval of the Monetary Board in accordance with the following procedures:

a. Request for Monetary Board approval of the relocation of the bank's head office signed by the president of the bank or officer of equivalent rank shall be submitted to the appropriate department of the SES together with the following documentary requirements:

(1) A certified true copy of the resolution of the bank's board of directors authorizing the proposed relocation/ transfer of the head office, and stating the justification/reasons therefor;

(2) A certified true copy of stockholders' resolution authorizing the amendment of the articles of incorporation of the bank;

(3) Description of the building and/or place of relocation, manner of occupancy, i.e., whether lease or purchase, estimate of the total costs to be incurred in connection with the transfer, and the proposed timetable for such relocation; and

(4) Plan for the disposition of the original site.

b. Upon receipt of the notice of Monetary Board approval but at least three (3) months prior to the relocation, notice of relocation shall be sent to depositors and other creditors by registered mail or POD service of the Philpost or other mail couriers, and poster shall be displayed in conspicuous places in the premises of the head office to be relocated: *Provided*, That said notification period may be reduced to forty-five (45) calendar days under any of the following circumstances:

(1) As an incentive to merger or consolidation of banks;

(2) As an incentive to the purchase or acquisition of majority or all of the outstanding shares of stock of a distressed bank for the purpose of rehabilitating the same; or

(3) The proposed relocation site is within the same municipality/city of the head office to be relocated.

c. Within five (5) banking days from the date of relocation, a notice of relocation, together with a certification signed by the president of the bank or officer of equivalent rank that the notification requirement under Item *"b"* above has been complied with shall be submitted to the appropriate department of the SES.

A bank's head office may be relocated only in areas where the bank may be authorized to establish branches as provide in Subsec. X151.4.

The executive offices of the bank shall not be separated from the head office, i.e., these shall be located where the bank's head office is located.

Relocation of any other department/ unit of the bank not performing front-office operation, i.e., not dealing with the banking public, shall not require prior Monetary Board approval: *Provided however*, That within five (5) banking days from date of relocation, a notice of relocation signed by a vice president or officer of equivalent rank or by a higher ranking officer, together with a certified true copy of the resolution of the bank's board of directors authorizing the relocation, shall be submitted to the appropriate department of the SES.

(As amended by Circular No. 624 dated 13 October 2008)

§ X152.1 *Sanctions.* If any part of the certification submitted by the bank as required in this Section is found to be false, the sanctions under Subsec. X151.12 shall be imposed.

Sec. X153 Establishment of Additional Branches of Foreign Banks. The following guidelines shall govern the establishment of additional branches of foreign banks in the Philippines pursuant to R.A. No. 7721.

For purposes of this Section, the term *bank* shall refer to the existing branches of the applicant bank in the Philippines reckoned as a single unit.

In the case of a foreign bank which has more than one (1) branch and/or other office in the Philippines, all such branches/ offices shall be treated as one (1) unit and all references to the Philippine branches/ offices of such foreign bank shall be held to refer to such unit pursuant to Section 74 of the R.A. No. 8791.

§ X153.1 *Application for authority to establish additional branch.* An application for authority to establish additional branch or branches shall be signed by the Country Manager or the highest ranking officer in the Philippines of the applicant foreign bank, and shall be accompanied by the following information/documents:

a. Certified true copy of the resolution of the bank's board of directors authorizing the establishment of the additional branch/es and indicating its proposed site/s and/or authority of the bank's Country Manager or highest ranking officer in the Philippines to apply for authority to establish additional branch/es and represent the bank in connection therewith;

b. Banking facilities and services to be offered;

c. Organizational set up of the proposed branch showing the proposed staffing pattern; and

d. Certification signed by the bank's Country Manager that the bank's existing branches in the Philippines reckoned as a single unit, have complied with all the requirements enumerated under Subsec. X153.2.

§ X153.2 *Requirements for establishment of additional branch.* In addition to the standard pre-qualification requirement for the grant of banking authorities in *Appendix 5*, the applicant bank shall comply with requirements prescribed in Subsecs. X105.4 *b* and *c*, and X105.6.

§ X153.3 *Date of opening.* The opening of approved branches shall be subject to the provisions of Subsec. X151.6.

§ X153.4 ***Requirements for opening a branch.*** After a bank's application to establish a branch has been approved, it may open the same subject to the following conditions:

a. Submission by the applicant bank of a written notice at least thirty (30) days prior to the intended date of opening, accompanied by the following:

(1) Proof or evidence of inward remittance needed to meet the requirements prescribed in Subsecs. X105.4 *b* and *c*, and X105.6;

(2) List of principal and junior officers of the proposed branch/es and their respective designations and salaries;

(3) Personal information sheet (bio-data) for each of the officers to enable the BSP to evaluate their qualifications as officers; and

(4) A certification signed by the bank's Philippine Country Manager that the requirements enumerated under Subsec. X153.2 has been complied with up to the date of the aforementioned written notice.

A bank that fails to continuously comply with the requirements under Subsec. X153.2 shall be given an extension of time to open such branch after it has shown compliance for another test period of the same duration required of each requirement in Subsec. X153.2: *Provided,* That the provisions of Subsec. X153.3 shall be observed if the branch cannot open within six (6) months from the date of approval thereof: *Provided, further,* That before such branch opens for business, the bank shall submit to the BSP the requirements under Subsec. X153.4a with the certification to the effect that the bank has complied with requirements of Subsec. X153.2 up to the date of the written notice within the period prescribed therein;

b. The foreign bank branch has adequate staff, equipment, and other facilities to meet the needs of its commercial banking operations: *Provided,* That the bank's premises, vault and office equipment, after inspection by the representatives of the SES shall have been found to be substantially in compliance with specifications on security standards and ready for use by the bank; and

c. Issuance by the Governor of the permit to open and operate the approved branch/es.

Banks shall submit a written notice to the appropriate department of the SES of the actual date of opening of their branches not later than ten (10) banking days from such opening.

§ X153.5 ***Choice of locations for establishment of branches***

a. A foreign bank authorized to establish branches in the Philippines pursuant to the provisions of R.A. No. 7721, may open its first three (3) branches in locations of its choice.

b. The same foreign bank may open its next three (3) additional branches only in locations designated by the Monetary Board to ensure balanced economic development in all the regions.

§ X153.6 ***Sanctions.*** If a bank fails to submit any certification as required in this Section, or any part of the certification submitted by the bank as required in this Section is found to be false, the sanctions under Subsec. X151.10 shall be imposed.

Sec. X154 Establishment of Offices Abroad. The following rules shall govern the establishment by domestic banks of branches and other offices abroad.

For purposes of this Section, the term *offices* shall include branches, agencies, representative offices, remittance centers, remittance desk offices and other offices.

§ X154.1 *Application for authority to establish an office abroad.* An application for authority to establish an office abroad shall be signed by the president of the bank and shall be accompanied by the following information/documents:

a. Certified true copy of the resolution of the bank's board of directors authorizing the establishment of that office indicating its proposed site;

b. Economic justification for such establishment, indicating among other things, the services to be offered, the minimum outlay such as capital requirement of the host country, outlay for furniture, fixture and equipment, rental and other expenses;

c. Organizational set up of the proposed office showing the proposed positions and the names, qualifications and experience of the proposed manager and other officers;

d. Certification signed by the president or the executive vice president that the bank has complied with the standard pre-qualification requirements for the grant of banking authorities enumerated in *Appendix 5*; and

e. Certification from the host country that the duly authorized personnel/ examiners of the BSP will be authorized to examine the proposed office.

§ X154.2 *Requirements for establishing an office abroad.* In addition to the standard prequalification requirements of *Appendix 5*, the applicant bank shall comply with the following:

a. The citizenship requirements, ownership ceilings and other limitations on voting stockholdings in banks under existing law and regulations;

b. Experience and expertise in international banking operations as shown by:

(1) Its international banking operations for at least three (3) years prior to the date of application;

(2) Substantial income derived from international banking operations; and

(3) Established correspondent relationship with reputable banks.

§ X154.3 *Conditions attached to the approved application.* An approved application to establish a banking office abroad shall be subject to the following conditions:

a. Without prejudice to the qualification requirements in the country where the office is to be established, the proposed officer(s), at the time of appointment must be at least:

(1) Twenty-five (25) years of age;

(2) A college graduate, preferably with training and experience abroad;

(3) With three (3) years experience in international banking operations; and

(4) Must not possess any of the disqualification of an officer as provided for under existing regulations;

b. The applicant bank shall comply with the licensing requirements of the host country and the necessary license to operate shall be secured from the appropriate government agency of the host country;

c. The outward investment representing initial capital outlay and other outlays shall be subject to existing regulations;

d. The proposed office shall submit periodic reports on its financial condition and profitability and such other reports that may be required by the BSP;

e. An office not authorized to perform banking business (e.g., representative and liaison offices) shall not carry any of the business of a bank as contemplated within the context of the Philippine banking system; and

f. The applicant shall defray the necessary cost and expenses to be incurred by the appropriate department of the SES.

§ X154.4 ***Date of opening.*** The opening of any office abroad shall be subject to the provisions of Subsec. X151.6.

§ X154.5 ***Requirements for opening an office abroad.*** After a bank's application to establish a branch has been approved, it may open the same subject to the following conditions:

a. Submission by the applicant bank of a written notice at least thirty (30) days prior to the intended date of opening, accompanied by the following:

(1) Proof or evidence of outward remittance needed to meet the capital requirements prescribed by the host country;

(2) List of principal and junior officers of the proposed branch/es and their respective designations and salaries; and

(3) Personal information sheet (Bio-data) for each of the officers to enable the BSP to evaluate their qualifications as officers; and

b. A certification signed by the bank's president or executive vice president that the standard prequalification requirements enumerated in *Appendix 5* have been complied with up to the date of the aforementioned written notice.

A bank that fails to continuously comply with the requirements shall be given an extension of time to open such office after it has shown compliance for another test period of the same duration required of each requirement: *Provided,* That the provisions of Subsec. X151.6 shall be observed if the branch cannot open within six (6) months from the date of approval thereof: *Provided, further,* That before such branch opens for business, the bank shall submit to the BSP the requirements under Subsec. X154.5a together with a certification stating that the bank has complied with the standard prequalification requirements in *Appendix 5* up to the date of the written notice within the period prescribed therein.

§ X154.6 ***Sanctions.*** If any part of the certification submitted by the bank as required in this Section is found to be false, the sanctions under Subsec. X151.12 shall be imposed.

§§ X154.7 - X154.8 ***(Reserved)***

§ X154.9 ***Establishment of a foreign subsidiary by a bank subsidiary.*** The establishment of a foreign subsidiary by a bank subsidiary are subject to the guidelines in Subsec. X382.8.

Sec. X155 (Reserved)

J. BANKING DAYS AND HOURS

Sec. X156 Banking Days and Hours Banks, including their branches and offices, doing business in the Philippines, shall observe for the conduct of their business a regular banking week of five (5) days, except when such days are holidays. The regular banking week should fall on Mondays to Fridays unless otherwise authorized by the BSP in the interest of the banking public. On these days, said institution shall transact business for at least six (6) hours each day.

Subject to compliance with other relevant laws, banks, including their branches and offices, may opt to observe a banking week in excess of the five (5) days after reporting to the BSP the additional days during which such banks or their branches or offices shall transact business for at least three (3) hours each day.

Without the need for prior approval of the BSP, and even in the absence of an approved local holiday, banks and/or their branches or other offices are allowed to close on certain days in celebration of important historical and/or religious events in the locality where these banks operate: *Provided*, That said closure has the prior approval of the bankers' association in the locality and in the case of bank branches, their respective head offices: *Provided, further*, That said closure will only be allowed in the municipality or city where the festivities are centered.

Banks and/or their branches or other offices shall submit, either individually or through their head offices, to the appropriate department of the SES a prior notice of their intended closure on account of a specific local festivity, together with a copy of the resolution of the local bankers association approving said closure, at least two (2) working days before the intended date of closure.

The required notice shall be supported by a certification that:

a. On the date of the temporary closure, the bank and/or branch will maintain a skeletal force to handle "out-of-town" clearing items in line with the provisions of Section X205;

b. The notice of the bank's closure and the reason thereof shall be posted conspicuously in the bank's premises; and

c. For branches of banks, the closure has the prior approval of their respective head offices**.**

(As amended by Circular Nos. 634 dated 05 December 2008 and 624 dated 13 October 2008)

§ X156.1 *Banking hours beyond the minimum; banking services during holidays.* For purposes of servicing deposits and withdrawals, banks may, at their discretion, remain open beyond the minimum six (6) hours and for as long as they find it necessary, even before 8:00 AM or after 8:00 PM. Banks may, after prior written notice to the approriate department of the SES, also remain open beyond the minimum six (6) hours for banking services other than the servicing of deposits and withdrawals but in no case shall such banking hours start earlier than 8:00 AM nor extend beyond 8:00 PM: *Provided, however,* That branches of banks at any international airport or major fish port are allowed to operate on flexible banking hours within a twenty-four (24)-hour period, subject to the condition that the individual bank's management will inform the BSP of the schedule of its banking hours which shall in no case be less than six (6) hours a day.

Banks and/or their branch/es and/or extension offices may opt to remain open during any or all of their regular banking days that were covered by holidays for the purpose of servicing deposits and withdrawals: *Provided,* That a bank opting to open its head office and/or branch/es and/or extension offices, shall submit to the appropriate department of the SES at least two (2) working days before the intended date of opening of the bank's head office and/or branches and/or extension offices, a notice signed by its president or officer of equivalent rank, of its intention to open during the holidays, together with a copy of the board resolution approving the same: *Provided further,* That the notice shall specify which office (head office and/or branch/es and/or extension offices) will open on what dates and their schedule of banking hours.

Subject to submission of a notice signed by the bank president or officer of equivalent rank, authorized agent banks of the BIR (BIR-AABs), and/or its branch/es and/or extension offices, are allowed to open for two (2) Saturdays prior to April 15 of every year, and daily from April 1 to income tax payment deadline, to extend banking hours from 3:00 PM to 5:00 PM to receive internal revenue tax payments. The notice, which shall specify which office (head office and/or branch/es and/or extension offices) will open or extend banking hours on what dates, shall be submitted to the appropriate department of the SES on or before the last banking day of March of every year.

(As amended by Circular No. 634 dated 5 December 2008)

§ X156.2 ***Report of, and changes in, banking days and hours.*** The banking days and hours selected for each of the offices of banks shall be reported in writing to the appropriate department of the SES. Banks may change the banking days and hours previously reported to the BSP by giving prior written notice: *Provided,* That changes in banking days or hours shall not be made oftener than once every thirty (30) days, except during emergencies. *Emergency* shall mean (a) condition of an area or locality proclaimed by the President of the Philippines as in a state of emergency; or (b) an event or occasion or a combination of circumstances equivalent to a public calamity resulting from fire, flood, or like disaster, or through some unusual occurrence or pressing necessity not reasonably subject to anticipation calling for immediate action or remedy.

The prior written notice to the BSP on changes in banking days and hours shall be given through the fastest means of communication, at least seven (7) banking days before the intended effectivity of the change in banking hours or days. In case a bank, due to an emergency, has to open outside, or close during, the banking hours or days reported to the BSP, a written report submitted within twenty-four (24) hours from opening or closing, as the case may be, will suffice. The report shall state the specific nature of the emergency and the period the bank opened or closed or shall open or close by reason of emergency.

§ X156.3 ***Posting of schedule of banking days and hours.*** The schedule of banking days and hours reported to the BSP shall be posted conspicuously at all times in the bank's premises.

Secs. X157 - X159 (Reserved)

K. BANKING PREMISES

Sec. X160 ***(2008 - X606)*** **Bank Premises and Other Fixed Assets.** The following rules shall govern the premises and other fixed assets of banks.

§ X160.1 ***(2008 - X606.1) Appreciation or increase in book value.*** Bank premises, furniture, fixtures and equipment shall be accounted for using the cost model under PAS 16 "Property, Plant and Equipment."

Outstanding appraisal increment as of 13 October 2005 arising from mergers and consolidation and other cases approved by the Monetary Board, shall be deemed part of the cost of the assets. However, appraisal increment previously allowed to be booked shall be reversed.

Accordingly, the booking of appreciation or increase in the book value of bank premises and other fixed assets in cases where the market value of the property has greatly increased since the original purchase is no longer allowed.
(As amended by Circular No. 520 dated 20 March 2006)

§ X160.2 ***(2008 - X606.2) Ceiling on total investments.*** The total investment of a bank in real estate and improvements thereon, including bank equipment, shall not exceed fifty percent (50%) of the bank's net worth. In determining compliance with such ceiling, the following rules shall apply:

a. The investment shall include all real estate and equipment necessary for the bank's immediate use in the transaction of its business, such as:

(1) *Bank Premises - Land and Buildings, Buildings under Construction, Leasehold Rights and Improvements and Furniture, Fixtures and Equipment* (as defined in the Manual of Accounts for All Banks), owned and used by the bank in the conduct of its business, including staff houses, recreational facilities and landscaping costs, net of accumulated

depreciation: *Provided, however,* That appraisal increment on bank premises shall not be included in the total investment in real estate and improvements for purposes of these guidelines; and

(2) Real properties, equipment or other chattels purchased by the bank in its name for the benefit of its officers and employees, net of depreciation and in the case of land or other non-depreciable property, net of payments already made to the bank by the officers and employees for whose benefits the property was bought, where such property has not yet been fully paid and ownership has not yet been transferred to them.

b. The following shall be included in the computation of a bank's total investment in bank premises:

(1) (a) The cost of real estate leased in whole or in part by the bank from a corporation, other than a corporation primarily engaged in real estate in which the bank has equity, equivalent to the amount obtained by applying the percentage of the equity of the bank in the lessor to the cost of that portion of the property being leased, or

(b) the amount of equity in the lessor, whichever is lower, plus the amount obtained by applying the percentage of the equity of the bank in the lessor to any outstanding loans of the lessor with the bank, the proceeds of which were used to purchase, construct or develop the real estate used for the bank's purposes.

(2) The lower of -

(a) the cost of real estate leased in whole or in part by the bank from a corporation in which any or a group of stockholders owning ten percent (10%) or more of the voting stock of the bank, directors and/or officers of the bank, hold or own more than fifteen percent (15%) of the subscribed capital stock of the lessor, equivalent to the amount obtained by applying the percentage of the equity of said stockholders/directors/officers in the lessor to the cost of that portion of the property being leased by the bank, or

(b) the amount obtained by applying the percentage of the equity of the stockholders/directors/officers in the lessor to any outstanding loans of the corporation with the bank, the proceeds of which were used to purchase, construct or develop the real estate used for the bank's purposes.

The equity investment of a bank in a corporation engaged primarily in real estate shall be included in the computation of the bank's total investment in real estate, unless otherwise provided by the Monetary Board.

§ X160.3*(2008 -X606.3) Reclassification of real and other properties acquired as bank premises.* ROPA reclassified as bank premises shall be booked at their ROPA balance, net of any valuation reserves: *Provided,* That only such acquired asset or a portion thereof that will be immediately used or earmarked for future use may be reclassified and booked as bank premises.

Banks, prior to the reclassification of their ROPA accounts to bank premises, shall first secure prior BSP approval before effecting the reclassification and shall submit, in case of future use, justification and plans for expansion/use.

L. MANAGEMENT CONTRACTS AND OUTSOURCING OF BANKING FUNCTIONS

Sec. X161 *(2008 - X168)* Management Contracts

a. Management contracts of banks with management firms shall be limited to consultancy and advisory services;

b. Only a natural person may be elected or appointed as an officer of a bank, without prejudice to such person being a nominee of a management corporation: *Provided,* That the responsibility and/or accountability of anyone elected or appointed to an officer position shall be personal in nature and cannot be delegated to a corporation; and

c. Any bank that enters into contracts contrary to this policy shall be denied the credit facilities of the BSP.

Sec. X162 ***(2008 - X169)*** **Duties and Responsibilities of Banks and their Directors/Officers in All Cases of Outsourcing of Banking Functions.** When outsourcing of banking functions is allowed by law, banks shall:

a. Carry out the same in accordance with proper standards, ensuring the integrity of the data, systems and controls of the banks and subject to the supervisory, regulatory and administrative authority of the BSP over the banks and their directors/ officers;

b. Be responsible for the performance thereof in the same manner and to the same extent as it was before the outsourcing;

c. Comply with all laws and regulations governing the banking activities/services performed by the qualified service providers in its behalf such as, but not limited to, keeping of records and preparation of reports, signing authorities, internal control and clearing regulations; and

d. Manage, monitor and review on an ongoing basis the performance by the qualified service providers of the outsourced banking activities/services.

§ X162.1 ***(2008 - X169.1) Prohibition against outsourcing certain banking functions.*** No bank or any director, officer, employee, or agent thereof shall outsource inherent banking functions.

For purposes of this Section, *outsourcing of inherent banking functions* shall refer to any contract between the bank and a service provider for the latter to supply, or any act whereby the latter supplies, the manpower to service the deposit transactions of the former.

Banks cannot outsource management functions except as may be authorized by the Monetary Board when circumstances justify.

§ X162.2 ***(2008 - X169.2) Outsourcing of information technology systems/ processes.*** Subject to prior approval of the Monetary Board, banks may outsource all information technology systems and processes except for certain functions affecting the ability of the bank to ensure the fit of technology services deployed to meet its strategic and business objectives and to comply with all pertinent banking laws and regulations, such as, but not limited to, strategic planning for the use of information technology; determination of system functionalities; change management inclusive of quality assurance and testing; service level and contract management; and security policy and administration.

However, subject to prior approval of the Monetary Board and submission of the documentary requirements referred to in Item *"a"* hereof, consultants and/or service providers may be engaged to provide assistance/support to the bank personnel assigned to perform these excepted functions.

A bank intending to outsource information technology systems and processes shall submit the following documents to BSP which shall treat the same as strictly confidential:

(1) Proposed contract between the bank and the service provider which should, at a minimum, include all the following:

(a) Complete description of the work to be performed or services to be provided;

(b) Fee structure;

(c) Provisions regarding on-line communication availability, transmission line security, and transaction authentication;

(d) Responsibilities regarding hardware, software and infrastructure upgrades;

(e) Provisions governing amendment and pretermination of contract;

(f) Mandatory notification by the service provider of all systems changes that will affect the bank;

(g) Details of all security procedures and standards;

(h) Responsibility, fines, penalties and accountability of the service provider for errors, omissions and frauds;

(i) Confidentiality clause covering all data and information; solidary liability of service provider and bank for any violation of R.A. No. 1405 (the Bank Deposits Secrecy Law) actions that the bank may take against the service provider for breach of confidentiality or any form of disclosure of confidential information; and the applicable penalties;

(j) Segregation of the data of the bank from that of the service provider and its other clients;

(k) Disaster recovery/business continuity contingency plans and procedures;

(l) Adequate insurance for fidelity and fire liability;

(m) Ownership/maintenance of the computer hardware, software (program source code), user and system documentation, master and transaction data files;

(n) Guarantee that the service provider will provide necessary levels of transition assistance if the bank decides to convert to other service providers or other arrangements;

(o) Access to the financial information of the service provider;

(p) Access of internal and external auditors to information regarding the outsourced activities/services which they need to fulfill their respective responsibilities;

(q) Access of BSP to the operations of the service provider in order to review the same in relation to the outsourced activities/services;

(r) Provision which requires the service provider to immediately take the necessary corrective measures to satisfy the findings and recommendations of BSP examiners and those of the internal and/or external auditors of the bank and/or the service provider; and

(s) Remedies for the bank in the event of change of ownership, assignment, attachment of assets, insolvency, or receivership of the service provider.

(2) Minutes of meetings of the board of directors of the bank concerned signed by majority thereof, certified by the secretary and attested by the president documenting their discussions on the following:

(a) The benefits and advantages of outsourcing with respect to, among others, its role and contribution to the accomplishment of the strategic and business plans of the bank as well as the economy, efficiency and quality of its over-all operations;

(b) The careful and diligent evaluation, prior to selecting the service provider with which it is entering into an outsourcing contract, by the bank of various service providers and their proposals, including their reputation, financial condition, cost for development, maintenance and support, internal controls, recovery processes, service level agreements, availability of competent, technically qualified and experienced personnel, strategic or convenient location of support services and such similar other considerations;

(c) The creation, organization and membership of a senior management oversight committee to handle and oversee the efficient implementation and monitoring of the applications/operations of the service provider to ensure that the same is in accordance with the existing information technology initiatives, policies and guidelines of the bank; the list of the members of such committee, its organizational chart, and a detailed description of the roles and responsibilities of its members must be included in the minutes of the meeting or submitted as attachments thereto;

(d) The creation, organization and membership of a help desk to resolve all queries, problems and other concerns arising from the applications/operations rendered by the service provider; and

(e) The systems and user acceptance tests that will be conducted by the service provider before full implementation of the outsourced systems/processes and the unsatisfactory results of which shall be valid ground to rescind the contract with the service provider.

(3) Profile of the selected service provider or the non-bank partner, in case of joint ventures and other similar arrangements, which should include:

(a) Most recent and complete financial and operational information;

(b) Track record;

(c) List of clientele, particularly banks and the services provided thereto by the service provider; and

(d) At the option of the service provider or non-bank partner, other documents demonstrative of its competence and reputation in the field of information technology as applied to banking operations.

The following are considered as extension of the banks' information technology processes and are outsourcing activities that need prior Monetary Board approval under this Subsection:

(1) *Connection of the bank's ATM host and/or CASA systems to an ATM consortium or an Affiliate Switch Network (ASN).* However, no prior Monetary Board approval shall be required for a bank connected or seeking to connect with Bancnet and/or Megalink or with ASN of either ATM consortium: *Provided,* That it passed/es the BSP-approved accreditation process of either Bancnet or Megalink.

(2) Sponsoring bank arrangement. A sponsoring bank arrangement is one where a TB/RB or Coop Bank, which is not a member of any ATM network consortium, but wishes to provide ATM services and terminals is "sponsored" by a member-bank of any of the existing ATM consortium.

For purposes of these regulations, an *ATM network consortium* is an entity that operates and maintains an ATM switch network connecting member institutions while an *Affiliate Switch Network* (ASN) is an aggregator/service provider that connects its ATM switch with BancNet and/or Megalink and extends that connection to its subscribers and/or members. ASN has to pass its accreditation requirements of BancNet and Megalink which includes service level standards, BSP access, and minimum paid-up capital of P300 million. ASNs already interconnected with BancNet and/or Megalink are required to comply with the minimum paid-up capital on staggered basis of: P100 million by 31 December 2008; P200 million by 31 December 2009; and P300 million by 31 December 2010.

A bank that intends to outsource its internet and/or mobile banking services to BancNet and/or Megalink shall no longer require prior MB approval: *Provided,* That the applicant bank had passed the BSP-approved accreditation process for membership in BancNet and/or Megalink, which requires, among others, a "no objection" notice from the appropriate department of the SES. *Provided further,* That banks which intend to provide electronic banking services via other arrangements or service providers will still have to comply with the existing regulations on outsourcing in this Subsection and under Sec. X701 on e-banking.

To ensure that it remains effective and adaptive to the changing environment, the accreditation process of BancNet and Megalink for availment of the ATM interconnection, internet and mobile banking services, shall be subject to periodic BSP review and examination.
(As amended by M-2008-030 dated 12 September 2008)

§ X162.3 ***(2008 - X169.3) Outsourcing of other banking functions***

a. Subject to prior approval of the Monetary Board, banks may outsource the following functions, services or activities:

(1) data imaging, storage, retrieval and other related systems;

(2) clearing and processing of checks not included in the Philippine Clearing House System;

(3) printing of bank deposit statements;

(4) credit card services;

(5) credit investigation and collection;

(6) processing of export, import and other trading transactions;

(7) property appraisal;

(8) property management services;

(9) Internal audit, subject to the following conditions:

(a) the board of directors and senior management of the regulated entity remain responsible for maintaining an effective system of internal control and for providing active oversight of the outsourced internal audit activities/ functions;

(b) the external service provider shall be an independent external auditor included in the list of BSP-selected external auditors or a parent company which owns or controls more than fifty percent (50%) of the subscribed capital stock of the outsourcing entity: *Provided*, That Item *"A2"* of the general requirements under *Appendix 43* shall apply to the parent company while Items *"A2"*, *"A4"*, *"A5"*, and *"A6"* shall apply to the independent external auditor;

(c) the contract/service agreement with the external service provider shall not be entered into for a period longer than five (5) years;

(d) there shall be a contingency plan to mitigate any significant disruption, discontinuity or gap in audit coverage, particularly for high-risk areas;

(e) the written engagement contract or service agreement with the external service provider shall, as a minimum:

(i) define the rights, expectations and responsibilities of both parties;

(ii) set the scope and frequency of, and the fees to be paid for, the work to be performed by the external service provider;

(iii) state that the outsourced internal audit services are subject to regulatory review and that BSP examiners shall be granted full and timely access to internal audit reports and related working papers;

(iv) state that the external service provider will not perform management functions, make management decisions, or act or appear to act in a capacity equivalent to that of a member of management or an employee of the institution, and will comply with professional and regulatory independence guidelines;

(v) specify that the external service provider must maintain the audit reports and related working papers/files for at least five (5) years;

(vi) state that internal audit reports are the property of the institution, that the institution will be provided with copies of related working papers/files it deems necessary, and any information pertaining to the institution must be kept confidential; and

(vii) establish a protocol for changing the terms of the service contract and stipulations for default and termination of the contract;

(10) marketing loans, deposits and other bank products and services, provided it does not involve the actual opening of deposit accounts;

(11) general bookkeeping and accounting services: *Provided,* That these activities do not include servicing bank deposits or other inherent banking functions;

(12) offsite records storage services;

(13) front/back office functions, i.e., trade support services and downstream processing activities, by parent to a subsidiary or vice-versa, subject to the following conditions:

(a) The bank intending to outsource the aforementioned functions shall certify that the front office functions to be done by its parent/subsidiary (service provider) shall be limited to trade support services;

(b) The bank shall remain a parent/ subsidiary of its subsidiary/parent (service provider) and such service provider shall service only entities belonging to its business group;

(c) The bank shall certify that no inherent banking functions involving deposit transactions shall be outsourced to its parent/subsidiary (service provider);

(d) The bank shall submit a Service Level Agreement duly signed by the concerned parties and any amendments thereto, detailing the functions to be outsourced, the respective responsibilities of the bank and its parent/subsidiary (service provider), and a confidentiality clause; and

(e) Any breach in any of the above conditions shall subject the outsourcing of the aforementioned banking functions to all the requirements of this Section;

(14) Back-up and data recovery operations;

(15) Call center operations for credit card and bank services: *Provided,* That such bank services do not involve inherent banking functions; and

(16) Loans processing, credit administration and documentation services in favor of subsidiaries, affiliates and other companies related to it by at least five percent (5%) common ownership;

(17) Loan documentation services (such as mortgage registration); and

(18) Such other activities as may be determined by the Monetary Board.

The bank concerned must submit the same documentary requirements listed in Subsec. X162.2a, except where they exclusively pertain to information technology operations.

b. Without need of prior Monetary Board approval, banks may outsource the following functions, services or activities:

(1) printing of bank loan statements and other non-deposit records, bank forms and promotional materials;

(2) transfer agent services for debt and equity securities;

(3) messenger, courier and postal services;

(4) security guard services;

(5) vehicle service contracts;

(6) janitorial services;

(7) public relations services, procurement services, and temporary staffing: *Provided,* That these activities do not include servicing bank deposits or other inherent banking functions;

(8) sorting and bagging of notes and coins;

(9) maintenance of computer hardware, e.g., disk drives, printers, monitors, UPS, network cabling systems;

(10) payroll of bank employees;

(11) telephone operator/receptionist services;

(12) sale/disposal of acquired assets (ROPA);

(13) personnel training and development;

(14) buildings, ground and other facilities maintenance;

(15) legal services from local legal counsel;

(16) compliance risk assessment and testing;

(17) tax compliance services: *Provided,* That the service provider is not also the external auditor of the bank; and

(18) ATM card plastic embossing service, subject to the following conditions:

a. Only the ATM card number and the name of the depositor are printed/ indicated on the plastic card and stored in the magstripe; and

b. Account/transaction validation is done at the host level,i.e., the bank's computer, as the card number stored in the magstripe is linked to the deposit account number residing at the same host computer;

(19) ATM incident management service: *Provided,* That the messages transmitted by the ATM machines to the service provider's monitoring system are purely ATM statuses and in no way shall client or transaction information be sent; and

(20) Such other activities as may be determined by the Monetary Board.

(As amended by Circular Nos.623 dated 09 October 2008, 621 dated 16 September 2008, 610 dated 26 May 2008, 596 dated 11 January 2008, 548 dated 25 September 2006 and 543 dated 08 September 2006)

§ X162.4 *(2008 - X169.4) Service providers.* When allowed by law, banks may enter into outsourcing contracts only with service providers with demonstrable technical and financial capability commensurate to the services to be rendered.

§ X162.5 *(2008 - X169.5) Review of subsisting outsourcing contracts.* Within six (6) months from 05 December 2000 -

a. Banks should submit a list of all their existing contracts with service providers, detailing the:

(1) Services/activities being outsourced;

(2) Terms of the contracts;

(3) Measures, if any, undertaken by the bank and/or service provider to ensure the secrecy of bank deposits and confidentiality of all other data and information; and

(4) Such other information as may be necessary to show compliance with the pertinent provisions of this Section or be required by the Monetary Board; and

b. For outsourcing contracts not in accordance with this Section, the following alternative courses of action are available to the bank concerned:

(1) preterminate said contracts;

(2) renegotiate or remedy the same and submit the amendments thereto or new contracts to the BSP; or

(3) submit a program of compliance to the BSP.

§§ X162.6 - X162.10 *(Reserved)*

§ X162.11 *(2008 - X169.11) Other banking services for subsidiaries, affiliates and related companies.* A bank may be authorized, upon prior Monetary Board approval, to render the following services in favor of subsidiaries, affiliates and companies related to it by at least five percent (5%) common ownership:

a. Credit card, bank and loans reconciliation;

b. Credit card billing;

c. Time deposit processing;

d. Merchant settlement;

e. Collections which may involve legal action;

f. Credit application processing;

g. Call center support;

h. Telemarketing of bank, credit card and insurance (life and non-life) products;

i. Human resource-related service;

j. Finance/accounting functions;

k. Documentation;

l. Cashiering;

m. Reports preparation;

n. Procurement;

o. Records coordination;

p. Mailroom and general services;

q. Internal audit services;

r. Credit administration services, such as, limit administration, loan documentation, loan administration, and credit reporting, compliance and control;

s. Legal and compliance services;

t. Production of credit cards and preparation of statement of accounts; and

u. Check writing services

subject to the condition that, as service provider, the following shall be upheld by the bank:

(a) Confidentiality of bank deposits and investment in government bonds (R.A. No. 1405);

(b) Prohibition against outsourcing of inherent banking functions; and

(c) Prohibition on cross-selling except as allowed under applicable regulations.

(As amended by Circular Nos. 606 dated 26 March 2008, 604 dated 03 March 2008, 597 dated 11 January 2008, 586 dated 16 October 2007, 569 dated 21 May 2007, 567 dated 04 May 2007 and 556 dated 12 January 2007)

§ X162.12 *(2008 - X169.12) Other banking services to other entities.* A bank may render the following services to other entities (including non-related companies):

a. Collections and payments;

b. Safekeeping of securities;

c. Act as correspondent of other FIs;

d. Payroll service;

e. Enter into a conduit clearing arrangement with indirect clearing participants;

f. ATM cash loading service to depositors;

g. Enter into an arrangement with other banks to enable such other banks to avail the service of an ATM network consortium, and

h. Subject to prior Monetary Board approval, such other services which are not incompatible with banking business as may be determined by the Monetary Board: *Provided,* That the bank shall perform said services as depositary or as an agent, subject to the following conditions:

(1) The bank (or if the counterparty is also a bank, both the bank providing the service and the outsourcing bank jointly) shall inform the appropriate department of the SES at least thirty (30) calendar days prior to undertaking the abovementioned services. The bank may undertake said activities if no objection has been received from said department within said thirty (30)-calendar day period.

(2) The proposed contract or Memorandum of Agreement (MOA) indicating, among others, the particular type of service to be rendered (and if the counterparty is also a bank, to be outsourced) by the bank/s shall be kept on file and be made available for inspection during BSP examination;

(3) As a service provider, the following shall be upheld by the bank:

(a) Confidentiality of bank deposits and investment in government bonds (R.A. No. 1405);

(b) Prohibition against outsourcing of inherent banking functions; and

(c) Prohibition on cross-selling except as allowed under applicable regulations.

(Circular No. 606 dated 26 March 2008)

§§ X162.13 - X162.18 *(Reserved)*

§ X162.19 *(2008 - X169.19) Penalties* Violation of this Section shall be subject to Sections 34, 35, 36 and 37 of R.A. No. 7653, the New Central Bank Act. If the offender is a director or officer or a bank, the Monetary Board may also suspend or remove such director or officer.

Sec. X163 - X171 (Reserved)

M. BANK OFFICES AS OUTLET OF FINANCIAL PRODUCTS OF ALLIED UNDERTAKINGS/IH

Sec. X172 (Reserved)

Sec. 1172 ***(2008 - 1631)*** **Financial Products of Allied Undertakings or Investment House Units of Banks.** The following guidelines shall govern the use of the head office and/or any or all branches of UBs and KBs as outlets for the presentation and sale of financial products of their allied undertakings (subsidiaries and affiliates as defined hereafter) or of their investment house (IH) units. In case of sale of insurance products of insurance company affiliates, said affiliates must be accredited or pre-cleared by the Insurance Commission (IC) to ensure that only stable and reputable insurance companies can sell their products through banks.

a. Financial products covered by this Section are the following:

(1) Credit cards;

(2) Insurance products limited to:

(a) Life insurance products;

(i) Term insurance (including mortgage redemption insurance);

(ii) Whole life insurance;

(iii) Endowment;

(iv) Health and accident policies;

(v) Variable life insurance contracts; and

(vi) Life annuities.

(b) Non-life insurance;

(i) Fire insurance;

(ii) Marine cargo policies;

(iii) Homeowners' policies;

(iv) Directors/officers liability insurance; and

(v) Motor vehicle insurance;

(3) Such other products as may be authorized by the Monetary Board.

b. For purposes of this Section, a "subsidiary" means a corporation more than fifty percent (50%) of the voting stock of which is directly or indirectly owned, controlled or held with power to vote by a bank while an "affiliate" means a corporation at least five percent (5%) but not exceeding fifty percent (50%) of the voting stock of which is directly or indirectly owned, controlled or held with the power to vote by a bank. A domestic subsidiary or affiliate is any subsidiary or affiliate domiciled in the Philippines and incorporated under the laws of the Philippines, while a foreign subsidiary or affiliate is a subsidiary or affiliate incorporated and organized under the laws of the foreign country.

§ 1172.1 ***(2008 - 1631.1) Statement of principles.*** The use of a bank's head office and/or any or all of its branches in the presentation and sale of financial products of allied undertakings or IH units could give the banking public the impression that these products are covered by the deposit insurance system or guaranteed by the parent bank. To enable the public to understand fully the attendant risks involved in these transactions, a clear and explicit distinction between financial products offered by a bank and those of its allied undertakings or IH units must be made in the presentation and sale of these products, whether through written or verbal communications.

§ 1172.2 ***(2008 - 1631.2) Prior Monetary Board approval.*** The presentation and sale of financial products shall be made by the bank in its head office and/or any or all of its branches only upon prior approval of the Monetary Board.

The bank's proposal on said presentation and sale shall provide information on the location of the office where financial products will be sold. Where possible, the office shall not be located in the main lobby of the bank's head office and/or its branches and should be clearly distinguishable by the public as a separate entity from the parent bank. The proposal shall likewise cover particulars on: (a) personnel who will be involved in the marketing of the financial products; and (b) promotional matters including safeguards that would ensure that the public will be able to differentiate readily the bank products from the non-bank products. The public should also be able to distinguish personnel marketing non-bank products from regular bank personnel. In case of sale of insurance products, the staff selling insurance policies must be duly licensed by the IC.

§ 1172.3 ***(2008 - 1631.3) Minimum documentary requirements.*** The following documents shall be submitted as basis for the evaluation of a bank intending to sell financial products of its allied undertakings or its IH units:

a. Latest information on the allied undertaking or IH unit:

(1) Annual report;

(2) List of directors and senior officers; and

(3) Income and expense statement for the last three (3) years;

b. Copy of the approval of the Board of Directors of both the parent bank and allied undertakings or IH units on the presentation and sale of financial products;

c. Justification of the presentation and sale of financial products;

d. Detailed information on the financial products to be offered, including promotional materials which will be used;

e. Outline of the content of the training materials for bank's staff and officers who will be involved in the handling of the sale of financial products;

f. Sample contracts; and

g. Such other information that may be required by the BSP.

§ 1172.4 ***(2008 - 1631.4) Financial ratios and other related requirements*** A bank intending to use its head office and any/or all its branches as outlets for the presentation and sale of financial products of its allied undertakings or IH units must comply with the following requirements to ensure that only financially viable institutions complying with BSP rules and regulations are allowed to undertake cross-selling activities:

a. The bank during the last ninety (90) days immediately preceding the date of application has complied with the following:

(1) Ceilings on credit accommodations to DOSRI;

(2) Liquidity floor on government deposits;

(3) Minimum capitalization as defined under Sec. X111;

(4) Risk-based capital adequacy ratio under Sec. X116 or as may be required by the Monetary Board in the future;

(5) Single borrower's limit;

(6) Investment in bank premises and other fixed assets;

(7) Open foreign exchange position; and

(8) Foreign exchange asset cover on FCDU/EFCDU foreign currency liabilities.

b. It does not have float items outstanding for more than sixty (60) calendar days in the "Due from/to Head Office/Branches/Offices" accounts and the "Due from Bangko Sentral" account exceeding one percent (1%) of the total resources as of end of preceding month;

c. It has no weekly reserve deficiency against deposit liabilities, deposit substitutes and CTFs during the last twelve (12) weeks immediately preceding the date of application;

d. It maintains adequate provisions for probable losses commensurate to the quality of its asset portfolio but not lower than the required valuation reserves as determined by the BSP; and

e. It has a CAMELS Composite Rating of at least "3" in the last regular examination by the BSP.

§ 1172.5 *(2008 - 1631.5) Promotional materials; stationeries and other paraphernalia*

a. The promotional materials used in the sale of these financial products, especially posters displayed in bank premises, shall contain the following:

(1) The logo of the allied undertaking or IH unit promoting the financial product accompanied by the words "A subsidiary (or affiliate, as the case may be) of (name of parent bank)"; and

(2) The words *"financial product/s of (name of allied undertaking/investment house unit) is/are not insured by the Philippine Deposit Insurance Corporation and is/are not guaranteed by the (name of parent bank)"* shall be printed in capital letters, black letters against light background/white letters against dark background with the following print size:

Size of Promotional Material	Print Size[1]
Legal/letter size	12
15"X20"	24
19"X25"	36

[1] For other measurements of promotional materials, use of print size closest to indicated size of promotional material.

b. Stationeries and other paraphernalia used in the sale of aforementioned products shall bear the logo of the allied undertaking or IH unit promoting the financial product and the words *"a subsidiary (or affiliate, as the case may be) of (name of parent bank)"* should appear visibly under the logo.

§ 1172.6 *(2008 - 1631.6) Contracts/ Information to be disclosed*

a. The following paragraph shall be printed at the end of the contract in the print size as the rest of the contract, or font size 12 whichever is bigger, in capital letters and in bold font:

"This contract is between (name of client) and (name of allied undertaking or investment house unit), a subsidiary (or affiliate, as the case may be) of (name of parent bank). All transactions arising out of or related to this contract shall be binding only between these two (2) contracting parties. It is understood that this transaction is neither insured by the Philippine Deposit Insurance Corporation (PDIC) nor guaranteed by the parent bank."

b. All other limitations that may affect the interest of the client shall also be disclosed in the contract.

§ 1172.7 *(2008 - 1631.7) Training*. The bank shall conduct training for the officers and staff who will be involved in the handling of the sale of non-bank products to ensure that they do not unwittingly guarantee or give the impression that the financial products being offered are those of the parent bank.

§ 1172.8 *(2008 - 1631.8) Other requirements*

a. Record-keeping and accounting for the financial products of the bank's allied undertaking or IH unit shall be separate from those of the parent bank.

b. The bank, in coordination with its allied undertaking/IH unit, shall formulate the guidelines and establish clear procedures for evaluating client suitability.

§§ 1172.9 - 1172.10 *(Reserved)*

§ 1172.11 *(2008 - 1631.11) Sanctions*

a. Violations of the provisions of this Section shall constitute grounds for the imposition on the bank of the following:

(1) Monetary fine - Any amount as may be authorized by the Monetary Board not to exceed ₱30,000 a day for each violation from the time the violation was committed until it is corrected;

(2) Non-monetary penalties

(a) Suspension of rediscounting privileges or access to BSP credit facilities; and

(b) Other sanctions as the Monetary Board may impose depending on the gravity of the offense.

Sec. 2172 (Reserved)

Sec. 3172 (Reserved)

N. RISK MANAGEMENT

Sec. X173 Supervision by Risks. The guidelines on supervision by risk to provide guidance on how banks should identify, measure, monitor and control risks are shown in *Appendix 72*.

The guidelines set forth the expectations of the BSP with respect to the management of risks and are intended to provide more consistency in how the risk-focused supervision function is applied to these risks. The BSP will review the risks to ensure that a bank's internal risk management processes are integrated and comprehensive. All banks should follow the guidelines in their risk management efforts.

(Circular No. 510 dated 19 January 2006)

Sec. X174 Market Risk Management. The guidelines on market risk management in *Appendix 73* set forth the expectations of the BSP with respect to the management of market risk and are intended to provide more consistency in how the risk-focused supervision function is applied to this risk. Banks are expected to have an integrated approach to risk management to identify, measure, monitor and control risks. Market risk should be reviewed together with other risks to determine overall risk profile.

The BSP is aware of the increasing diversity of financial products and that industry techniques for measuring and managing market risk are continuously evolving. As such, the guidelines are intended for general application; specific application will depend to some extent on the size, complexity and range of activities undertaken by individual banks.

The guidelines on risk management for derivatives are shown in *Appendix 25*.

(Circular No. 544 dated 15 September 2006)

Sec. X175 Liquidity Risk Management The guidelines on liquidity risk management in *Appendix 74* set forth the expectations of the BSP with respect to the management of liquidity risk and are intended to provide more consistency in how the risk-focused supervision function is applied to this risk. Banks are expected to have an integrated approach to risk management to identify, measure, monitor and control risks. Liquidity risk should be reviewed together with other risks to determine overall risk profile.

The guidelines are intended for general application; specific application will depend on the size and sophistication of a particular bank and the nature and complexity of its activities.

The guidelines on risk management for derivatives are shown in *Appendix 25*.

(Circular No. 545 dated 15 September 2006)

Sec. X176 Technology Risk Management The guidelines on technology risk management to ensure that banks have the knowledge and skills necessary to understand and effectively manage their technology-related risks are in *Appendix 75*.

The guidelines contain two (2) main parts. The first outlines the primary risk related to the bank's use of technology and the second describes a risk management process on how banks should manage these risks. Key points include the following:

a. The use of technology-related products, services, delivery channels and processes exposes a bank to various risks, particularly Operational, Reputation, Compliance and Strategic risk.

b. Banks are expected to have an integrated approach to risk management to identify, measure, monitor, and control risks. Technology-related risks should be reviewed together with other bank risks to determine the bank's overall risk profile.

c. In using technology, bank management should engage a rigorous analytic process to identify and quantify risks, to the extent possible, and to establish risk controls to manage risk exposures.

d. Technology-related risk management process involves three (3) essential elements:

(1) Planning

(2) Implementing

(3) Measuring and monitoring performance

These elements are critical to an effective technology-related risk management process of a well-managed bank, regardless of size.

The guidelines on risk management and internal control are shown in Subsec. X705.2.

(Circular No. 511 dated 03 February 2006)

Secs. X177 - X179 (Reserved)

Sec. X180 ***(2008 - X170)*** **Compliance System; Compliance Officer.** Banks shall develop and implement a compliance system and appoint/designate a compliance officer to oversee its implementation.

§ X180.1 ***(2008 - X170.1) Compliance system.*** The compliance system shall have the following basic elements.

a. A written compliance program approved by the board of directors:

(1) The compliance program shall enable the bank to identify the relevant Philippine laws and regulations, analyze the corresponding risks of non-compliance, and prioritize the compliance risks (e.g., low, medium, high).

(2) The program shall provide for periodic compliance testing with applicable legal and regulatory requirements. Testing frequency shall be commensurate with identified risk levels (e.g., annual testing for low-risk, quarterly testing for medium-risk, monthly testing for high-risk). It shall also provide for the reporting of compliance findings noted to appropriate levels of management.

(3) The program shall establish the responsibilities and duties of the compliance officer and other personnel (if any) involved in the compliance function.

(4) A copy of the compliance program and the written approval of the board of directors shall be submitted to the appropriate department of the SES within twenty (20) banking days from date of approval.

(5) The program shall be updated at least annually to incorporate changes in laws and regulations. Any changes in the program shall likewise be approved by the bank's board of directors and submitted to BSP within twenty (20) banking days from the date of approval.

b. A constructive working relationship with regulatory agencies.

The bank, through its compliance officer, may consult the regulatory agencies for additional clarification on specific provisions of laws and regulations and/or discuss compliance findings with the regulatory authorities. A dialogue may also be initiated with respect to borderline issues.

c. A clear and open communication process within the bank to educate and address compliance matters.

Officers and staff shall be trained on the regulatory requirements through regular meetings, distribution of manuals and dissemination of regulatory issuance.

d. Continuous monitoring and assessment of the compliance program.

The program shall provide for the periodic review of the compliance function to measure its effectiveness. The review may be carried out by the internal audit department of the bank.

The compliance program may operate parallel to or as part of a bank's internal control and auditing program.

§ X180.2 ***(2008 - X170.2) Compliance officer***

a. The principal function of the compliance officer is to oversee and coordinate the implementation of the compliance system. His responsibility shall include the identification, monitoring and controlling of compliance risk.

b. The appointment/designation of a compliance officer shall require prior approval of the Monetary Board. The bio-data of the proposed compliance officer shall be submitted to the appropriate department of the SES.

c. The compliance officer shall have the skills and expertise to provide appropriate guidance and direction to the bank on the development, implementation and maintenance of the compliance program.

d. All UBs/KBs, as well as TBs and RBs/Coop Banks with total resources of P500 million and above, shall appoint an independent full-time compliance officer, who shall have the rank of at least a vice president or its equivalent.

e. For TBs and RBs/Coop Banks with total resources of below P500 million, an incumbent senior officer may be designated concurrently as the bank's compliance officer: *Provided,* That such designation will not give rise to any conflict of interest situation and that the main function of the senior officer shall be that of a compliance officer.

The internal auditor of a bank may also be designated as its compliance officer subject to the condition that his main function shall be that of a compliance officer.

Transitory Provision. Compliance officers concurrently holding the position of Head of Internal Audit or Internal Auditor shall be given one (1) year from 02 February 2008 within which to comply with this Subsection.

(As amended by Circular No. 598 dated 11 January 2008)

§ X180.3 ***(2008 - X170.3) Compliance risk.*** Compliance risk is the risk of legal or regulatory sanctions, financial loss, or loss to reputation a bank may suffer as a result of its failure to comply with all applicable laws, regulations, codes of conduct and standards of good practice.

§ X180.4 ***(2008 - X170.4) Responsibilities of the board of directors and senior management on compliance.*** Aside from the duties and responsibilities of the board of directors mentioned under Subsec. X141.3, the board should oversee the implementation of the compliance policy and ensure that compliance issues are resolved expeditiously. Senior management should be responsible for establishing a compliance policy, ensuring that it is observed, reporting to the board of directors on its ongoing implementation and assessing its effectiveness and appropriateness. Senior management should, at least once a year, report to the board of directors or a committee of the board on matters relevant to the compliance policy and its implementation, recommending any required changes to the policy. The report should assist the board members in making an informed assessment as to whether the institution is managing its compliance risk effectively. However, any material breaches of laws, rules and standards shall be reported promptly.

§ X180.5 ***(2008 - X170.5) Status.*** The compliance function should have a formal status within the organization established by a charter or other formal document approved by the board of directors that defines the compliance function's standing, authority and independence, and addresses the following issues:

(1) measures to ensure the independence of the compliance function from the business activities of the bank;

(2) its role and responsibilities;

(3) its relationship with other functions or units within the organization;

(4) its right to obtain access to information necessary to carry out its responsibilities;

(5) its right to conduct investigations of possible breaches of the compliance policy;

(6) its formal reporting relationships to senior management and the board of directors; and

(7) its right of direct access to the board of directors or an appropriate committee of the board.

The compliance charter or other formal document defining the status of the compliance function shall be communicated throughout the organization.

§ X180.6 ***(2008 - X170.6) Independence*** The compliance function should be independent from the business activities of the institution. It should be able to carry out its responsibilities on its own initiative in all units or departments where compliance risk exists and must be provided with sufficient resources to carry out its responsibilities effectively. It must be free to report to senior management and the board or a committee of the board on any irregularities or breaches of laws, rules and standards discovered, without fear of retaliation or disfavor from management or other affected parties. The compliance function should have access to all operational areas as well as any records or files necessary to enable it to carry out its duties and responsibilities.

§ X180.7 ***(2008 - X170.7) Role and responsibilities of the compliance function.*** The role and responsibilities of the compliance function should be clearly defined. If there is a division of duties and responsibilities between different functions such as legal, compliance, internal audit or risk management, the allocation of duties and responsibilities to each function should be properly delineated. There should likewise be formal arrangements for cooperation between each function and for the exchange of relevant information.

§ X180.8 ***(2008 - X170.8) Cross-border compliance issues.*** The compliance function for institutions that conduct business in other jurisdictions should be structured to ensure that local compliance concerns are satisfactorily addressed within the framework of the compliance policy for the organization as a whole. As there are significant differences in legislative and regulatory frameworks across countries or from jurisdiction to jurisdiction, compliance issues specific to each jurisdiction should be coordinated within the structure of the institution's group-wide compliance policy. The organization and structure of the compliance function and its responsibilities should be in accordance with local legal and regulatory requirements.

§ X180.9 ***(2008 - X170.9) Outsourcing of compliance risk assessment and testing*** Banks should establish policies for managing the risks associated with outsourcing activities. Outsourcing of services/activities can reduce the institution's risk profile by transferring activities to others with the necessary expertise to manage the risks associated with specialized business activities. However, the use of third parties does not diminish the responsibility of the board of directors and senior management to ensure that the outsourced activity is conducted in a safe and sound manner and in compliance with applicable laws and regulations.

Compliance risk assessment and testing may be outsourced, subject to appropriate oversight by the compliance officer: *Provided,* That a copy of the outsourcing agreement stating the duties and responsibilities as well as rights and obligations of the contracting parties, which agreement shall be approved by the board of directors of the institution concerned, must be submitted to the appropriate department of the SES at least thirty (30) days prior to its execution to enable review of its compliance with existing regulations on outsourcing of banking functions.

The service level agreement shall ensure a clear allocation of responsibilities between the external service providers and the bank. *Furthermore,* the outsourcing bank should manage residual risks associated with outsourcing arrangements, including default, operational failures, and possible disruption of services.

Sec. X181 ***(2008 - X171)*** **Bank Protection** Each bank shall adopt an adequate security program commensurate to its operations, taking into consideration its size, location, number of offices and business operations.
(As amended by Circular No. 620 dated 03 September 2008)

§ X181.1 ***(2008 - X171.1) Objectives*** These regulations are designed to:

a. Promote maximum protection of life and property against crimes (e.g. robbery, hold-up, theft, etc.) and other destructive causes;

b. Prevent and discourage perpetration of crimes against bank; and

c. Assist law enforcement agencies in the identification, apprehension and prosecution of the perpetrators of crimes committed against banks.
(As amended by Circular No. 620 dated 03 September 2008)

§ X181.2 ***(2008 - X171.2) Designation of security officer.*** The board of directors of each bank or the country head in the case of a foreign bank branch, shall appoint or designate a qualified security officer who shall hold office under the direct authority and supervision of the president of the bank or the country head in the case of a foreign bank branch. Subject to prior BSP approval, banks with limited security risk exposure due to the nature of their operations such as single unit foreign bank branch operating in a highly secured environment or TBs or RBs/Coop Banks with total assets of less than P100 million may appoint one of their senior officers as security officer in a concurrent capacity: *Provided,* That if the senior officer so appointed does not possess the necessary qualifications, he shall be supported by a competent consultant/adviser until such time that he acquires the necessary competency on security matters: *Provided, further,* That such appointment shall not result to a conflict of interest situation.

The security officer must be: (a) at least thirty (30) years of age; (b) be a college graduate; (c) have at least five (5) years of supervisory experience in the field of law enforcement and/or security operations; and (d) possess all the qualifications and none of the disqualifications provided for under Sections X142 and X143.

The security officer shall be responsible for:

a. The development and administration of a security program acceptable to BSP;

b. The conduct of continuing security awareness program among all bank employees to highlight that security is a common concern;

c. Investigation of bank robberies/ hold-ups, recommending the filing of appropriate charges in court as the evidence may warrant and assisting in the prosecution of the perpetrator(s) thereof;

d. The establishment of an effective working relationship with the BSP, PNP, and other law enforcement agencies in the prevention of bank crimes and other natural and man-made hazards; and

e. The conduct of continuing research and studies on new techniques, methods and equipment to enhance bank protection measures.

For purposes of the foregoing, a security management team headed by the security officer may be constituted if warranted.

(As amended by Circular No. 620 dated 03 September 2008)

§ X181.3 ***(2008 - X171.3) Security program.*** The security program of each bank shall be in writing, duly approved by its board of directors or the country head in the case of a foreign bank branch. In addition, the security program shall define measures and procedures to detect and prevent the commission of bank crimes, as well as provide contingency plans in case of calamities, terrorist attacks and other emergency situations. The security program shall include the following:

i. Installation of the prescribed minimum security devices;

ii. A schedule for the periodic inspection, testing and servicing of all security devices installed in each of the bank's offices, designation of an officer or employee responsible for ensuring that such devices are inspected, tested, serviced and kept in good working order, and requiring record of such inspections, testing and servicing;

iii. Standard operating procedures for the safekeeping of all currencies, negotiable securities and similar valuables in vaults or safes;

iv. Provision for other security measures and procedures aimed at giving added protection to the bank, e.g., procedures for the transport of funds and other cash items, and defining responsibility for their implementation;

v. Provision for the training and periodic re-training of employees in their respective areas of responsibility under the security program, including the proper use of security devices and proper employee conduct during and after an emergency situation;

vi. Contingency measures for security and rescue operations in emergency situations;

vii. Provision for the posting of adequate number of security personnel in all vital and/or critical areas in the bank's premises, and the minimum number of hours when each personnel shall be on duty; and

viii. Such other provisions/measures as the president of the bank or country head in the case of a foreign bank branch may, in consultation with its security officer, deem appropriate.

(As amended by Circular No. 620 dated 03 September 2008)

§ X181.4 ***(2008 - X171.4) Minimum security measures***

a. *Guard system*. All banking offices shall be manned by an adequate number of security personnel to be determined by the bank, taking into consideration its size, location, costs and overall bank protection requirement: *Provided*, That cash centers shall be manned by an adequate number of security guards as may be necessary during banking hours. For this purpose *cash centers* shall refer to branches which also handle the cash requirements of other branches of the same bank.

b. *Security devices*. Within 120 calendar days from 23 September 2008 in the case of existing offices and before opening for business in the case of offices to be opened after 23 September 2008, banks shall effect the installation, operation and maintenance, as individually appropriate, of the following security devices in each banking office;

(1) A time delay device in the cash vault/safe;

(2) A lighting system for illuminating the area around the vault, if the vault is visible from outside the banking office;

(3) Tamper-resistant locks on exterior doors and windows;

(4) A robbery alarm system or other appropriate device for promptly notifying the nearest law enforement office either directly or through an intermediary of an attempted, ongoing or perpetrated robbery;

(5) Anti-burglary or intrusion system capable of detecting promptly an attack on the outer doors, walls, floor or ceiling of the bank premises, including the vault(s); and

(6) Such other devices like the closed circuit television (CCTV) and video recording system appropriate to deter the commission of bank crimes and assist in the identification and apprehension of the culprit/s:

Provided, That the bank security officer shall consider, among other things, the following:

(i) The incidence of crimes against the particular banking office and other business establishments in the area where the banking office is located;

(ii) The amount of currency or other valuables exposed to robbery and other man-made hazards;

(iii) The distance of the banking office from the nearest law enforcement office and the time ordinarily required for law-enforcement officers to arrive at the banking office;

(iv) The cost of the security devices;

(v) Other existing security measures in effect at the banking office; and

(vi) The physical characteristics of the banking office structure and its surroundings.

Each bank shall install, operate and maintain security devices which are expected to give a general level of bank protection equivalent, at least, to the standards prescribed herein.

c. *Vaults and safes*. Vault walls, ceilings and floors, shall be made of steel-reinforced concrete or such other equally safe materials/specifications. Vault doors shall be made of steel or other drill and torch resistant material, equipped with a dual combination lock and time-delay device, and provided with inner and outer grill doors: *Provided*, That all vaults constructed after 23 September 2008 shall be equipped with a breathing/ventilation device and emergency button capable of giving audible and visible signal in case of accidental lock-up.

A vault record book shall be maintained to record all activities relative to the opening and closing of the vault.

Safes should be sufficiently heavy or be securely anchored to the premises where located. The door shall be equipped with a combination lock with a time-delay device if used for safekeeping cash and other valuables. The body shall consist of steel with an ultimate tensile strength of 50,000 pounds per square inch or the equivalent in metric system.

Safe and vault combinations must be changed whenever the custodian is terminated or transferred to another place of assignment. A record of the names of the holder of the keys and combinations shall be maintained for each lock, safe, vault and compartment. Changing of combinations shall be documented to pinpoint responsibility and to ensure confidentiality and proper observance of this requirement.

d. *Security of the premises*. For emergency purposes and where applicable, each banking office shall be provided with a back door with a steel or grill door which shall be used as an alternative exit door for evacuation in case of fire, flood, bomb threats, wind damage, explosion, civil disturbance, earthquake, or other emergency.

Steel grills, where applicable, shall support exterior glass doors and windows of all banking offices for protection against any forcible entry. Access to the back door shall be limited to authorized bank personnel. Opening and closing thereof before and after banking hours shall be recorded in a registry.

Firearms and other deadly weapons shall not be allowed inside bank premises except when so authorized by the bank. A signage for this purpose shall be conspicuously placed near the main entrance door of the bank. Specific guidelines as to when to allow firearms and other deadly weapons inside bank premises should be incorporated in the security program.

A bank shall maintain within its premises a record of the addresses and telephone numbers of the nearest law enforcement agencies, hospitals, rescue agencies and fire departments.

The security officer of each bank shall conduct, at least annually, a security survey of bank premises and make available the inspection report to BSP examiners during regular examination.

The bank shall conduct fire, earthquake and bomb threat drill at least once a year.

e. *ATM*. ATM sites shall be provided with adequate security. Where there are no security personnel assigned to secure the ATM, an anti-tampering device shall be installed or the ATM and its immediate surroundings shall be regularly inspected to promptly detect any attempt to rob or destroy the same.

f. *Armored Car Operation*. To ensure the protection of crew members and valuables, all armored vehicles shall be built with bullet-resistant materials capable of withstanding the firepower of high-powered firearms, e.g., M16 and M14 rifles. Moreover, armored vehicles shall be equipped with a vault or safe or a partition wall with a combination lock designed to prevent retrieval of the cargo while in transit. When in use the armored vehicles shall be provided with at least two (2) armed guards and its operations must be supervised by at least two (2) officers of the bank.

All canvass bags that contain cash and other items of value shall be provided with padlocks for security and control purposes. Armored cars shall not be operated as mobile bank.

(As amended by Circular No. 620 dated 03 September 2008)

§ X181.5 *(2008 - X171.5) Reports* Banks shall conduct a review and self-assessment of their security program to ensure their compliance with prescribed security requirements. Any substantive amendment thereto shall be approved by the bank's board of directors or country head in the case of branches of foreign banks. The self-assessment of compliance with prescribed security requirements together with the updated security program (if amended during the year) shall be submitted annually to the appropriate department of the SES on or before 30 January of the following year in accordance with the format shown in *Appendix 10*. The self-assessment together with the updated security program shall be considered *Category A-2* reports.

(As amended by Circular No. 620 dated 03 September 2008)

§ X181.6 *(2008 - X171.6) Bangko Sentral inspection.* During regular examination, the BSP reserves the right to perform a compliance assessment of the adequacy of a bank's security

arrangements. The BSP, with approval of the Governor, may also conduct at any time a targeted inspection of the bank's implementation of its security program to determine compliance with regulations. For this purpose, the BSP may avail of the services of experts as resource persons.
(As amended by Circular No. 620 dated 03 September 2008)

§ X181.7 ***(2008 - X171.7) Common security service provision.*** A bank, with prior BSP approval, may share the services of a security officer or a security management team with its related FIs.
(As amended by Circular No. 620 dated 03 September 2008)

§ X181.8 ***(2008 - X171.8) Sanctions*** Any violation of the provisions of this Section, as well as non-compliance with the minimum standards set forth or any directive of the Monetary Board issued pursuant hereof, shall be subject to the administrative sanctions provided under Section 37 of R.A. No. 7653 and may, depending on the materiality or seriousness of the violation, constitute a ground for considering the same as an unsafe and unsound banking practice.
(As amended by Circular No. 620 dated 03 September 2008)

Secs. X182 - X184 (Reserved)

Sec. X185 ***(2008 - X163)*** **Internal Control System.** The following provisions are the minimum internal control standards for banks to help promote effective control system.

For this purpose, the following records/ data shall be compiled and made available for the inspection of BSP examiners:

a. Records showing compliance with independent balancing procedures. These records should indicate the accounts and the periodic balancing procedures performed.

b. Statements of actual duties of persons assigned to handle cash and securities.

c. All internal control audit reports or their equivalent.

d. Information/data on the direct and/ or indirect equity holdings and/or connection with any firm, partnership or corporation organized for profits, of all the bank directors, officers and major stockholders as defined under Subsec. X326.1 should be maintained.

e. Information/data pertaining to the electronic data processing (EDP) department or EDP servicer of the bank particularly on organization, input controls, processing controls, output controls, software controls, program and documentation standards, logs on the operation of mainframes and peripherals, hardware controls and such other EDP internal control standards prescribed by the BSP in separate rules and regulations.

§ X185.1 ***(2008 - X163.1) Proper accounting records***

a. All banks shall maintain proper and adequate accounting records.

b. These records should be kept up-to-date and shall contain sufficient detail so that an audit trail is established.

c. All tickets shall bear official approval and should be initiated by the person originating and another person by checking them.

§ X185.2 ***(2008 - X163.2) Independent balancing***

a. *Independent balancing* shall mean that records posted by a person or cash held by a teller or cashier shall be balanced or counted by another person.

b. The following minimum independent balancing procedures shall be adopted:

(1) Monthly reconciliation of general ledger balances against respective subsidiary and supporting records and documentation by someone other than the bookkeeper or the person handling the records;

(2) Irregular and unannounced count of teller's cash and checks and other cash items at least twice a month and vault cash including Automated Tellering Machine's (ATM) cash dispensers at least once a month by the auditor/control officer or by an officer not connected with cash department;

(3) Monthly reconciliation of *due from banks, cash in bank* accounts (domestic and foreign) and *due from/to head office/ branches* by someone other than the person handling the records or posting the general ledger entries;

(4) Periodic verification of securities and collaterals by someone other than their custodian; and

(5) Periodic verification of the accuracy of the interest credits to deposit liabilities accounts.

§ X185.3 ***(2008 - X163.3) Division of duties and responsibilities***

a. The duties of all the officers and employees shall be segregated, clearly defined, understood, documented and manualized. No individual shall have complete authority and responsibility for handling all phases of any transaction from beginning to end, without some check or balance from some other part of the organization.

b. The physical handling of a transaction shall be separated from its recording and supervision as follows:

(1) A person handling cash shall not be permitted to post the ledger records nor should posting the general ledger be performed by an employee who posts the depositor's subsidiary ledgers;

(2) A lending officer shall never be allowed to disburse proceeds of notes, accept note payment nor post loan ledgers;

(3) The functions of issuing, recording and signing of drafts/checks shall be separated;

(4) Checks and other cash items shall be maintained either by an employee not handling cash or by the Rack/Distributing Department provided that adequate control as to custody and disposition of funds are properly maintained;

(5) The receipt of statements from depository bank shall be assigned to an employee other than the one connected with the preparation, recording and signing of bank drafts;

(6) Custodians of securities shall not be allowed to handle security transactions;

(7) Collateral appraisal shall be done by an employee/officer who does not approve loans;

(8) Incoming checks and other cash items shall be recorded chronologically in a register by an employee other than the bookkeeper before they are forwarded for posting purposes;

(9) Credit reports shall be obtained by someone other than lending officers;

(10) Mailing of customers' statements and delinquent notices shall be done by an employee other than the one who granted the loan or the one handling the records; and

(11) Dispatching and delivery of current account statements shall be done by someone who is not involved in current account operations.

c. Extensive background checking of persons intended to be assigned to handle cash and securities shall be conducted. Frequent follow-up checking after their employment shall also be made.

§ X185.4 ***(2008 - X163.4) Joint custody***

a. Joint custody shall mean the processing of transactions in the presence of and under the direct observation of a second person. Both persons shall be equally accountable for the physical protection of the items and records involved.

b. Physical protection shall be deemed established through the use of two (2) locks or combinations on a file chest or vault compartment.

c. Two (2) or more persons shall be assigned to each half of the control so that operating efficiency is not impaired if one (1) person is not immediately available.

d. Persons who are related to each other within the third degree of consanguinity or affinity shall not be made joint custodians.

e. The following shall be under joint custody:

(1) Cash in vault and in ATM cash dispensers;

(2) All accountable forms;

(3) Collaterals;

(4) Securities;

(5) Documents of title and/or ownership of properties or fixed assets;

(6) Dormant or inactive deposit ledgers/EDP print-outs and corresponding signature cards including on-line posting of dormant/inactive accounts;

(7) Import documents;

(8) Trust receipts;

(9) Collection items;

(10) Duplicate keys, safe deposit spare locks and keys, and keys to unrented safe deposit boxes;

(11) Safekeeping items;

(12) Vault door and safe combinations;

(13) Unissued specimen signature books;

(14) Correspondent's and bank's own telegraphic and/or electronic fund transfer system or cable test keys currently in use;

(15) Test key fixed numbers unissued;

(16) Unissued and captured ATM cards and similar devices;

(17) Access locks and keys to on-line EDP terminals and similar devices; and

(18) Access locks and keys to EDP mainframes and peripherals.

§ X185.5 ***(2008 - X163.5) Signing authorities.*** Signing authorities for the different levels of officers to sign for and in behalf of the banks shall be approved by the board of directors and the extent of each level of authority shall be clearly defined. These signing authorities shall include but need not be limited to the following:

a. Lending;

b. Investment;

c. Approval of expense;

d. Various supervisory reports; and

e. Bank drafts, manager's/cashier's checks, bank money orders and certificates of time deposit.

§ X185.6 ***(2008 - X163.6) Dual control***

a. Dual control shall mean the work of one (1) person is to be verified by a second person to ensure that the transaction is properly authorized, recorded and settled.

b. The routine and completion of each transaction shall involve at least two (2) or more individuals.

c. Except as herein provided, the following accounts/transactions shall be under dual control:

(1) *Cashier's/manager's checks, telegraphic transfers (TTs) and electronic fund transfer system (EFTS)* - The signature of at least two (2) officers should be required in the issuance of cashier's/ manager's checks and payment orders (incoming and outgoing) of TTs and EFTS. The board of directors may, however, prescribe a predetermined amount by which one (1) senior officer can sign checks or payment orders, subject to appropriate control measures.

(2) *Certificates of Time Deposit* - The board of directors of a bank is given the discretion to determine the number of signatories for the issuance of certificates of time deposit (CTDs).

For this purpose, all banks shall submit to the appropriate department of the SES their respective internal control measures for the issuance of CTDs, the minimum of which shall include the following activities:

(a) Joint custody of unissued CTD forms;

(b) Accounting for all issued/ cancelled CTDs;

(c) Signature requirement for the issuance of CTDs;

(d) Counterchecking of issued CTDs against the tellers' proofsheets/validated slips; and

(e) Recording of CTD transactions.

Any change in the internal control measures shall be submitted to the appropriate department of the SES not later than thirty (30) days prior to the implementation. For newly established banks, the requirement shall be submitted not later than a month from the start of banking operations.

(3) *Bank Drafts* - The signature of two (2) authorized officers should be required in the issuance of bank draft.

(4) *Borrowings* - The signature of at least two (2) authorized officers should be required.

(5) All transactions giving rise to *Due to* or *Due from* accounts and all instruments of remittances evidencing these transactions particularly those involving substantial amounts should be approved by two (2) authorized officers.

§ X185.7 *(2008 - X163.7) Number control*

a. Sequence number controls shall be incorporated in the accounting system and should be used in registering notes, in issuing official checks and in other similar situations.Bank management shall designate a person who is detached from the banking operations involved to monitor said sequence number controls.

b. The following are the forms, instruments and accounts that shall be number-controlled:

(1) Bank drafts;
(2) Manager's and cashier's checks;
(3) Promissory notes;
(4) Savings deposit accounts;
(5) Demand deposit accounts;
(6) CTDs;
(7) Letters of credit;
(8) Collection items;
(9) Official and provisional receipts;
(10) Certificates of stocks;
(11) Loan accounts;
(12) Expense vouchers;
(13) Payment orders (incoming and outgoing) of TTs and EFTS;
(14) Transfer requests through EFTS involving bank's accounts abroad;
(15) EDP batch transmittal slips of documents; and
(16) Due to/from head office/branches tickets.

§ X185.8 *(2008 - X163.8) Rotation of duties*

a. The duties of personnel handling cash, securities and bookkeeping records shall be rotated.

b. Rotation assignment shall be irregular, unannounced and long enough to permit disclosure of any irregularities or manipulations.

c. Tellers/cashiers shall be temporarily relieved of their duties during the actual count of their cash accountabilities by BSP examiners or by internal/external auditors.

§ X185.9 *(2008- X163.9) Independence of the internal auditor*

a. The by-laws shall provide for the position of internal auditor together with the duties and responsibilities, scope and objectives of internal auditing.

b. The internal auditor shall report directly to the board of directors or to an audit committee composed of directors who do not hold executive positions in the bank.

c. The internal auditor shall not install nor develop procedures, prepare records or engage in other activities which he normally reviews or appraises.

§ X185.10 ***(2008 - X163.10) Confirmation of accounts.*** At least once a year, the internal auditing staff shall confirm by direct verification with bank clients, the following:

a. Balances of loans and credit accommodations of borrowers;

b. Deposit account balances particularly new deposit accounts, inactive or dormant accounts and closed accounts;

c. Outstanding balances of borrowings and other liabilities; and

d. Outstanding balances of receivables/payables.

§ X185.11 ***(2008 - X163.11) Other internal control standards***

a. *Deposit accounts*

(1) Entries to dormant account ledgers shall be verified and approved by a designated officer. His initials shall be placed next to the entry on the ledger sheet.

(2) Dormant accounts shall be segregated from active account ledgers with a separate subsidiary control.

(3) Signature cards for dormant accounts shall be removed from active files.

(4) All new current accounts shall be approved by a designated officer.

(5) Signature cards and deposit ledger sheets shall be authenticated by some form of validation. Subsequent changes shall also be validated.

(6) Signature cards and deposit ledger sheets shall be accessible only to authorized persons.

(7) Deposit tickets shall be occasionally examined at irregular intervals to determine that postings are made on the actual date deposits are received.

(8) Checks shall be cancelled as soon as they have been paid and posted.

(9) Reports on closed accounts and returned checks shall be prepared daily.

(10) All current account statements shall be mailed or sent electronically via electronic mail (e-mail), or such other electronic means direct to depositors: *Provided*, That banks using the electronic means of sending the current account statements shall have prior BSP-approved internet banking service and shall strictly observe the required retention of electronic data messages or electronic documents under Section 13 of R.A. No. 8792, otherwise known as the "Electronic Commerce Act".

Undelivered statements shall be retained by an organizational unit not responsible for demand deposit account processing.

(11) An officer shall be designated to attend to customers who report differences on their statements.

(12) Checkbooks shall be issued only against requisition forms signed by an authorized signatory to the account.

(13) Banks shall adopt a system to establish the identity of their depositors.

b. *Miscellaneous*

(1) Loan applications and related documents shall be verified to ensure their authenticity particularly the name, residence, employment and current reputation of the borrower.

(2) Tellers paying checks to strangers shall obtain positive identification of the person and the account on which the checks are drawn should be verified.

(3) No employee shall be permitted to process transaction affecting his own account.

(4) Tellers and other employees having contact with customers shall be prohibited from preparing deposit ticket, withdrawal slip or other forms for the customer.

(5) All banks shall have a sound recruitment policy.

(6) In the case of TBs, all accountable officers and employees shall be bonded.

§ X185.12 *(2008 - X163.12) Internal control procedures for dormant/inactive accounts*

a. *Definition of dormant or inactive accounts*

(1) Current or checking accounts showing no activity (deposit or withdrawals) for a period of one (1) year.

(2) Savings account showing no activity (deposit or withdrawals) for a period of two (2) years.

b. *Procedures for classification.* Banks shall review and segregate dormant accounts as herein defined at least once in every semester.

c. *Internal control measures*

(1) As a matter of policy, banks shall exert all efforts to prevent checking and savings accounts from becoming dormant. When it becomes apparent that an account is inactive, a short letter should be sent to the depositor encouraging him to use his account.

In case of checking accounts, the banks shall ensure that the monthly statement of accounts reach the depositors. If the depositors cannot be located, the following steps should be undertaken:

(a) Check any significant changes or fluctuations in the depositors' account balances over a period of time with emphasis on accounts with decreasing balances;

(b) Verify apparent reactivation entries, represented either by deposit or withdrawal, that appears to have prevented the account from being classified as dormant; and

(c) Investigate any obvious alteration of the ledger records.

(2) Segregated dormant accounts shall be placed under joint custody of two (2) responsible officers/employees.

(3) A separate ledger control for dormant accounts shall be maintained.

(4) Signature cards for dormant accounts shall also be segregated from active files and held under joint custody.

(5) Entries to dormant account ledgers shall be verified and approved by a designated officer. His initials shall be placed next to the entry on the ledger sheet.

(6) All inquiries on dormant accounts shall be coursed to one officer who should obtain sufficient identification from the inquirer to assure that he is entitled to the information.

(7) A trial balance of dormant account ledgers shall be taken periodically and balances with the general control account by an employee other than the bookkeeper.

(8) Dormant or inactive accounts shall be verified directly with depositors.

(9) All transactions affecting dormant accounts shall be subject to audit by the internal auditor.

(10) A semestral report on deposit accounts transferred to dormant shall be rendered to bank management.

Sec. X186 *(2008 - X164)* Internal Audit Function. Internal audit is an independent, objective assurance and consulting function established to examine, evaluate and improve the effectiveness of risk management, internal control, and governance processes of an organization.

§ X186.1 *(2008 - X164.1) Independence of internal audit function.* The internal audit function must be independent of the activities audited and from day-to-day internal control process. It must be free to report audit results, findings, opinions, appraisals and other information to the appropriate level of management. It shall have authority to directly access and communicate with any officer or employee, to examine any activity or entity of the institution, as well as to access any records, files or data whenever relevant to the exercise of its assignment.

The Audit Committee or senior management should take all necessary measures to provide the appropriate resources and staffing that would enable internal audit to achieve its objectives.

§ X186.2 ***(2008 - X164.2) Scope.*** The scope of internal audit shall include:

a. Examination and evaluation of the adequacy and effectiveness of the internal control systems;

b. Review of the application and effectiveness of risk management procedures and risk assessment methodologies;

c. Review of the management and financial information systems, including the electronic information system and electronic banking services;

d. Assessment of the accuracy and reliability of the accounting system and of the resulting financial reports;

e. Review of the systems and procedures of safeguarding assets;

f. Review of the system of assessing capital in relation to the estimate of organizational risk;

g. Transaction testing and assessment of specific internal control procedures; and

h. Review of the compliance system and the implementation of established policies and procedures.

§ X186.3 ***(2008 - X164.3) Qualification standards of the internal auditor.*** The internal auditor of a UB or a KB must be a Certified Public Accountant (CPA) and must have at least five (5) years experience in the regular audit (internal or external) of a UB or KB as auditor-in-charge, senior auditor or audit manager. He must possess the knowledge, skills, and other competencies to examine all areas in which the institution operates. Professional competence as well as continuing training and education shall be required to face up to the increasing complexity and diversity of the institution's operations.

The internal auditor of a TB,QB, trust entity or national Coop Bank must be a CPA with at least five (5) years experience in the regular audit (internal or external) of a TB, QB, trust entity or national Coop Bank as auditor-in-charge, senior auditor or audit manager or, in lieu thereof, at least three (3) years experience in the regular audit (internal or external) of a UB or KB as auditor-in-charge, senior auditor or audit manager.

The internal auditor of an RB, NSSLA or local Coop Bank must be at least an accounting graduate with two (2) years experience in external audit or in the regular audit of an RB, NSSLA or local Coop Bank or, in lieu thereof, at least one (1) year experience in the regular audit (internal or external) of a UB, KB, TB, QB, trust entity or national Coop Bank as auditor-in-charge, senior auditor or audit manager.

A qualified internal auditor of a UB or a KB shall be qualified to audit TBs, QBs, trust entities, national Coop Banks, RBs, NSSLAs, local Coop Banks, subsidiaries and affiliates engaged in allied activities, and other FIs under BSP supervision.

A qualified internal auditor of a TB or national Coop Bank shall likewise be qualified to audit QBs, trust entities, RBs, NSSLAs, local Coop Banks, subsidiaries and affiliates engaged in allied activities, and other FIs under BSP supervision.

§ X186.4 ***(2008 - X164.4) Code of Ethics and Internal Auditing Standards.*** The internal auditor should conform with the Code of Professional Ethics for CPAs and ensure compliance with sound internal auditing standards, such as the Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing* (e-mail: standards@theiia.org; Web: http://www.theiia.org.) and other supplemental standards issued by regulatory authorities/government agencies. The Standards address independence and objectivity, professional proficiency, scope of work, performance of audit work, management of internal audit, quality assurance reviews, communication and monitoring of results.

Secs. X187 - X188 (Reserved)

Sec. X189 ***(2008 - X165)*** **Selection, Appointment and Reporting Requirements for External Auditors; Sanction; Effectivity.** Under Section 58, R.A. No. 8791, the Monetary Board may require a bank to engage the services of an independent auditor to be chosen by the bank concerned from a list of CPAs acceptable to the Monetary Board.

It is the policy of the BSP to promote high ethical and professional standards in public accounting practice and to encourage coordination and sharing of information between external auditors and regulatory authorities of banks, QBs, trust entities and/or NSSLAs to ensure effective audit and supervision of these institutions and to avoid unnecessary duplication of efforts. In furtherance of this policy and to ensure that reliance by regulatory authorities and the public on the opinion of external auditors is well placed, the BSP hereby prescribes the rules and regulations that shall govern the selection, appointment, reporting requirements and delisting for external auditors of banks, QBs, trust entities, NSSLAs, their subsidiaries and affiliates engaged in allied activities and other FIs which under special laws are subject to BSP supervision.

The selection of external auditors shall be valid for a period of three (3) years. BSP selected external auditors shall apply for the renewal of their selection every three (3) years. The provisions of Items *"A"* and *"B"* of *Appendix 43* shall likewise apply for each application for renewal.

The SES shall make an annual assessment of the performance of external auditors and will recommend deletion from the list even prior to the three (3)-year renewal period, if based on assessment, the external auditors' report did not comply with BSP requirements.

External auditors who meet the requirements specified in this Section shall be included in the list of BSP selected external auditors. In case of partnership, inclusion in the list of BSP selected external auditors shall apply to the audit firm only and not to the individual signing partners or auditors under its employment.

The BSP will circularize to all banks, QBs, trust entities and NSSLAs the list of selected external auditors once a year. The BSP, however, shall not be liable for any damage or loss that may arise from its selection of the external auditors to be engaged by banks, QBs, trust entities or NSSLAs for regular audit or special engagements.

a. *Rules and regulations.* The rules and regulations to govern the selection and delisting by the BSP of external auditors of banks and their subsidiaries and affiliates engaged in allied activities are shown in *Appendix 43.*

b. *Sanctions.* The applicable sanctions/ penalties prescribed under Sections 36 and 37 of R.A. No. 7653 to the extent applicable shall be imposed on the bank, its audit committee and the directors approving the hiring of external auditors who are not in the BSP list of selected auditors for banks, QBs, trust entities, NSSLAs or for hiring, and/or retaining the services of the external auditor in violation of any of the provisions of this Section and for non-compliance with the Monetary Board directive under Item *"I"* in *Appendix 43.* Erring external auditors may also be reported by the BSP to the PRC for appropriate disciplinary action.

(As amended by Circular No. 529 dated 11 May 2006)

Sec. X190 ***(2008 - X166)*** **Audited Financial Statements of Banks.** The following rules shall govern the utilization and submission of AFS of banks.

For purposes of this Section, AFS shall include the balance sheets, income statements, statements of changes in equity, statements of cash flows and notes to financial statements which shall include among other information, disclosure of the volume of past due loans as well as loan-loss provisions. On the other hand, financial audit report shall refer to the AFS and the opinion of the auditor. The AFS of banks with subsidiaries shall be presented side by side on a solo basis (parent) and on a consolidated basis (parent and subsidiaries). *(As amended by Circular No. 540 dated 09 August 2006)*

§ X190.1 ***(2008 - X166.1) Financial audit.*** Banks shall cause an annual financial audit by an external auditor acceptable to the BSP not later than thirty (30) calendar days after the close of the calendar year or the fiscal year adopted by the bank. Report of such audit shall be submitted to the board of directors or country head, in the case of foreign bank branches, and the appropriate department of the SES not later than 120 calendar days after the close of the calendar year or the fiscal year adopted by the bank. The report to the BSP shall be accompanied by the: (1) certification by the external auditor on the: (a) dates of start and termination of audit; (b) date of submission of the financial audit report and certification under oath stating that no material weakness or breach in the internal control and risk management systems was noted in the course of the audit of the bank to the board of directors or country head; and (c) the absence of any direct or indirect financial interest and other circumstances that may impair the independence of the external auditor; (2) Reconciliation Statement between the AFS and the balance sheet and income statement for bank proper (regular and FCDU) and trust department submitted to the BSP including copies of adjusting entries on the reconciling items; and (3) other information that may be required by the BSP.

In addition, the external auditor shall be required by the bank to submit to the board of directors or country head, a LOC indicating any material weakness or breach in the institution's internal control and risk management systems within thirty (30) calendar days after submission of the financial audit report. If no material weakness or breach is noted to warrant the issuance of an LOC, a certification under oath stating that no material weakness or breach in the internal control and risk management systems was noted in the course of the audit of the bank shall be submitted in its stead, together with the financial audit report.

Material weakness shall be defined as a significant control deficiency, or combination of deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be detected or prevented by the entity's internal control. A material weakness does not mean that a material misstatement has occurred or will occur, but that it could occur. A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles. The phrase *more than remote likelihood* shall mean that future events are likely to occur or are reasonably possible to occur.

The board of directors, in a regular or special meeting, shall consider and act on the financial audit report and the certification under oath submitted in lieu of the LOC and shall submit, within thirty (30) banking days after receipt of the reports, a copy of its resolution to the appropriate department of the SES. The resolution shall show, among other things, the actions(s) taken on the reports and the names of the directors present and absent.

The board shall likewise consider and act on the LOC and shall submit, within thirty (30) banking days after receipt thereof, a copy of its resolution together with said LOC to the appropriate department of the SES. The resolution shall show the action(s) taken on the findings and recommendations and, the names of the directors present and absent, among other things.

The country head of foreign banks with branches in the Philippines shall submit a report on the action taken by management (head office, regional, or country, as the case may be) on the financial audit report and the certification under oath submitted in lieu of the LOC within thirty (30) banking days after receipt thereof.

The country head shall likewise submit a report on the action taken by management on the LOC within thirty (30) banking days after receipt thereof.

The LOC shall be accompanied by the certification of the external auditor of the date of its submission to the board of directors or country head, as the case may be.

Government-owned or-controlled banks, including their subsidiaries and affiliates, as well as other FIs under BSP supervision which are under the concurrent jurisdiction of the Commission on Audit (COA) shall be exempt from the aforementioned annual financial audit by an acceptable external auditor: *Provided*, That when warranted by supervisory concern such as material weakness/breach in internal control and/or risk management systems, the Monetary Board may, upon recommendation of the appropriate department of the SES, require the financial audit to be conducted by an external auditor acceptable to the BSP, at the expense of the institution concerned: *Provided, further,* That when circumstances such as, but not limited to loans from multilateral FIs, privatization, or public listing warrant, the financial audit of the institution concerned by an acceptable external auditor may also be allowed.

Banks and other FIs under the concurrent jurisdiction of the BSP and COA shall, however, submit a copy of the annual audit report (AAR) of the COA to the appropriate department of the SES within thirty (30) banking days after receipt of the report by the board of directors. The AAR shall be accompanied by the: (1) certification by the institution concerned on the date of receipt of the AAR by the board of directors; (2) reconciliation statement between the AFS in the AAR and the balance sheet and income statement of bank proper (regular and FCDU) and trust department submitted to the BSP, including copies of adjusting entries on the reconciling items; and (3) other information that may be required by the BSP.

The board of directors of said institutions, in a regular or special meeting, shall consider and act on the AAR, as well as on the comments and observations and shall submit, within thirty (30) banking days after receipt of the report, a copy of its resolution to the appropriate department of the SES. The resolution shall show the action(s) taken on the report, including on the comments and observations and the names of the directors present and absent, among other things.

The financial audit report required to be submitted shall in all respect be PFRS/PAS compliant: *Provided,* That banks shall submit to the BSP adjusting entries reconciling the balances in the financial statements for prudential reporting with that in the audited annual financial statements.

Banks as well as external auditors shall strictly observe the requirements in the submission of the financial audit report and reports required to be submitted under *Appendix 61*.

The reports and certifications of institutions concerned, schedules and attachments required under this Subsec. shall be considered Category *B* reports, delayed submission of which shall be subject to the penalties under Subsec. X192.2b(1)b.

(As amended by Circular Nos. 554 dated 22 December 2006 and 540 dated 09 August 2006)

§ X190.2 ***(2008 - X166.2) Posting of audited financial statements.*** Local banks shall post in conspicuous places in their head offices, all their branches and other banking offices, as well as in their respective websites, their latest financial audit report.

The abovementioned documents shall also be posted by foreign bank branches in all their banking offices in the Philippines.

(As amended by Circular No. 540 dated 9 August 2006)

§ X190.3 ***(2008 - X166.3) Disclosure of external auditor's adverse findings to the Bangko Sentral; sanction***

a. *Findings to be disclosed.* Banks shall require their external auditors to report to the BSP any matter adversely affecting the condition or soundness of the bank, such as, but not limited to:

(1) Any serious irregularity, including those involving fraud or dishonesty, that may jeopardize the interest of depositors and creditors;

(2) Losses incurred which substantially reduce the capital funds of the bank; and

(3) Inability of the auditor to confirm that the claims of creditors are still covered by the bank's assets.

The disclosure of information by the external auditor to the BSP shall not be a ground for civil, criminal or disciplinary proceedings against the former.

Bank management shall be present during discussions or at least be informed of the adverse findings in order to preserve the concerns of the supervisory authority and external auditors regarding the confidentiality of information.

b. *Sanction.* The auditing firm(s) shall be blacklisted by the Monetary Board for a period as the Board may deem appropriate for their failure to perform their duty of reporting to the BSP any matter adversely affecting the condition or soundness of the bank. Banks shall not be allowed to engage the services of the blacklisted auditing firm.

§ X190.4 ***(2008 - X166.4) Disclosure requirement in the notes to the audited financial statements.*** Banks shall require their external auditors to include the following additional information in the notes to financial statements:

a. Basic quantitative indicators of financial performance such as return on average equity, return on average assets and net interest margin;

For purposes of computing the indicators, the following formulas shall be used:

(1) **Return on Average Equity** (%) =

$$\frac{\text{Net Income (or Loss) after Income Tax x 100}}{\text{Average Total Capital Accounts}}$$

Where:

$$\text{Average Total Capital Accounts} = \frac{\text{Sum of Total Capital Accounts as of the 12 month-ends in the calendar/fiscal year adopted by the Bank}}{12}$$

(2) **Return on Average Assets (%) =**

$$\frac{\text{Net Income (or Loss) after Income Tax x 100}}{\text{Average Total Assets}}$$

Where:

$$\text{Average Total Assets} = \frac{\text{Sum of Total Assets as of the 12 month-ends in the calendar/fiscal year adopted by the Bank}}{12}$$

(3) **Net Interest Margin** (%) $= \dfrac{\text{Net Interest Income x 100}}{\text{Average Interest Earning Assets}}$

Where:

Net Interest Income = Total Interest Income – Total Interest Expense

Average Interest Earning Assets $= \dfrac{\text{Sum of Total Interest Earning Assets as of the 12 month-ends in the calendar/fiscal year adopted by the Bank}}{12}$

b. Risk-based capital adequacy ratio under Section 34 of R.A. No. 8791/Sec. X116;

c. Concentration of credit as to industry/ economic sector where concentration is said to exist when total loan exposures to a particular industry/economic sector exceeds thirty percent (30%) of total loan portfolio;

d. Breakdown of total loans as to secured and unsecured and breakdown of secured loans as to type of security;

e. Total outstanding loans to bank's DOSRI, percent of DOSRI loans to total loan portfolio, percent of unsecured DOSRI loans to total DOSRI loans, percent of past due DOSRI loans to total DOSRI loans and percent of non-performing DOSRI loans to total DOSRI loans;

f. Nature and amount of contingencies and commitments arising from off-balance sheet items [include direct credit substitutes (e.g., export LCs confirmed, underwritten accounts unsold), transaction-related contingencies (e.g., performance bonds, bid bonds, standby LCs), short-term self-liquidating trade-related contingencies arising from the movement of goods (e.g., sight/ usance domestic LCs, sight/usance import LCs), sale and repurchase agreements not recognized in the balance sheet; interest and foreign exchange rate related items; and other commitments;

g. Provisions and allowances for losses and how these are determined;

h. Aggregate amount of secured liabilities and assets pledged as security; and

i. Accounting policies which shall include, but shall not be limited to, general accounting principles, changes in accounting policies/practices, principles of consolidation, policies and methods for determining when assets are impaired, recognizing income on impaired assets and losses on non-performing credits, income recognition, valuation policies and accounting policies on securitizations, foreign currency translations, loan fees, premiums and discounts, repurchase agreements, premises/fixed assets, income taxes and derivatives.

§ X190.5 ***(2008 - X166.5) Disclosure requirements in the annual report.*** UBs, KBs, and TBs with at least ₱1.0 billion resources shall prepare an annual report which shall include, in addition to the audited financial statements and other usual information contained therein, a discussion and/or analysis of the following information:

a. Financial performance;

b. Financial position and changes therein;

c. Overall risk management philosophy (i.e., a general statement of the risk management policy adopted by the bank's board of directors which serves as the basis for the establishment of its risk management system), risk management system and structure;

d. Qualitative and quantitative information on risk exposures (credit, market, liquidity, operational, legal and other risks); and

e. Basic business management and corporate governance information such as the bank's organizational structure, incentive structure including its remuneration policies, nature and extent of transactions with affiliates and related parties.

§ X190.6 ***(2008 - X166.6) Posting and submission of annual report*.** A copy of the latest annual report shall be posted by the bank in a conspicuous place in its head office, all its branches and other offices.

The deadline for the submission of the annual report to the appropriate department of the SES is 180 calendar days after the close of the calendar or fiscal year adopted by the bank.

Sec. X191 ***(2008 - X161)*** **Records.** Banks shall have a true and accurate account, record or statement of their daily transactions, particularly those referring to their deposit liabilities. The making of any false entry or the willful omission of entries relevant to any transaction, is a ground for the imposition of administrative sanctions under Section 37 of R.A. No. 7653 and the disqualification from office of any director or officer responsible therefor under Section 9-A of R.A. No. 337, as amended. This is without prejudice to their criminal liability under Sections 35 and 36 of R.A. No. 7653 and/or the applicable provisions of the Revised Penal Code.

§ X191.1 ***(2008 - X161.1) Adoption of the Manual of Accounts.*** Banks shall strictly adopt the Manual of Accounts prescribed by the BSP for recording daily transactions including reportorial and publication requirements.

Local branches of foreign banks may continue using their parent bank's general ledger accounts: *Provided,* That published statements and reports submitted to the BSP follow the account definitions in the BSP-prescribed Manual of Accounts: *Provided, further,* That the mathematical formulas for reconciling such published statements and submitted reports with the general ledger accounts of the bank are submitted to the appropriate department of the SES: *Provided, finally,* That said banks prepare for BSP use, reconciliations of their ledger accounts with the BSP prescribed Manual of Accounts during regular or special bank examinations.

Any bank which fails or refuses to adopt the prescribed Manual of Accounts, or any of the applicable accounts contained therein, or adopts any general ledger account not specified in the said Manual of Accounts without prior written approval of the Governor of the BSP, shall be penalized by revocation or suspension of its authority to engage in quasi-banking function.

§ X191.2 ***(2008 - X162.16) Financial Reporting Package.*** In line with the adoption of the Philippine Financial Reporting Standards (PFRS) and Philippine Accounting Standards (PAS) effective the annual financial reporting period beginning 01 January 2005, the Manual of Accounts and the BSP reportorial requirements consisting of the Consolidated Statement of Condition (CSOC), Consolidated Statement of Income and Expense (CSIE) and their supporting schedules are amended through the issuance of the new Financial Reporting Package (FRP) for banks.

The general features as well as the implementing guidelines of the FRP are provided in *Appendix 77*.

(Circular No. 512 dated 03 February 2006, as amended by Circular No. 568 dated 08 May 2007)

§ X191.3 ***(2008 - X161.2) Philippine Financial Reporting Standards/Philippine Accounting Standards***

Statement of policy. It is the policy of the BSP to promote fairness, transparency and accuracy in financial reporting. It is in this light that the BSP aims to adopt all PFRS and PAS issued by the ASC to the greatest extent possible.

Banks shall adopt the PFRS and PAS which are in accordance with generally accepted accounting principles in recording transactions and in the preparation of financial statements and reports to BSP. However, in cases where there are differences between BSP regulations and PFRS/PAS as when more than one (1) option are allowed or certain maximum or minimum limits are prescribed by the PFRS/PAS, the option or limit prescribed by BSP regulations shall be adopted by banks.

For purposes hereof, the PFRS/PAS shall refer to issuances of the ASC and approved by the Professional Regulation Commission (PRC).

Accounting treatment for prudential reporting. For prudential reporting, banks shall adopt in all respect the PFRS and PAS except as follows:

a. In preparing *consolidated financial statements*, only investments in financial allied subsidiaries except insurance subsidiaries shall be consolidated on a line-by-line basis; while insurance and non-financial allied subsidiaries shall be accounted for using the equity method. Financial/non-financial allied/non-allied associates shall be accounted for using the equity method in accordance with the provisions of PAS 28 "Investments in Associates".

b. For purposes of preparing *separate financial statements*, financial/non-financial allied/non-allied subsidiaries/associates, including insurance subsidiaries/associates, shall also be accounted for using the equity method; and

c. Banks shall be required to meet the *BSP recommended valuation reserves*.

Government grants extended in the form of loans bearing nil or low interest rates shall be measured upon initial recognition at its fair value (i.e., the present value of the future cash flows of the financial instrument discounted using the market interest rate). The difference between the fair value and the net proceeds of the loan shall be recorded under "*Unearned Income-Others*", which shall be amortized over the term of the loan using the effective interest method.

The provisions on government grants shall be applied retroactively to all outstanding government grants received. FIs that adopted an accounting treatment other than the foregoing shall consider the adjustment as a change in accounting policy, which shall be accounted for in accordance with PAS 8.

Notwithstanding the exceptions in Items *"a", "b" and "c"*, the audited annual financial statements required to be submitted to the BSP in accordance with the provision of Subsec. X190.1 shall in all respect be PFRS/PAS compliant: *Provided,* That FIs shall submit to the BSP adjusting entries reconciling the balances in the financial statements for prudential reporting with that in the audited annual financial statements.

(As amended by Circular No. 572 dated 22 June 2007)

§§ X191.4 - X191.9 ***(Reserved)***

§ 1191.9 ***(Reserved)***

§ 2191.9 ***(Reserved)***

§ 3191.9 ***(2008 - §3161.9) Retention and disposal of records of rural/cooperative banks.*** To guide RBs/Coop Banks in the disposition of their records and documents which no longer need to be retained and in determining which of the records are of permanent value and therefore should be preserved, RBs/Coop Banks shall follow the guidelines on retention and disposal of records in *Appendix 50*.

Sec. X192 ***(2008 - X162)*** **Reports.** Banks shall submit to the appropriate department of the SES all their statements and/or periodic reports listed in *Appendix* 6 in such frequency and deadlines indicated therein. In the preparation of said statements/

reports, banks shall use and strictly follow the forms prescribed by the BSP.

In line with the policy direction of R.A. No. 8792 (E-Commerce Act), the BSP is strongly encouraging banks to submit their regular reports to the BSP in electronic form.

However, the BSP cannot presently guarantee the security/confidentiality of data in the course of electronically transmitting reports to BSP. BSP recommends that sensitive or confidential information be provided by ordinary post or courier. The BSP will accept no responsibility for electronic messages/reports/information that may be hacked or cracked, intercepted, copied or disclosed outside BSP's information system.

§ X192.1 *(2008 - X162.1) Categories and signatories of bank reports*

a. *Categories of reports.* Reports required to be submitted to the BSP by banks are grouped into *Category A-1, Category A-2, Category A-3* and *Category B* reports as indicated in *Appendix 6*.

b. *Authorized signatories*

(1) *Category A-1* reports shall be signed by the bank's chief executive officer or, in his absence, by the executive vice president, and by the comptroller or, in his absence, by the chief accountant, or officers holding equivalent positions.

(2) *Category A-2* reports shall be signed by the president, executive vice president, vice president or by an officer holding equivalent position.

(3) *Category A-3* and *Category B* reports shall be signed by officers or their alternates, duly designated by the board of directors.

The designated signatories of *Categories A-1, A-2, A-3 and B* reports including their specimen signatures shall be contained in a resolution approved by the board of directors. A copy of the board resolution covering the initial designation and subsequent change(s) in signatories as well as specimen signatures of the signatories and alternates, shall be submitted to the appropriate department of the SES in such frequency and within the deadline indicated in *Appendix 6*.

(4) Reports in computer media that are submitted by banks shall be subject to the same requirements regarding authorized signatories.

(5) Any report submitted to the BSP that is signed by an officer who is not listed or included in any of the resolutions mentioned above, shall be considered as not having been submitted at all.

(6) All authorized agent banks shall submit to the Director, Branch Operations, BSP, the updated specimen signatures of Senior Bank Officers in their respective Head Offices who are authorized to authenticate the signatures of their provincial branch officers transacting business with the BSP Regional Offices/ Branches.

The BSP Branch Operations shall be advised of any changes in authorized branch signatories, as well as authenticating Head Office Senior Officers.

c. *Deadline for submission of reports*

(1) *Regular reports.* Unless otherwise specified, the deadlines for submission of reports enumerated in *Appendix 6,* shall be reckoned on the basis of banking days. For this purpose, *banking days* shall be understood to mean Monday through Friday or banking days of the BSP.

(2) *Call Reports.* The deadline of submission of call reports shall be specified in the letter calling for the report.

§ X192.2 *(2008 - X162.2) Sanctions in case of willful delay in the submission of reports/refusal to permit examination.* For willful delay in the submission of reports, specific sanctions shall be imposed in accordance with the following rules.

a. *Definitions*. For purposes of this Subsection, the following definitions shall apply.

(1) *Report* shall refer to any report or statement required to be submitted by a bank to the BSP.

(2) *Willful delay in the submission of reports* shall refer to the failure of any bank to submit on time the report defined in Item *"a(1)"* above. Failure to submit a report on time due to fortuitous events, such as fire and other natural calamities, and public disorders including strike or lockout affecting a bank as defined in the Labor Code, or of a national emergency affecting operations of banks, shall not be considered as willful delay.

(3) *Examination* shall include, but need not be limited to, the verification, review, audit, investigation and inspection of the books and records, business affairs, administration and financial condition of any bank including the reproduction of banking records, as well as the taking possession of the books and records and keeping them under BSP's custody after giving proper receipts therefor.

It shall also include the interview of the directors and personnel of any bank including its Electronic Data Processing (EDP) servicer. Books and records shall include, but not limited to, data and information stored in magnetic tapes, discs, diskettes printouts, logbooks and manuals kept and maintained by the bank or by the EDP servicer, that are necessary and incidental to the use of EDP systems by the bank.

(4) *Refusal to permit examination* shall mean any act or omission which impedes, delays or obstructs the duly authorized BSP officer/examiner/ employee from conducting an examination, including the act of refusing to accept or honor a letter of authority to examine presented by any officer/ examiner/employee of the BSP.

b. *Fines for willful delay in the submission of reports.*

(1) *Amount of fine*. Any bank which shall incur willful delay in the submission of required reports shall pay a fine in accordance with the following schedule:

(a) *For Category A-1, A-2 and A-3 reports*

(1) UBs/KBs	-	₱1,200
(2) TBs	-	600
(3) RBs/Coop Banks	-	180

per day of default until the report is filed with the BSP: and

(b) *For Category B reports*

(i) UBs/KBs	-	₱ 240
(ii) TBs	-	120
(iii) RBs/Coop Banks	-	60

per day of default until report is filed with the BSP.

In the implementation of the foregoing rules, delay or default shall start to run on the day following the last day required for the submission of reports. However, should the last day of filing fall on a non-working day in the locality where the reporting bank is situated, delay or default shall start on the day following the next banking day. The due date/deadline for submission of reports to BSP as prescribed under Sec. X192 governing the frequency and deadlines indicated in *Appendix 6* shall be automatically moved to the next banking day whenever a half-day suspension of business operations in government offices is declared due to an emergency such as typhoon, floods, etc.

Delayed schedules/attachments and amendments shall be considered late reporting subject to the above penalties.

(2) *Manner of filing.* For the purpose of establishing delay or default, the submission of reports shall be effected by filing them with the appropriate department of the SES or with the BSP Regional Offices, or by sending them by registered mail or by special delivery through a private courier, unless

otherwise specified in the circular or memorandum of the BSP.

In the first case, the date of acknowledgment by the appropriate department of the SES or the BSP Regional Office appearing on the copies of such reports filed or submitted, and in the second case, the date of mailing postmarked on the envelope or the date of the registry receipt or the date of special delivery receipt, shall be considered as the date of filing.

c. *Fines for refusal to permit examination.*

(1) *Amount of fine* - A bank which shall willfully refuse to permit examination shall pay a fine of ₱3,000 daily from the day of refusal and for as long as such refusal lasts.

(2) *Basis and effectivity of the imposition of fine.*

(a) The BSP officer/examiner/ employee shall report the refusal of the bank to permit examination to the head of the appropriate department of the SES, who shall forthwith make a written demand upon the bank concerned for such examination. If the bank continues to refuse said examination without any satisfactory explanation thereof, the BSP officer/examiner/employee concerned shall submit a report to that effect to the said department head.

(b) The fine shall be imposed starting on the day following the receipt by the said department of the written report submitted by the BSP officer/examiner/employee concerned regarding the continued refusal of the bank to permit the desired examination.

d. *Manner of payment or collection of fines.* The regulations embodied in Subsec. X902.1 shall be observed in the collection of fines from banks for willful delay in the submission of reports or for refusal to permit examination.

e. *Other penalties.* The imposition of the foregoing penalties shall be without prejudice to imposition of the other administrative sanctions and to the filing of a criminal case as provided for in other provisions of law.

f. *Appeal to the Monetary Board.* An aggrieved bank may appeal to the Monetary Board any fine imposed by the BSP.
(As amended by Circular 585 dated 15 October 2007)

§ X192.3 *(2008 - X162.3) Submission of certain required information.* Banks shall submit to the appropriate department of the SES the information on bank's profile required in *Appendix 7*. Any change in any of the required information submitted, after the initial submission, shall be reported to the said department immediately.

Banks shall likewise submit to the said department any or all of the documents/information on bank's organizational structure and operational policies enumerated in *Appendix 8*. Any subsequent change/issuance should be furnished the department within fifteen (15) banking days from such change/ issuance.

§ X192.4 *(2008 - X162.4) Report on crimes/losses.* Banks shall report on the following matters to the appropriate department of the SES.

a. Crimes whether consummated, frustrated or attempted against property/ facilities (such as robbery, theft, swindling or estafa, forgery and other deceits) and other crimes involving loss/destruction of bank property when the amount involved, in each crime is ₱20,000 or more.

Crimes involving bank personnel, regardless of whether or not such crimes involve the loss/destruction of bank property, even if the amount involved is less than ₱20,000, shall likewise be reported to the BSP.

b. Incidents involving material loss, destruction or damage to the bank's property/facilities, other than arising from a crime, when the amount involved per incident is ₱100,000 or more.

c. *Definition of terms.* For the purpose of this regulation, the following definitions shall apply:

(1) *Estafa* - a crime committed by a person who defrauds another causing the latter to suffer damage by means of any of the following:

(a) unfaithfulness or abuse of confidence;

(b) false pretense; or

(c) fraudulent acts/means, under Articles 315 to 317 of the Revised Penal Code, as amended.

(2) *Theft* - a crime committed by a person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent pursuant to Article 308 and other pertinent provisions of Chapter III, Title X of the Revised Penal Code, as amended.

(3) *Robbery* - a crime committed by a person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything pursuant to Article 295 and other pertinent provisions of Chapter 1, Title X of the Revised Penal Code, as amended.

(4) *Falsification* - a crime committed by a person who falsifies a document by

(a) Counterfeiting or imitating any handwriting, signature or rubric;

(b) Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

(c) Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;

(d) Making untruthful statements in a narration of facts;

(e) Altering true dates;

(f) Making any alteration or intercalation in a genuine document which changes its meaning;

(g) Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original; or

(h) Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book and other acts falling under Articles 169, 171 and 172 of the Revised Penal Code, as amended.

(5) *Credit-card related crimes* - crimes arising through the use of credit cards.

(6) *Other crimes that may cause loss to the bank* - crimes committed that cannot be appropriately classified under any of the above classifications.

(7) *Negligence* - the failure to exercise the care which an ordinarily prudent person would use under the circumstances in the discharge of the duty then resting upon him (People v. Aguilar, 2899-R, 18 October 1949).

(8) *Non-crime related loss* - Incidents that may cause the bank to suffer a loss arising from fortuitous events.

(9) *Insider* - person involved include stockholders, directors, officers and employees of the bank.

(10) *Outsider* - persons involved other than an insider.

(11) *Perpetrator* - a person, whether an insider or outsider, who is responsible for the commission of crime either by direct participation, inducement or cooperation, including accomplices and accessories as defined under Articles 18 and 19 of the Revised Penal Code, as amended.

(12) *Victim* - an insider or outsider other than the perpetrator, who is the aggrieved party to the crime and may as a result of the incident, suffered the loss.

(13) *Attempted crime* - a crime is attempted when the perpetrator commences the commission of the crime directly by overt acts but does not perform

all of the acts of execution which constitute the crime by reason of some cause or act other than his own voluntary desistance under Article 6 of the Revised Penal Code, as amended.

(14) *Frustrated crime* - a crime is classified as frustrated, when the perpetrator performs all the acts of execution which should produce the crime as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator under Article 6 of the Revised Penal Code, as amended.

(15) *Consummated crime* - a crime is consummated when all the acts of execution which constitute the crime was performed. As a result, the bank may have suffered a loss, the recoverable portion of which should be deducted to arrive at the probable loss incurred by the bank.

(16) *Termination of the investigation* - an investigation is said to be terminated when all the material facts/information which are sufficient to support a conclusion relative to the matters involved have already been gathered and a finding/ conclusion may be made based on the gathered information.

d. The following guidelines shall be observed in the preparation and submission of the report:

(1) The Branch or Head Office unit's Report on Crimes and Losses shall be submitted to the BSP through the bank's head office unit and shall be certified correct by the compliance officer. The report shall be assigned a prescribed reference number by the bank using the format *mm-yyyy-xxx* with *mm* and *yyyy* as numeric code for the month and year of reporting respectively and *xxx* as sequence no. (e.g. 01-2007-001) which shall be a continuing series until the end of the year.

The report shall be prepared using the new format in two (2) copies and shall be submitted to the SDC and to the BSP Security Coordinator, thru the Director, Security, Investigation and Transport Department (SITD) within ten (10) calendar days from knowledge of the crime/ incident;

(2) Where a thorough investigation and evaluation of facts is necessary to complete the report, an initial report submitted within deadline may be accepted: *Provided,* That a complete report is submitted not later than twenty (20) calendar days from termination of investigation.

Moreover, final reports on crimes and losses with incomplete information as required under SES Form 6G shall be considered erroneous reports and the concerned bank shall be required to submit amended reports subject to penalties on late reporting for *Category B* reports under Subsec. X192.2; and

(3) Proof of submission of the report shall be determined by the date of postmark, if the report was sent by mail or by the date received, if handcarried to the SDC and SITD.

(As amended by Circular No. 587 dated 26 October 2007)

§ X192.5 *(2008 - X162.5) Report on real estate/chattel transactions.* Banks shall within ten (10) banking days from approval of the transaction:

a. Report to the appropriate department of the SES, any real estate/ chattel transaction (such as, but not limited to, rentals or leases, purchases and sales, of foreclosed assets) between the bank and its director(s), officer(s), employee(s), or between the bank and its stockholder(s) or their related interest(s), as defined under Items *"c" and "e"*, respectively, of Subsec. X326.1; and

b. Certify to the BSP that such transaction has been thoroughly reviewed and verified as having been entered into in the best interest of the bank.

(As amended by Circular No. 525 dated 04 April 2006)

§ X192.6 ***(2008-X162.6) Reconciliation of head office and branch transactions*** Banks shall prepare reconciliation statements covering transactions between the head office and all its branches within thirty (30) banking days after the end of each month.

All items which are unresponded or outstanding in the reconciliation statement for more than (6) months as of reconciliation statement date shall be reported, with explanations/reasons for their being outstanding, to the appropriate department of the SES in such frequency and within the deadline set in *Appendix 6*.

The reconciliation statement shall be made available to any authorized bank examiner for inspection/examination without need of advance notice.

A copy of the year-end reconciliation statement covering transactions between the bank's head office and all its branches shall be furnished the said department not later than the end of January of the following year.

§ X192.7 ***(2008 - X162.7) List of stockholders and their stockholdings***

a. Banks shall submit to the appropriate department of the SES annually a complete list of stockholders and their stockholdings in the prescribed form within the deadline indicated in *Appendix 6*.

b. Any change in the list shall also be reported to the said department in such frequency and within the deadline indicated in *Appendix 6,* indicating the name(s) and/or stockholdings involved which is/are to be cancelled or replaced, and the new name(s) and/or stockholdings which shall be included for that quarter. In case no change occurred during a particular quarter, the report shall provide a notation, viz *"no change(s) since last report submitted for quarter ended, ____________, 20_____"*.

§ X192.8 ***(2008 - X162.8) Bangko Sentral offices, where reports are submitted.*** Submission of BSP periodic or call reports shall be as follows:

a. All banking offices shall submit the required reports in accordance with *Appendix 6* to the BSP, Manila or to the nearest BSP Regional Offices: *Provided*, That the head office of a bank may submit to the SDC in electronic form the batched copy of all its banking units' *Quarterly Statement of Condition and Statement of Income and Expenses by Banking Unit* in behalf of its branches and other offices;

b. Where a particular report form calls for distribution of copies to other departments of the BSP, the bank concerned shall furnish said copies of the report direct to the respective departments of the BSP; and

c. As an exception to Item *"a"* above, the duplicate copy of the bio-data for directors/officers shall be submitted to the SDC of the BSP.

§ X192.9 ***(2008 - X162.9) Publication/ Posting of balance sheet***

a. *UBs/KBs, TBs, RBs and Coop Banks with resources of P1.0 billion and above*

(1) Banks belonging to this category shall accomplish the prescribed form and publish their quarterly Balance Sheet (BS) as of the cut-off date indicated in the call letter issued by the SES.

The Consolidated Balance Sheet (CBS) of a bank and its subsidiaries and affiliates shall be published side by side with the BS of its head office and its branches/other offices.

(2) The CBS of the bank and its subsidiaries and affiliates shall be prepared in accordance with the rules of consolidation provided under the Financial Reporting Package (FRP), in which case, only financial allied

subsidiaries, except subsidiary insurance companies, shall be consolidated on a line-by-line basis, while non-financial allied subsidiaries including subsidiary insurance companies shall be accounted for using the equity method.

(3) Such BS, and CBS where applicable, shall be published in a newspaper of general circulation in the city/province where the principal office, in the case of a domestic bank, or the principal branch/office, in the case of a foreign bank, is located, but if no newspaper is published in the same province, then in a newspaper published in Metro Manila or in the nearest city/province.

(4) The names and position/designation of the members of the board of directors, president and executive vice presidents (senior vice presidents, if there are no executive vice presidents), shall be published and shown in the right side column of the published BS as of June of every year.

(5) (a) Before publication, a soft copy of the BS shall be submitted to the SDC within twelve (12) banking days from the date of the call letter.

Further, a hard copy of the control proof list for the said report shall likewise be submitted to the SDC within the said deadline.

(b) Banks that are incapable of submitting the BS in electronic form shall submit the same in hard copy to the SDC within the said deadline.

(c) The published BS with the publisher's certificate shall be submitted within twenty (20) banking days after the date of said call letter to the SDC.

b. *TBs/RBs/Coop Banks with resources of less than ₱1 billion*

(1) A TB, RB and Coop Bank belonging to this category shall either publish its quarterly BS as of the cut-off date indicated in the call letter issued by the SES of the BSP, in a newspaper of general circulation as in Item *"a(3)"* above or post the same in the most conspicuous area of its premises, in the municipal building, municipal public market, barangay hall and barangay public market where the head office and all its branches are located. The posting shall be printed on 12"x18" white paper, preferably white buff paper (cartolina) and shall be made within twenty (20) banking days from the end of the reference quarter and for a period of thirty (30) successive calendar days.

(2) (a) A TB, RB and Coop Bank that shall publish/post its quarterly BS shall submit a soft copy of the same to the SDC within twenty (20) banking days after the end of the reference quarter.

(b) Banks that are incapable of submitting the BS in electronic form shall submit the same in hard copy to the SDC within the said deadline.

(c) In either case, an affidavit executed by the president, or in his absence, the vice-president or manager, as the case may be, shall likewise be submitted to the SDC within the said deadline.

c. *Additional information required*

Banks shall disclose the following information in the quarterly published/posted BS:

(1) Solo BS (Head Office and Branches/Other Offices)

(a) Non-performing loans (NPLs)

(b) Ratio of NPLs to total loan portfolio (TLP)

(c) Classified loans and other risk assets

(d) Specific provision for loan losses

(e) Return on equity (ROE)

(f) DOSRI loans and receivables

(g) Ratio of DOSRI loans and receivables to TLP

(h) Past due DOSRI loans and receivables

(i) Ratio of past due DOSRI loans and receivables to TLP

(j) Percent compliance with Magna Carta - 6% for Small Enterprise

(k) Percent compliance with Magna Carta - 2% for Medium Enterprise

(l) CAR on Solo Basis under *Appendix 63b* for UBs/KBs, TBs, and RBs that are subsidiaries of UBs/KBs. For stand-alone TBs, RBs and Coop Banks, Sec. X116 shall apply.

(i) Total CAR

(ii) Tier 1 CAR

(2) CBS (parent bank and financial allied subsidiaries excluding subsidiary insurance companies)

(a) List of financial allied subsidiaries (excluding subsidiary insurance companies)

(b) List of subsidiary insurance companies

(c) CAR on consolidated basis

(i) Total CAR

(ii) Tier 1 CAR

For purposes of additional information, all amounts and ratios shall be as of the same call date. However, the basis for computing the ROE shall be the latest quarter immediately preceding the call date using the following formula:

$$\textbf{Return on Average Equity } (\%) = \frac{\text{Net Income (or Loss) after Income Tax}}{\text{Average Total Capital Accounts}} \times 100$$

Where net income/(loss) after tax and average total capital accounts shall be:

Quarter	Net Income After Tax (loss) (NIAT)	Average Total Capital Accounts
March	Quarter end NIAT multiplied by 4.	Sum of end-month capital accounts (December - March) divided by 4.
June	Semester end NIAT multiplied by 2.	Sum of end-month capital accounts (December - June) divided by 7.
Sept.	Nine (9) mos. NIAT multiplied by 1.33333.	Sum of end-month capital accounts (December - September) divided by10.
Dec.	Year end NIAT	Sum of end-month capital accounts (December - December) divided by 13.

d. *Deferment of publication requirement.*

The abovementioned publication requirement may be deferred by the Monetary Board by at least five (5) affirmative votes upon application by the bank concerned during periods of national and/or local emergency or of imminent panic which directly threaten monetary and banking stability.

The amended prescribed form for the published BS shall be used starting with the quarter-end September 2007 reports.

(As amended by Circular No. 576 dated 08 August 2007)

§ X192.10 *(2008-X162.10) Consolidated financial statements of banks and their subsidiaries engaged in financial allied undertakings.* Banks shall submit after the end of the calendar year or the end of the fiscal year adopted by the bank their consolidated financial statements and supported by the individual annual financial statements of their subsidiaries engaged in financial allied undertakings.

For purposes of this Subsection, the consolidated financial statements shall conform to the guidelines of PAS 27 "Consolidated and Separate Financial Statements" except that for purposes of consolidated financial statements, the provisions of Subsec. X191.3a shall apply.

The consolidated financial statements and the supporting individual financial statements of their subsidiaries shall be submitted to the appropriate department of the SES within the deadline indicated in *Appendix 6*.

§ X192.11 *(2008 - X162.11) Reports of other banking offices.* Extension offices of banks which maintain separate books of accounts shall be subject to all reporting requirements of a regular branch.

An extension office whose record of transactions/accounts is consolidated daily with its mother unit shall submit only the Selected Financial Accounts form as listed in *Appendix* 6.

Convenience Banking Centers (CBCs) are not required by BSP to submit Statement of Condition (SOC) and Statement of Income and Expenses (SIE). A CBC is not considered as a branch but as an extension office of a bank without separate books of accounts which directly reports its transactions to its mother branch.

§ X192.12 ***(2008 - X162.12) Reports required of foreign subsidiaries/affiliates/ banking offices or non-bank entities of domestic banks.*** The submission of periodic reports of a foreign subsidiary/ affiliate/banking offices or non-bank entities of domestic banks shall be governed by the following rules:

a. For foreign subsidiaries/affiliates of domestic banks, the local investor-bank(s) concerned shall regularly submit to the appropriate department of the SES a quarterly statement of condition and quarterly/annual report of income and expenses concerning the operations of the foreign subsidiaries/affiliates, including such other periodic reports which may be required from time to time in the forms prescribed by the BSP for domestic financial intermediaries to the extent that their operations are applicable;

b. For foreign subsidiaries/affiliates of domestic banks, the appropriate department of the SES shall be furnished by said domestic banks copies of the annual report prescribed by any of the supervisory/ regulatory authorities in the country of operations;

c. When material changes noted in the annual financial statements warrant an interim comprehensive evaluation, the foreign affiliate concerned shall be requested to submit to the appropriate department of the SES, through its domestic investor-bank, copies of its quarter/interim reports to stockholders or the call reports in the case of U.S. banks;

d. Audited financial statements (AFS) of the foreign banking offices and subsidiaries; and

e. Examination reports done by the foreign bank supervisory authority.

The submission of the documents in Items *"d"* and *"e"* to BSP shall not be later than thirty (30) banking days from date of submission/release of said reports to the foreign banking offices and subsidiaries of Philippine banks. Material findings, if any, contained in said reports should be highlighted.

f. For purposes of this Subsection, *affiliate* shall refer to an entity linked directly or indirectly to a bank by means of:

(1) Ownership, control or power to vote, of ten percent (10%) or more of the outstanding voting stock of the entity, or vice-versa;

(2) Interlocking directorship or officership, except in cases involving independent directors as defined under existing regulations;

(3) Common stockholders owning ten percent (10%) or more of the outstanding voting stock of each financial intermediary and the entity;

(4) Management contract or any arrangement granting power to the bank to direct or cause the direction of management and policies of the entity, or vice-versa; and

(5) Permanent proxy or voting trusts in favor of the bank constituting ten percent (10%) or more of the outstanding voting stock of the entity, or vice-versa.

For purposes of this Manual, the above definition of *affiliate* shall be adopted except where the provision of the regulation expressly states otherwise.

§ X192.13 ***(Reserved)***

§ 1192.13 ***(2008 - §1162.13) Additional reports from UBs/KBs***

a. *Volume and weighted average interest rates of deposits and loans.* Data on the volume of transactions and weighted average interest rates of certificates of time deposits and secured/ unsecured loans granted, classified by maturity, and outstanding savings deposits classified by interest rates, shall be prepared daily (except data on savings deposits which shall be prepared weekly) and submitted weekly by all head offices of UBs/KBs to the Department of Economic Research of the BSP not later than 4:00 PM on Thursday after end of reference week.

b. *Short-term prime rates.* All UBs and KBs shall submit in the prescribed form a report on the volume and interest rates on credit line availments under short-term prime rates in such frequency and within the deadline indicated in *Appendix 6*.

c. *(Deleted by Cir. No. 405 dated 28 August 2003).*

d. *Foreign Exchange Position Report* Banks may be allowed to submit on a weekly basis the notarized certification signed by the bank's president/CEO/ country manager and the treasurer to cover the daily hard copies of *Schedule 13*, *FX Form I* and *CFXPR* pertaining to each day of the week. Delayed submission of the notarized certification shall be subject to monetary penalty, as follows:

	Daily Penalty
1st banking day of delay	₱6,000.00 (equivalent ₱1,200.00 per day for five (5) report dates covered by the certification on the assumption that the five (5) weekdays of the reference week are all banking days)
2nd banking day of delay and onwards	₱1,200.00/day

§ 2192.13 ***(Reserved)***

§ 3192.13 ***(Reserved)***

§ X192.14 ***(2008 - X162.14) Reports of strikes and lockouts.*** Banks through their president or chief executive officer shall immediately apprise the Deputy Governor of the SES of the BSP on the status of strikes/lockouts involving their banks, if unsettled after seven (7) calendar days. The bank shall disclose the following pertinent information on the strike/lockout:

a. Cause of the strike/lockout and bank management's position on its legality; and

b. Bank operations affected.

§ X192.15 ***(2008 - X162.15) Report on the Sworn Statement on Real Estate/ Chattel Transactions.*** The Report on the Sworn Statement on Real Estate/ Chattel Transactions submitted under BSP Form Nos. NP06-KB, NP06-TB and RB/COB 20 need not be under the signature of all the members of the bank's board of directors: *Provided,* That:

(a) transactions reported are being availed of strictly in accordance with the terms and conditions of a fringe benefit program approved by the bank's board of directors and by the BSP; and

(b) the signatory to the certification is an officer duly authorized by the bank's board of directors.

Transactions not covered under the bank's fringe benefit plan shall still be reported under the signatures of all the members of the bank's board of directors.

§§ X192.16 - X192.20 ***(Reserved)***

O. PROMPT CORRECTIVE ACTION FRAMEWORK

§ X193 ***(2008 - X106.4)*** **Prompt corrective action framework.** A bank may be subject to Prompt Corrective Action (PCA) whenever any or all of the following conditions obtain:

(1) When either of the Total Risk-Based Ratio [otherwise known as Capital Adequacy Ratio (CAR)], Tier 1 Risk-Based Ratio, or Leverage Ratio (total capital/total assets) falls below ten percent (10%), six percent (6%) and five percent (5%), respectively, or such other minimum levels that may be prescribed for the said ratios under relevant regulations, and/or the combined capital account falls below the minimum capital requirement prescribed under Subsec. X111.1;

(2) The Capital Adequacy, Asset Quality, Management, Earnings, Liquidity and Sensitivity to Market Risk ("CAMELS") composite rating is less than three "3" or a Management component rating of less than three "3"; and

(3) A serious supervisory concern has been identified that places a bank at more-than-normal risk of failure in the opinion of the Director of the examination department concerned, which opinion is confirmed by the Monetary Board. Such concerns could include, but are not limited, to any one (1) or a combination of the following;

(a) Finding of unsafe and unsound activities that could adversely affect the interest of depositors and/or creditors;

(b) A finding of repeat violations of law or continuing failure to comply with Monetary Board directives; and

(c) Significant reporting errors that materially misrepresent the bank's financial condition.

The framework for the enforcement of PCA on banks and other financial institutions under its jurisdiction is in *Appendix 69.*

(Circular No. 523 dated 23 March 2006)

Secs. X194 - X195 (Reserved)

P. LIQUIDATION AND RECEIVERSHIP

Sec. X196 Voluntary Liquidation. The following guidelines shall be observed when a bank decides to undertake voluntary liquidation as a consequence of voluntary dissolution, such as (i) by vote of the board of directors and stockholders, where no creditors are affected; (ii) judgment of the SEC after hearing the petition for voluntary dissolution; (iii) amending the articles of incorporation to shorten the corporate term.

§ X196.1 ***Prior Monetary Board approval.*** Upon voluntary dissolution of a bank pursuant to the provisions of the Corporation Code, voluntary liquidation may be undertaken by the bank itself through its board of directors, by a trustee appointed by the bank, or by a receiver appointed to the bank: *Provided, however,* That no voluntary dissolution shall be undertaken by a bank without prior approval of the Monetary Board: *Provided, further,* That requests for approval of a voluntary dissolution shall be accompanied by a liquidation plan which lays down the procedure to be adopted by the bank in the event of liquidation: *Provided, finally,* That written notice shall be sent to the Monetary Board before actual liquidation is undertaken in accordance with the liquidation plan previously approved by the Monetary Board.

§ X196.2 ***Liquidation plan.*** The minimum requirements to be set forth in a liquidation plan are the following:

a. *Inventory/Appraisal of assets and liabilities*. Submission to the Monetary Board within thirty (30) days from written notice of liquidation, a schedule/inventory and status/appraisal reports on assets and liabilities of the bank.

b. *Notice to creditors requirement*. Notice by registered mail to all recorded claimants of the bank, and notice by publication in a newspaper of general circulation at least once a week for two (2) consecutive weeks, to be made within thirty (30) days from submission of aforesaid inventory of assets and liabilities.

c. *Conversion of assets into money*. Projected timetable in the conversion, manner of sale (public auction, sealed bidding, or on negotiated basis), notice by publication requirement, and report on liquidation to be submitted to the Monetary Board.

d. *Final notice to claimants/creditors*. Undertaking of the board of directors/ trustee/receiver to cause, within thirty (30) days from conversion into money of all or substantially all of the assets of the bank, the publication in a newspaper of general circulation at least once a week for two (2) consecutive weeks of a notice giving claimants/creditors fifteen (15) days within which to file their claims.

e. *Inventory of remaining claims against the bank*. Submission to the Monetary Board of a complete list of all remaining claims against the bank, within thirty (30) days from the deadline given in the final notice to claimants/creditors.

f. *Plan for distribution of proceeds of sales and distribution of liquidating dividends*. Submission to the Monetary Board of a distribution plan of assets within thirty (30) days from conversion of all or substantially all of the assets of the bank.

§§ X196.3 - X196.7 *(Reserved)*

§ X196.8 *Final liquidation report.* The board of directors/trustee/receiver shall submit to the Monetary Board a final liquidation report after winding up the affairs of the bank.

Sec. X197 (Reserved)

Sec. X198 Insolvency or Receivership of Banks. The rules and regulations governing insolvency and receivership are as follows:

§ X198.1 *Definition of term.* A *"bank declared insolvent or placed under receivership by the Monetary Board"* shall refer to a banking institution that has been forbidden from doing business in the Philippines by the Monetary Board under the applicable grounds provided for under Section 30 of R.A. No. 7653 and placed under receivership of the PDIC.

§ X198.2 *Prohibited acts.* Any director or officer of a bank declared insolvent or placed under receivership by the Monetary Board shall not commit any of the following acts:

a. refusing to turn over the bank's records and assets to the designated receivers;

b. tampering with bank records;

c. appropriating for himself or another party, or destroying or causing misappropriation and destruction of the bank's assets;

d. receiving or permitting or causing to be received in said bank any deposit, collection of loans and/or receivables;

e. paying out or permitting or causing to be paid out any funds of said bank; and

f. transferring or permitting or causing to be transferred any securities or property of said bank.

§§ X198.3 - X198.8 ***(Reserved)***

§ X198.9 ***Penalties and sanctions.*** Any director or officer of a bank declared insolvent or placed under receivership by the Monetary Board who commits any of the foregoing acts shall be subject to the sanctions under Sections 36 and 37 of R.A. No. 7653, in correlation with Section 66 of R.A. No. 8791. Moreover, any such director or officer thereby sanctioned shall be included in the watchlist files of directors/officers disqualified by the Monetary Board from holding any position in any bank or FI.

Q. GENERAL PROVISION ON SANCTIONS

Sec. X199 General Provision on Sanctions. Except as otherwise provided, any violation of the provisions of this Part shall be subject to Sections 36 and 37 of R.A. No. 7653.

The guidelines for the imposition of monetary penalty for violations/offenses with sanctions falling under Section 37 of R.A. No. 7653 on banks, their directors and/or officers are shown in *Appendix 67*.

PART TWO

DEPOSIT AND BORROWING OPERATIONS

A. DEMAND DEPOSITS

Section X201 Authority to Accept or Create Demand Deposits. Banks may accept or create demand deposits subject to withdrawal by check.

A UB/KB may accept or create demand deposits subject to withdrawal by check, without prior authority from the BSP.

A TB/RB/Coop Bank may accept or create demand deposits upon prior authority of the BSP.

§ X201.1 *Prerequisites to accept or create demand deposits for Thrift Banks/ Rural Banks/Cooperative Banks.* In addition to the *Standard Pre-qualification Requirements for the Grant of Banking Authorities* enumerated in *Appendix 5,* a TB/RB/Coop Bank applying for authority to accept or create demand deposits shall also comply with the following requirements:

a. The applicant TB must have complied with the minimum capital required under Subsecs. X111.1 and X111.2.

In the case of RB/Coop Bank, it must have net assets of at least P5.0 million: *Provided*, That RBs which have been authorized to accept or create demand deposits prior to the approval of R.A. No. 7353 (Rural Banks Act of 1992) shall be allowed to continue servicing such deposits.

The terms *capital* and *net assets* shall have the same meaning as in Sec. X111.

b. It must be a member of the Philippine Deposit Insurance Corporation (PDIC) in good standing.

§ X201.2 *Requirements for accepting demand deposits.* After a TB's/RB's/Coop Bank's application to accept demand deposits has been approved, it may actually accept such deposits, subject to the following conditions:

a. Submission of a certification signed by the President/Chairman of the Board of the bank stating that the requirements enumerated under Subsec. X201.1 have been complied with up to the day before the checking account services are actually offered/extended to the public;

b. That if it is not a member of the Philippine Clearing House Corporation (PCHC), it has appointed a commercial bank, or a normally operating thrift bank which is a direct participant in clearing with the PCHC/BSP and has complied with the minimum capital required for commercial banks, thru which it shall participate in the check clearing system; and

c. That it has complied with all other conditions that the BSP may impose.

The applicant bank shall submit a written notice to the appropriate supervising and examining department of the BSP of the actual date when the demand deposit service is offered to the public not later than ten (10) banking days from such offering of the service.

§ X201.3 *Sanctions.* If any part of the certification submitted by the bank as required in these guidelines is found to be false, the following sanctions shall be imposed, without prejudice to the sanctions under Section 35 of R.A. No. 7653.

a. *On the Bank*

Suspension of its authority to accept or create demand deposits for one (1) year.

b. *On the Certifying Officer*

A fine of P5,000 per day from the time the certification was made up to the time the certification was found to be false.

Sec. X202 Temporary Overdrawings; Drawings Against Uncollected Deposits The following regulations shall govern temporary overdrawings and drawings against uncollected deposits (DAUDs).

a. *Temporary overdrawings.* Temporary overdrawings against current account shall not be allowed, unless caused by normal bank charges and other fees incidental to handling such accounts. Banks which violate these regulations shall be subject to a fine of one-tenth of one percent (1/10 of 1%) per day of violation, computed on the basis of the amount of overdrawing or fines in amounts as may be determined by the Monetary Board, but not to exceed P30,000 a day for each violation, whichever is lower.

Technical overdrawings arising from *"force posting"* in-clearing checks shall be debited by banks under *"Returned Checks and Other Cash Items Not in Process of Collection"* which is part of *"Other Assets"* in the Statement of Condition. Items to be lodged under this account shall consist only of in-clearing checks which may result in *"technical overdrawn"* accounts and shall be immediately reversed the following day.

The checks lodged under *"Returned Checks, etc."* shall either be returned or honored the following day before clearing. The items to be used as cover for the honored checks should only consist of any of the following:

(1) Cash

(2) Cashier's, Manager's or Certified Checks

(3) Bank Drafts

(4) Postal Money Orders

(5) Treasury Warrants

(6) Duly funded "On us" Checks

(7) Fund transfers/credit memos within the same bank representing proceeds of loans granted under existing regulations.

Peso demand deposit accounts maintained by foreign correspondent banks with commercial banks shall not be subject to the above-mentioned regulations: *Provided,* That:

(a) The maintenance of non-resident correspondent bank's peso checking accounts and overdrawings therefrom are covered by reciprocal arrangement;

(b) Temporary overdrawings are covered within fifteen (15) days from the date overdrawings are incurred; and

(c) Such accounts are credited only through foreign exchange inward remittance.

b. *Drawings against uncollected deposits.* DAUDs shall be prohibited except when the drawings are made against uncollected deposits representing manager's/cashier's/treasurer's checks, treasury warrants, postal money orders and duly funded "*on us*" checks which may be permitted at the discretion of each bank.

Sec. X203 Checks Without Sufficient Funds. To complement the provisions of Batas Pambansa Blg. 22, (An Act Penalizing the Making or Drawing and Issuance of a Check Without Sufficient Funds or Credit), the following regulations shall govern:

a. The drawee bank shall stamp, write or print on a dishonored check or on a paper attached thereto the date the check is presented for payment and the reason for the refusal to pay the same to the holder thereof.

b. Where the reason for the dishonor of a check is stamped, written or printed on a paper attached to the checks, the drawee bank shall indicate the pertinent details, such as the names of the drawer, the payee and the drawee bank, the date and amount of the check, the check number and the date of dishonor.

c. The drawee bank shall use only the remark or notation "*Drawn Against Insufficient Funds*", "*No Funds*", or "*Insufficient Funds*" stamped, written, or printed on, or attached to the check dishonored or returned by reason of insufficiency of funds or credit.

d. Notwithstanding receipt of an order to stop payment, the drawee bank shall likewise stamp, write, or print on, or attach to the check any of the remarks or notations mentioned in Item *"c"* hereof indicating that there were no sufficient funds in or credit with such bank for the payment in full of such check, if such be the fact. The bank shall also indicate receipt of a stop payment order.

e. A check and other clearing item (COCI) dishonored by reason of insufficiency of funds or credit shall be returned by the drawee bank to the negotiating bank not later than the next clearing for returned COCI.

(1) For Local Exchanges

There shall be two (2) separate clearing windows for COCIs returned due to insufficient funds or credit in the local exchanges in the integrated Metro Manila area served by the PCHC and the BSP Regional Clearing Centers (RCCs). (The settlement of interbank transactions vis-à-vis covering reserve requirement/ deficiency of banks' demand deposit account (DDA) is shown in *Appendix 39*.)

(a) *AM Returned COCI Clearing* - The AM returned COCI clearing in the integrated Metro Manila local exchange shall be conducted from 7:30 AM to 10:00 AM on the banking day immediately following the original date of presentation of the COCI to PCHC.

The AM returned COCI clearing window for local exchanges in the BSP RCCs shall be conducted from 8:00 AM to 9:30 AM on the banking day immediately following the original date of presentation of the COCI to the RCC.

Returned COCI in the AM clearing windows shall be given value on the same date as the date of original presentation of the COCI to PCHC and RCC. The amount of debits and credits on the date of original presentation shall be reversed to the extent of the amount of credits and debits arising from the returned COCI. The process restores the balances of the demand deposits of banks with the BSP to their position prior to the settlement of the clearing results affected by the COCI later returned due to insufficient funds or credit.

(b) *PM Returned COCI Clearing* - The PM returned COCI clearing window shall coincide with the afternoon regular clearing. Other dishonored COCI not returned in the morning clearing session shall be presented by the drawee bank to the negotiating bank in the afternoon regular clearing. Such returned COCI shall be given value on the date the returned COCI was presented to PCHC for the integrated Metro Manila area and to BSP RCCs.

Return of Dishonored COCI - A COCI dishonored by reason of insufficiency of funds or credit shall be returned by the drawee bank to the negotiating bank not later than the next clearing for returned COCI.

(2) For Out-of-town Exchanges

For out-of-town exchanges, a COCI so dishonored shall be returned by the drawee bank to the negotiating bank within the period specified in the clearing Circular Letters issued by BSP.

(3) COCI not coursed through the Clearing System

A COCI dishonored by reason of insufficiency of funds or credit which was not coursed through the clearing system shall be returned by the drawee bank to the holder or the negotiating bank, as the case may be, not later than the business day following the date the COCI is presented for payment with the drawee bank.

The negotiating bank shall, in turn, return a COCI dishonored by reason of insufficiency of funds or credit to the holder not later than the business day following its receipt of the dishonored COCI from the drawee bank.

Sec. X204 Current Accounts of Bank Officers and Employees. As a general rule, officers and employees of banks, their spouses and relatives within the second degree of consanguinity and affinity, including partnerships, associations or corporations in which such officers and employees, their spouses and relatives within the second degree of consanguinity and affinity, individually or as a group, own or control at least a majority of the capital are prohibited from maintaining demand deposits or current accounts with the banking office in which they are assigned. However, officers and employees without direct access and involvement in the handling of transactions and/or records pertaining to demand deposit operations may be allowed to maintain demand deposits or current accounts in the banking office where they are assigned subject to the following conditions:

a. It shall be the responsibility of the bank concerned to identify the officers, employees, departments or units with direct involvement in its demand deposit operations and/or deposit records;

b. The opening of current accounts of officers and employees shall be subject to approval of the head of the branches department or any designated higher ranking officer; and

c. The following minimum operating control measures shall be implemented to ensure systems integrity and mitigate technology-related risks:

(1) *Tagging of accounts*. Savings and demand deposits of officers and employees, their spouses and relatives within the second degree of consanguinity and affinity, including partnerships, associations or corporations in which such officers and employees, their spouses and relatives within the second degree of consanguinity and affinity, individually or as a group, own or control at least a majority of the capital shall be tagged in the bank's current accounts/savings accounts (CA/SA) system;

(2) *Monitoring of accounts*. All accounts maintained by officers, employees and said relatives including their business interests shall be monitored by a designated officer who shall be responsible for ensuring that accounts of officers and staff are properly maintained. Any irregularity in the account activity shall be promptly investigated and reported to the appropriate management level;

(3) *Access controls*. Access to all data, application software, operating systems and utilities must be restricted to authorized persons through appropriate identification mechanisms and access codes and such authentication and authorization controls must be fully documented and auditable. No officer or employee, regardless of rank or position, shall be allowed to process any transaction from initiation to final authorization;

(4) *Data capture*. Operating procedures for data capture, update and retrieval must be strictly adhered to. The operating system shall maintain a permanent record of each authenticated user session including every user input; and

(5) *Audit trails*. Detailed records and audit trails shall be maintained to substantiate the processing of all transactions. Audit trails must be reviewed periodically by a designated officer commensurate with the risk level of the information system. The review process must ensure that the reviewer does not review his/her own activity.

(As amended by Circular No. 508 dated 24 January 2006)

Sec. X205 ***(2008 - X603)*** **Check Clearing Operations.** Banks shall observe the clearing procedures outlined in *Appendix 28* for the clearing of checks and settlement of interbank balances through the clearing facilities.

Secs. 1205 (Reserved)

Sec. 2205 Check Clearing Rules for Thrift Banks Authorized to Accept Demand Deposits. The following are the check clearing rules for TBs authorized to accept demand deposits:

a. TBs authorized to accept demand deposits may participate in the clearing process conducted by the PCHC in the integrated Metro Manila clearing area and by the BSP in regional clearing centers through either of the following modes: (i) maintenance of NOW accounts with KBs; (ii) conduit arrangements with KBs; and (iii) direct participation in clearing operations, at the option of the TB concerned.

b. In conduit arrangements, caps shall be set on the net clearing losses to be passed on to the conduit KB by the conduit TB.

To address the settlement risks, the pro-forma conduit arrangement should include provisions setting aforementioned cap on the net clearing losses. The cap is defined as the combined value of the following amounts:

(1) the TB's reserve deposit with BSP; and

(2) the value of collateralized overdraft line that may be extended by the conduit KB to the conduit TB.

Parties to existing conduit arrangements shall have thirty (30) days from 08 April 1998 to comply with the above requirement.

c. For TBs authorized to participate in the PCHC and BSP check clearing operations, ceilings for clearing losses not covered by interbank borrowings shall be established and unwinding of the clearing transactions shall be authorized when the ceilings are breached.

(1) The proposed ceiling is defined as the collateralized overnight clearing line that will be extended by BSP. Every TB authorized to participate directly in the clearing operations of PCHC should apply for this line with the appropriate department of the SES. The availments against the approved loan line shall bear interest at the ninety-one (91)-day Treasury Bill rate of the last auction immediately preceding the availments.

(2) Procedures for unwinding shall apply to all inward items, other than *Returned Items* and to local exchanges only.

(3) The aggregate value of all inward items of all clearing centers, including *On Manila* clearing demands presented to PCHC, shall be ranked from highest to lowest. The unsettled net clearing losses shall be eliminated by unwinding the inward items starting from the clearing centers, including PCHC, with highest aggregate value.

(4) In case the aggregate value of the inward items for a given clearing center, except PCHC, exceeds the unsettled net clearing losses, the total inward items for that clearing center shall be the subject of unwinding.

(5) In the case of checks cleared through PCHC, the inward clearing items shall be unwound to the extent of the unsettled net clearing loss. The selection of the specific demand items to be covered by unwinding shall be based on PCHC rules.

(6) Checks which are the subject of the unwound clearing transactions shall be returned to the presenting banks not later than 9:00 A.M. of the following clearing day.

d. TBs authorized to participate directly in the clearing in PCHC and BSP regional clearing centers shall be subject to the following measures to manage the settlement risks:

(1) Settlement of Outward items shall be value dated on the day the checks are cleared, net of returns. For this purpose,

the *value date* or *settlement date* referred to herein shall be defined uniformly as the next clearing day when dishonored checks are returned within the reglementary period, reckoned after the date of presentation for local clearing in the integrated Manila Clearing area for PCHC and in all BSP regional clearing centers. For inter-regional clearing items, outward Manila clearing items and to Manila clearing items, the *value or settlement date* shall be defined in clearing circulars to be issued by BSP.

(2) A ceiling shall be set on the amount of overdraft a TB authorized to accept demand deposits may incur due to failure to cover clearing losses through interbank borrowings. The ceiling is defined as the collateralized overnight clearing line that will be extended by BSP DLC. The availments against the approved loan line shall bear interest at the *ninety-one (91)-day Treasury Bill (T-Bill)* rate of the last auction immediately preceding the availments.

(3) Should the overdraft exceed the ceiling, the BSP Accounting Department is authorized to instruct the PCHC and the BSP regional clearing centers to unwind the clearing transactions following the procedures defined in Item *"c"* of this Section.

The operating guidelines implementing Items *"c"* and *"d"* of this Section are in *Appendix 31*.

e. Any overdraft incurred under Section 102 of R.A. No. 7653 may be converted into an emergency loan or advance provided it complies with the guidelines governing the grant of emergency loans under Subsec. X272.2.

(As amended by Circular No. 516 dated 06 March 2006)

Sec. 3205 Check Clearing Rules for Rural Banks Who Are Members of the Philippine Clearing House Corporation. The provisions of Items *"c"* and *"d"* of Sec. 2205 and the implementing operating guidelines in *Appendix 31* shall also apply to RBs which are members of the PCHC.

(As amended by Circular No. 516 dated 06 March 2006)

Sec. X206 (Reserved)

Sec. X207 Check Clearing Operations During Public Sector Holidays. The guidelines on check clearing operations during public sector holidays are shown in *Appendix 84*.

(M-2008-025 dated 13 August 2008)

Secs. X208 - X212 (Reserved)

B. SAVINGS DEPOSITS

Sec. X213 Servicing Deposits Outside Bank Premises. Banks may be authorized by the BSP to solicit and accept deposits outside their bank premises, subject to the following conditions:

a. Minimum capital requirement is met;

b. No major supervisory concerns affecting safety and soundness;

c. The area of operations shall be within one (1)-hour normal travel time by land/sea from any head office or branch, except in remote areas where more than one (1)- hour normal travel time may be allowed; and

d. Applicant bank shall institute and maintain the following minimum safeguards:

(1) All deposit solicitors shall be initially bonded for at least P1,000 subject to the increase thereof to approximate their daily collections;

(2) Deposit solicitors shall be provided with proper identification cards with photograph and signature of each respective solicitor, certified to by the appropriate officer of the bank. Said identification cards shall be worn by each solicitor at all times at the upper breast of his outer garment when soliciting deposits; and

(3) Adequate insurance coverage for funds in transit (representing deposits collected outside banking premises) shall be secured by applicant bank from insurance companies not included in the list of companies blacklisted by the Insurance Commissioner;

(4) Deposit slips shall be in booklet form, prenumbered, in triplicate copies and in three (3) colors - the original to be issued to the depositor, the second copy to be used for posting reference, and the third copy to be retained in the booklet;

(5) All collections shall be turned over to the cashier at the end of each day accompanied by a *Collection Summary Report* to be accomplished in duplicate which shall contain the following minimum information:

(a) Date of the report

(b) Names and addresses of the depositors

(c) Deposit slip numbers

(d) Amounts of deposit

(e) Savings account and passbook numbers

(f) Name and signature of solicitor rendering the report

(6) Depositors shall always be required to accomplish a *Signature Card* when opening an account, which card shall be used always as reference in checking the genuineness/authenticity of signatures affixed on withdrawal slips or authorizations for withdrawal;

(7) Deposits/withdrawals shall be recorded by the bookkeeper or any ledger clerk, except any bank solicitor, in the depositor's ledger cards and passbooks on the same day that such deposits/withdrawals are accepted. Passbooks shall be returned to the depositors not later than the following business day;

(8) At the end of each month, depositors shall be advised in writing of the balances of their deposits with the bank, the advise slips of which shall never be handcarried by the solicitors themselves;

(9) Places of assignments of bank solicitors shall be rotated at least quarterly.

Sec. X214 Withdrawals. Banks are prohibited from issuing/accepting withdrawal slips or any other similar instruments designed to effect withdrawals of savings deposits without requiring the depositors concerned to present their passbooks and accomplishing the necessary withdrawal slips, except for banks authorized by the BSP to adopt the no passbook withdrawal system: *Provided*, That banks which are already adopting the no passbook withdrawal system shall be given six (6) months from effectivity of this Manual to seek approval from the BSP.

The provisions of Sec. X202b shall also apply to withdrawals from savings deposits.

Sec. X215 Rental Deposits of Lessees The following guidelines shall govern the opening and handling by banks of deposits made by lessees under Section 5(b) of Batas Pambansa Blg. 25, otherwise known as the Rent Control Law:

a. The deposit made by the lessee shall only be accepted by the bank under a special savings account in the name of the lessor;

b. The bank shall require the lessee to submit a copy of the written notice sent to the lessor for the deposit made, stating among other things, the date and amount of the deposit and the name and address of the lessor;

c. The bank, at its option, may require the lessee to submit any supporting document, such as the lease contract or official receipts of previous rentals paid, which will show the specimen signature of the lessor, or other papers to identify the lessor;

d. The bank shall segregate from its regular savings deposit accounts and maintain a separate subsidiary control ledger for deposits made under Section 5(b) of Batas Pambansa Blg. 25;

e. Any withdrawal against these special savings deposit accounts may only be allowed in favor of the lessee concerned before the amount deposited under consignation has been accepted by the lessor, or when authorized by the lessor;

f. The expenses which may be incurred by the bank with respect to such rental deposits shall be charged against the lessor;

g. All the minimum internal control standards applicable to savings deposit accounts prescribed in Sec. X185 shall be complied with; and

h. The acceptance of such rental deposits, however, shall be optional or discretionary only upon the bank concerned.

Secs. X216 - X220 (Reserved)

Sec. X221 Peso Savings Deposit Accounts of Embassy Officials. Embassy officials are allowed to open peso savings deposit accounts with Philippine banks: *Provided,* That they submit proof of conversion of foreign currency to peso with Philippine banks.

(M-2007-021 dated 15 September 2007)

Sec. X222 (Reserved)

C. NEGOTIABLE ORDER OF WITHDRAWAL ACCOUNTS

Sec. X223 Authority to Accept Negotiable Order of Withdrawal Accounts Negotiable Order of Withdrawal (NOW) accounts are interest-bearing deposit accounts that combine the payable on demand feature of checks and investment feature of savings accounts.

A UB/KB may offer NOW accounts without prior authority of the Monetary Board.

A TB/RB/Coop Bank may accept NOW accounts upon prior approval of the Monetary Board.

§ X223.1 *Prerequisites to accept negotiable order of withdrawal accounts for thrift banks/rural banks/cooperative banks.* In addition to the *Standard Pre-qualification Requirements for the Grant of Banking Authorities* enumerated in *Appendix 5*, a TB/RB/Coop Bank applying for authority to accept NOW accounts shall also comply with the following requirements:

a. The applicant TB must have complied with the minimum capital required under Subsecs. X111.1 and X111.2.

In the case of RB/Coop Bank, it must have net assets of at least P5.0 million: *Provided*, That RBs which have been authorized to accept or create NOW accounts prior to the approval of R.A. No. 7353 (Rural Banks Act of 1992) shall be allowed to continue servicing such deposits.

The terms *capital* and *net assets* shall have the same meaning as in Sec. X111.

b. It must be a member of the PDIC in good standing.

§ X223.2 *Requirements for accepting negotiable order of withdrawal accounts* After a TB's/RB's/Coop Bank's application to accept NOW account has been approved, it may actually accept the same subject to the following conditions:

a. Submission of a certification signed by the president/chairman of the board of the bank stating that the requirements enumerated under Subsec. X223.1 have been complied with up to the day before the NOW account services are actually offered/extended to the public; and

b. That it has complied with all other conditions that the BSP may impose.

The applicant bank shall submit a written notice to the appropriate department of the SES of the actual date when the NOW account deposit service is offered to the public not later than ten (10) banking days from such offering of the service.

§ X223.3 *Sanctions.* If any part of the certification submitted by the bank as required in these guidelines is found to be false, the following sanctions shall be imposed, without prejudice to the sanctions under Section 35 of R.A. No. 7653:

a. *On the bank*

Suspension of its authority to accept or create NOW accounts for one (1) year.

b. *On the certifying officer*

A fine of P5,000 per day from the time the certification was made up to the time the certification was found to be false.

Sec. X224 Rules on Servicing Negotiable Order of Withdrawal Accounts. The following rules shall be observed in servicing NOW accounts:

a. Prior to or simultaneous with the opening of a NOW account, the bank shall inform the depositor of its terms and conditions;

b. The bank shall be responsible for the proper identification of its depositors; it shall require, among other things, two (2) specimen signatures and such other pertinent information;

c. Deposits shall be covered by deposit slips in duplicate duly validated and initialed by the teller receiving the deposit. A copy of the deposit slip shall be furnished the depositor;

d. NOW accounts shall be kept and maintained separately from the regular savings deposits;

e. Blank NOW forms shall be prenumbered and shall be controlled as in the case of unissued blank checks;

f. A bank statement shall be sent to each depositor at the end of each month for confirmation of balances; and

g. Banks must use the form prescribed by present rules for NOW accounts.

Nothing herein shall be construed as precluding a TB, RB or Coop Bank from applying for authority to accept both demand deposits and NOW accounts.

Sec. X225 Minimum Features. The order of withdrawal form shall have a size of three (3) inches by seven (7) inches, and shall be printed on security/check paper. It shall contain, as a minimum, the features of the pro-forma order of withdrawal shown in *Appendix 11*.

Sec. X226 Clearing of Negotiable Order of Withdrawal Accounts. Any NOW account which may be deposited with a bank other than the drawee bank may be cleared through the PCHC in Manila and the Regional Clearing Units in regional clearing centers designated by the BSP in accordance with the clearing procedures. Nothing in this Section shall prevent direct settlement between the parties concerned.

The provision of Sec. X202 shall also apply for withdrawals on NOW accounts.

Secs. X227 - X230 (Reserved)

D. TIME DEPOSITS

Sec. X231 Term of Time Deposits. Time deposits shall be issued for a specific period of term.

Sec. X232 Special Time Deposits Authority shall be automatically granted to any accredited banking institution which may participate in the supervised credit program to accept special time deposits from the Agrarian Reform Fund Commission with interest lower than the rate allowed on time deposits accepted from the general public. Such deposits shall be exempt from the legal reserve requirements, as an exception to the existing policies on the matter.

Sec. X233 Certificates of Time Deposit

a. *Negotiable Certificates of Time Deposit (NCTDs)*

(1) UBs/KBs may issue NCTDs without approval of the BSP.

(2) TBs/RBs/Coop Banks may issue NCTDs upon the prior approval of the BSP.

b. *Non-Negotiable Certificates of Time Deposit*

Banks may issue long-term non-negotiable tax-exempt certificates of time deposit without approval of the BSP**.**

§ X233.1 *Prerequisites to issue negotiable certificates of time deposits for thrift banks/rural banks/cooperative banks.* In addition to the *Standard Pre-qualification Requirements for the Grant of Banking Authorities* enumerated in *Appendix 5*, a TB/RB/Coop Bank applying for authority to issue NCTDs shall also comply with the following requirements:

a. Applicant's capital must be at least P150.0 million. For this purpose, capital shall have the same meaning as in Sec. X111; and

b. It must be a member of the PDIC in good standing.

§ X233.2 *Requirements for issuing negotiable certificates of time deposits* After a TB's/RB's/Coop Bank's application to issue NCTDs has been approved, it may actually issue the same subject to the following conditions:

a. Submission of a certification signed by the president/chairman of the board of the bank stating that the requirements enumerated under Subsec. X233.1 have been complied with up to the day before the NCTDs are actually issued to the public; and

b. That it has complied with all other conditions that the BSP may impose.

The applicant bank shall submit a written notice to the appropriate department of the SES of the actual date when the NCTDs are actually issued to the public not later than ten (10) banking days from such issuance.

§ X233.3 *Minimum features*

a. *Form; denomination* - NCTDs may be issued in bearer or other form denoting negotiability and shall have a standard format to be prescribed by the BSP which shall be prenumbered serially and predenominated. The minimum denomination shall be at the discretion of the issuing bank. No certificate payable to bearer shall contain words prohibiting its negotiation.

b. *Term* - The minimum maturity of the certificates shall be 731 days.

c. *Manner of issuance* - The certificates shall be issued only upon receipt of funds equivalent to their face value.

d. *Manner of printing* - NCTDs shall be printed on security paper by the Security Printing Plant (SPP) of the BSP.

Orders for the printing of the desired forms shall not exceed a total value equivalent to twenty percent (20%) of the issuing bank's capital accounts (based on the quarter immediately preceding the request for printing) at any one time. Additional orders for printing which shall result in an excess over the prescribed benchmark shall require prior BSP approval.

§ X233.4 *Insurance coverage.* The NCTDs shall be insured with the PDIC. Banks issuing bearer certificates shall imprint on the instrument the following:

"For purposes of deposit insurance by the PDIC, the holder shall have his name registered in the books of the issuing bank."

§ X233.5 *Desistance from issuing new negotiable certificates of time deposits* Unless authorized by the BSP, TBs/RBs/Coop Banks with outstanding NCTDs shall immediately desist from issuing new NCTDs.

All outstanding NCTDs shall be valid and negotiable up to their maturity dates and shall not be subject to renewal.

§ X233.6 *Sanctions.* If any part of the certification submitted by the bank as required in these guidelines is found to be false, the following sanctions shall be imposed, without prejudice to the sanctions under Section 35 of R.A. No. 7653.

a. *On the bank*

Suspension of its authority to issue NCTDs for one (1) year.

b. *On the certifying officer*

A fine of P5,000 per day from the time the certification was made up to the time the certification was found to be false.

§§ X233.7 - X233.8 *(Reserved)*

§ X233.9 *Long-term negotiable certificates of time deposit.* The following guidelines shall govern the issuance of long-term negotiable certificates of time deposit (LTNCTD) with a minimum maturity of five (5) years:

a. *Prior BSP approval.* No LTNCTD shall be issued without the prior approval of the BSP.

b. *Application for authority of the issuing bank.* An application for authority on each issue/issue program of LTNCTD shall be filed with the appropriate department of the SES: *Provided,* That the issue period of an issue program of two (2) or more tranches shall not exceed one (1) year from approval.

The application shall be signed by the president/country manager (branch of a foreign bank) of the bank. It shall be accompanied by a certified true copy of the resolution of the bank's board of directors authorizing the issuance of LTNCTD indicating, among others, the issue size, offering period, purpose or intended use of proceeds thereof, registry bank, underwriter/arranger, selling agent(s) and market maker(s).

c. *Pre-qualification requirements*

(1) *Issuing bank*

A bank applying for authority to issue an LTNCTD shall comply with the following requirements:

(a) It has complied with the following capital adequacy requirements:

(i) Minimum capitalization as defined under Sec. X111; and

(ii) Risk-based capital adequacy ratio under Sec. X115 within the sixty (60) days immediately preceding the date of application;

(b) It has not incurred net weekly reserve deficiencies within eight (8) weeks immediately preceding the date of application;

(c) It has generally complied with banking laws, rules and regulations, orders or instructions of the Monetary Board and/ or BSP Management in the last two (2) preceding examinations prior to the date of application, more particularly:

(i) The ceilings on credit accommodations to DOSRI;

(ii) Liquidity floor requirements for government deposits;

(iii) Single borrower's loan limit; and

(iv) Investment in bank premises and other fixed assets;

(d) It maintains adequate provisions for probable losses commensurate to the quality of its asset portfolio but not lower than the required valuation reserves as determined by the BSP;

(e) It does not have float items outstanding for more than sixty (60) calendar days in the "Due From/To Head Office/Branches/Offices" accounts and the "Due From Bangko Sentral" account exceeding one percent (1%) of the total resources as of date of application;

(f) It has no past due obligations with the BSP or with any government FI;

(g) It has established a risk management system appropriate to its operations characterized by clear delineation of responsibility for risk management, adequate risk measurement systems, appropriately structured risk limits, effective internal controls and complete, timely and efficient risk reporting system;

(h) It has a CAMELS Composite Rating of at least "3" in the last regular examination; and

(i) It is a member of PDIC in good standing.

(2) *Registry bank*

(a) It may be a UB, a KB, or such other specialized entity that may be qualified by the Monetary Board;

(b) In the case of a UB or a KB:

(i) It must be a third party:

(aa) with no subsidiary/affiliate relationship with the issuing bank; and

(bb) which is not related to the issuing bank in any manner that would undermine its independence.

(ii) It must have adequate facilities and the organization to do the following:

(aa) Maintain the Electronic Registry Book (ERB);

(bb) Deliver transactions within the agreed trading period; and

(cc) Issue registry confirmations to holders of LTNCTDs.

(iii) It must have a CAMELS Composite Rating of at least "3" in the last regular examination.

(3) *Underwriter/Arranger*

(a) It is either a UB or an IH: *Provided,* That if an offering is on a best-efforts basis, such arranger may also be a KB;

(b) It must be a third party, such that:

(i) it has no subsidiary/affiliate relationship with the issuing bank; and

(ii) it is not related in any manner that would undermine the objective conduct of due diligence.

(c) Underwriters must be well-capitalized and must have adequate risk management as evidenced by compliance with Items "*c(1)(a), (d), (g) and (h)*" as may be applicable.

(4) *Selling agent*

It may be any FI, with dealership or brokering license, under the regulatory supervision of the BSP.

(5) *Market maker*

(a) It must not be the issuing bank;

(b) It must be a third party which is not related to the issuing bank in any manner that would undermine its independence;

(c) It must be a FI, with dealership or brokering license, under the regulatory supervision of the BSP; and

(d) It must be well-capitalized and must have adequate risk management as evidenced by compliance with Items *"c(1)(a), (d), (g) and (h)"* as may be applicable.

d. *Additional requirements for the issuance of LTNCTD*. After a bank's application to issue an LTNCTD has been approved, it may issue the same, subject to the submission of the following additional requirements:

(1) At least fifteen (15) days before the date of offering:

(a) Written waiver of the secrecy of deposits on said LTNCTD by the issuing bank, its subsidiaries, affiliates and wholly or majority-owned or -controlled entities of such subsidiaries and affiliates;

(b) Information disclosure and the terms and conditions of the LTNCTD issuance;

(c) Promotional materials; and

(d) Specimen of the proposed registry confirmation and purchase advice from each selling agent/market maker which will evidence sale of the LTNCTD.

(2) Within ten (10) days after issuance of the initial and subsequent tranches:

Written notice to the appropriate department of the SES of the actual date of initial/tranche offering accompanied by a certification by the president/country manager that the pre-qualification requirements under Item "*c(1)*" have been complied with up to the time of offering.

e. *Functions/responsibilities of the parties involved.* The respective parties shall have, among others, the following functions/responsibilities:

(1) *Registry bank*

(a) Generates and maintains the ERB;

(b) Records any transfer of ownership;

(c) Issues and sends registry confirmation to holders;

(d) Functions as paying agent for periodic interest and principal payments; and

(e) Monitors compliance with the prohibition on holdings of LTNCTD, as prescribed under Item *"h"* hereof.

(2) *Underwriter/Arranger*

(a) Conducts due diligence on the issuing bank and determines the valuation/ pricing of the primary issue;

(b) Prepares the prospectus/information disclosure/updates for multi-tranche issues;

(c) Formulates the distribution/ allocation plan for the initial offering and ensures proper and orderly distribution of the primary sale/issue of the LTNCTDs;

(d) Disseminates information to prospective depositors/investors of LTNCTDs on the terms and conditions of the issue (including information of non-pretermination by the depositor prior to original maturity and the liquidity mechanism in secondary trades) and the rights and obligations of the holder, issuer, market maker/selling agent, underwriter/ arranger and registry bank; and

(e) When selling to its clients, it must perform the functions/responsibilities of the selling agent under Items *"e(3)(a) and (b)"*.

(3) *Selling agent*

(a) Verifies identity of each investor and applies other standards to combat money laundering as required under Sec. X801; and

(b) Issues the purchase advice for the primary offering of the LTNCTDs.

(4) *Market maker*

(a) Sets independent pricing for the secondary trading of LTNCTDs;

(b) Posts daily the bid and offer prices for the LTNCTDs on the screen of at least one (1) of the information providers until the operation of a fixed income exchange for LTNCTDs;

(c) Verifies identity of each investor and applies other standards to combat money laundering as required under Sec. X801;

(d) Issues the purchase advice for the secondary sale of the LTNCTDs; and

(e) Ensures secondary market transfers and registration in coordination with the registry bank.

f. *Change of Underwriter/Arranger, registry bank, selling agent(s)/market maker(s).* After an application for authority to issue LTNCTDs has been approved by the BSP, the issuing bank cannot change its underwriter/arranger, registry bank, selling agent(s) and market maker(s) without the prior approval of the BSP.

g. *Waiver of the secrecy of deposits for market makers.* A market maker who holds an LTNCTD for its own account must issue a waiver of the secrecy of deposits in favor of the BSP for examination purposes. Any information obtained from an examination of said LTNCTD shall be held strictly confidential.

h. *Prohibition on holdings of LTNCTDs.* The issuing bank including its related companies (subsidiaries and affiliates and wholly or majority-owned or -controlled entities of such subsidiaries and affiliates) cannot be a holder of the LTNCTDs of the issuing bank.

The issuing bank shall provide the registry bank with an updated list of all related companies. This report shall be a *"Category B"* report.

For purposes of this Subsection, an affiliate is an entity, at least twenty percent (20%) but not exceeding fifty percent (50%)

of the outstanding voting stock of which is, owned by the issuing bank.

i. *Agreements between issuing bank and registry bank/selling agent(s)/market maker(s).* The agreements between the issuing bank and the registry bank/market makers/selling agents shall comply with the provisions of Sec. X162 on bank service contracts. The issuing bank shall be liable for any damages to investors/depositors caused by actions of said registry bank, selling agent(s)/market maker(s) contrary to the agreements entered into.

j. *Minimum features*

(1) *Form; denomination* - An LTNCTD shall be in scripless form with a third party registry bank maintaining the ERB. To have legal effect, it shall comply with the provisions of R.A. No. 8792 (Electronic Commerce Act) particularly on the existence of an assurance on the integrity, reliability and authenticity of the LTNCTD in electronic form. LTNCTDs shall be registered in the name of individuals or corporations, negotiable and prenumbered serially. The minimum denomination shall be at the discretion of the issuing bank.

(2) *Currency* - Denomination shall be in Philippine pesos.

(3) *Term* - The minimum maturity of the LTNCTDs shall be five (5) years.

(4) *Primary Offering/Secondary Trading* - The initial offering shall be executed through an underwriter or an arranger. Subsequent negotiations in secondary trading must be executed through authorized market maker(s).

k. *Purchase Advice and Registry Confirmation*

(1) The Purchase Advice and Registry Confirmation shall conspicuously contain the following *caveat*:

(a) *"This LTNCTD cannot be terminated by the holder nor the Issuing Bank before (maturity date). However, negotiations/transfers from one (1) holder to another do not constitute pretermination."*

The *caveat* shall apply if the issuing bank commits no pretermination. Otherwise, it shall read as follows:

"This LTNCTD cannot be terminated by the holder before (maturity date). However, it may be preterminated at the instance of the Issuing Bank upon prior notice to the holder on record. Negotiations/transfers from one (1) holder to another do not constitute pretermination"; and

(b) *"All negotiations/transfers of this LTNCTD prior to maturity must be coursed through a Market Maker".*

(2) The selling agent/market maker shall issue a Purchase Advice to evidence initial purchase/secondary trading of LTNCTD with the original copy given to the holder.

(3) The registry bank shall issue a Registry Confirmation to evidence ownership of the LTNCTD, with the original copy given to the holder.

l. *Issue size and aggregate ceiling.* An issuing bank can issue LTNCTDs up to 300% of its total capital accounts as defined under Subsec. X111/X105.5: *Provided*, That each issue/issue program size does not exceed P5.0 billion pesos. This ceiling shall be subject to a regular review by the BSP.

m. *Deposit insurance coverage*. The LTNCTDs shall be insured with the PDIC, subject to applicable rules and regulations, among others, on maximum insurance coverage.

n. *Pretermination by the issuer*. LTNCTDs may be preterminated by the issuing bank, subject to the following conditions:

(1) The Information Disclosure, Purchase Advice and Registry Confirmation shall include the information that the LTNCTD may be preterminated by the issuing bank;

(2) Thirty (30)-day prior notification must be given to the appropriate department of the SES together with the justification for the pretermination;

(3) Thirty (30)-day prior notification to holders of record;

(4) Notwithstanding any agreement to the contrary, the issuer shall shoulder the tax due on the interest income already earned by the holders; and

(5) The issuing bank's reserve positions shall be recomputed retroactively based on the applicable reserve rate(s) for regular time deposits during the affected periods.

If the recomputed amounts result in a reserve deficiency, the issuing bank shall be fined with the corresponding monetary penalties. The preceding monetary penalty, however, shall not be imposed if pretermination by the issuer is due to a change in law or regulation that will increase the cost of maintaining the LTNCTDs.

o. *Non-pretermination by the holder*. Presentation of the LTNCTD to the issuing bank for payment before the maturity date is not allowed. However, negotiation or transfer from one (1) holder to another shall not constitute pretermination of the LTNCTD.

p. *Sanctions*. Without prejudice to the other sanctions prescribed under Section 37 of R.A. No. 7653 and the provisions of Section 16 of R.A. No. 8791, the following sanctions will be imposed on any issuing bank, registry bank and other parties for failure to perform their respective functions/responsibilities and for non-disclosure or misrepresentation of information:

(1) *On the issuing bank* - Suspension of its authority to issue LTNCTDs, disqualification from future issuance of LTNCTDs and a monetary penalty of P30,000 for each violation.

(2) *On the registry bank* - Disqualification to be a registry bank for one (1)-year and a monetary penalty of P30,000 for each violation.

(3) *On all authorized selling agents/ market makers* - Disqualification to be appointed as selling agent/market maker for one (1) year and a monetary penalty of P30,000 for each violation.

(4) *On the certifying officer* - A fine of P5,000 per day from the time of required disclosure up to the time disclosure was made; or from the time misrepresentation was made up to the time the information was corrected.

(5) *On the responsible officer* - A fine of P30,000 for participating or confirming in the non-disclosure or misrepresentation of information.

(As amended by Circular No. 585 dated 15 October 2007)

§ X233.10 *(Reserved)*

§ X233.11 *Long-term non-negotiable tax-exempt certificates of time deposit* The issuance of long-term non-negotiable tax-exempt certificates of time deposit shall be governed by the following rules:

a. *Minimum features*

(1) *Form; denomination* - The certificate shall contain words denoting its non-negotiability and shall be issued by banks only in the name of individuals with denominations in increments of P1,000.00.

(2) *Term* - The minimum maturity of the certificate shall be five (5) years.

(3) *Manner of issuance* - The certificate shall be issued only upon receipt of funds equivalent to their face value.

(4) *Manner of printing* - The certificate shall be printed on security paper.

(5) *Pre-termination* - In case of pre-termination, the deposit shall be subject to income tax as provided under Section 24(B)(1) of the Tax Reform Act of 1997 which states that "xxx a final tax shall be imposed on the entire income and shall be deducted and withheld by the depository bank from the proceeds of the

long-term deposit or investment certificate based on the remaining maturity thereof:

(a)	Four (4) years to less than five (5) years	5%
(b)	Three (3) years to less than four (4) years	12%
(c)	Less than three (3) years	20%

b. *Insurance coverage*. The deposits shall be insured with the PDIC, subject to applicable rules and regulations, among others, on maximum insurance coverage.

c. *Reserves against long-term non-negotiable certificates of time deposit*. The rate and form of required reserves on regular time deposit shall also apply to the required reserves on long-term non-negotiable tax-exempt certificates of time deposit.

E. DEPOSIT SUBSTITUTE OPERATIONS (QUASI-BANKING FUNCTIONS)

Sec. X234 Scope of Quasi-Banking Functions. The following rules and regulations shall govern the quasi-banking operations of banks.

§ X234.1 *Elements of quasi-banking* The essential elements of quasi-banking are:

a. Borrowing funds for the borrower's own account;

b. Twenty (20) or more lenders at any one (1) time;

c. Methods of borrowing are issuance, endorsement, or acceptance of debt instruments of any kind, other than deposits, such as acceptances, promissory notes, participations, certificates of assignments or similar instruments with recourse, trust certificates, repurchase agreements, and such other instruments as the Monetary Board may determine; and

d. The purpose of which is (1) relending, or (2) purchasing receivables or other obligations.

§ X234.2 *Definition of terms and phrases.* The following terms and phrases shall be understood as follows:

a. *Borrowing* shall refer to all forms of obtaining or raising funds through any of the methods and for any of the purposes provided in Subsec. X234.1 whether the borrower's liability thereby is treated as real or contingent.

b. *For the borrower's own account* shall refer to the assumption of liability in one's own capacity and not in representation, or as an agent or trustee, of another.

c. *Purchasing of receivables or other obligations* shall refer to the acquisition of claims collectible in money, including interbank borrowings or borrowings between financial institutions, or of acquisition of securities, of any amount and maturity, from domestic or foreign sources.

d. *Relending* shall refer to the extension of loans by an institution with antecedent borrowing transactions. Relending shall be presumed, in the absence of express stipulations, when the institution is regularly engaged in lending.

e. *Regularly engaged in lending* shall refer to the practice of extending loans, advances, discounts or rediscounts as a matter of business, as distinguished from isolated lending transactions.

§ X234.3 *Transactions not considered quasi-banking.* The following shall not constitute quasi-banking:

a. Borrowing by commercial, industrial and other non-financial companies through any of the means listed in Subsec. X234.1 hereof, for the limited purpose of financing their own needs or the needs of their agents or dealers; and

b. The mere buying and selling without recourse of instruments mentioned in Subsec. X234.1: *Provided*, That:

(1) The institution buying and selling without recourse shall indicate in conspicuous print on its instrument the

phrase *without recourse*, *sans recourse* or words of similar import that will convey the absence of liability or guarantee by said institution; and

(2) In the absence of the phrase *"without recourse", "sans recourse"* or words of similar import, the instrument so issued, endorsed or accepted, shall automatically be considered as falling within the purview of these regulations: *Provided, further,* That any of the following practices or practices similar and/or tantamount thereto in connection with a without recourse transaction is hereby prohibited:

(a) Issuance of postdated checks by a financial intermediary, whether for its own account or as an agent of the debt instrument issuer, in payment of the debt instrument, sold, assigned or transferred without recourse; or

(b) Issuance by a financial intermediary of any form of guaranty on sale transactions or on negotiations or assignment of debt instruments without recourse; and

(c) Payment with its own funds by a financial intermediary which assigned, sold or transferred the debt instrument without recourse, unless the financial intermediary can show that the issuer has with the said financial intermediary funds corresponding to the amount of the obligation.

§ X234.4 *Pre-conditions for the exercise of quasi-banking functions.* No bank shall engage in quasi-banking functions without authority from the BSP: *Provided, however,* That banks authorized by the BSP to perform universal or commercial banking functions shall automatically have the authority to engage in quasi-banking functions: *Provided, further,* That the authority to obtain funds from the public, which shall mean twenty (20) or more persons under Section 8.2 of R.A. 8791, is not a condition but an authorization for the bank or quasi-bank, once the Monetary Board has granted the quasi-banking license.

In addition to the Standard Pre-qualification Requirements for the Grant of Bank Authorities enumerated in *Appendix 5,* a TB securing BSP authority to engage in quasi-banking functions must meet the following requirements:

a. The bank must have a networth or combined capital of at least P650.0 million computed in accordance with Sec. X111;

b. The bank is well capitalized with risk-based capital adequacy ratio of not lower than twelve percent (12%) at the time of filing the application;

c. The bank's operation during the preceding calendar year and for the period immediately preceding the date of application has been profitable;

d. The bank has elected at least two (2) independent directors and all its directors have attended the required seminar for directors of banks conducted or accredited by the BSP;

e. The bank has established a risk management system appropriate to its operations characterized by clear delineation of responsibility for risk management, adequate risk measurement systems, appropriately structured risk limits, effective internal controls, and complete, timely and efficient risk reporting system; and

f. The bank has a CAMELS Composite Rating of at least "3" in the last regular examination with management rating of not lower than "3".

§ X234.5 *Certificate of Authority from the Bangko Sentral.* A bank securing BSP's Certificate of Authority to engage in quasi-banking functions shall file an application with the appropriate department of the SES. The application shall be signed by the bank president or officer of equivalent rank and shall be accompanied by the following documents:

a. Certified true copy of the resolution of the bank's board of directors authorizing the application;

b. A certification signed by the president or the officer of equivalent rank that the institution has complied with all conditions/prerequisites for the grant of authority to engage in quasi-banking functions;

c. An information sheet;

d. Bio-data signed under oath, of the members of the managerial staff who will undertake quasi-banking operations;

e. Borrowing-investment program for one (1) year which should include at the minimum:

(1) planned distribution of portfolios as to -

(a) underwriting;

(b) commercial paper markets;

(c) stocks and bonds;

(d) government securities;

(e) receivables financing, discounting and factoring;

(f) leasing; and

(g) direct loans;

(2) expected sources of funds to support investment program classified as to -

(a) maturity: short, medium and long-term;

(b) interest rates; and

(c) domestic or foreign sources whether institutional or personal.

TBs authorized to engage and are actually performing quasi-banking functions but do not meet the new capital requirement are hereby given a period of two (2) years reckoned from 11 November 2004 within which to comply with the minimum capital requirement in Subsec. X234.4 (a): *Provided,* That in case the TB has an approved capital build-up program under Subsec. X501.2, for its FDCU license, the approved capital build-up program, may be considered compliance with this requirement: *Provided, further,* That in case, the TB has no approved capital build-up program, the minimum capital requirement may be substituted by a capital build-up program for a period of not more than five (5) years from 11 November 2004 and which must be approved by the Monetary Board. Such capital build-up program shall be in equal annual or diminishing amounts and shall be submitted to the appropriate department of the SES within three (3) months from 11 November 2004.

TBs which fail to comply with the required capitalization upon expiration of said two (2) year period given them or those which fail to comply with approved capital build-up program shall liquidate their quasi-banking operations within one (1) year and shall be considered revoked/cancelled. The license of a TB with authority to engage in quasi-banking functions but has not actually engaged in quasi-banking functions and has not complied with the above minimum capital requirements as of 11 November 2004, shall automatically be revoked.

§ X234.6 *Sale, discounting, assignment or negotiation by banks of their credit rights arising from claims against the BSP.* Pursuant to the policy of the BSP to promote investor protection and transparency in securities transactions as important components of capital markets development, credit rights in Special Deposit Account (SDA) placements and reverse repo agreements with the BSP, shall not be subject of sale, discounting, assignment or negotiation on a *with or without recourse basis*.

Any violation of the provisions of this Subsection shall be considered a *less serious offense* and shall subject the bank and the director/s and/or officer/s concerned to the sanctions provided under Section X299.

(Circular No. 636 dated 17 December 2008)

Sec. X235 Deposit Substitute Instruments Any deposit substitute transaction by a bank performing quasi-banking functions shall be limited to its own promissory notes, repurchase agreements, and certificates of assignment/participation with recourse.

§ X235.1 *Prohibition against use of acceptances, bills of exchange and trust certificates.* Acceptances, bills of exchange, and trust certificates shall not be used by banks as evidence of deposit substitute liabilities in connection with their quasi-banking functions. This prohibition shall not apply to the acceptance or negotiation of bills of exchange in connection with trade transactions, or to the issuance of trust certificates creating trust relationships.

§ X235.2 *Negotiation of promissory notes.* Negotiable promissory notes acquired by banks in connection with their quasi-banking functions shall not be negotiated by mere indorsements and/or delivery, if they do not conform with the minimum features prescribed under Subsec. X235.3. If these notes do not contain the features, their negotiation shall be covered by any of the appropriate deposit substitute instruments above-mentioned.

§ X235.3 *Minimum features.* Deposit substitute instruments issued by entities performing quasi-banking functions shall have the following minimum features:

a. The present value and maturity value and/or the principal amount and interest rate and such other information as may be necessary to enable the parties to determine the cost or yield of the borrowing or placement shall be specified.

b. The date of issuance shall be indicated at the upper right corner of the instrument, and directly below which shall be the maturity period or the word "demand", if it is a demand instrument.

c. The payee may be identified by his trust account/deposit account number in both negotiable and non-negotiable instruments.

d. Securities which are the subject of a repurchase agreement or a certificate of assignment/participation with recourse, shall be particularly described on the face of said instruments or on a separate instrument attached and specifically referred to therein and made an integral part thereof as to the maker, value, maturity, serial number, and such other particulars as shall clearly identify the securities.

e. The instrument shall provide for the payment of liquidated damages, in addition to stipulated interest, in case of default by the maker or issuer, as well as attorney's fees and costs of collection in case of suit.

f. A conspicuous notice at the lower center margin of the face of the instrument that the transaction is not insured by the PDIC shall be indicated.

g. The corporate name of the issuer shall be printed at the upper center margin of the instrument and directly below which shall be a designation of the instrument, such as *"Promissory Note" or "Repurchase Agreement"*.

h. The words *"duly authorized officer"* shall be placed directly below the signature of the person signing for the maker or issuer.

i. Each instrument shall be serially pre -numbered.

j. The copy delivered to the payee shall bear the word *"Original"* and the copies retained by the issuer shall be identified as *"Duplicate"*, *"File Copy"* or words of similar import.

k. Only security paper with adequate safeguards against alteration or falsification shall be used.

Borrowings of banks from the loans and discounts window of other banks or non-bank financial intermediaries shall be exempted from the documentation requirements prescribed in this Subsection: *Provided,* That the exemption from the documentation requirements prescribed in this Subsection shall not be construed or interpreted as exempting said borrowings from other regulations standardizing deposit substitute instruments and from other BSP regulations on deposit substitutes.

Deposit substitute instruments shall conform to the language prescribed by the BSP. Any substantial deviation therefrom or any additional stipulation therein shall be referred to the BSP for prior approval. The size and appearance of these instruments, shall not be similar to the size and appearance of checks. Rubber stamping, typewriting or handwriting some provisions shall not be considered compliance with said regulations. (Shown in *Appendix 12* are the samples of standardized instruments as evidence of deposit substitute liabilities.)

§ X235.4 *Interbank loan transactions* Except for interbank loan transactions evidenced by interbank loan advice or repayment transfer tickets settled thru the DDAs with the BSP, all interbank loan transactions shall be evidenced by a promissory note containing the minimum features prescribed in Subsec. X235.3.

§ X235.5 *Delivery of securities* [1]

a. Securities, warehouse receipts, quedans and other documents of title which are the subject of quasi-banking functions, such as repurchase agreements, shall be physically delivered, if certificated, to a BSP accredited custodian that is mutually acceptable to the lender/purchaser and borrower/seller, or by means of book-entry transfer to the appropriate securities account of the BSP-accredited custodian in a registry for said securities, if immobilized or dematerialized while the overlying principal borrowing instrument shall be physically delivered to the lender/purchaser. The custodian shall hold the securities in the name of the borrower/seller, but shall keep said securities segregated from the regular securities account of the borrower/seller if the borrower/seller has an existing securities account with the custodian: *Provided,* That a bank/other entity authorized by the BSP to perform custodianship function may not be allowed to be custodian of securities issued or owned by said bank/entity, its subsidiaries or affiliates, or of securities in bearer form.

The delivery shall be effected upon payment and shall be evidenced by a securities delivery receipt duly signed by authorized officers of the custodian and delivered to both the lender/purchaser and seller/borrower.

Sanctions. Violation of any provision of Item *"a"* shall be subject to the following sanctions/penalties:

(1) *Monetary penalties*

First Offense - Fine of P10,000 a day for each violation reckoned from the date the violation was committed up to the date it was corrected.

Subsequent offenses - Fine of P20,000 a day for each violation reckoned from the date the violation was committed up to the date it was corrected.

(2) *Other sanctions*

First offense - Reprimand for the directors/officers responsible for the violation.

Subsequent offense -

(a) Suspension for ninety (90) days without pay of directors/officers responsible for the violation;

(b) Suspension or revocation of the accreditation to perform custodianship function;

[1] Amendments under Circular 392 dated 23 July 2003 shall take effect on 01 January 2005 for all securities transactions, regardless of the date of their execution under Circular 460 dated 12 November 2004.

(c) Suspension or revocation of the authority to engage in quasi-banking function; and/or

(d) Suspension or revocation of the authority to engage in trust and other fiduciary business.

b. The guidelines to implement the delivery by the seller of securities to the buyer or to his designated third party custodian are shown in *Appendix 68*.

The disposition of compliance issues of *Appendix 68* is shown in *Appendix 68a*.

The guidelines on the delivery of government securities to the investor's principal securities account with the Registry of Scripless Securities (RoSS) are in *Appendix 68b*.

Sanctions. Without prejudice to the penal and administrative sanctions provided for under Sections 36 and 37, respectively of R.A. No. 7653 (The New Central Bank Act), violation of any provision of the guidelines in *Appendix 68* shall be subject to the following sanctions/penalties depending on the gravity of the offense:

(a) *First offense* -

(1) Fine of up to P10,000 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected; and

(2) Reprimand for the directors/officers responsible for the violation.

(b) *Second offense* -

(1) Fine of up to P20,000 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected; and

(2) Suspension for ninety (90) days without pay of directors/officers responsible for the violation.

(c) *Subsequent offenses* -

(1) Fine of up to P30,000 a day for the institution for each violation from the date the violation was committed up to the date it was corrected;

(2) Suspension or revocation of the authority to act as securities custodian and/or registry; and

(3) Suspension for 120 days without pay of the directors/officers responsible for the violation.

(As amended by M-2007-002 dated 23 January 2007, M-2006-009 dated 06 July 2006, M-2006-002 dated 05 June 2006 and Circular No. 524 dated 31 March 2006)

§ X235.6 *Other rules and regulations governing the issuance and treatment of deposit substitute instruments*

a. If there is any stipulation that payment of the deposit substitute shall be chargeable against a particular deposit account, it shall further provide that the liability of the maker or issuer of the instrument shall not be limited to the outstanding balance of said account.

b. Any agreement allowing the issuer or maker to substitute the underlying securities shall further provide that the actual substitution shall be with the prior written consent of the payee.

c. Automatic renewal upon maturity of the instrument may be effected only under terms and conditions previously stipulated by the parties.

d. Stipulations between the maker or issuer and the payee which are embodied in separate instruments shall be specifically referred to in the deposit substitute instruments and made an integral part thereof.

e. In the case of repurchase agreements and certificates of assignment/ participation with recourse, the stipulation shall clearly state either (1) that the underlying securities are being delivered to the buyer or assignee as collaterals or (2) that the ownership thereof is being transferred to the buyer or assignee.

§§ X235.7 - X235.11 *(Reserved)*

§ X235.12 ***Repurchase agreements covering government securities, commercial papers and other negotiable and non-negotiable securities or instruments.*** The following regulations shall govern repurchase agreements covering government securities, commercial papers and other negotiable and non-negotiable securities or instruments of banks as well as sale on a without recourse basis of said securities by banks.

a. *Proper recording and documentation of repurchase agreements.*

Banks shall have a true and accurate account, record or statement of their daily transactions. As such, repurchase agreements covering government securities, commercial papers and other negotiable and non-negotiable securities or instruments must be properly recorded and documented in accordance with existing BSP regulations.

The absence of proper documentation for repurchase agreements is tantamount to willful omission of entries relevant to any transaction, which shall be a ground for the imposition of administrative sanctions and the disqualification from office of any director or officer responsible therefor under existing laws and regulations.

b. *Responsibilities of the chief executive officer (CEO) or officer of equivalent rank.*

It shall be the responsibility of the CEO or the officer of equivalent rank in a bank to:

(1) Institute policies and procedures to prevent undocumented or improperly documented repurchase agreements covering government securities, commercial papers and other negotiable and non-negotiable securities or instruments;

(2) Submit a notarized certification at the end of every semester that the bank did not enter into any repurchase agreement covering government securities, commercial papers and other negotiable and non-negotiable securities or instruments that are not documented in accordance with existing BSP regulations and that the bank has strictly complied with the pertinent rules of the SEC and the BSP on the proper sale of securities to the public and performed the necessary representations and disclosures on the securities particularly the following:

(a) Informed the clients that such securities are not deposits and as such, do not benefit from any insurance otherwise applicable to deposits such as, but not limited to, R.A. No. 3591, as amended, otherwise known as the PDIC law;

(b) Informed and explained to the client all the basic features of the security being sold on a without recourse basis, such as but not limited to:

(i) issuer and its financial conditions;

(ii) term and maturity date;

(iii) applicable interest rate and its computation;

(iv) tax features (whether taxable, tax paid or tax-exempt);

(v) risk factors and investment considerations;

(vi) liquidity feature of the instrument:

(aa) procedures for selling the security in the secondary market (e.g., OTC or exchange);

(bb) authorized selling agents; and

(cc) minimum selling lots.

(vii) disposition of the security:

(aa) registry (address and contact numbers);

(bb) functions of the registry; and

(cc) pertinent registry rules and procedures.

(viii) collecting and paying agent of the interest and principal; and

(ix) other pertinent terms and conditions of the security and if possible, a copy of the prospectus or information sheet of the security.

(c) Informed the client that pursuant to Subsecs. X235.5 and X238.1:

(i) Securities sold under repurchase agreements shall be physically delivered, if certificated, to a BSP-accredited custodian that is mutually acceptable to the client and the bank, or by means of book-entry transfer to the appropriate securities account of the BSP-accredited custodian in a registry for said securities, if immobilized or dematerialized; and

(ii) Securities sold on a without recourse basis are required to be delivered physically to the purchaser, or to his designated custodian duly accredited by the BSP, if certificated, or by means of book-entry transfer to the appropriate securities account of the purchaser or his designated custodian in a registry for said securities if immobilized or dematerialized.

(d) Clearly stated to the client that:

(i) The bank does not guarantee the payment of the security sold on a "without recourse basis" and in the event of default by the issuer, the sole credit risk shall be borne by the client; and

(ii) The bank is not performing any advisory or fiduciary function.

(3) Report to the appropriate department of the SES any undocumented repurchase agreement within seventy-two (72) hours from knowledge of such transactions.

c. *Treatment as Deposit Substitutes*. All sales of government securities, commercial papers and other negotiable and non-negotiable securities or instruments that are not documented in accordance with existing BSP regulations shall be deemed to be deposit substitutes subject to regular reserves.

d. *Certification*. The submission deadline for the required certification from the CEO/officer of equivalent rank of the bank shall initially be 01 February 2005 using the format attached as Annex A of *Appendix 65*. Thereafter, the required succeeding certification shall be submitted within five (5) banking days from end of reference semester using the format attached as *Appendix 65*.

e. *Sanctions*. The Monetary Board may, at its evaluation and discretion, impose any or all of the following sanctions to a bank or the director/s or officer/s found to be responsible for repurchase agreements covering government securities, commercial papers and other negotiable and non-negotiable securities or instruments that are not documented in accordance with existing BSP regulations:

(1) Fine of up to P30,000 a day to the concerned entity for each violation from the date the violation was committed up to the date it was corrected;

(2) Suspension of interbank clearing privileges/immediate exclusion from clearing;

(3) Suspension of access to BSP rediscounting facilities;

(4) Suspension of lending or foreign exchange operations or authority to accept new deposits or make new investments;

(5) Revocation of quasi-banking license;

(6) Revocation of authority to perform trust operations; and

(7) Suspension for one hundred twenty (120) days without pay of the directors/ officers responsible for the violation.

Sec. X236 Minimum Trading Lot and Minimum Term of Deposit Substitute

a. The minimum size of any single deposit substitute transaction shall be P50,000.

No bank performing quasi-banking functions shall issue deposit substitute instruments in the name of two (2) or more persons or accounts except those falling under the following relationships in which cases, commingling may be allowed: (a) husband and wife; (b) persons related to each other within the second degree of consanguinity; and (c) "in trust for" (ITF) arrangements.

b. The minimum term of any single deposit substitute transaction shall be fifteen (15) days except interbank borrowings, which shall not be subject to this limitation.

Sec. X237 Money Market Placements of Rural Banks. Banks shall not accept money market placements from any RB unless the latter presents a certification under oath stating: (a) that it has no overdue special time deposits; (b) that it has no past due obligations with the BSP or other government financial institutions; (c) the amount of its current obligations, if any, with said government financial institutions; and (d) the amount of its total outstanding money market placements. However, in no case shall such banks sell receivables to RBs without recourse.

§ X237.1 *Definition of terms.* As used in this Section, the following terms shall have the following meanings:

a. *Money market placements* shall include investments in debt instruments, including purchase of receivables with recourse to the lending institution, except purchase of government securities on an outright basis.

b. *Government securities* shall include evidences of indebtedness of the Republic of the Philippines, the BSP and other evidences of indebtedness or obligations of government entities the servicing and repayment of which are fully guaranteed by the Republic of the Philippines.

c. *Persistent violation* shall mean the violation of any of the provisions of these rules by the director or officer concerned for four (4) or more times within a twelve (12)-month period from the date the first offense was committed.

§ X237.2 *Conditions required on accepted placements not covered by prohibition.* Placements accepted which are otherwise not covered by the above prohibition must comply with the following conditions:

a. That total money market placements of an RB as stated in the certification, including the placement being accepted by the entity concerned, shall not exceed the RB's combined capital accounts or net worth less current obligations with the BSP or other government financial entities;

b. The maturity of the money market placement shall not exceed sixty (60) days; and

c. That placements shall be evidenced in all cases by promissory notes of accepting entities/repurchase agreements and/or certificates of participation/assignment with recourse and that underlying instruments shall be certificates of indebtedness issued by the BSP or other government securities the servicing and repayment of which are guaranteed by the Republic of the Philippines.

§ X237.3 *Sanctions.* Violations of the provisions of this Section shall be subject to the following sanctions/penalties:

a. *Monetary penalties*

First offense - Fines of P3,000 a day, reckoned from the date placement started up to the date when said placement was withdrawn, for each violation shall be assessed on the bank.

Subsequent offenses - Fines of P5,000 a day, reckoned from the date placement started up to the date placement was withdrawn, for each violation shall be assessed on the bank.

b. *Other sanctions*

First offense - Reprimand for the directors/officers who approved the acceptance/placement with a warning that subsequent violations will be subject to more severe sanctions.

Subsequent offenses -

(1) Suspension for ninety (90) days without pay for directors/officers who approved the placement.

(2) Suspension or revocation of the authority to engage in quasi-banking functions.

Sec. X238 Without Recourse Transactions No bank shall sell, discount, assign, or negotiate, in whole or in part, such as thru syndications, participations and other similar arrangements, any notes, receivables, loans, debt instruments and any type of financial asset or claim, except government securities, or be a party in any capacity in any of the above transactions, on a without recourse basis unless such receivables, notes, loans, debt instruments and financial assets or claims are registered with the SEC. This prohibition includes transactions between a bank and its trust department.

Unregistered commercial papers may be sold, discounted, assigned, or negotiated by banks to the following:

a. other banks;
b. QBs;
c. IHs;
d. insurance companies;
e. finance companies;
f. investment companies;
g. pension or retirement plan maintained by the government of the Philippines or any political subdivision thereof or managed by a bank or other persons authorized by the Bangko Sentral to engage in trust functions;
h. funds managed by another bank or other entities duly authorized to engage in trust or other fiduciary business; and
i. such other person as the SEC may by rule determine as qualified buyers, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial and business matters, or amount of assets under management.

§ X238.1 *Delivery of securities*[1]

a. Securities sold *on a without recourse basis* allowed under Sec. X238 shall be delivered physically to the purchaser, or to his designated custodian duly accredited by the BSP, if certificated, or by means of book-entry transfer to the appropriate securities account of the purchaser or his designated custodian in a registry for said securities, if immobilized or dematerialized, while the confirmation of sale or document of conveyance by the seller shall be physically delivered to the purchaser. The custodian shall hold the securities in the name of the buyer: *Provided,* That a bank/other entity authorized by the BSP to perform custodianship function may not be allowed to be custodian of securities issued or sold on a without recourse basis by said bank/ entity, its subsidiaries or affiliates, or of securities in bearer form.

The delivery shall be effected upon payment and shall be evidenced by a securities delivery receipt duly signed by the authorized officer of the custodian and delivered to the purchaser.

Sanctions. Violation of any provisions of Item *"a"* shall be subject to the following sanctions/penalties:

(1) *Monetary penalties*

First offense - Fine of P10,000 a day for each violation reckoned from the date the violation was committed up to the date it was corrected.

Subsequent offenses - Fine of P20,000 a day for each violation reckoned from the date the violation was committed up to the date it was corrected.

(2) *Other sanctions*

First offense - Reprimand for the directors/officers responsible for the violation.

Subsequent offense -

(a) Suspension for ninety (90) days without pay of directors/officers responsible for the violation;

[1] Effective 01 January 2005 under Circular 460 dated 12 November 2004.

(b) Suspension or revocation of the accreditation to perform custodianship function;

(c) Suspension or revocation of the authority to engage in quasi-banking function; and/or

(d) Suspension or revocation of the authority to engage in trust and other fiduciary business.

b. The guidelines to implement the delivery by the seller of securities to the buyer or to his designated third party custodian are shown in *Appendix 68*.

Sanctions. Violation of any provision of the guidelines in *Appendix 68* shall be subject to the sanctions/penalties under Item "*b*" of Subsec. X235.5.

(As amended by M-2007-002 dated 23 January 2007, M-2006-009 dated 06 July 2006 and M-2006-002 dated 05 June 2006, Circular No. 524 dated 31 March 2006)

§ X238.2 ***Sanctions.*** Unless specific sanctions are prescribed under these rules, any violation of the provisions of this Section shall be subject to any or all of the following sanctions:

a. Suspension of quasi-banking authority for a period of six (6) months; and

b. Monetary penalty of P500 per day per transaction for each officer of the bank involved in any capacity in any transaction violative of these regulations.

§ X238.3 ***Securities custodianship operations***

a. Securities sold on a without recourse basis shall be delivered to the purchaser, or to his designated custodian duly accredited by the BSP: *Provided,* That a bank/other entity authorized by the BSP to perform custodianship function may not be allowed to be custodian of securities issued or sold on a without recourse basis by said bank/ entity, its subsidiaries or affiliates, or of securities in bearer form. Existing securities being held under custodianship by banks/other entities under BSP supervision, which are not in accordance with said regulation, must therefore, be delivered to a BSP-accredited third party custodian. However, banks and other FIs under BSP supervision may maintain custody of existing securities of their clients who are unable or unwilling to take delivery pursuant to the provisions of Subsec. X235.5 but who declined to deliver their existing securities to a BSP accredited third party custodian subject to the following conditions:

(1) the custody arrangements with clients have been in existence prior to 05 November 2004 (effectivity of Circular 457 dated 14 October 2004);

(2) the dealing bank/NBFI under BSP supervision had been informed in writing by the client that he is not willing to have his existing securities delivered to a third party custodian;

(3) any BSP regulated institution shall not enter into securities transactions with a client who has outstanding securities not delivered to a BSP-accredited third party custodian; and

(4) it shall be the responsibility of any BSP regulated institution to satisfy itself that the person purchasing securities from it has no outstanding securities holdings which were not delivered to a BSP-accredited third party custodian.

Sanctions. Without prejudice to the penal and administrative sanctions provided for under Sections 36 and 37, respectively, of the R.A. No. 7653, violation of any provision of this Subsection shall be subject to the following sanctions/ penalties:

(1) *First offense* -

(a) Fine of up to P10,000 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected; and

(b) Reprimand for the directors/officers responsible for the violation.

(2) *Second offense* -

(a) Fine of up to P20,000 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected; and

(b) Suspension for ninety (90) days without pay of directors/officers responsible for the violation.

(3) *Subsequent offenses* -

(a) Fine of up to P30,000 a day for the institution for each violation from the date the violation was committed up to the date it was corrected;

(b) Suspension or revocation of the authority to act as securities custodian and/or registry; and

(c) Suspension for 120 days without pay of the directors/officers responsible for the violation.

b. Sec. X441 shall also govern the securities custodianship and securities registries of banks.

(As amended by M-2006-009 dated 06 July 2006, M-2006-002 dated 05 June 2006 and Circular No. 524 dated 31 March 2006)

Sec. X239 Issuance of Bonds. The following guidelines shall govern the issuance of bonds by banks with quasi-banking authority.

§ X239.1 *Definition of terms.* For purposes of this Section, unless the context clearly indicates otherwise, the following shall have the meaning as indicated:

a. *Government securities* shall refer to evidences of indebtedness of the Republic of the Philippines or its instrumentalities, or of the BSP, and must be freely negotiable and regularly serviced.

b. *Net book value* shall refer to the acquisition cost of property or accounts plus additions and improvements thereon less valuation reserves, if any.

c. *Current market value* shall refer to the value of the property as established by a duly licensed and independent appraiser.

§ X239.2 *Compliance with Securities and Exchange Commission rules on registration of bond issues.* All banks with quasi-banking authority issuing or intending to issue bonds shall comply with the New Rules on Registration of Long-Term Commercial Papers promulgated by the SEC (*Appendix 13*).

§ X239.3 *Notice to Bangko Sentral ng Pilipinas.* Within three (3) days from approval by SEC of its bond issue, the bank concerned shall notify the appropriate department of the SES of the approval attaching thereto the documents required by the SEC for the issuance and registration of the bond issue.

§ X239.4 *Minimum features.* Bonds issued by banks shall have the following minimum features:

a. *Form; issue price; denomination* - The trust indenture and the name of the indenture trustee shall be indicated on the face of the bond certificate.

The SEC-assigned bond registration number and expiry date, if any, shall likewise be indicated, stamped on the face of each bond certificate issued.

Bonds may be issued at face value, at a discount or at a premium. Minimum denomination shall be P20,000.

b. *Term* - The minimum term of the bonds shall be four (4) years. No optional redemption before the fourth year shall be allowed.

c. *Interest; manner; form of payment* - The bonds shall not be subject to interest rate ceilings prescribed by the Monetary Board or Act No. 2655, as amended.

d. *Trust indenture; collaterals; sinking fund* - A trust indenture shall be executed between the issuer and a qualified trust corporation as trustee, which shall neither be an affiliate nor a subsidiary of the issuer.

The following shall be deemed as eligible collateral and shall be maintained at respective values indicated in relation to the face value of the bond issue:

(1)	Government securities	-	Aggregate current market value of 100%
(2)	Readily marketable private securities listed in the big board of stock exchanges	-	Aggregate current market value of 150%
(3)	Real estate	-	Net book value of 100%
(4)	Unmatured receivables acquired with recourse	-	Net book value of 150%
(5)	Unmatured receivables acquired without recourse	-	Net book value of 200%

Government and private securities, certificates of title and documents evidencing receivables offered as security shall be physically delivered to the indenture trustee. Substitution of collaterals shall be allowed: *Provided,* That in no case shall the collateral fall below the herein required ratios.

The issuer may, at his option, provide for the retirement at maturity of the bond issue through the sinking fund to be deposited with and managed by the indenture trustee.

e. *Bond registry* - The bonds shall be fully registered as to principal and interest. The issuer, its trustee, agent or underwriter must maintain a bond registry duly approved by the SEC for recording initial and subsequent transfers the names of transferees, date of transfer, purchase price and serial numbers of bonds transferred.

§ X239.5 *Issuance of commercial papers.* The issuance of other forms of commercial papers by banks with quasi-banking authority shall be subject to the new rules on registration of short-term and long-term commercial papers appended hereto as *Appendices 13 and 14.*

F. GOVERNMENT DEPOSITS

Sec. X240 Statement of Policy. As a general policy, cash balances of the Government, its political subdivisions and instrumentalities as well as of government-owned or controlled corporations shall be deposited with the BSP, with only minimum working balances to be held by government-owned banks and such other banks incorporated in the Philippines as the Monetary Board may designate: *Provided,* That such banks may be authorized by the Monetary Board to hold deposits of the political subdivisions and instrumentalities of the Government beyond their minimum working balances whenever such subdivisions and instrumentalities have outstanding loans with said banks.

For purposes of this Section:

a. The term *government-owned or controlled corporations* shall refer to government-owned or-controlled corporations which are created by special laws. It shall exclude government FIs such as DBP, LBP and Al-Amanah Islamic Investment Bank of the Philippines, corporations which are created under the provisions of the Corporation Law (Act No. 1459, as amended) or the Corporation Code (BP Blg. 68) and private corporations which are taken over by government-owned or-controlled corporations.

b. *Minimum working balances* shall represent the minimum amounts necessary to enable the government instrumentality/political subdivision making the deposit to transact business efficiently and effectively as determined by the Department of Finance.

§ X240.1 *Prior Monetary Board approval.* No private bank shall, without prior approval of the Monetary Board, accept, as depository, any fund or money from the Government, its political subdivisions and instrumentalities, and government-owned or-controlled corporations; nor shall a private bank borrow any fund or money therefrom, through the issuance or sale of its acceptances, notes or other evidences of indebtedness.

§ X240.2 ***Banks which may accept government funds***

a. Banks, the majority of the capital of which is owned by the Government, may act as depository of funds of the Government, its political subdivisions and instrumentalities, and government-owned or-controlled corporations.

b. Private banks incorporated in the Philippines may act as depository of government funds only with the prior approval of the BSP. Local government units may maintain depository accounts preferably in government banks and, in exceptional cases and with the prior approval of the Monetary Board, in the name of their respective government units, in private banks located in or nearest to their respective areas of jurisdiction but the depository bank(s) must also seek the prior approval of the BSP: *Provided,* That a TB/RB/Coop Bank may only act as official depository of government funds pursuant to R.A. Nos. 7906, 7353 and 6938, as follows:

(1) a TB may only act as official depository of national agencies, and of municipal, city or provincial funds in the municipality, city or province where the TB is located;

(2) an RB may only act as official depository of municipal, city or provincial funds in the municipality, city or province where the RB is located; and

(3) a Coop Bank may accept deposits of all government departments, agencies and units of the national and local governments including government-owned or-controlled corporations.

c. Where there is no government bank or BSP office in the province and the nearest government bank or BSP office is inaccessible by ordinary transportation, or transporting/withdrawing the government deposits to and from the said office is impractical or risky, the province, as well as cities and municipalities located therein, may seek approval of the Monetary Board to consider all their funds eligible for deposits with a qualified private depository bank within the province, city or municipality, as the case may be.

d. Banks acting as official depository of government funds may accept demand, savings or time deposits.

e. The authority of a bank to accept government deposits does not obligate the Government, its subdivisions and instrumentalities and government-owned or-controlled corporations to deposit with that bank. Thus, even if a TB or RB is authorized by the Monetary Board to accept government deposits, a municipality is not obligated to deposit with that TB or RB. Similarly, a bank which is authorized to accept deposits of the Government or a government corporation because of outstanding loans granted by the bank cannot demand as a matter of right that the Government or government corporation make deposits unless there is a stipulation in the loan agreement.

§ X240.3 ***Prerequisites for the grant of authority to accept deposits from the Government and government entities.*** In addition to the *Standard Pre-qualification Requirements for the Grant of Banking Authorities* enumerated in *Appendix 5,* private banks applying for authority to accept deposits from the Government, its subdivisions and instrumentalities and government-owned or-controlled corporations and government banks applying for authority to accept government deposits in excess of minimum working balances shall also comply with the following conditions:

a. The applicant bank must have complied with the minimum capital required under Subsecs. X111.1 and X111.2; and

b. It must be a member of the PDIC in good standing.

c. The bank's CAMELS composite rating in its latest examination is not lower than three (3) with Management component score of not lower than three (3).

(As amended by Circular No. 526 dated 10 April 2006)

§ X240.4 *Application for authority.* An application for authority to accept government deposits shall be signed by the president of the bank and shall be filed with the appropriate department of the SES. The application shall be accompanied by a certification by the bank president or executive vice-president that the bank has complied with all the requirements enumerated under Subsec. X240.3.

Banks authorized to accept government funds as depository shall continuously comply with the conditions enumerated under Subsec. X240.3 even after the authority to accept government deposits has been granted and during the period while the banks actually hold government deposits, otherwise, any violation may be a basis for the imposition of sanctions against the bank, its directors and officers, or revocation of the authority to accept government deposits.

Deposits maintained by the Government, its subdivisions and instrumentalities and government-owned or-controlled corporations shall be supported by the following documents whenever applicable:

a. A copy of the resolution of the barangay, municipal or city council (Sangguniang Bayan/Panglunsod) or the provincial board (Sangguniang Panlalawigan) authorizing the deposit of municipal, city or provincial funds;

b. A copy of the resolution of the board of directors of the government-owned or-controlled corporations authorizing the deposit of funds of said corporations; or

c. In case of the National Government, its unincorporated branches, agencies and instrumentalities, a written authority to deposit government funds signed by the duly authorized official of the department, agency, office or unit making the deposit.

The resolution or authority should state the name and location of the depository bank, type and terms of the deposit, and that the amount to be deposited represents working balances.

§ X240.5 *Limits on funds of the Government and government entities that may be deposited with banks*

a. Funds of the Government, its subdivisions and instrumentalities and government-owned or-controlled corporation, deposited with banks authorized to receive deposits shall be limited to the minimum working balance of the depositor.

With prior Monetary Board approval, government or private banks may be authorized to accept amounts in excess of minimum working balances if the Government or government entity making the deposit has outstanding loan obligations to the depository bank but such amounts shall not exceed the amount of its outstanding loan obligations to the depository bank. The amount of non-transferable and non-negotiable government securities with market or below market interest rate at the time of issue, issued by the National Government to the depository bank shall be considered as "outstanding loans" of the National Government to said bank within the meaning of Section 113 of R.A. No. 7653.

b. The aggregate amount of government funds which a private bank can hold at any given time shall not exceed 200% of the bank's net worth.

c. Where any director, officer or stockholder of a private bank, as defined under Subsec. X326.1, is also an elective or appointive official of a municipality, city or province, said bank is prohibited from accepting deposits from said municipality, city or province unless it is the only bank existing therein: *Provided,* That this provision shall not be construed as a grant of authority to such elective or appointive public official to act as director or officer of a private bank.

§ X240.6 *Liquidity floor.* Unless otherwise prescribed by the Monetary Board, authorized government depository banks other than the BSP, and authorized private banks shall, inclusive of the required reserves against deposits and/or deposit substitutes, maintain a fifty percent (50%) liquidity floor with respect to deposits of, borrowings from, and all other liabilities to, the Government and government entities, in the form of transferable government securities which represent direct obligations of the National Government.

Government securities representing direct obligations of the National Government regardless of maturity, issued pursuant to the provisions of R.A. No. 245, as amended by P.D. No. 142, which are not otherwise earmarked or used as part of other reserve requirements of the BSP, shall be eligible as liquidity reserves.

Securities received pursuant to the Domestic Debt Exchange Offer of the Republic of the Philippines in exchange for securities that are eligible reserves for liquidity floor requirement shall, likewise be eligible as liquidity reserves.

Eligible securities being used as such reserve shall not in any way be encumbered or be subject to any transaction without prior approval of the BSP.

Also eligible for liquidity floor are the following:

a. The free portion of the *"Due from Bangko Sentral - Local Currency"* after satisfying the legal and other reserve requirements;

b. NDC Agri-Agra ERAP Bonds, which are not being used as alternative compliance with PD 717. Such bonds shall not in any way be encumbered or be subject to any transaction without prior approval of the BSP;

c. Securities backed by the unreleased Internal Revenue Allotments (IRA) of local government units (issued by a Special Purpose Trust administered by the DBP under the IRA Monetization Program of the Union of Local Authorities of the Philippines) the release of which IRA on scheduled date of payment has been certified by the Department of Budget Management (DBM) as not being subject to any conditionalities: *Provided,* That such securities shall be eligible only to the extent of the present value of the bond computed using the original yield to maturity (as of auction/issue date);

d. Tobacco Excise Tax Receivables Monetization Program Investment Certificates (TEXTR Certificates) backed by receivables representing the unreleased portion of the obligation of the National Government to its LGU for their share of the Tobacco Excise Taxes under R.A. No. 7171 amounting to P1.85 billion and covering the years 2001 and 2002: *Provided,* That such securities shall be eligible only to the extent of the present value of the securities computed using the original yield to maturity as of auction/issue date; and

e. Placement of banks in their SDA with the BSP, effective 10 May 2007.

For purposes of computing the fifty percent (50%) liquidity floor requirement on all government funds held by authorized banks, banks shall adopt a one (1)-week lag system, effective 04 May 2001.

Banks authorized to accept government deposits shall specify in the prescribed reports submitted to the SDC of the BSP the balance of government deposits subject to liquidity floor requirement and, if any, the corresponding GS earmarked for subject purpose.

(As amended by Circular Nos. 566 dated 03 May 2007 and 509 dated 01 February 2006)

§ X240.7 ***Exempt transactions.*** The following deposits of, borrowings from and/or liabilities to, the Government and government entities shall be exempt from the liquidity floor:

a. Obligations to the BSP arising from rediscounting facilities and sale of government securities under repo agreements made in connection with the provisions of Sec. X269 and Subsec. X601.1;

b. Special time deposits (STDs) and deposit substitutes under the special financing program of the Government and/or international FIs;

c. Obligations to the BSP consisting of emergency advances, overdraft facilities, and those arising from peso swap differentials and supervision and examination fees;

d. Marginal deposits on importations;

e. Due to the Treasurer of the Philippines (unclaimed deposit balances);

f. Funds held by participating financial institutions (PFIs) under the GSIS Housing Loan Programs: *Provided,* That the agreement between GSIS and the conduit banks specify that such funds may be held by the conduit banks for a period of not more than seven (7) calendar days prior to their release to the borrower and prior to the remittance by the conduit banks of payment to the GSIS;

g. Deposits of the BIR and BOC; and

h. Any other form of deposits, borrowings and/or liabilities specifically authorized by law or exempted by the Monetary Board.

§ X240.8 ***Reports.*** Banks shall submit to the appropriate department of the SES a report of their government deposits from all sources in the aggregate in the prescribed form.

§ X240.9 ***Sanctions.*** Any violation of this Section shall be a ground for the imposition of the following sanctions:

a. The deposit account with the BSP of the bank concerned shall be debited by the Accounting Department of the BSP in the amount of the unauthorized deposit or borrowing upon receipt of a report or notice from the appropriate department of the SES and the deposit account of the government institutions with the BSP shall be credited for the same amount. A copy of said report or notice of the SES shall be furnished each to the bank concerned and the government institutions.

b. The withdrawal of previously granted authority to accept government funds;

c. Without prejudice to the sanctions under Section 35 of R.A. No. 7653, the following administrative sanctions shall be imposed if any part of the certification as required in this Section is found to be false or misleading:

On the bank - Cancellation of the authority to accept government deposits if one has already been granted and/or disqualification to act as a government depository for not more than one (1) year.

On the certifying officer - A fine of P5,000 per day from the time the certification was found to be false, for each application filed with the BSP.

d. Any bank with deficiency in the required liquidity floor against deposits of, and/or borrowings from, the Government and government entities or with excess holdings of such deposits shall: (1) be denied the credit facilities of the BSP; and (2) if the deficiency lasts for four (4) consecutive weeks, the bank shall be prohibited from declaring cash dividends and making new loans and investments, except investments in government securities. The prohibition shall be lifted by the Governor of the BSP, upon certification by the appropriate department of the SES that the bank has had no deficiency in its liquidity floor and no excess holdings of government deposits for at least four (4) consecutive weeks.

§§ X240.10 - X240.14 ***(Reserved)***

§ X240.15 ***Acceptance by banks with internet banking facility of payment of fees for account of government entities*** Domestic private banks with BSP-approved internet banking facility are allowed to accept payment of fees/other charges of similar nature for the account of the departments, bureaus, offices and agencies of the government as well as all GOCCs: *Provided,* That the funds so accepted/ collected shall be treated as deposit liabilities subject to existing regulations on government deposits and shall not exceed the minimum working balance of the said government entities.

These banks are required to notify the appropriate department of the SES that supervises the bank, copy furnished the Head of the Technical Working Group on E-Banking, SDC, of the names of the government institutions that will interface with their systems and any changes that may subsequently be made on the arrangements.

Sec. X241 (Reserved)

G. INTEREST

Sec. X242 Interest on Deposits/Deposit Substitutes. Demand, savings, NOW accounts, time deposits and deposit substitutes shall not be subject to interest ceilings.

§ X242.1 ***Time of payment of interest on time deposits/deposit substitutes*** Interest or yield on time deposit/deposit substitute may be paid at maturity or upon withdrawal or in advance: *Provided, however,* That interest or yield paid in advance shall not exceed the interest for one (1) year.

§ X242.2 ***Treatment of matured time deposits/deposit substitutes***

a. A time deposit not withdrawn or renewed on its due date shall be treated as a savings deposit and shall earn interest from maturity to the date of actual withdrawal or renewal at a rate applicable to savings deposits.

b. A deposit substitute instrument not withdrawn or renewed on its maturity date shall from said date become payable on demand and shall earn an interest or yield from maturity to actual withdrawal or renewal at a rate applicable to a deposit substitute with a maturity of fifteen (15) days.

Banks performing quasi-banking functions shall continue to consider matured and unwithdrawn deposit substitutes as such and subject to reserves.

Sec. X243 Disclosure of Effective Rates of Interest. Banks are required to disclose to depositors the following information on interest computation and payments:

a. Type/kind of deposit;

b. Nominal rate of interest and period covered;

c. Manner of interest payment, i.e., whether credited in advance or otherwise;

d. Basis of interest payment, i.e., whether based on average daily balance compounded quarterly or otherwise;

e. Effective rate of interest expressed as a simple annual rate, on the basis of the information above given and indicating the formula used to arrive at the effective rate of interest; and

f. Illustration of basis of computing interest on a hypothetical deposit account.

Copies of the abovementioned information shall be made available to each and every depositor by attaching these copies to savings deposit passbooks and time deposit certificates. Posters disclosing the above information and aggregate deposit rates shall also be displayed conspicuously within the bank premises.

Secs. X244 - X252 (Reserved)

H. RESERVES AGAINST DEPOSIT AND DEPOSIT SUBSTITUTE LIABILITIES

Sec. X253 Accounts Subject to Reserves; Amounts Required. The following rules and regulations shall govern the reserves against deposit and deposit substitute liabilities.

§ X253.1 *Regular reserves against deposit and deposit substitute liabilities* The rates of regular reserves against deposit and deposit substitute liabilities in local currency of banks shall be as follows:

	UBs/KBs	TBs	RBs/ Coop Banks
a. Demand Deposits	8%[1]	4%	4%
b. NOW Accounts	8%	4%	4%
c. Savings Deposits	8%[1]	4%	1%
d. Time Deposits, Negotiable CTDs, Long-Term Non-Negotiable Tax-Exempt CTDs	8%[1]	4%	1%
Long-term NCTDs	2%	2%	2%
e. Deposit Substitutes	8%	4%	NA
f. IBCL (Sec. X343)	0%	0%	0%
g. Bonds	5%	5%	NA
h. Mortgage/CHM cert.	NA	5%	NA

Provided, That deposit substitutes evidenced by repo agreements covering government securities up to the amount equivalent to the adjusted Tier 1 capital of the bank shall be subject to the statutory reserve of two percent (2%)[2]: *Provided, further,* That such rate shall apply only to repo agreements, the documentation of which conforms with, and were delivered to a BSP accredited third party custodian as required under existing BSP regulations.
(As amended by Circular No. 632 dated 19 November 2008)

§ X253.2 *Liquidity reserves.* On top of the regular reserve requirements, liquidity reserves against peso demand, "NOW", savings, time deposit and deposit substitute liabilities shall be maintained, as follows:

Category of Banks	Liquidity Reserves
a. UBs/KBs	11%[1]
b. TBs	2%
c. RBs/Coop Banks	0%

The liquidity reserves for LTNCTDs shall be 0%.

The required liquidity reserves shall be maintained in the Reserve Deposit Account (RDA) with the BSP, or may be in the form of the following: *Provided,* That it complies with the guidelines shown in *Appendix 71*.

a. Short-term market-yielding government securities purchased directly from the BSP-Treasury Department;

b. NDC Agri-Agra ERAP Bonds which are not being used as alternative compliance with P.D. No. 717. Such bonds shall not in any way be encumbered or be subject to any transaction without prior approval of the BSP; and

c. Poverty Eradication and Alleviation Certificates (PEACe) bonds only to the

[1] Under Circular 632 dated 19 November 2008, the reduction in regular reserves shall be effective the reserve week starting 14 November 2008.

[2] The statutory reserve of two percent (2%) may not yet be availed of pending:
(a) the issuance of the pertinent market convention acceptable to BSP that shall govern deposit substitutes transactions evidenced by repo agreements covering government securities; and
(b) the opening for the purpose of a separate RoSS account with the Bureau of the Treasury by the BSP- accredited third party custodian.

extent of the original gross issue proceeds determined at the time of the auction, plus capitalized interest on the underlying zero-coupon Treasury Notes as and when the corresponding interest is earned over the life of the bonds.

Any deficiency in the liquidity reserves shall continue to be in the forms or modes prescribed under existing regulations for the composition of required reserves.

(As amended by Circular Nos. 632 dated 19 November 2008, 551 dated 17 November 2006 and 539 dated 09 August 2006)

Sec. X254 Composition of Reserves. The composition of the required reserves shall be as follows:

a. *Deposits with the BSP*. At least twenty-five percent (25%) shall be in the form of deposits with the BSP.

b. *Government securities and cash in vault*. The remaining portion of the required reserves may be held by all banks in the form of cash in vault and/or government securities or evidences of indebtedness of the Republic of the Philippines.

To support the implementation of the provisions of Subsecs. X343.3 and X601.3, the cash-in-vault (CIV) component of available reserves shall be based on the actual CIV balance outstanding one (1) banking day lag, for purposes of computing the reserve position of the current day.

For purposes of this Section, *government securities which may form part of the reserves against deposits/deposit substitute liabilities of banks* shall refer to bonds or other evidences of indebtedness representing direct obligations of the Government of the Republic of the Philippines: *Provided*, That such securities shall have the following minimum features/conditions:

(1) The securities must bear an interest rate of not more than four percent (4%) per annum, must be non-negotiable and shall carry BSP support; and

(2) The amount, maturity date and rate of interest must be definite and stated in the certificate itself.

Other government securities being used for reserve purposes shall continue to be eligible as such: *Provided*, That whenever said securities shall have matured, they shall be replaced by securities carrying the above features.

The securities held as reserves under Item *"b"* and last paragraph of Sec. X253 shall be valued at cost of acquisition and the bank may freely alter its composition: *Provided*, That any substitution or acquisition satisfies the eligibility requirements prescribed above: *Provided, further*, That the bank notifies the BSP of any such change in the prescribed forms not later than the reporting day following the change. Securities counted as reserves may not be hypothecated or encumbered in any way or earmarked for any other purpose without automatically losing their eligibility as reserves.

Only the buying/lending bank in an agreement covering eligible government securities may use such securities as reserves against deposits/deposit substitutes. Conversely, the selling/borrowing bank in a resale agreement covering eligible government securities may not use such securities as reserves against deposits/deposit substitutes.

The list of reserve-eligible and non-eligible securities may be found in *Appendix 15*.

The reserve eligibility of government securities under the reverse repo operations of the BSP shall be suspended during the term of the reverse repo agreement.

The phrase *non-reserve eligible* shall be stamped on the face of the custodian receipt being issued by the BSP to buyer FIs.

§ X254.1 *Allowable drawings against reserves.* Deposit with the BSP to comply with reserve requirements are not regular current accounts. The use, therefore, of

BSP checks for drawings against reserve deposits shall be limited to (a) settlement of obligations with the BSP, and (b) withdrawals to meet cash requirements.

§ X254.2 ***Exclusion of uncleared checks and other cash items.*** COCIs which have not been cleared yet through the Clearing Office should not be debited to the account *Due from the BSP* and should not be considered as available reserves against deposit/deposit substitute liabilities. Such items shall be debited to the *COCIs* account.

Only after the COCIs have been cleared through the Clearing Office can the bank debit the Due from the BSP account for said items.

§ X254.3 ***Interest income on reserve deposits.*** Deposits maintained by banks with the BSP up to forty percent (40%) of the reserve requirement (excluding the liquidity reserve mentioned in Subsec. X253.2 against the combined deposit and deposit substitute liabilities of banks allowed to be maintained in the form of short-term market yielding government securities purchased directly from the BSP Treasury Department) shall be paid interest at four percent (4%) per annum based on the average daily balance of said deposits to be credited quarterly.

The computation of quarterly interest payments credited to the DDAs of banks' legal reserve deposits with BSP are shown in *Appendix 54*.

Effective 01 July 2003, published interest rates that will be applied on BSP's Regular DDAs of banks shall be inclusive of the ten percent (10%) Value Added Tax (VAT).

§ X254.4 ***Book entry method for reserve securities.*** In the implementation of the book entry system for transactions in government securities eligible for reserves, transactions concerning reserve-eligible securities shall be entered in the respective securities account of each bank with the BSP and shall be evidenced by securities account debit or credit advices to be promptly furnished the institution/s concerned. No certificate shall be issued for any purpose. Transactions with third parties other than the BSP shall not be recognized.

Sec. X255 Exemptions from Reserve Requirements. The following shall be exempt from reserve requirements:

a. All collections credited to the special account *"Due to BSP - Internal Revenue Account (Other Cities and Municipalities)"*;

b. STDs from the Agrarian Reform Fund Commission and special savings deposits from farmer-borrowers; and

c. Unclaimed balances of deposit liabilities already reported to the Treasurer of the Philippines in accordance with the Unclaimed Balances Act (Act No. 3936, as amended) and transferred/reclassified from the deposit liability/other credit accounts to the liability account *"Due to the Treasurer of the Philippines"*.

Local banks may deduct from the amount of their gross demand deposits, the total of their *Due from Local Banks - Demand and Due from PNB - Clearing* in an amount not exceeding the total of their *Demand Deposits-Banks and Due to Local Banks*. As used herein, the term *gross demand deposits* shall mean the sum of all individual deposits, including deposits made by other local banks, the Philippine Government, its political subdivisions and instrumentalities, and GOCCs.

Sec. X256 Computation of Reserve Position. The reserve position of any bank and the penalty on reserve deficiency shall be computed based on a seven (7)-day week, starting Friday and ending Thursday, including Saturdays, Sundays, public special/legal holidays, non-banking days, unexpected declared non-banking days or declared half-day holidays and days when there is no clearing: *Provided,* That with reference to public special/legal holidays, non-banking days, unexpected declared non-banking days, declared half-day holidays and days when there is no clearing, the reserve position as calculated at the close of the business day immediately preceding such public special/legal holidays, non-banking days and unexpected declared non-banking days and declared half-day holidays and days when there is no clearing, shall apply thereon. For this purpose, the principal office in the Philippines and all other banking offices located therein shall be treated as a single unit.

The guidelines on the computation of a banks' reserve position during public sector holidays are shown in *Appendix 84*.
(As amended by M-2008-025 dated 13 August 2008)

§ X256.1 ***Measurement of reserve requirement.*** The required reserves in the current period (reference reserve week) shall be computed based on the corresponding levels of deposit and deposit substitute liabilities of the prior week.

§§ X256.2 – X256.4 ***(Reserved)***

§ X256.5 ***Guidelines in calculating and reporting to the Bangko Sentral the required reserves on deposit substitutes evidenced by repurchase agreements covering government securities***

a. The SDC shall determine the maximum allowable amount of repo agreements covering government securities that will qualify for the reduced statutory reserve requirements of two percent (2%). It shall be based on the amount reported by banks in their weekly Consolidated Daily Report of Condition. The adjusted Tier 1 capital reported daily should approximate the quarterly adjusted Tier 1 capital as submitted by banks in compliance with the provisions of Sec. X115 or X116, as applicable.

b. Any material differences that may be noted by the SDC between the daily and the quarterly report shall be considered as erroneous reporting and shall be subject to the penalties under existing regulations. The SDC shall also make a re-run of its computation of the bank's reserve position and in the event that the reserve position resulted to a reserve deficiency/ies, the corresponding penalties on reserve deficiencies shall also apply.

c. The lagged system in the measurement of a bank's reserve requirement, as provided in Subsec. X256.1, shall also be adopted in the calculation of the two percent (2%) statutory reserve requirements for repo agreements covering government securities.

d. Deposit substitutes evidenced by repo agreements covering government securities in excess of the adjusted Tier 1 capital shall be treated as regular deposit substitutes and shall be subject to the regular statutory and liquidity reserve requirements under existing regulations.

Sec. X257 Reserve Deficiencies; Sanctions. Whenever the reserve position of any bank computed in the manner specified in Sec. X256 is below the required minimum, it shall pay the BSP one-tenth of one percent (1/10 of 1%) per day on the amount of the deficiency or the prevailing ninety-one (91) day T-Bill rate plus three (3) percentage points, whichever is higher: *Provided, however*, That a bank shall be permitted to offset any reserve deficiency occurring one (1) or more days of the week covered by the report against excess reserves which it may hold on other days of the same week, and shall be required to pay the penalty only on the average daily net deficiency during the week.

In case of abuse, a bank shall automatically lose the privilege of offsetting reserve deficiency in the aforesaid manner until such time that it maintains its daily reserve position at the required minimum for at least two (2) consecutive weeks.

As used in this Section, "*abuse*"* in the privilege of offsetting reserve deficiencies against excess reserves shall mean having reserve deficiencies occurring four (4) or more times during any given week for two (2) consecutive weeks, whether or not resulting in net weekly deficiencies.

§ X257.1 *Chronic reserve deficiency; penalties.* In cases where the bank has chronic reserve deficiency in deposit/ deposit substitute liabilities, the bank shall be denied the credit facilities of the BSP; and the Monetary Board may:

(a) limit or prohibit the making of new loans or investments by the bank; and

(b) prohibit the declaration of cash dividends. The board of directors of said bank shall be notified of such chronic reserve deficiency and the penalties therefor, and be required to immediately correct the reserve position of the bank.

As used in this Subsection, *"chronic reserve deficiency"* shall mean having net reserve deficiencies for two (2) consecutive weeks.

§ X257.2 *Failure to cover overdrawings with the Bangko Sentral.* Any bank which incurs an overdrawing in its deposit account with the BSP shall fully cover said overdraft not later than the next clearing day including interest thereon equivalent to one-tenth of one percent (1/10 of 1%) per day or the prevailing ninety-one (91) day T-Bill plus three (3) percentage points, whichever is higher. In case a bank fails to cover its overdrawings, it shall be excluded from clearing on such day and it shall also be denied the credit facilities of the BSP. Such exclusion from clearing shall continue for as long as it has not maintained credit balances with the BSP for at least five (5) consecutive banking days. If its clearing account is overdrawn for five (5) consecutive banking days, it shall be prohibited from (a) making new loans or investments, except investment in government securities with BSP support; (b) declaring cash dividends until it has maintained credit balances in its BSP clearing account for at least fifteen (15) consecutive banking days; and (c) establishing branches. The denial from availment of credit facilities of the BSP shall continue for as long as the bank maintained credit balances with the BSP for at least fifteen (15) consecutive banking days.

For purposes of computing the total available reserves against deposit/deposit substitute liabilities, the total amount of overdrawing in the clearing account with the BSP shall be deducted from available reserves after the required reserves against deposit/deposit substitute liabilities shall have been satisfied.

§ X257.3 *Payment of penalties on reserve deficiencies.* Penalties if unpaid within fifteen (15) days from receipt of the assessment, shall be charged against the demand deposits of banks with the BSP: *Provided*, That where the bank's credit balance is insufficient and it fails to settle the assessment, the Monetary Board may limit or prohibit the making of new loans or investments by the bank.

Sec. X258 Report on Compliance. Every bank shall make a weekly report to the BSP of its daily required and available reserves on deposit/deposit substitute liabilities in the prescribed forms.

Secs. X259 - X260 (Reserved)

* The reserve weeks, 20 to 26 December 2002 and 27 December 2002 to 2 January 2003, shall be considered as a single reserve week for the purpose of determining "abuse" of the privilege of offsetting reserve deficiencies against excess reserves during the reserve week.

I. SUNDRY PROVISIONS ON DEPOSIT OPERATIONS

Sec. X261 Booking of Deposits and Withdrawals. The following regulations shall govern the booking of deposits and withdrawals of banks.

§ X261.1 ***Clearing cut-off time.*** As a general rule, all deposits and withdrawals during regular banking hours shall be credited or debited to deposit liability accounts on the date of receipt or payment thereof: *Provided, however,* That a bank may set a clearing cut-off time for its head office not earlier than two (2) hours before the start of clearing at the BSP, and not earlier than three and one-half (3-1/2) hours before the start of clearing for all its branches, agencies and extension offices doing business in the Philippines, after which time, deposits received shall be booked as hereinafter provided: *Provided, further,* That banks which are located in areas where there are no BSP regional/ clearing arrangements may set a clearing cut-off time not earlier than two (2) hours before the start of their local clearing after which time, deposits received shall be booked likewise as hereinafter provided.

§ X261.2 ***Definitions.*** As used in this Section, the following terms shall have the following meanings:

a. *Regular banking hours* shall refer to the banking hours reported to the BSP pursuant to Sec. X156, including the extended banking hours reported for servicing deposits and withdrawals; and

b. *Clearing cut-off time* shall mean the bank's closing time for the acceptance of deposits in the form of checks, bills and other demand items for clearing on the day of their receipt.

§ X261.3 ***Booking of cash deposits*** Cash deposits received after the selected clearing cut-off time until the close of the regular banking hours shall be booked as deposits on the day of receipt.

§ X261.4 ***Booking of non-cash deposits*** Deposits of checks including *"on us"* checks, *manager's/cashier's/ treasurer's checks* and *demand drafts*, which are drawn against the depository bank and all its offices, as well as treasury warrants and postal money orders, received after the selected clearing cut-off time until the close of the regular banking hours, may, at the option of the bank, be booked as deposits on the day of receipt.

Other non-cash deposits received after the selected clearing cut-off time shall be treated as contingent accounts on the day of receipt and shall be booked as deposits the following banking day.

§ X261.5 ***Booking of deposits after regular banking hours.*** Deposits, whether cash or non-cash, received after the close of the regular banking hours shall be treated as contingent accounts on the day of receipt and shall be booked as deposits the following banking day.

§ X261.6 ***Other records required*** For record and control purposes, banks shall prepare a daily abstract of deposit transactions treated as contingent accounts.

§ X261.7 ***Notice required.*** Banks shall post at a conspicuous place near each teller's window a notice to depositors indicating their selected clearing cut-off time and a statement to the effect that non-cash items deposited after said cut-off time shall be treated as transactions for the next banking day.

Sec. X262 Miscellaneous Rules on Deposits. Banks shall also be governed by the following miscellaneous rules on deposits.

§ X262.1 ***Specimen signatures, identification photos.*** All banking institutions are required to set a minimum of three (3) specimen signatures to be simultaneously required from each of their depositors and to update the specimen signatures of their depositors every five (5) years or sooner, at the discretion of the bank. Banks may, at their option, require their depositors to submit ID photos together with the specimen signatures.

§ X262.2 ***Insurance on deposits.*** All banks shall indicate the coverage of the PDIC in each passbook, certificate of time deposit and/or cover of checkbook for demand deposit/NOW accounts stating, among other things, the maximum amount of insurance.

§ X262.3 ***Certification of compliance with Subsection 55.4 of R.A. No. 8791*** Banks shall submit to the appropriate supervising and examining department of the BSP, through the Deputy Governor of SES, a statement within seven (7) banking days after end of June and December, signed solely by the Vice-President for Administration or Human Resource or Personnel, or by any officer assuming equivalent responsibility, certifying their institution's compliance with Subsection 55.4 of R.A. No. 8791, which prohibits banks from employing casual, nonregular personnel or too lengthy probationary personnel in the conduct of its business involving bank deposits. A format for the certification of compliance is shown in *Appendix 49*.

The definition contained in Articles 280-281 of the Labor Code of the Philippines for private banks and Section 2 of the Civil Service Commission Memorandum Circular No. 40 and Rule VII of Civil Service: Laws and Rules for government banks shall apply in classifying employee/personnel as casual, regular or probationary. Personnel with too lengthy probationary status are employees who are allowed to work after a probationary period of six (6) months without being considered a regular/ permanent employee.

Sec. X263 Service and Maintenance Fees Banks may impose and collect service charges and/or maintenance fees on savings and demand deposit accounts, whether active or dormant, that fall below the required minimum monthly average daily balance (ADB), subject to the following conditions:

a. the imposition of such charges or fees is clearly stated among the terms and conditions of the deposit;

b. the rate or amount of such charges or fees is properly disclosed among the terms and conditions of the deposit;

c. the deposit account balances have fallen below the required minimum monthly ADB for dormant accounts and for at least two (2) consecutive months for active accounts;

d. the required minimum monthly ADB of deposits are properly disclosed among the terms and conditions of the deposit; and

e. in the case of charges and fees for dormant accounts or dormancy fee, the period of dormancy as prescribed under Subsec. X185.12 shall be properly disclosed among the terms and conditions of the deposit, and that the depositors shall be informed by registered mail with return card or Proof of Delivery (POD) service of the Philippine Postal Corporation and other mail couriers on his last known address at least sixty (60) days prior to the imposition of dormancy fee.

Said Proof of Delivery Receipt will be accomplished upon the addressee-depositor's receipt of the letter, with the postal personnel or courier required to obtain and safekeep a copy of the signed POD, for submission to the sender/bank.

The PhilPost system likewise employs a Delivery/Monitoring Report that tallies the number of mails with POD received, delivered and returned per client/bank, indicating the name of the letter carrier, his signature and date signed. Said POD and Delivery/Monitoring Report may be system generated by the bank so as not to rely on the manual inscription of the required information by the PhilPost and/or other mail courier personnel.

Regardless of the forms adopted by the PhilPost and/or other mail couriers, the proper implementation of the POD service requires as a minimum, that the following information be stated clearly: (1) name and address of the addressee/depositor; (2) actual date of delivery/receipt; (3) name and address of sender/bank; and (4) name of recipient and relationship to the addressee/depositor.

§ X263.1 ***Amendments to terms and conditions for the imposition of service charges/fees.*** Any change in the terms and conditions for the imposition of service charges and/or maintenance fees, e.g., increase in the amount of such charges and fees or increase in the required minimum monthly average daily balance of deposits, shall take effect only after due notice to the depositor: *Provided*, That information by regular mail, statement of account messages, electronic mail, courier delivery and/or other alternative modes of communication on the depositor's last known address at least sixty (60) days prior to implementation shall be considered sufficient notice: *Provided*, *further*, That failure of the depositor to manifest or register his objection to the new service charges and maintenance fees or any change in their terms and conditions in writing within thirty (30) days from receipt of written notice of amendment shall be deemed to constitute acceptance of such changes, for purposes of this Subsection.

Banks shall likewise post said information on their respective websites, Automated Time Machine on-screen messages, and in conspicuous places within the bank premises and other places near the bank's own Automated Time Machine at least sixty (60) days prior to implementation.

Sec. X264 Unclaimed Balances. All unclaimed balances, which include credits or deposits of money, bullion, securities or other evidences of indebtedness of any kind, and interest thereon already reported to the Treasurer of the Philippines in accordance with the Unclaimed Balances Act (Act No. 3936, as amended) shall be transferred/reclassified from the deposit liability/other credit accounts to the liability account, "*Due to the Treasurer of the Philippines*," until they are deposited with or turned over to the Treasurer of the Philippines upon order of the court that the same have been escheated in favor of the Government of the Republic of the Philippines and as such, the unclaimed deposit liabilities shall no longer be covered by reserves required of deposit liabilities.

Sec. X265 Acceptance, Encashment or Negotiation of Checks Drawn in Favor of Commissioner/Collector of Customs All checks payable to the Commissioner/ Collector of Customs shall be accepted for deposit only to the account of the Commissioner/Collector of Customs. Banks where the Commissioner/Collector of Customs has no account shall not encash, accept nor negotiate checks payable to the Commissioner/Collector of Customs.

Any attempt to defraud the government or the bank through the irregular or unauthorized encashment or deposit of these checks to accounts other than that of the Commissioner/Collector of Customs shall be reported immediately by the head of the banking office to the BOC, copy furnished the BSP.

Sec. X266 Deposit Pick-up/Cash Delivery Services. The following are the guidelines on the deposit pick-up/cash delivery services of banks;

a. As a general rule, deposit pick-up/ cash delivery services shall be limited to the following:

(1) To service the need of valued clients whose daily average deposit amounts to:

P500 thousand – for Metro Manila and Metro Cebu clients/depositors

P300 thousand – for outside Metro Manila and Metro Cebu clients/depositors

(2) To be serviced during regular banking hours and days only, unless the nature of the business and the volume of the deposits/cash would warrant servicing beyond regular banking hours and days, in which case justification therefore should be submitted to the satisfaction of the appropriate department of the SES (Central Point of Contact Department (CPCD) I, CPCD II, Integrated Supervision Department (ISD) I, and ISD II).

b. Prior BSP authority is not required before banks can engage in deposit pick-up/cash delivery services: *Provided*, That the following conditions are complied with:

(1) Pick-up of deposits/cash delivery shall be made with the use of armored cars, which shall not be operated as a mobile bank used in soliciting deposits from the general public, or in any manner in carrying out banking transactions/services other than to afford security of deposit/cash items in transit;

(2) Pick-up of deposits/cash delivery may be made with the use of non-armored vehicles in the following cases/ circumstances:

(a) On an unscheduled request; *Provided,* That:

(i) all armored vehicles have already been fielded and the request has to be served immediately; and

(ii) it is within a five (5) kilometer radius of a servicing banking office.

(b) In rugged terrain/mountainous roads or roads not suitable for heavy armored vehicles;

(c) In critical or rebel-infested areas where there are peace and order problems as certified by the local police authorities; and

(d) In island provinces where the transport of cash to a branch or office may be made only with the use of a ferry boat:

Provided, That the non-armored vehicles are equipped with dual control safe and supported with adequate security back-up. Their movements may be coordinated with law enforcement authorities.

(3) The risk of loss involved in the pick-up of deposits/cash delivery shall be adequately covered by insurance, and the armored car/non-armored car to be used shall be provided, with at least two (2) armed guards and supervised by at least two (2) officers of the bank;

(4) The deposit/cash delivery transactions shall be booked in accordance with existing regulation;

(5) The strictest measure of safeguards, control and confidentiality will be adopted in implementing the services;

(6) A separate record/log book for each armored car/non-armored car shall be maintained by the bank which shall contain the information on the deposit pick-up/cash delivery activities of the armored car/non-armored car to be supported by "trip tickets" signed by a responsible officer of the bank; and

(7) Records and/or such other reports that may be required of the bank from time

to time shall be made available for examination/inspection by the authorized representative(s) of the appropriate department of the SES during on-site examination;

c. If the use of the non-armored car under Item "*b(2)(a)*" becomes regular, the bank shall engage an armored car to take its place. Regularity shall mean daily (i.e., regular banking days) or periodic (e.g., every 15th or end of the month) servicing of a valued client within a three (3) month period.

d. Pick-up of deposits/cash delivery services to be made on days other than the bank's regular banking days shall be allowed without prior BSP authority: *Provided*, That a notarized certification (using the format shown in *Appendix 82*) stating that the bank complies with all the conditions set forth in Sec. X266, jointly signed by the bank's executive vice president or officer of equivalent rank and by the bank's compliance officer, shall be submitted to the appropriate department of the SES (CPCD I, CPCD II, ISD I and ISD II) at least five (5) banking days before bank's intended starting date of its deposit pick-up/cash delivery services beyond regular banking hours and days to clients.

e. If any of the above conditions is not met, the BSP may suspend the deposit pick up/cash delivery operations of the bank without prejudice to the imposition of sanctions under Section 37 of R.A. No. 7653.

(As amended by Circular No. 614 dated 14 July 2008)

§ X266.1 *Operation of armored cars* Except for Item *"b(2)"* of this Section**,** banks shall use armored cars to afford security in collection and/or delivering cash or securities and other valuables from or to their clients, branch or extension offices or the BSP, provided such armored cars are not operated as mobile banks.

Sec. 1266 (Reserved)

Sec. 2266 (Reserved)

Sec. 3266 Qualifying Criteria Before a Rural/Cooperative Bank Engages in Deposit Pick-up Services

a. An RB/Coop Bank desiring to undertake deposit pick-up service must meet the following criteria:

(1) Its total resources should not be less than P100.0 million and its net assets should be at least P10.0 million or the minimum capital required under Subsec. X111.1, whichever is higher;

(2) It should not be deficient in its networth-to-risk assets ratio;

(3) Its past due loan ratio should not be more than fifteen percent (15%);

(4) It has no past due obligations with the BSP or with any government FI;

(5) It should have continuous profitable operations; and

(6) It must show adherence to law, and BSP rules and regulations.

b. An RB/Coop Bank that meets the above criteria shall submit for evaluation, the following justifications on the need for the RB/Coop Bank and its branches to undertake such service which should contain, among other things, the following:

(1) the names of clients/companies to be serviced, estimated daily average deposit and distance/proximity of client from applicant bank;

(2) the names and number of banks, branches, if any, in the area where depositor is situated;

(3) the arrangement in writing between the bank and the client desiring to avail of the service, which arrangement shall define and specify the respective responsibilities of the parties; and

(4) such other information pertinent to the application.

Sec. X267 Automated Teller Machines

a. *Off-site ATMs*. Banks may establish off-site ATMs, subject to the following conditions:

(1) Banks shall submit a report to the appropriate department of the SES on ATMs which they establish;

(2) The off-site ATMs shall be installed only in centers of activity like shopping centers, supermarkets, hospitals, university campuses: *Provided*, That adequate internal control and security measures shall be adopted and submitted to the BSP; and

(3) Only banks which have shown general compliance with laws, rules and regulations shall be allowed to open off-site *ATM*s.

b. *Mobile ATMs*. Banks may also establish mobile ATMs, subject to the following conditions:

(1) The mobile ATMs should be allowed to visit only centers of activity as mentioned in Item a(2) above and should confine their itinerary to Metro Manila until further notice;

(2) The bank shall secure insurance coverage or adopt a self-insurance scheme to protect itself against losses of whatever nature in its mobile ATM operations; and

(3) The bank shall notify the appropriate department of the SES of the actual date a mobile ATM becomes operational and when no longer in operation.

J. BORROWINGS FROM THE BANGKO SENTRAL

Sec. X268 Rediscounting Line. The following guidelines shall govern the operations of the BSP's rediscounting line by banking institutions.

(Circular No. 515 dated 06 March 2006)

§ X268.1 *Credit Information System* The rediscounting availments of all eligible banks shall be drawn against their rediscounting line which is based on their total credit score under the Credit Information System (CRIS). The scoring system under the CRIS shall consider the following factors:

a. Management and risk management system;

(1) Management; and

(2) Risk management system;

b. Financial indicators;

(1) Capital adequacy;

(2) Asset quality;

(3) Profitability; and

(4) Liquidity;

c. Credit experience;

(1) Compliance with the terms and conditions of the loan and other BSP regulations; and

(2) Credit experience with other FIs.

The CRIS guidelines shall be reviewed on a regular basis by a Credit Committee created under MB Resolution No. 832 dated 02 July 2008, to maximize its effectiveness in managing the credit risk of the BSP.

(Circular No. 515 dated 06 March 2006 as amended by Circular No. 630 dated 11 November 2008)

§ X268.2 *Application procedure* Banks applying for a rediscounting line shall submit their application in the prescribed form (RL Form No. 1) to the DLC, BSP- Manila or the appropriate Regional Loans and Credit Division (RLCD), BSP Regional Offices in Cebu, Davao and La Union, together with the following documents:

a. Board resolution duly signed by the board of directors of the applicant bank, authorizing the bank to apply for a rediscounting line with the BSP and designating the officer/s of the bank to sign and endorse documents pertaining thereto, together with their specimen signature/s;

b. Articles of incorporation (for new applicants only) and amendments, if any;

c. Organizational chart (for new applicants only);

d. List of board of directors and principal officers (top three (3) executive officers) and their education/training and work experience;

e. Annual report/AFS for the immediately preceding year; and

f. For banks applying for microfinance facility, a copy of the Manual of Operations pertaining to microfinance operations.

(Circular No. 515 dated 06 March 2006 as amended by Circular No. 630 dated 11 November 2008)

§ X268.3 *Approval/Renewal of the line* The approval/renewal of the line shall be subject to the bank's full compliance with the following requirements:

a. Minimum capital prescribed under Subsecs. X111.1 and X111.2 based on the latest available report of the SDC;

b. CAR as required under Sec. X115 or X116, as applicable based on the latest available report of the SDC except those with capital build-up program approved by the Monetary Board;

c. Required reserves against deposit liabilities/deposit substitutes for two (2) consecutive weeks based on the latest available report of the SDC;

d. NPL ratio lower or equal to the industry average adjusted upward by two percent (2%) based on the latest available report of the SDC, or the allowable NPL ratio approved by the Monetary Board;

e. Positive DDA balance with the BSP as of date of application;

f. No past due obligations or collateral deficiencies on account of matured notes/unremitted collections/ missing collaterals or ineligible papers with the BSP as of date of application;

g. A CAMELS composite rating of "3" or higher based on the latest general examination of the appropriate department of the SES; and

h. The ratio of past due direct and indirect loans to DOSRI to the aggregate past due loans should not be more than five percent (5%) based on latest available report of the SDC.

Banks applying for the microfinance facility shall also comply with the following requirements based on the latest available report of the SES:

a. At least one (1) year track record in microfinance;

b. At least 500 active microfinance borrowers;

c. A portfolio at risk ratio (PAR) of not more than five percent (5%);

d. The ratio of total collections (excluding prepayments) during the preceding twelve (12)-month period to total collectibles (past due microfinance loans beginning, plus matured loans/principal amortizations due for the period) should not be less than ninety-five percent (95%); and

e. Officers and staff responsible for microcredit operations shall have completed: (1) a training course on microfinance; and (2) at least one (1) year experience in microlending activities.

The approval, disapproval, extension, amendment, cancellation, suspension and restoration of the rediscounting line shall be delegated to a Credit Committee composed of the Assistant Governor/ Managing Director (MD) of the Monetary Operations Sub-Sector, MD of the Regional Monetary Affairs Sub-Sector, and the Director of the DLC.

Banks with approved rediscounting line shall, thereafter, submit the following:

a. Rediscounting line agreement (RL Form No. 3);

b. Surety agreement executed by the controlling interest [single stockholder, natural or juridical owning more than fifty percent (50%) of the voting stocks] obligating himself/itself jointly and severally with the bank to pay promptly on maturity, or when due, the BSP, its successors or assigns, the bank's outstanding obligations with the BSP (RL Form No. 4); and

c. For new applicant RBs/Coop Banks with designated custodian bank, a tripartite depository agreement (RLF Form No. 2) by and among the applicant bank, designated depository bank (duly concurred by its Head Office) and the DLC or RLCD.

(Circular No. 515 dated 06 March 2006 as amended by Circular No. 630 dated 11 November 2008)

§ X268.4 *Amount of line.* The amount of rediscounting line shall be based on the total credit score obtained by the applicant bank computed under the CRIS guidelines which ranges from fifty percent (50%) to 200% of adjusted net worth.

(Circular No. 515 dated 06 March 2006 as amended by Circular No. 630 dated 11 November 2008)

§ X268.5 *Term of the line.* The term of the line shall be for one (1) year unless sooner cancelled, suspended, amended or extended by the Credit Committee. The line is renewable annually upon submission of application one (1) month before the expiry of said line. Should there be special circumstances or information from the SES that may adversely affect the credit worthiness of a bank in the intervening period, the rediscounting line of the bank concerned will be reviewed immediately and acted upon accordingly.

(Circular No. 515 dated 06 March 2006 as amended by Circular No. 630 dated 11 November 2008)

§§ X268.6 - X268.9 *(Reserved)*

§ X268.10 *Constitutional prohibition* The following regulations shall govern the implementation of Section 16, Article XI of the Constitution, which reads as follows:

"Sec. 16. No loan, guaranty, or other form of financial accommodation for any business purpose may be granted, directly or indirectly, by any government-owned or controlled corporation or financial institution to the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, and the Constitutional Commissions, the Ombudsman, or to any firm or entity in which they have controlling interest, during their tenure."

a. Definition

(1) The terms *"loan"*, *"guaranty"* or *"other form of financial accommodation"* as used in these regulations shall refer to transactions which involve the grant, renewal or extension to a bank by the BSP of any loan, advance, discount, rediscount or credit in any form whatsoever.

(2) *Controlling interest in a bank*. Any of the government officials mentioned in Section 16, Article XI of the Constitution (the "Official") shall be deemed to have a controlling interest in a bank if he owns more than fifty percent (50%) of the voting stock of such bank. For the purpose of this Subsection, the stockholdings of the spouse or minor child of the Official shall be included in determining if he has such controlling interest.

b. *Certification required*. A bank applying for a loan or financial accommodation with the BSP shall submit, together with the application, a certification under oath of the President of the bank that the bank and/or any of its stockholders do not fall within the prohibition under Section 16, Article XI of the Constitution.

Sec. X269 Rediscounting Availments Banks shall enroll in the Electronic Rediscounting System (eRS) by executing and submitting to the DLC or the RLCD a Notarized Electronic Rediscounting System Participation Agreement before availing of the rediscounting facility of the BSP.

(Circular No. 515 dated 06 March 2006 as amended by Circular No. 630 dated 11 November 2008)

§ X269.1 *Eligibility requirements at the time of availment.* Banks availing of the BSP rediscounting facility must have at the time of availment :

a. A positive DDA balance;
b. No past due obligations; and
c. No collateral deficiencies on account of matured notes, unremitted collections, missing collaterals or ineligible papers.

(Circular No. 515 dated 06 March 2006 as amended by Circular No. 630 dated 11 November 2008)

§ X269.2 *Eligible papers and collaterals.* The BSP shall accept credit instruments covering all economic activities except the following:

a. Interbank loans;
b. Extended/Restructured loans;
c. Past due loans;
d. Unsecured loans;
e. Personal consumption loans;
f. Loans to NBFIs; and
g. Loans funded from other borrowings, e.g. government FIs or multi-lateral agencies.

Credit instruments offered as collateral shall be subject to the eligibility requirements provided under Section 82 of R.A. No. 7653.

a. *Commercial credits* - Bills, acceptances, promissory notes (PNs) and other credit instruments with maturities of not more than 180 days from the date of their rediscount, discount or acquisition by the BSP and resulting from transactions related to:

(1) the importation, exportation, purchase or sale of readily saleable goods and products, or their transportation within the Philippines; or

(2) the storing of non-perishable goods and products which are duly insured and deposited, under conditions assuring their preservation, in authorized bonded warehouses or in other places approved by the Monetary Board.

Credit instruments acquired under commercial credits shall be secured either by:

	Type of Collateral	Collateral Value
(1)	Duly notarized assignment of export or domestic letters of credit confirmed purchase order sales contract, quedans	Shall equal or exceed the outstanding balance of the credit instrument
(2)	Trust Receipts	Shall equal or exceed the outstanding balance of the credit instrument
(3)	Duly registered mortgage on real property	70% of the appraised value shall equal or exceed the outstanding balance of the PN
(4)	Credit guarantees/ sureties issued by the IGLF, the Small Business Corporation (SBC) and the national government	Shall equal or exceed the outstanding balance of the PN
(5)	Credit guarantees/ sureties issued by the Credit Surety Fund (CSF) jointly established by cooperatives and local government units	Shall equal or exceed 80% of the outstanding balance of the PN

b. *Production credits* - Bills, acceptances, PNs and other credit instruments having maturities of not more than 360 days from the date of their rediscount, discount or acquisition by the BSP and resulting from transactions related to the production or processing of agricultural, animal, mineral, industrial and other products.

Credit instruments acquired under production credits shall be secured by a duly registered mortgage on real property seventy percent (70%) of the appraised value of which equals or exceeds the outstanding balance of the PN.

c. *Other credits* - Special credit instruments not otherwise rediscountable under the immediately preceding Items *"a"* and *"b"* such as, but not limited to, microfinance, housing, services, agricultural loans with long gestation period and other eligible economic activities with maturity of not more than ten (10) years from date of their rediscount, discount or acquisition of the BSP.

Credit instruments acquired under other credits shall be secured by:

	Type of Collateral	Collateral Value
(1)	Duly registered mortgage on real property	70% of the appraised value shall equal or exceed the outstanding balance of the PN
(2)	Duly notarized assignment of receivables from service contract	Shall equal or exceed the outstanding balance of the PN
(3)	Credit guarantees/ sureties issued by the IGLF the SBC and the national government	Shall equal or exceed the outstanding balance of the PN
(4)	Credit guarantees sureties issued by the CSF jointly established by cooperatives and LGUs	Shall equal or exceed 80% of the outstanding balance of the PN
(5)	Other collaterals acceptable to the BSP e.g., government securities	Current market value shall equal or exceed the outstanding balance of the PN

For housing loans, the lien or mortgage shall cover the property being financed.

Unsecured loans may be accepted for rediscounting provided they are:

a. Microfinance loans; or

b. Loans secured by a duly registered mortgage on real property of the bank, seventy percent (70%) of the appraised value of which equals or exceeds the outstanding balance of the unsecured PN and other collaterals acceptable to the BSP, e.g., government securities.

(Circular No. 515 dated 06 March 2006 as amended by Circular No. 630 dated 11 November 2008)

§ X269.3 *Loan availment procedure* Banks availing of the rediscounting facility shall submit their loan applications electronically to the BSP using their eRS registered computers.

Upon receipt of the confirmation of loan approval:

a. Banks shall execute the PNs with Trust Receipt Agreement and Deed of Assignment (PNTRADA) in favor of the BSP (RL Form No. 7 for peso and RL Form No. 8 for dollar and yen), signed by the authorized officer/s of the bank.

b. Banks authorized to hold-in trust the rediscounted credit instruments and underlying collaterals shall segregate and keep the same together with the PNTRADA at a secured place within their premises under the custody of the accountable officer.

c. Banks with custodianship agreements shall deposit with their respective depositary/ custodian bank the rediscounted credit instruments, underlying collaterals and the PNTRADA not later than the next banking day from date of loan grant, receipt of which shall be acknowledged by the depositary bank in the List of Rediscounted Loans.

(Circular No. 515 dated 06 March 2006 as amended by Circular No. 630 dated 11 November 2008)

§ X269.4 *Loan value.* The loan value of all eligible papers shall be eighty percent (80%) of the outstanding balance of the borrower's credit instrument.

(Circular No. 515 dated 06 March 2006 as amended by Circular No. 630 dated 11 November 2008)

§ X269.5 *Maturities.* The maturities of BSP rediscounts are as follows:

Type of Credit	Maturity Date
a. Commercial Credits	
(1) Export Packing	180 days from date of rediscount but shall not go beyond the maturity date of the credit instrument
(2) Trading	
(3) Transport	
(4) Quedan	

Type of Credit	Maturity Date
(5) Export Bills (EBs)	
At sight	fifteen (15) days from purchase date
Usance EB	term of draft but not to exceed sixty (60) days from shipment date
b. Production Credits	360 days from date of rediscount but shall not go beyond the maturity date of the PN
c. Other Credits	maximum term of ten (10) years but shall not go beyond the maturity date of the credit instrument

(Circular No. 515 dated 06 March 2006 as amended by Circular No. 630 dated 11 November 2008)

§ X269.6 ***Rediscount/Lending rates and liquidated damages.*** The rediscount rates for peso, dollar and yen loans shall be as follows:

	Based on the applicable T-Bill rates from the last auction of the preceding week as follows:	
	Loan Maturity	Applicable T-Bill Rates
a. Peso Rediscount	90 days or less	91 days
	91-180 days	182 days
	181-360 days	364 day
	>360 days	364-day subject to re-pricing every year
b. Dollar/ Yen Rediscounts	Based on their respective London Inter-Bank Offered Rate (LIBOR) for the last working day of the immediately preceding month	

The lending rates of banks on their rediscounted papers shall not be subject to any ceiling but the spreads of the banks on these papers shall be closely monitored by the BSP to ensure that these are consistent with the prevailing market rates.

Past due BSP loans and unpaid matured notes shall be levied liquidated damages equivalent to five percent (5%) per annum.

(Circular No. 515 dated 06 March 2006 as amended by Circular No. 630 dated 11 November 2008)

§ X269.7 ***Release of proceeds***. The proceeds of the rediscounting availment shall be released as follows:

a. *Peso rediscounts* - automatically credited to the borrowing bank's DDA or its depository bank's DDA with the BSP on the same day for loan application submitted to the BSP before 4:30 pm during banking days.

b. *Dollar/Yen rediscounts* - released through the Treasury Department, BSP, for credit to the designated foreign correspondent bank of the borrowing bank as follows:

(1) Same banking day credit for dollar loan application submitted to the BSP before 11:00 am, during banking days; and

(2) Following banking day credit for yen loan application submitted to the BSP before 11:00 am, during banking days.

(Circular No. 515 dated 06 March 2006 as amended by Circular No. 630 dated 11 November 2008)

§ X269.8 ***Repayments/Remittance of collections/arrearages.*** The following shall govern repayments, remittance of collections, and arrearages:

a. Repayments -

(1) Peso rediscounts

(a) The loan value of the rediscounted credit instruments or the amortization plus interest due thereon shall automatically be debited against the borrower bank's DDA with the BSP at maturity/amortization due date.

(b) For microfinance loans, the DDA of the borrower bank shall automatically be debited on the amortization due date for the loan value of the amortization plus interest due thereon. For loans with daily, weekly or semi-monthly amortizations, the borrower bank's DDA shall automatically be debited on the last amortization due date of said month for the total loan value of the amortizations for the month plus interest due thereon.

(c) The loan value of unremitted collections and of the rediscounted credit instruments and/or underlying collaterals found to be missing, ineligible or with exceptions not corrected within fifteen (15) days from receipt of notice plus interest due thereon shall automatically be debited against the borrowers bank's DDA with the BSP.

(2) Dollar/Yen rediscounts

Dollar and yen loans shall be repaid in the same currency under which they were released. For this purpose, the bank shall submit online to the BSP its payment instruction one (1) day before the payment date or the maturity date of the loan corresponding to the remittance instruction to its designated correspondent bank. The payment shall cover total collections or payment of maturing loans plus interest due thereon. In case of short payment, the bank's DDA with the BSP shall automatically be debited for the peso equivalent of the shortage.

If the foreign currency denominated loans are not settled on maturity date, the borrowing bank's DDA with the BSP shall automatically be debited for the peso equivalent of the matured obligation plus accrued interest due thereon, using the applicable BSP selling rate for dollar or yen at the date of debit.

b. Remittance of collections -

(1) Total collections received by the borrowing bank before the maturity date of the rediscounted credit instruments shall be remitted not later than five (5) banking days following the date of receipt of collections to the following:

Peso Rediscounts	BSP
Dollar Rediscounts	Federal Reserve Bank of New York for the account of BSP
Yen Rediscounts	Bank of Tokyo for the account of BSP

(i) *Total collections* shall refer to the loan value of the principal amount collected from rediscounted credit instruments plus accrued interest due on the outstanding balance of subject credit instruments.

(ii) For banks with BSP loans under past due status, total collections shall include all collections on principal, interest and penalty.

(iii) In the case of negotiated EBs, the receipt by the borrowing bank of payment from its correspondent bank either through actual remittance or credit advice; or through book entries made by the borrowing bank charging its correspondent bank before receipt of advice shall constitute receipt of collection.

(2) The bank shall ensure that adequate records are maintained in its Head Office on the collections made by the branches.

c. Arrearages. The BSP shall undertake all necessary collection measures allowed by law, such as foreclosure proceedings against banks with past due loans.

(Circular No. 515 dated 06 March 2006 as amended by Circular No. 630 dated 11 November 2008)

§ X269.9 *Prohibited transactions* The following shall not be allowed without prior approval of the BSP:

a. Substitution of rediscounted credit instruments and underlying collateral real properties on outstanding loans with the BSP;

b. Renewal of rediscounted credit instruments without remitting payment while the loan released against the rediscounted credit instrument is still outstanding with the BSP; and

c. Acceptance of properties as payment (*dacion en pago*).

(Circular No. 515 dated 06 March 2006 as amended by Circular No. 630 dated 11 November 2008)

§ X269.10 ***Monitoring and credit examination of borrowing banks.*** The DLC and the RLCD shall conduct an off-site analysis of the BSP's credit exposure to borrowing banks and a risk-based on-site examination that will focus primarily on determining whether there is a "high", "moderate" or "low" probability of default on the settlement of the banks' rediscounting obligations with the BSP.

(Circular No. 515 dated 06 March 2006 as amended by Circular No. 630 dated 11 November 2008)

§ X269.11 ***Penalties/sanctions.*** The following penalties and sanctions shall be imposed on the erring bank and/or the bank's authorized/certifying officers.

a. For serious offense

Aggregate Amount/ Penalty Range	Minimum	Maximum
P50K or less	P83	P250
Above P50K to 100K	250	750
Above P100K to P500K	1,000	3,000
Above P500K to 1M	2,500	7,500
Above P1M	5,000	15,000

b. For less serious offense

P50K or less	P63	P188
Above P50K to 100K	188	563
Above P100K to P500K	750	2,250
Above P500K to 1M	1,875	5,625
Above P1M	3,750	11,250

c. Minor offense

P50K or less	P42	P125
Above P50K to 100K	125	375
Above P100K to P500K	500	1,500
Above P500K to 1M	1,250	3,750
Above P1M	2,500	7,500

The following definition of terms shall apply:

(1) *Offense* shall refer to a violation that connotes infraction of the terms and conditions of the loans granted by the BSP and of the applicable laws, rules and regulations, BSP credit policies and non-compliance with the BSP/Monetary Board directives.

(2) *Serious offense* – This refers to acts or omissions constituting violation of the terms and conditions of the loans granted to the bank and of the applicable laws, rules and regulations that constitute unsafe and unsound banking practices; and the misrepresentation of facts and warranties committed by the bank/ individual(s) that influenced the approval and amount of the rediscounting loan/line granted, such as:

(a) Rediscounting of ineligible papers, fictitious borrowers/loans/titles or submission of spurious documents;

(b) Absence of or failure to execute vital loan documents;

(c) Failure or delay in the deposit of rediscounted loan documents with the custodian bank, except those caused by fortuitous events; and

(d) Failure to remit to the BSP collections on principal of the rediscounted loans within the prescribed period of five (5) banking days from date of actual receipt of collections except collections from microfinance loans.

(3) *Less serious offense* – This refers to acts or omissions constituting violation of the terms and conditions of the loans granted to the bank and of the applicable laws, rules and regulations that constitute unsafe and unsound banking practices but not falling under the serious offense category; however, the deficiencies noted should be addressed immediately to mitigate the credit risk of the BSP.

(4) *Minor offense* – This includes acts or omissions which are procedural in nature, not intentional, may not result in any loss or damage to or any significant increase in the risk of the creditor BSP and can be resolved immediately during the normal course of business. For purposes of classifying the nature of the offense, this includes all other acts or omissions which cannot be classified under serious or less serious offenses.

(5) *Aggregate amount* - shall refer to the aggregate amount of the following under the current examination:

(a) *Under serious offense*:

Total loan value of the following:

(i) Rediscounted ineligible papers with serious offense, fictitious loans or spurious loan documents as determined by the BSP or OSI;

(ii) Undeposited vital loan documents and underlying collaterals as of examination date; and

(iii) Collections on principal of rediscounted loans which were not remitted to the BSP within the prescribed period of five (5) banking days from date of receipt of collections.

(b) *Under less serious offense*:

Total loan value of rediscounted ineligible papers with less serious offense as determined by the BSP.

(c) *Under minor offense*:

Total loan value of rediscounted ineligible papers with minor offense as determined by the BSP.

(6) *Minimum penalty* – refers to the range of penalties to be imposed if the mitigating factor(s) outweigh the aggravating circumstances, to wit:

(a) The act or omission is not intentional or the bank acted in "good faith" when the error, deficiency, violation or the absence/lack of the required action were committed.

(b) The bank is willing to take immediate action or has started to rectify the deficiencies/violations noted or undertakes to correct the deficiencies within fifteen (15) days from receipt of notice.

(c) The bank has voluntary disclosed the offense/violation committed before it is discovered by the BSP or has remitted to the BSP the total amount due plus accrued interest.

(7) *Maximum penalty* – refers to the range of penalties to be imposed if the aggravating circumstances outweigh the mitigating factor(s), to wit:

(a) The act or omission carries with it the intention to commit or cover up a violation or to defraud the BSP.

(b) Commission or omission of a specific offense corrected in the past but found repeated in another transaction in subsequent examination.

(c). Additional interest charges on unpaid penalty.

An additional interest of twelve percent (12%) per annum shall be assessed on non-payment of the penalties, from date of demand until full settlement thereof.

The foregoing monetary penalties shall be without prejudice to the cancellation of the bank's rediscounting line with the BSP and/or administrative and criminal sanctions that may be charged against its culpable officers.

(Circular No. 515 dated 06 March 2006 as amended by Circular No. 630 dated 11 November 2008)

§ X269.12 *Interlocking directorship/ officership.* Banks owned or managed by the same owners, stockholders, directors, officers or family/business group may also be suspended from availment of the rediscounting facility by the Credit Committee once the rediscounting line of any of the banks belonging to the same group is suspended, until such time that the suspension of the erring bank is lifted.

(Circular No. 515 dated 06 March 2006 as amended by Circular No. 630 dated 11 November 2008)

Sec. X270 Repurchase Agreements with the Bangko Sentral. Repo agreements with the BSP shall be governed by Sec. X601.

Sec. X271 Bangko Sentral Liquidity Window. The following guidelines shall govern the grant by the BSP of credit accommodations through a liquidity window to banks.

§ X271.1 *Nature of liquidity window* The window shall meet the liquidity needs of the financial system under normal conditions and shall be distinct from overdrafts and emergency advances.

§ X271.2 *Terms of credit*

a. *Interest rate*. The rate of interest chargeable on availments under the liquidity window shall be the rate equivalent to the reference rate for ninety (90) days determined and announced by the BSP for floating rate loans, plus or minus a rate to be determined by the BSP on the basis of the prevailing monetary situation.

The additional or discount rate established for any given time shall be made public by the BSP and applied uniformly to all borrowers during that period.

The additional rate to be imposed over and above the reference rate shall not be less than two (2) percentage points, with the applicable additional rate to be determined by the BSP on the basis of the prevailing monetary situation.

b. *Security*. Any paper, irrespective of maturity, eligible under Section 82 of R.A. No. 7653.

c. *Loan values*. The loan values of the paper offered as collateral should be eighty percent (80%) of the amount still due outstanding on the paper offered as collateral.

d. *Repayment period*. The term of the credit accommodation shall not exceed seven (7) days.

§ X271.3 *Limit*. Availment by any bank under this facility shall not exceed ten percent (10%) of its net worth, as defined under Sec. X111 as of the end of the quarter preceding the date of application. In the case of branches of foreign banks, the quota shall be ten percent (10%) of the assigned capital as of the date of application. Additionally, a bank or a branch of a foreign bank may avail itself of this facility to the extent equivalent to a further five percent (5%) of its net worth, as defined under Sec. X111 or assigned capital, as the case may be, as of the end of the quarter preceding the date of availment. Any availment of the liquidity window shall fall within the unavailed basic rediscount ceiling of the bank or the branch of a foreign bank as the case may be.

Sec. X272 Emergency Loans or Advances to Banking Institutions. The emergency loan or advance to banking institutions is governed by the provisions of Sections 84 to 88 of R.A. No. 7653, otherwise known as The New Central Bank Act. The following guidelines shall govern the BSP's emergency loans and advances.
(Circular No. 517 dated 06 March 2006)

§ X272.1 *Nature of emergency loans or advances*. An emergency loan or advance is a credit facility that is intended to assist a bank experiencing serious liquidity problems arising from causes not attributable to, or beyond the control of, the bank management. The grant of such facility is discretionary upon the Monetary Board, and is intended only as a temporary remedial measure to help a solvent bank overcome serious liquidity problems. As provided under Sections 84 to 88 of R.A. No. 7653, no emergency loan or advance may be granted except on a fully secured basis and the Monetary Board may prescribe additional conditions, which the borrowing banks

must satisfy in order to have access to the credit facility of the BSP.
(Circular No. 517 dated 06 March 2006)

§ X272.2 ***When an emergency loan or advance may be availed of.*** An emergency loan or advance may be granted:

a. In periods of national and/or local emergency or of imminent financial panic which directly threaten monetary and banking stability, i.e., situations involving bank runs, massive movements by depositors of their funds from certain banks to other banks, bank holidays and voluntary cessation of business, or when there are movements which endanger the economy, or when the international stability of the peso is threatened, or when there is an exchange crisis.

b. During normal periods for the purpose of assisting a bank in a precarious financial condition or under serious financial pressures brought about by unforeseen events or events which though foreseeable, cannot be prevented by the bank concerned.

Provided, That there is a concurrent vote of at least five (5) members of the Monetary Board and the latter has ascertained that the bank is not insolvent: *Provided, further,* That banks with positive CAR of not more than six percent (6%) based on adjusted books of accounts shall submit a Business Improvement Plan (BIP) acceptable to the BSP within six (6) months from date of advice by the appropriate department of the SES. For this purpose, the appropriate department of the SES shall warn the concerned banks that failure to submit the required BIP in accordance with the criteria of the appropriate department of the SES shall disqualify the bank from access to the BSP's emergency loan facility. Banks with zero to negative CAR should have an existing BSP-approved rehabilitation plan and on track with the Plan to be eligible to avail itself of emergency loan.
(Circular No. 517 dated 06 March 2006)

§ X272.3 ***Allowable amount of emergency loan or advance***. The maximum amount of an emergency loan or advance shall be limited to the amount needed by the applicant bank to overcome the emergency or financial predicament but not to exceed the sum of fifty percent (50%) of its total deposits and deposit substitutes as of the last banking day of the month preceding the date of emergency loan application: *Provided,* That, in no case shall such maximum amount exceed the loan values of the collaterals submitted, as determined by the BSP.

The amount approved by the Monetary Board shall be released in tranches. The first tranche shall not exceed twenty-five percent (25%) of the total deposits and deposit substitutes of the bank as of the last banking day of the month preceding the date of emergency loan application and shall be released only after the submission of the collaterals and required documents under Subsecs. X272.4 and X272.5: *Provided, however,* That upon request of the applicant bank, the Monetary Board may authorize a first tranche in an amount greater than twenty-five percent (25%) of the bank's total deposits and deposit substitutes if the circumstances surrounding the emergency or financial predicament warrant the release of such greater amount and the same is adequately secured by first class collaterals.

Except as provided in Subsec. X272.7(d) hereof, the proceeds of the emergency loan or advance shall be utilized exclusively to service net withdrawals of deposits and deposit substitutes, i.e., amount of the bank's total withdrawals less total deposits.

The principal amount of the emergency loan or advance shall not exceed the difference between the highest level of the bank's deposit and deposit substitutes of the immediately preceding thirty (30)-day period from date of emergency loan application and the current level of deposits

and deposit substitutes as determined by the appropriate department of the SES.
(Circular No. 517 dated 06 March 2006)

§ X272.4 ***Application procedures*** Banks applying for an emergency loan or advance shall submit an application (EL Form No. 1) with the appropriate department of the SES, copy furnished the DLC. During normal periods, the applicant-bank shall state the reasons for the proposed loan availment and other details showing the precarious financial condition or the serious financial pressures being experienced by the bank.

The bank shall submit together with the application, the following documents:

a. Certified Statement of Condition (under oath) as of the last banking day of the month preceding the date of emergency loan application.

b. A duly notarized secretary's certificate (EL Form No. 2) together with a resolution of the board of directors of the bank:

(1) Authorizing the availment by the bank of an emergency loan or advance from the BSP.

(2) Signifying the bank's commitment to comply with the guidelines set forth herein and the terms and conditions that may be imposed by the Monetary Board.

(3) Designating the chairman and the president or in their absence, any of the next two (2) highest officers, as duly authorized signatories for the emergency loan or advance application, promissory notes, and all undertakings. Designated authorized officers not lower than senior vice president, or equivalent position, may be authorized to execute all accessory documents for the emergency loan or advance.

(4) Authorizing the Bangko Sentral to evaluate other assets of the bank certified by its auditors to be good and available for collateral purposes should the grant of subsequent tranches be applied for.

After determining the eligibility of the applicant bank to avail of the emergency loan or advance under Subsec. X272.2, the appropriate department of the SES shall prepare a memorandum to the Monetary Board stating among others, the following:

a. Validation of the eligibility of applicant bank.

b. Financial condition of applicant bank.

c. Volume of deposits and expected withdrawals of deposits.

d. Amount and terms of the loan.

e. Whenever applicable, circumstances that warrant the grant of the first tranche greater than twenty-five percent (25%) of the total deposits and deposit substitutes as provided by law.

The applicant bank shall submit to the DLC, prior to the release of the first tranche, the following documents together with the copy of the application:

a. Listing of assets that are good and available for collateral purposes as certified by the bank's duly appointed external auditor (EL Form No. 3).

b. Listing of collaterals in the prescribed formats (EL Form Nos. 4/4a/4b) as well as a 3.5″ diskette containing the database, (in MS Excel format), together with the documents of title and/or evidences of ownership of the collaterals offered including the following documents:

(1) Appraisal reports of not more than one (1) year conducted by an independent appraiser acceptable to the BSP in accordance with BSP's terms of reference.

(2) Latest tax declarations.

(3) Current tax receipts, tax clearances and other documents needed for registration of mortgages and deeds of assignment.

(4) Current insurance policies covering improvements and official receipts of premium payments.

(5) Department of Agrarian Reform (DAR) certification that agricultural properties offered as collaterals are not covered by the Comprehensive Agrarian Reform Program (CARP).

(6) Current original promissory notes of bank's borrowers duly endorsed in favor of the BSP.

(7) Special power of attorney or stockholder's resolution, when appropriate.

c. Notarized Deed of Undertaking executed by the above-mentioned officers of the bank to: (1) register with the Registry of Deeds all the covering legal documents before loan release at the expense of the bank and that, in the event the BSP agrees to release the proceeds of the loan before said documents are registered, the same shall be registered by the bank at its own expense; and (2) submit the documents needed to complete the requirements of the tranche not later than fifteen (15) days from release of the emergency loan or advance. (EL Form No. 5).

In case of failure by the bank to register the covering legal documents within fifteen (15) days from date of release of loan proceeds, the BSP shall register said documents for the account of the applicant bank, and all costs and expenses shall, at the option of BSP, be deducted from any subsequent availments of the bank or from its DDA or be added to its liability account with the BSP.

d. Notarized Joint and Several Undertaking executed by all the controlling stockholders [owning more than fifty percent (50%) of the voting stocks] of the bank and every person or a group of persons whose stockholdings are sufficient to elect at least one (1) director to indemnify and hold harmless from suit the BSP, its Monetary Board members, Governor, officers and personnel, and the conservator whose appointment the Monetary Board may find necessary at any time. The Department of Finance or stockholder of record will sign the joint and several undertaking if the government is a stockholder (EL Form No. 6).

e. Notarized Deed of Undertaking with waiver of secrecy of deposits and commitment by the directors, principal officers with the equivalent rank of vice-president and up, all the controlling stockholders, and every person or group of persons and their respective spouses, whose stockholdings are sufficient to elect at least one (1) director not to withdraw any portion of their deposits and deposit substitutes as of date of release of the first tranche while the emergency loan remains outstanding. In the event of a compelling reason to withdraw, payment of the emergency loan or advance in an amount equivalent to the deposits to be withdrawn shall be made (EL Form No. 7).

f. Notarized Surety Agreement executed by the controlling stockholders and every person or group of persons whose stockholdings are sufficient to elect at least one (1) director obligating themselves jointly and severally with the bank to pay promptly on maturity, or when due, the Bangko Sentral, its successors or assigns, all promissory notes covering the emergency loan or advance. (The Government, its subdivisions, instrumentalities and agencies, and government entities are exempted from this requirement.) (EL Form No. 8)

g. Notarized Deed of Negative Pledge executed by the controlling stockholders and every person or group of persons whose stockholdings are sufficient to elect at least one (1) director, together with their respective certificates of stock. (The Government, its subdivisions, instrumentalities and agencies, and government entities are exempted from this requirement.) (EL Form No. 9).

h. Certification under oath executed by the chairman and president of the bank that the bank or any of its stockholders does not fall within the prohibition under Section 16, Article XI of the Constitution (EL Form No. 10).

Prior to the release of the subsequent tranches, the bank shall submit to DLC the documents of title and/or evidences of ownership of the collaterals, together with the other documents referred to in Item *"b"* of the immediately preceding paragraph of this Subsection for the amount being applied for release and, where necessary, such other acceptable security which, in the judgment of the Monetary Board, would be adequate to supplement the assets tendered to collateralize the subsequent tranche.

Banks availing of emergency loan or advance may decline to submit either item *"f"* or *"g"* or both, but the loan values specified in Items *"b"* and *"d"* of Subsec. X272.6 shall be reduced.
(Circular No. 517 dated 06 March 2006)

§ X272.5 ***Other documentary requirements.*** Before release of any emergency loan or advance, the applicant bank shall, aside from the documentary requirements already mentioned above, submit such other requirements/ documentation as may be required by the DLC, e.g., duly Notarized Promissory Note in Favor of the BSP (EL Form No. 11/11a), Notarized Deed of Real Estate Mortgage (EL Form No. 12-Bank Assets/12a-Stockholder/ Third Party Assets), Notarized Deed of Pledge (EL Form No.13- Individual/Corporation/13a-Stockholders'/Third Party Assets), Notarized Deed of Assignment of Mortgages (EL Form No. 14), Hold-out on Foreign Currency Deposits with BSP (EL Form No. 15) and Joint Affidavit executed by the bank's chairman and president and the Individual Mortgagor (EL Form No. 16- Individual) or the Corporate-Mortgagor's chairman and president (EL Form 16a- Corporation).
(Circular No. 517 dated 06 March 2006)

§ X272.6 ***Acceptable collaterals and their corresponding loan values.*** All availments of the emergency loan or advance shall be secured by first class collaterals, i.e., assets and securities which have relatively stable and clearly definable value and/or greater liquidity and free from lien and encumbrances, to the extent of their applicable loan values, as follows:

ACCEPTABLE COLLATERALS	With Surety Agreement and Negative Pledge	With Surety Pledge but no Negative Pledge	With Negative Pledge but no Surety Agreement	No Surety Agreement and no Negative Pledge
a. Government securities - based on the current market value of the securities	80%	80%	80%	80%
b. Unencumbered real estate properties in the name of the bank				
1. Initial rate - based on the appraised value (AV) of the land and insured improvements	40%	35%	30%	25%
2. Final rate - based on the AV of the land and insured improvements determined by a licensed and independent appraiser acceptable to the BSP in accordance with BSP's terms of reference	70%	65%	60%	55%
c. Hold-outs on foreign currency deposits with the BSP - based on current market value	80%	80%	80%	80%
d. Mortgage credits (with remaining maturities of not more than 360 days)				
1. Initial rate - based on the AV of the property securing the loan evidenced by negotiable instruments or the outstanding balance of such loan whichever is lower	40% of AV or 50% of the outstanding balance	35% of AV or 40% of the outstanding balance	30% of AV or 40% of the outstanding balance	25% of AV or 40% of the outstanding balance
2. Final rate - based on the AV of the property securing the loan evidenced by negotiable instruments as determined by a licensed and independent appraiser acceptable to the BSP in accordance with BSP's terms of reference or the outstanding balanceof such loan whichever is lower.	70% of AV or 80% of the outstanding balance	65% of AV or 75% of the outstanding balance	60% of AV or 70% of the outstanding balance	55% of AV or 65% of the outstanding balance
e. Commercial papers ("AAA")	80%	80%	80%	80%

Assets of stockholders and of other third parties, the latter acceptable only in instances provided under the last paragraph of Subsec. X272.8, are acceptable as collaterals for emergency loan with corresponding loan values, as follows:

ACCEPTABLE COLLATERALS	With Surety Agreement and Negative Pledge	With Surety Pledge but no Negative Pledge	With Negative Pledge but no Surety Agreement	No Surety Agreement and no Negative Pledge
I. Asset of stockholders to secure new loan releases if the bank has no available first class collaterals:				
a. Unencumbered real estate				
1. Initial rate - based on the AV of the land and insured improvements	35%	30%	25%	20%
2. Final rate - based on the AV of the land and insured improvements determined by a licensed and independent appraiser acceptable to the BSP in accordance with BSP's terms of reference	60%	55%	50%	45%
b. Government Securities	80%	80%	80%	80%
c. Commercial papers ("AAA")	80%	80%	80%	80%
II. Assets of other third parties to cover deficiency arising from unpaid interest and liquidated damages, reduction in loan value of existing colaterals and conversion of overdrafts into emergency loan:				
a. Unencumbered real estate				
1. Initial rate - based on the AV of the land and insured improvements	30%	25%	20%	15%
2. Final rate - based on the AV of the land and insured improvements determined by a licensed and independent appraiser acceptable to the BSP in accordance with BSP's terms of reference	50%	45%	40%	35%
b. Government securities	80%	80%	80%	80%
c. Commercial papers ("AAA")	80%	80%	80%	80%

Other types of assets may be acceptable as collateral for emergency loan as the Monetary Board may approve.

The initial valuation rate shall apply in case the appraisal reports of independent appraiser acceptable to the BSP for real estate collaterals are not available or not in accordance with BSP's terms of reference or the collaterals themselves are with rectifiable minor deficiencies as determined by DLC, but will be adjusted upon compliance with the foregoing requirements.

All collateralization expenses, such as registration fees, documentary stamps, etc., shall be borne by the applicant bank.

(Circular No. 517 dated 06 March 2006)

§ X272.7 ***Manner and conditions of release.*** The manner and conditions of release of emergency loan or advance shall be as follows:

a. The grant of emergency loan or advance shall bear the concurrent vote of at least five (5) members of the Monetary Board.

b. The emergency loan or advance shall have a ninety (90)-day availability period from date of Monetary Board approval, non-renewable, non-extensible. Request for extension or renewal shall be treated as new loan application to be evaluated by the appropriate department of the SES if qualified under Subsec. X272.2.

c. The amount approved by the Monetary Board may be disbursed in one (1) or more releases as dictated by the needs of the bank and availability of first class collateral.

d. The proceeds of the emergency loan or advance shall be applied first to the advance interest, and then to any outstanding overdrawings that may have been incurred by the bank in its demand deposit with the BSP.

e. The bank shall submit to the DLC a board resolution confirming every receipt of proceeds of emergency loan or advance. Likewise, the bank shall submit a board resolution confirming the undertakings executed by the officers under Subsec. X272.4.
(Circular No. 517 dated 06 March 2006)

§ X272.8 ***Interest rates, liquidated damages, and penalties***. The interest rate that shall be charged on emergency loan or advance shall be based on the BSP lending rate plus two percent (2%) per annum. Interest shall be collected in advance from the borrowing bank.

An additional five percent (5%) per annum shall be imposed as liquidated damages on the past due emergency loan or advance.

A penalty of one-tenth of one percent (1/10th of 1%) per day of delay on unremitted/delayed remittance of collections received by the bank from promissory notes covering the assigned mortgage credits or the proceeds of sale from assigned/mortgaged real estate properties commencing on the day following the deadline prescribed in Subsec. X272.11 shall be imposed on the erring bank.

Any shortfall in collateral due to unpaid accrued interest, liquidated damages, reduction in loan value of existing collaterals and conversion of overdraft into emergency loan may be covered by third party assets after the assets of the bank have been exhausted.

A Joint Affidavit (EL Form No. 16/16a) between the bank's chairman and president and the corporate-mortgagor's chairman and president or the individual mortgagor to be signed and notarized in the BSP shall be submitted in support of the mortgage documents. The signing shall be photographed as well as recorded in video tape.
(Circular No. 517 dated 06 March 2006)

§ X272.9 ***General terms and conditions.*** A bank with an outstanding emergency loan or advance shall comply with the following conditions:

a. The bank shall not, without the prior authorization of the Monetary Board, expand its outstanding loans or investments as of the date of application for emergency loan, except for investment in government securities.

b. The bank shall not declare cash dividends.

c. The bank shall not grant new loans to DOSRI or to affiliates and subsidiaries.

d. The bank shall accept the BSP designated Comptroller to be assisted by examiners recommended by the appropriate department of the SES and the DLC to monitor the operations of the bank under the Terms of Reference as determined by the Monetary Board.

e. The bank shall not be allowed to avail of the BSP rediscounting facility.

f. The bank shall comply with any other terms and conditions that may be imposed by the Monetary Board.
(Circular No. 517 dated 06 March 2006)

§ X272.10 ***Maturity/Conditions for renewals.*** The term of any emergency loan or advance shall not exceed 180 days including renewals.

Any request for renewal of an emergency loan or advance shall be treated as a new loan and shall be considered only upon the bank's compliance with the following:

a. All the requirements of the previous tranche/s;

b. Remittance of collections/proceeds of sales under Subsec. X272.11;

c. Payment of advance interest;

d. Submission of a duly notarized promissory note in favor of the Bangko Sentral; and

e. Other requirements that may be imposed by the Monetary Board on the borrowing bank.

The Director of the DLC shall approve the renewal of an emergency loan or advance.

(Circular No. 517 dated 06 March 2006)

§ X272.11 ***Remittance of collections/ repayments/arrearages***. The following shall govern remittance of collections, sale proceeds, repayments and arrearages:

a. Total collections received on loan accounts assigned to the BSP shall be held in trust for, and remitted to the BSP not later than five (5) banking days following the date of receipt in payment of the bank's outstanding emergency loan or advance, net of refund of interests, if any.

b. Proceeds from the sale of properties assigned/mortgaged to the BSP shall be held in trust for, and remitted to the BSP not later than five (5) banking days following the date of receipt in payment of the bank's outstanding emergency loan or advance, net of refund of interests, if any.

For banks with emergency loan or advance under current status, "total collections" and "proceeds from the sale" shall pertain to the loan value of the mortgaged credits and properties.

For banks with emergency loan or advance under past due status:

(1) Total collections shall pertain to total collections from the mortgaged credits, i.e. principal plus interest and penalty.

(2) Proceeds from the sale shall pertain to net proceeds from the sale of assigned/ mortgaged properties or the total BSP claims pertaining to the sold properties, i.e., loan value plus interest and penalty, whichever is higher.

The bank shall ensure that adequate records on the collections and sale made by the branches are maintained in its Head Office.

c. Increases in the deposit level of the borrowing bank equivalent to the recovery of the net withdrawal of deposits, shall be remitted to the BSP or debited against the bank's demand deposit account in payment of the emergency loan or advance, net of refund of interest.

d. The loan value of the collaterals of the emergency loan or advance, i.e., mortgaged credits and properties, discovered by the BSP falling short of its criteria of first class collaterals, shall be debited against the bank's DDA with the BSP, net of refund of interest.

e. The BSP shall undertake all necessary collection measures allowed by law, such as foreclosure proceedings against banks, whether operating or closed, with past due loans.

In the event the bank fails to comply with any of the foregoing, the DLC shall notify, copy furnished the bank, the borrowers of the assignment of their outstanding loans to the BSP and advise them to remit payment directly to the BSP (EL Form 17).

(Circular No. 517 dated 06 March 2006)

§ X272.12 ***Default.*** The following shall constitute events of default which shall render the emergency loan or advance due and demandable and shall be sufficient cause for the BSP to stop further releases of funds, without prejudice to any action the BSP may decide to take in accordance with R.A. No. 7653:

a. Insolvency or bankruptcy of the bank.

b. Appointment of a receiver for the bank.

c. The bank's property and business is taken possession of or its business suspended or closed by the lawfully authorized governmental agency or authority.

d. Violation of any of the terms and conditions of all loan and collateral documents.

e. Non-compliance with the undertakings executed by the borrowing bank.

(Circular No. 517 dated 06 March 2006)

Sec. X273 Facility to Committed Credit Line Issuers. The following guidelines shall govern the grant by the BSP of special credit accommodations to banks which establish committed credit line in favor of corporations proposing to issue commercial paper.

§ X273.1 *Nature of special credit accommodations.* The BSP may extend a loan to any bank which on its own or as a member of a group of banks, provides a committed credit line facility to a corporation proposing to issue commercial paper.

§ X273.2 *Conditions to access.* A bank applying for a loan pursuant to the provisions of this Section shall submit to the BSP documents showing that it has extended a committed credit line to a commercial paper issuer and that such issuer has availed itself of said credit line.

§ X273.3 *Terms of credit*

a. *Interest rate*. The rate of interest chargeable on the availment of this credit facility shall be that which is equivalent to eighty percent (80%) of the total of interest and fees received by the bank from the issuer, net of provision for gross receipts tax paid by the bank on such income.

b. *Security*. The promissory note executed by the commercial paper issuer in favor of the bank for the amount drawn against the committed credit line shall be the security for this credit facility.

c. *Loan values*. The loan value of paper offered as collateral shall be eighty percent (80%) of the amount still due and outstanding on the paper offered as collateral.

d. *Repayment period*. The term of the credit accommodation may not exceed ninety (90) days and shall be non-renewable.

§ X273.4 *Ceiling.* If availment of this credit facility is outside the other rediscount ceiling of the bank, it shall be limited to the extent of fifteen percent (15%) of the net worth of the bank.

Sec. X274 (Reserved)

Sec. 1274 (Reserved)

Sec. 2274 Countryside Financial Institutions Enhancement Program (CFIEP) for Thrift Banks. The CFIEP shall be implemented under the terms of reference indicated in *Appendix 16*.

Sec. 3274 Countryside Financial Institutions Enhancement Program for Rural and Cooperative Banks. The CFIEP shall be implemented under the terms of reference indicated in *Appendix 16*.

Sec. X275 Recording and Reporting of Borrowings. The bank's liability for papers discounted and/or rediscounted *"with recourse"* with the BSP and/or other financial institutions shall be recorded and shown as *"Bills Payable"* in all reports submitted to the BSP.

The loans and discounts, bills purchased, acceptances and other accounts affected by such discounting and/or rediscounting transactions shall remain as part of the bank's loan portfolio. A footnote in the financial statement shall indicate the outstanding balances of the discounted and/or rediscounted loans.

Sec. X276 Rediscounting Window for Low-Cost Housing as Defined by the Housing and Urban Development Coordinating Council (HUDCC). The rules and regulations governing the rediscounting of housing loan papers of qualified banks under the low-cost housing program of the HUDCC are shown in *Appendix 40*.

Sec. X277 (Reserved)

Sec. 1277 Rediscounting Window Available to All Universal and Commercial Banks for the Purpose of Providing Liquidity Assistance to Investment Houses. The following implementing guidelines shall govern the new rediscount window available to all UBs and KBs under Section 82(c) of R.A. No. 7653, for the purpose of providing liquidity assistance to IH:

a. Criteria for eligibility

(1) Eligible papers

Promissory note of the UB/KB executed in favor of the BSP and secured by a Deed of Pledge or Assignment of unencumbered/unhypothecated commercial papers with a rating of triple "A" and double "A".

(2) Loan limit

Availments against this facility shall be charged against the rediscount ceiling of the borrowing bank (100% of net worth) as of the end of the quarter immediately preceding the date of application.

b. Terms and conditions

(1) The loan shall be assessed an annual interest rate equivalent to one percent (1%) below the weighted average of the ninety-one (91)-day Treasury Bill rate for the last auction of the immediately preceding month.

(2) The loan shall have a term of 180 days from date of availment.

(3) The loan value shall be ninety percent (90%) of the face value of the commercial paper.

(4) The BSP will automatically debit the demand deposit account of the UB/KB upon maturity of the rediscounting loan.

(5) The chief executive officer of the bank or his equivalent must certify that the rediscounted commercial paper is still outstanding as of the time of assignment.

(6) The UBs/KBs shall comply with the documentary requirements of the DLC.

c. Duration

Qualified UBs/KBs may avail of this facility until December 2000.

Sec. 2277 Rediscounting Window Available to TBs for the Purpose of Providing Liquidity Assistance to Support and Promote Microfinance Programs. TBs availing of rediscounting facility for purposes of providing liquidity assistance to support and promote microfinance programs shall comply with the guidelines under Sec. 3277, except for the requirement of a custodian bank under Subsec. 3277.4a(6).

Sec. 3277 Rediscounting Window Available to Rural and Cooperative Banks for the Purpose of Providing Liquidity Assistance to Support and Promote Microfinance Programs. The following guidelines shall govern the rediscounting facility available to RBs and Coop Banks for the purpose of providing liquidity assistance to support and promote microfinance programs.

§ 3277.1 *Eligibility requirements*

a. *Eligible borrowers* . RBs and Coop Banks with at least one (1) year track record in microfinance and at least 500 active borrowers, ratio of past due microfinance loans to total outstanding microfinance loans of not more than five percent (5%) as of end of the month preceding loan application and collection ratio of not less than ninety-five percent (95%) based on ratio of total collections (excluding prepayments) during the preceding twelve

(12)-month period to the sum of past due microfinance loans at the beginning of said period and amount of matured loans including principal amortizations during the same twelve (12) - month period.

b. *Eligible papers*. Promissory Note (PN) of the RB or Coop Bank executed in favor of the BSP and secured by duly endorsed PN of microcredit borrowers.

c. *Manual of operations*. Written policies on microfinance operations must be set forth and documented in a policy manual duly approved by the bank's board of directors. The manual should include the following minimum features:

(1) Scope of microfinance activities and the types of services or products offered to clients;

(2) Authorities and responsibilities of:

(a) Board of directors;

(b) Management;

(c) Chief executive officer or its equivalent;

(d) Credit officers; and

(e) Other officers involved in the microfinance operations;

(3) Policies and procedures covering microfinance program/project;

(4) Client evaluation process which should involve at least: client orientation, pre-application, credit investigation, and loan application process;

(5) Loan processing, documentation and release of proceeds;

(6) Accounts monitoring system;

(7) Accounts delinquency management;

(8) Management Information System;

(9) Accounting policies, systems and procedures; and

(10) Internal controls and audit policies, systems and procedures.

d. A copy of System of Reviewing Asset Accounts and Setting Up of Adequate Valuation Reserves submitted.

e. *Staff training and experience.* Key officers and staff responsible for microcredit operations must have a minimum experience of one (1) year and have completed a training course in microlending activities.

f. *Prescribed financial ratios and regulations.* Applicant bank must comply with the following financial ratios and regulations:

(1) Minimum capital prescribed under Subsec. X111.1;

(2) Risk-based capital ratio of not less than ten percent (10%);

(3) Reserves against deposit liabilities prescribed under existing regulations;

(4) Ratio of past due direct and indirect loans to DOSRI to the bank's aggregate past due loans of not more than ten percent (10%);

(5) Loans-to-deposits ratio of at least seventy-five percent (75%);

(6) Reports required to be submitted to the various departments and/or offices of the BSP;

(7) CAMELS rating of "3" or better; and

(8) Ratio of past due loans to total loan portfolio of not more than the industry average for RBs as of the preceding quarter.

§ 3277. 2 *Microcredit line*

a. Application for MCR Line shall be filed with the DLC, BSP at its head office in Manila or the appropriate BSP Regional Loans and Credit Unit (BSPRLCU). The term of the MCR line shall not exceed one (1) year from the date it is granted. The line may be renewed for another year upon submission of an application at least two (2) months before expiry, subject to full compliance with the prescribed eligibility requirements and the credit review by the DLC.

b. Total availments against the facility, which shall be charged against the approved MCR line, shall form part of the total authorized rediscount ceiling of the borrowing bank. The rediscount ceiling for microfinance shall be equivalent to one hundred percent (100%) of the bank's net worth, net of valuation reserves and other capital adjustments as recommended by the appropriate department of the SES as of the last regular examination of the bank.

c. The proceeds of availment or drawdown against the approved MCR line shall be credited to the account of the RB or Coop Bank maintained with the depository bank or with BSP. The RB or Coop Bank shall be notified in writing/ electronically of the credit of such account on the same banking day that the proceeds are released.

§ 3277. 3 *Terms and conditions*

a. The loan value shall be equivalent to eighty percent (80%) of the outstanding balance of the microfinance borrower's PN.

b. The RB or Coop Bank's loan from the BSP shall have a term of not more than 360 days. The maturity date of the microfinance borrower's PN shall in no case be beyond the maturity date of the RB or Coop Bank's PN.

c. The loan shall be assessed an annual interest rate equivalent to the 91-day Treasury Bill rate for the last auction date of the preceding month.

d. The demand deposit account of the RB or Coop Bank will be automatically debited at the maturity date of the BSP loan for the full amount due excluding collections from microfinance borrowers which were credited to the Special Savings Account of the BSP with the borrowing bank.

e. Any responsible officer who is holding a position that is not lower than manager or equivalent rank must, upon approval by the bank's Board, endorse the rediscounted PNs and certify that the same are still outstanding as of the time of application.

f. Collections made on amortizations due and maturing PNs shall be remitted to the DLC not later than two (2) banking days following the date of receipt of collections by the Head Office/branches located within Metro Manila and not later than four (4) banking days following the date of receipt of collections by the Head Office/ branches located outside Metro Manila as provided under Subsec. 3277.5.

g. A penalty of five percent (5%) per annum shall be imposed on matured and unpaid bank PNs in favor of the BSP.

Full compliance at all times with the eligibility requirements as prescribed under Subsec. 3277.1.

§ 3277.4 *Documentary requirements*

a. *Application for MCR Line*. RBs or Coop Banks applying for an MCR line shall submit a letter of application to DLC or the appropriate BSPRLCU accompanied by the following documents:

(1) Certificate of the Secretary (original) and copy of the resolution duly signed by the board of directors of the applicant bank, authorizing the bank to apply for an MCR line with the BSP and designating the officer authorized under Subsec. 3277.3(e) to endorse the PNs and sign all papers pertaining to the rediscounting line in the prescribed format.

(2) Certification of the applicant bank that it has complied with the financial and regulatory ratios, conditions, and reportorial requirements prescribed under the eligibility requirements for rediscounting as provided under Subsec. 3277.1.

(3) *Consolidated Financial Statements*. Statement of Condition as of the end of the month immediately preceding the date of application together with the corresponding Statement of Income and Expenses covering the results of operations for the last three (3) years.

(4) Report on required and available reserves covering the past two (2) consecutive weeks immediately preceding the date of application.

(5) Rediscounting Line Agreement executed by the CEO of the RB or Coop Bank.

(6) Notarized custodian agreement executed among the CEO of the RB or Coop Bank, the third party custodian and the BSP.

b. *Availment of MCR Line*. For availment of MCR line, the RB or Coop Bank shall submit the following documents:

(1) Application for MCR Line Availment - original and one (1) copy in prescribed form duly accomplished and signed by the CEO of the applicant bank;

(2) Rediscount Schedule (RS); and

(3) Notarized PNs in favor of the BSP - original and two (2) copies.

§ 3277.5 *Remittance of collections/ payments/repayments.* Collections made on amortizations due and maturing PNs shall be remitted to the DLC not later than two (2) banking days following the date of receipt of collections by the Head Office/branches located within Metro Manila and not later than four (4) banking days following the date of receipt of collections by the Head Office/branches located outside Metro Manila. As an alternative, collections may be deposited in a Special Savings Deposit Account (SSDA) which shall be maintained by the BSP with the borrower-bank and remitted to DLC or the appropriate BSPRLCU on the last banking day of every month. The SSDA shall earn interest of one percent (1%) lower than the 91-day Treasury Bill rate for the last auction date of the preceding month.

On due date of the PN, the RB or Coop Bank shall remit to the BSP the unpaid balance of such PN: *Provided,* That any amount credited to the SSDA shall be applied as payment of the PN in favor of BSP. The remittance shall be reported under DLC Form No. 5. The remittance to BSP shall be in the form of cash, demand draft, manager's check or based on authority issued by the bank to debit its demand deposit account with BSP. Check payments and demand drafts shall be given value when cleared.

§ 3277.6 *Reports required.* A monthly report on microfinance transactions shall be submitted to DLC or the appropriate BSPRLCU within the deadline set in *Appendix 6*.

§ 3277.7 *Accounts verification.* The microcredit accounts rediscounted shall be subject to verification and confirmation by authorized DLC or the appropriate BSPRLCU representatives to determine their eligibility and acceptability for rediscounting.

§ 3277.8 *Sanctions.* Any misrepresentation and/or violation of the provisions of this Section shall subject the RB or Coop Bank and/or the erring directors/officers to any of the following sanctions:

a. *Erring RB or Coop Bank*

(1) Fines in amounts as may be determined by the Monetary Board to be appropriate, but in no case to exceed Thirty thousand pesos (P30,000) a day for each violation;

(2) Suspension of rediscounting privileges or access to BSP credit facilities; and/or

(3) Reduction of rediscounting line.

b. *Erring directors/officers*

For violation of any of the provisions of this Section the following shall be imposed against the directors and officers of the bank:

(1) *1st offense* - a warning that a repetition of the same or similar offense shall subject the erring director/officer to monetary penalties and/or sanctions;

(2) *2nd offense* - a fine of P500 per day for each violation from the time the violation was committed up to the time it is corrected without prejudice, however, to the imposition of higher penalties; and

(3) *3rd and subsequent offenses* **-** a fine of P5,000 per day from the time the violation was committed up to the time it is corrected without prejudice, however, to the imposition of higher penalties.

If any of the documentary requirements submitted by the bank as required under Subsec. 3277.4 is found to be false, a fine of P5,000 per day, from the time the certification was made up to the time the certification was found to be false, shall be imposed against the certifying officer.

Sec. X278 Enhanced Intraday Liquidity Facility. The ILF is a smoothening mechanism which is available to eligible participant banks in the Philippine Payments and Settlements System (PhilPaSS) to support their liquidity requirements and avoid payment gridlocks in PhilPaSS. The revised features of the enhanced intraday liquidity facility are in *Appendix 21-B*.

(As superseded by the MOA between the BSP, BTr, BAP and Money Market Association of the Philippines dated 25 March 2008)

Secs. X279 - X280 (Reserved)

K. OTHER BORROWINGS

Sec. X281 Borrowings from the Government. Except as may be authorized by existing statutes, no private bank shall, whether or not performing quasi-banking functions, borrow any fund or money from the Government and government entities, through the issuance or sale of its acceptances, notes or other evidences of debt.

§ X281.1 *Exemption from reserve requirement.* The following borrowings shall not be subject to the reserve requirements:

a. STDs and deposit substitutes of specialized government banks and private banks arising from their lending operations under the special financing programs of the Government and/or international FIs; and

b. Funds held by participating financial institutions (PFIs) under the GSIS Housing Loan Programs: *Provided,* That the agreement between the GSIS and the conduit banks specify that such funds may be held by the conduit banks for a period of not more than seven (7) calendar days prior to their release to the borrower and prior to the remittance by the conduit banks of payments to the GSIS.

c. Borrowings by accredited FIs under the Wholesale Lending Program for SMEs of the SBGFC.

Sec. X282 Borrowings from Trust Departments or Investment Houses Funds borrowed by banks or non-bank financial intermediaries performing quasi-banking functions from trust departments or managed funds of banks or IHs are not considered as interbank borrowings and therefore are subject to the:

a. Reserve requirement on deposit substitutes;

b. Minimum fifteen (15)-day maturity period; and

c. Minimum trading lot rule.

Sec. X283 (Reserved)

Sec. 1283 (Reserved)

Sec. 2283 Mortgage/CHM Certificates of Thrift Banks. With prior approval of the Monetary Board, TBs may issue and deal in mortgage and CHM certificates. The rules and regulations governing the issuance of said certificates is shown in *Appendix 17*.

Sec. 3283 (Reserved)

Sec. X284 (Reserved)

Sec. 1284 (Reserved)

Sec. 2284 (Reserved)

Sec. 3284 Borrowings of Rural Banks/ Cooperative Banks. RBs and Coop Banks may rediscount papers with any bank.

The obligations of RBs arising from availments of rediscounting facilities and other borrowings from the BSP, will be considered as deposit substitutes. However, with the qualification in the Tax Code of 1997 that the term *public* means borrowing from twenty (20) or more individual or corporate lenders at any one (1) time, it is clear that the obligations of the RBs to BSP, which are entered in their books as *"Bills Payable-BSP,"* do not presently fall under the category of deposit substitutes.

Secs. X285 - X298 (Reserved)

Sec. X299 General Provision on Sanctions. Any violation of the provisions of this Part shall be subject to Sections 36 and 37 of R.A. No. 7653.

The guidelines for the imposition of monetary penalty for violations/offenses with sanctions falling under Section 37 of R.A. No. 7653 on banks, their directors and/or officers are shown in *Appendix 67*.

PART THREE

LOANS, INVESTMENTS AND SPECIAL CREDITS

Section X301 Lending Policies. It shall be the responsibility of the board of directors of a bank to formulate written policies on the extension of credit and risk diversification and to set the guidelines for evaluation of risk assets. Well-defined lending policies and sound lending practices are essential if a bank is to perform its lending function effectively and minimize the risk inherent in any extension of credit. The responsibility should be approached in a way that will provide assurance to the public, the stockholders and supervisory authorities that timely and adequate action will be taken to maintain the quality of the loan portfolio and other risk assets.

§ X301.1 *(Reserved)*

§ 1301.1 *Rules and regulations to govern the development and implementation of banks' internal credit risk rating systems*

a. *Statement of policy*. It is the policy of the BSP to ensure that banks' credit risk management processes are sound and effective. Towards this end, the following rules and regulations that shall govern the use of banks' internal credit risk rating systems are hereby prescribed.

b. *Scope*. UBs and KBs must have in place a formal internal credit risk rating system for the underwriting and ongoing administration, initially, of corporate credit exposures. The internal credit risk rating system must be appropriate to a bank's nature, complexity and scale of activities.

Initially and until such time that the Monetary Board prescribes otherwise, corporate credit exposure shall be defined as exposures to companies with assets of more than P15.0 million.

c. *Minimum operational requirements*

(1) A bank's internal credit risk rating system must be duly approved by the board of directors (or equivalent management committee in the case of Philippine branches of foreign banks). The board should exercise appropriate oversight over the system in a consistent manner.

(2) A bank's internal credit risk rating system must be operationally integrated into its internal credit risk management process. Its output should accordingly be an integral part of the process of evaluation and review of prospective and existing exposures, respectively. Credit underwriting criteria should become progressively more conservative as credit rating declines. All credit decisions must be supported by a written assessment. In the context of ongoing review, provisioning standards must be rationally tied to the internal credit rating system.

(3) Banks must have an independent credit risk control function that is responsible for the design, implementation and performance of their credit risk rating systems. The credit risk control function must be independent from the business functions responsible for originating exposures.

(4) Internal ratings must be an essential part of annual or more frequent reporting of banks' changing portfolio quality over time to the board of directors (or equivalent management committee in the case of Philippine branches of foreign banks). Reporting must include portfolio breakdown by credit grade, major portfolio segments breakdown by credit grade, and analysis of realized default rates against expectations.

(5) Internal and external audit must also review at least annually the bank's internal rating system and its operations, including the operations of the credit risk control function.

d. *Minimum technical standards*

(1) Banks must fully document their internal credit risk rating systems. The documentation must address topics such as coverage, rating criteria, responsibilities of parties involved in the ratings process, definition of what constitutes a rating exception, parties that have authority to approve exceptions, frequency of rating reviews, and management oversight of the rating process. A bank must document the rationale for its choice of rating criteria and must be able to provide analyses demonstrating that the rating criteria and procedures are likely to result in ratings that meaningfully differentiate risk.

(2) The rating criteria should reflect an established blend of qualitative and quantitative factors. Transparent ranges need to be set for the quantitative standards based on experience. The quantitative criteria must include leverage and cash flow standards.

(3) Banks must maintain rating histories on individual accounts, which shall include the ratings of the account, the dates the ratings were assigned, the methodology and key data used to derive the ratings and the analyst who gave the ratings. The identity of borrowers and facilities that default, and the timing and circumstances of such defaults, must be retained. Banks must also retain data on the realized default rates associated with rating grades and ratings migration in order to eventually track the predictive power of the risk rating system.

(4) A bank's internal credit risk rating system must have a minimum of 6 rating grades for unclassified accounts and 4 rating grades for classified accounts, which must be assigned in a consistent manner over time. Moreover, the rating system must result in a meaningful distribution of exposures across grades with no excessive concentrations on a single rating grade.

(5) The ratings output of banks' internal credit risk rating systems must contain both a borrower and a facility dimension. The borrower dimension should focus on factors that affect the inherent credit quality of each borrower. The facility dimension, on the other hand, should focus on security/ collateral arrangements and other similar risk influencing factors of each transaction.

(6) In rating corporate borrowers with total assets of more than P15.0 million, only financial statements audited by external auditors that are accredited/ selected by the SEC, the BSP or the Insurance Commission (IC) shall be used starting with the annual financial statements ending 31 December 2006.

e. *Definition of default and loss.* In connection with the data collection exercise prescribed under this Subsection, banks shall be guided by the following standard definitions of default and loss:

(1) *Definition of default*

A default is considered to have occurred in the following cases:

(a) If a credit obligation is considered non-performing under existing rules and regulations;

(b) If a borrower/obligor has sought or has been placed in bankruptcy, has been found insolvent, or has ceased operations in the case of businesses;

(c) If the bank sells a credit obligation at a material credit-related loss, i.e., excluding gains and losses due to interest rate movements. Banks' board-approved internal policies that govern the use of their internal rating systems must specifically define when a material credit-related loss occurs; and

(d) If a credit obligation of a borrower/ obligor is considered to be in default, all credit obligations of the borrower/obligor with the same bank shall also be considered to be in default.

(2) *Definition of loss*

Loss, for purposes of accumulating data on loss in the event of default, refers to economic loss. It must therefore include discount effects, as well as direct and indirect costs associated with collecting on the credit obligation. Banks' board-approved internal policies that govern the use of their internal rating systems must include specific policies and procedures that should be followed in the determination of economic loss.

f. *Timetable for implementation*

(1) Banks must submit an implementation plan to the appropriate department of the SES no later than 31 July 2004. A monetary penalty of P10,000 per day shall be imposed for delay until such plan is submitted.

(2) A fully documented internal credit risk rating system, duly approved by the board of directors, must be submitted to the BSP not later than 31 December 2004. Upon submission of the system, all prospective and existing corporate accounts must immediately be evaluated and monitored according to such system. A monetary penalty of P10,000 per day shall be imposed for delay until this requirement is complied with.

(As amended by Circular No. 585 dated 15 October 2007 and 531 dated 17 May 2006)

§ 2301.1 ***(Reserved)***

§ 3301.1 ***(Reserved)***

§§ X301.2 – X301.5 ***(Reserved)***

§ X301.6 ***Large exposures and credit risk concentrations.*** The following guidelines shall govern managing large exposures and credit risk concentrations in line with the objective of strengthening risk management in the banking system.

a. *General principles*

(1) A bank can be exposed to various forms of credit risk concentration which if not properly managed may cause significant losses that could threaten its financial strength and undermine public confidence in the bank.

(2) Credit risk concentrations may arise from excessive exposures to individual counterparties, groups of related counterparties and groups of counterparties with similar characteristics (e.g., counterparties in specific geographical locations, economic or industry sectors).

(3) Diversification of risk is essential in banking. Many past bank failures have been due to credit risk concentrations of some kind. It is essential for banks to prevent undue credit risk concentrations from excessive exposures to particular counterparties, industries, economic sectors, regions or countries.

(4) While concentration of credit risks are inherent in banking and cannot be totally eliminated, they can be limited and reduced by adopting proper risk control and diversification strategies. Safeguarding against credit risk concentrations should form an important component of a bank's risk management system.

(5) The board of directors of a bank shall be responsible for establishing and monitoring compliance with policies governing large exposures and credit risk concentrations of the bank. The board should review these policies regularly (at least annually) to ensure that they remain adequate and appropriate for the bank. Subsequent changes to the established policies must be approved by the board.

(6) The policy on large exposures and credit risk concentrations shall, at a minimum, cover the following:

(a) Exposure limits that are reasonable in relation to capital and resources for –

(i) Various types of borrowers/ counterparties (e.g., government, banks and other FIs, corporate and individual borrowers);

(ii) A group of related borrowers/ counterparties;

(iii) Individual industry sectors;

(iv) Individual countries; and

(v) Various types of investments.

(b) The circumstances in which the above limits can be exceeded and the party authorized to approve such excesses, e.g., the bank's board of directors or credit committee with delegated authority from the board.

(c) The delegation of credit authority within the bank for approving large exposures;

(d) The procedures for identifying, reviewing, managing and reporting large exposures of the bank;

(e) The definition of exposure. Banks should take into account the nature of their business and the complexity of their products. In any case, a bank's exposures to a counterparty should include its on and off-balance sheet exposures and indirect exposures; and

(f) The criteria to be used for identifying a group of related persons;

(7) The board and senior management of a bank should ensure that:

(a) Adequate systems and controls are in place to identify, measure, monitor and report large exposures and credit risk concentrations of the bank in a timely manner; and

(b) Large exposures of the bank are kept under regular review. *"Large exposures"* shall refer to exposures to a counterparty or a group of related counterparties equal or greater than five percent (5%) of bank's qualifying capital as defined under Section X116.

(8) A bank should, where appropriate, conduct stress testing and scenario analysis of its large exposures to assess the impact of changes in market conditions or key risk factors (e.g. economic cycles, interest rate, liquidity conditions or other market movements) on its profile and earnings.

(9) It is expected that banks would generally observe a lower internal single borrower's limit than the prescribed limit of twenty-five percent (25%) as a matter of sound practice.

b. *Monitoring of large exposures/ credit risk concentrations*

(1) Banks should have a central liability record (preferably based on automated system) for each loan exposure. Banks should be able to monitor such exposures against prescribed and internal limits on a daily basis.

(2) Every bank should have adequate management information and reporting systems that enable management to identify credit risk concentrations within the asset portfolio of the bank or of the group (including subsidiaries and overseas branches) on a timely basis. If a concentration does exist, banks should reduce it in accordance with their prescribed policies. Large exposures shall be subject to more intensive monitoring.

(3) Banks should ensure that their internal or external auditors conduct at least an annual review of the quality of large exposures and controls to safeguard against credit risk concentrations. Their review should ascertain whether:

(a) The bank's relevant policies, limits and procedures are complied with; and

(b) The existing policies and controls remain adequate and appropriate for the bank's business.

(4) Management should take prompt corrective action to address concerns and exceptions raised.

(5) There should also be an independent compliance function to ensure that all relevant internal and prescribed requirements and limits are complied with. Breaches of prescribed requirements and deviations from established policies and limits should be reported to senior management in a timely manner.

c. *Unsafe and unsound practice*

Non-observance of the principles and the requirements of Items "a" and *"b"* above may be a ground for a finding of unsafe and unsound practice under Section 56 of the General Banking Law of 2000 *(Appendix 48)* and may be subject to appropriate sanction as may be determined by the Monetary Board.

d. *Notification requirements*

A bank must inform BSP immediately when it has concerns that its large exposures or credit risk concentrations have the potential to impact materially upon its capital adequacy, along with proposed measures to address these concerns.

e. *Reporting*

Bank's records on monitoring of large exposures shall be made available to the BSP examiners for verification at any given time. When warranted, the BSP may impose additional reporting requirements on bank in relation to its large exposures and credit risk concentrations.

f. *Sanction*

Any failure or delay in complying with the requirements under Items *"d"* and *"e"* of this Subsection shall be subject to penalty applicable to those involving major reports.

Sec. X302 Loan Portfolio and Other Risk Assets Review System. To ensure that timely and adequate management action is taken to maintain the quality of the loan portfolio and other risk assets and that adequate loss reserves are set up and maintained at a level sufficient to absorb the loss inherent in the loan portfolio and other risk assets, each bank shall establish a system of identifying and monitoring existing or potential problem loans and other risk assets and of evaluating credit policies vis-à-vis prevailing circumstances and emerging portfolio trends. Management must also recognize that loss reserve is a stabilizing factor and that failure to account appropriately for losses or make adequate provisions for estimated future losses may result in misrepresentation of the bank's financial condition.

The system of identifying and monitoring problem loans and other risk assets and setting up of allowances for probable losses shall include, but is not limited to, the guidelines mentioned in *Appendix 18*.

(As amended by Circular Nos. 622 dated 16 September 2008, 603 dated 03 March 2008 and 520 dated 20 March 2006)

§ X302.1 *Provisions for losses; booking* The board of directors of banks are responsible for ensuring that their institutions have controls in place to determine the allowance for probable losses on loans, other credit accommodations, advances and other assets consistent with the institutions' stated policies and procedures, generally accepted accounting principles (GAAP), the BSP rules and regulations and the safe and sound banking practices. The board of directors, in fulfilling this responsibility, shall require management to develop and maintain an appropriate, systematic and uniformly applied process consistent and in compliance with existing BSP rules and regulations to determine the amount of reserves for bad debts or doubtful accounts or other contingencies.

The specific allowance for probable losses for classified loans and other risk assets and the general loan loss provision as required in *Appendix 18* shall be set up immediately.

§ X302.2 *Sanctions.* Non-compliance with the requirement to book valuation reserves required under the preceding Subsection shall be a ground for the imposition of any or all of the following sanctions:

a. Denial of the request for authority to establish new banking offices regardless of type or category;

b. Denial of access to BSP credit facilities except as may be allowed under Section 84 of R. A. No. 7653; and

c. Fine of P10,000 a day for UBs and KBs, P5,000 for TBs and P500 for RBs/Coop Banks, counted as follows:

(1) from the date the bank has been informed that the recommendation of the appropriate department of the SES has been confirmed by the Monetary Board up to the date that said recommended valuation reserves had been actually booked, in the case of allowance for probable losses for loans and other risk assets classified as substandard unsecured, doubtful and loss as required by the BSP; and

(2) from the dates prescribed under this Section up to the date of the actual booking in cases of the two percent (2%) general provision for probable losses, the twenty-five percent (25%) allowance for probable losses on secured loans classified as substandard, and the five percent (5%) allowance for probable losses on loans especially mentioned.

A. LOANS IN GENERAL

Sec. X303 Credit Exposure Limits to a Single Borrower

a. Consistent with national interest, the total amount of loans, credit accommodations and guarantees that may be extended by a bank to any person, partnership, association, corporation or other entity shall at no time exceed twenty five percent (25%) of the net worth of such bank. The basis for determining compliance with the single borrower's limit (SBL) is the total credit commitment of the bank to or on behalf of the borrower.

b. The total amount of loans, credit accommodations and guarantees prescribed in the first paragraph may be increased by an additional ten percent (10%) of the net worth of such bank: *Provided,* That the additional liabilities are adequately secured by trust receipts, shipping documents, warehouse receipts or other similar documents transferring or securing title covering readily marketable, non-perishable goods which must be fully covered by insurance.

c. The above prescribed ceilings shall include: (1) the direct liability of the maker or acceptor of paper discounted with or sold to such bank and the liability of a general endorser, drawer or guarantor who obtains a loan or other credit accommodation from or discounts paper with or sells papers to such bank; (2) in the case of an individual who owns or controls a majority interest in a corporation, partnership, association or any other entity, the liabilities of said entities to such bank; (3) in the case of a corporation, all liabilities to such bank of all subsidiaries in which such corporation owns or controls a majority interest; and (4) in the case of a partnership, association or other entity, the liabilities of the members thereof to such bank.

d. Even if a parent corporation, partnership, association, entity or an individual who owns or controls a majority interest in such entities has no liability to the bank, the liabilities of subsidiary corporations or members of the partnership, association, entity or such individual shall be combined under certain circumstances, including but not limited to any of the following situations: (1) the parent corporation, partnership, association, entity or individual guarantees the repayment of the liabilities; (2) the liabilities were incurred for the accommodation of the parent corporation or another subsidiary or of the partnership or association or entity or such individual; or (3) the subsidiaries though separate entities operate merely as departments or divisions of a single entity.

e. For purposes of this Section, loans, other credit accommodations and guarantees shall exclude: (1) loans and other credit accommodations secured by obligations of the BSP or of the Philippine Government; (2) loans and other credit accommodations fully guaranteed by the government as to the payment of principal and interest; (3) loans and other credit accommodations secured by U.S. Treasury Notes and other securities issued by central governments and central banks of foreign countries with the highest credit quality given by any two (2) internationally accepted rating agencies; (4) loans and other credit accommodations to the extent covered by the hold-out on or assignment of, deposits maintained in the lending bank and held in the Philippines; (5) loans, credit accommodations and acceptances under letters of credit to the extent covered by margin deposits; and (6) other loans or credit accommodations which the Monetary Board may from time to time specify as non-risk items.

f. The wholesale lending activities of government banks to participating financial institutions (PFIs) for relending to end-user borrowers shall at no time exceed a separate limit of thirty-five percent (35%) of net worth, subject to the following guidelines: (1) it shall apply only to loans granted to PFIs on a wholesale basis for on-lending to end-user borrowers; (2) it shall apply only to loan programs funded by multilateral, international or local development agencies, organizations or institutions especially designed for wholesale lending activities of government banks; (3) the end-user borrowers of the PFIs shall be subject to the twenty-five percent (25%) SBL, not the increased ceiling of thirty-five percent (35%); and (4) government banks shall observe appropriate criteria for accrediting PFIs and for the grant/renewal of credit lines to accredited PFIs.

g. Loans and other credit accommodations as well as deposits maintained with, and usual guarantees by a bank to any other bank or non-bank entity, whether locally or abroad, shall be subject to the limits as herein prescribed.

Deposits of RBs/Coop Banks with government-owned or controlled financial institutions like the LBP and the DBP shall not be covered by the SBL imposed under R.A. No. 8791.

In municipalities and cities where there are no government banks, the deposits of RBs/Coop Banks in private banks in said areas shall not be subject to the SBL. Deposits in private banks located in other municipalities/cities shall be covered by the SBL.

The outstanding balance of the deposit in a private depository bank being used by the TBs/RBs/Coop Banks with authority to accept/create demand or current deposits, to fund checks cleared through the said private depository bank shall also be exempt from the SBL even if there is a government-owned or controlled financial institution in the area.

§ X303.1 *Definition of terms*. For purposes of this Section, the following definitions shall apply:

a. *Total credit commitment* shall include outstanding loans and other credit accommodations, deferred letters of credit less margin deposits, and guarantees. Except as specifically provided, total credit commitment shall be reckoned on credit risk-weighted basis consistent with existing regulations.

b. *Loans* shall refer to all the accounts under the loan portfolio of a bank as enumerated in the Manual of Accounts for Banks.

c. *Other credit accommodations* shall refer to credit and specific market risk exposures of banks arising from accommodations other than loans such as receivables (sales contract receivables, accounts receivables and other receivables), and debt securities booked as investments.

d. *Bank guarantee*. A bank guarantee is an irrevocable commitment of a bank binding itself to pay a sum of money in the event of non-performance of a contract by a third party. The guarantee is a commitment separate and distinct from the principal debt or contract.

e. *Net worth* shall mean the total of the unimpaired paid-in capital including paid-in surplus, retained earnings and undivided profit, net of unbooked valuation reserves and other adjustments as may be required by the BSP**.**

f. *Qualifying capital* shall mean capital under Sec. X116.

g. The term *"control of majority interest"* shall be synonymous to "controlling interest" and exists when the parent owns directly or indirectly through subsidiaries more than one half of the voting power of an enterprise unless, in exceptional circumstance, it can be clearly demonstrated that such ownership does not constitute control. Control of majority interest may also exist even when the parent owns one-half or less of the voting power of an enterprise when there is:

(1) Power over more than one-half of the voting rights by virtue of an agreement with other investors; or

(2) Power to govern the financial and operating policies of the enterprise under a statute or an agreement; or

(3) Power to appoint or remove the majority members of the board of directors or equivalent governing body; or

(4) Power to cast the majority votes at meetings of the board of directors or equivalent governing body; or

(5) Any other arrangement similar to any of the above.

h. *Subsidiary* shall refer to a corporation or firm more than fifty percent (50%) of the outstanding voting stock of which is directly or indirectly owned, controlled or held with power to vote by its parent corporation.

i. *Credit risk transfer* shall refer to any arrangement that allows the bank to transfer the credit risk associated with its loan or other credit accommodation to a third party.

j. *Readily marketable goods* shall mean articles of commerce, agriculture or industry of such uses as to make them the subject of constant dealings in ready markets with such frequent quotations as to make their prices easily and definitely ascertainable, or which lend themselves easily to disposal by sale at any time to pay the obligations secured by the said goods.

k. *Bill of exchange drawn in good faith against actually existing values* shall mean one (1) which is drawn by a seller on the purchaser for the purchase price of commodities sold. A bill of exchange, whether drawn against goods for exports or against goods to be sold locally, which is discounted or purchased by a bank is a bill drawn against existing values only when it is accompanied by shipping documents, warehouse receipts or other papers, securing title to the goods sold. However, bills of exchange drawn in good faith against actually existing values as defined in this paragraph, which are past due or the maturities of which have been extended, shall be considered as additional loans authorized under the second paragraph of this section and shall be subject to the ten percent (10%) limitation provided therein.

l. *Commercial or business paper actually owned by the person negotiating the same* shall mean a paper arising from an actual business transaction. A trade acceptance or promissory note actually owned by the person negotiating the same is a commercial or a business paper. However, if a bill is drawn against an agent or fictitious drawee, or if a promissory note is executed by an agent or fictitious drawee, neither is a commercial nor a business paper. Commercial or business papers actually owned and discounted by the person negotiating the same, which are past due or the maturity of which have been extended, shall be considered as money borrowed and shall be subject to the limitation of twenty-five percent (25%) provided in the first paragraph of this Section: *Provided,* That commercial or business papers purchased by banks from SMEs which became past due or the maturities of which have been extended, shall be considered additional loan by the bank to the purchaser of goods or services from the SME and shall be entitled to an increased SBL equivalent to ten percent (10%) of the net worth of the concerned bank if the purchasers are companies with credit ratings of at least "AA-" or equivalent from a BSP-recognized rating agency.

§ X303.2 *Rediscounted papers included in loan limit.* The liabilities to the bank of borrowers whose papers were rediscounted by banks with the BSP shall not be deemed as having been extinguished by the rediscount, but shall be considered as still existing and shall be included in determining the SBL until such papers are paid by the borrowers.

§ X303.3 *Credit risk transfer.* Subject to prior approval of the BSP, loans and other credit accommodations covered by a legally effective credit risk transfer arrangement such as guarantee, letter of indemnity, standby letter of credit or credit derivative, may be excluded from the total credit commitment of the bank to a borrower in reckoning compliance with the SBL.

§ X303.4 *Exclusions from loan limit*

a. The discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper which are actually owned by the person, company, corporation or association negotiating the same;

b. Credit accommodations to finance the importation of rice and corn to the extent of 100% of the net worth of the bank concerned shall be excluded in determining the SBL prescribed herein, subject to the following conditions:

(1) The importation shall be made in pursuance of a national policy duly enunciated by the National Government;

(2) The importation shall have been approved by the National Economic Development Authority (NEDA);

(3) The letter of credit shall specify that importation shall be made with certification from the National Food Authority (NFA), or the consular establishment of the Philippine government at the source of any such establishment of the Philippine government at the source of any such shipment to the effect that the commodity being imported is either rice or corn; and

(4) The related bills of lading shall specify in addition to the name of the importer concerned, that the NFA shall be the consignee of the shipment;

c. The portion of loans and other credit accommodations covered by the guarantee of IGLF;

d. The total liabilities of a commercial paper issuer for commercial paper held by a UB as a firm underwriter shall not be counted in determining compliance with the SBL within a period of 180 days from the acquisition of the commercial paper by the UB: *Provided,* That in no case shall such liabilities exceed five percent (5%) of the net worth of the UB beyond the normal applicable SBL;

e. The portion of loans and other credit accommodations covered by guarantees of international/regional institutions/multi-lateral FIs where the Philippine Government is a member/ shareholder, such as the IFC and the ADB;

f. Loans and other credit accommodations or portion thereof, specifically provided for with valuation reserve: *Provided,* That the bank has no unbooked valuation reserves;

g. Loans and other credit accommodations as a result of an underwriting or sub-underwriting agreement of debt securities outstanding for a period not exceeding thirty (30) calendar days;

h. Loans granted to foreign embassies. These loans are considered as loans to their respective central governments and as such shall be considered non-risk; and

i. Foreign securities lending under Sec. X531 and other domestic securities lending programs duly recognized by the BSP containing safeguards consistent with best international practices, to protect securities lenders' risk exposures.

(As amended by Circular Nos. 578 dated 17 August 2007 and 550 dated 17 November 2006)

§ X303.5 *Sanctions.* Violations of the provisions of this Section shall be subject to the following:

a. *Monetary penalties* - Fines of one-tenth of one percent (1/10 of 1%) of the excess over the ceiling but not to exceed P30,000.00 a day for each SBL violation shall be assessed on the bank to be reckoned from the date the excess started up to the date when such excess was eliminated: *Provided,* That a maximum fine of P500.00 a day for each violation shall be imposed against banks with total resources of less than P50.0 million at the time of granting of loan/credit accommodation.

b. *Other sanctions*

First Offense – Reprimand for the directors/officers who approved the credit availment which resulted in the excess with a warning that subsequent violations will be subject to more severe sanctions.

Subsequent offenses –

(1) Fine of P1,000.00 for directors/officers who approved the credit availment which resulted in the excess.

(2) Suspension of the bank's branching privileges and access to BSP rediscounting facilities until the excess is eliminated.

(3) Other penalties as the Monetary Board may impose depending on the gravity of the offense.

Transitory provision. Outstanding credit commitments of a bank as of 02 May 2004 which are within the ceiling prescribed under the regulations existing prior to said date but will exceed the limitations prescribed in this Section shall not be subject to penalty for a period of one (1) year or until said credit commitments become past due or are extended, renewed or restructured whichever comes later. Said credit commitments shall, however, be reported to the BSP within fifteen (15) banking days from 02 May 2004.

§§ X303.6 – X303.7 *(Reserved)*

§ X303.8 *Limit for wholesale lending activities of government banks*. There shall be a separate SBL of thirty-five percent (35%) of unimpaired capital and surplus for the wholesale lending activities of government banks to PFIs for relending to end-user borrowers, subject to the following guidelines:

a. Government banks' SBL of thirty-five percent (35%) of unimpaired capital and surplus shall apply only to loans granted to PFIs on a wholesale basis for on-lending to end-user borrowers;

b. The thirty-five percent (35%) SBL shall apply only to loan programs funded by multilateral, international or local developmental agencies, organizations or institutions specially designed for wholesale lending activities of government banks;

c. The end-user borrowers of the PFIs shall be subject to the twenty-five percent (25%) SBL, not to the increased ceiling of thirty-five percent (35%); and

d. Government banks shall observe the minimum criteria for accrediting PFIs and for the grant/renewal of credit lines to accredited PFIs as set forth in *Appendix 41*.

Sec. X304 Grant of Loans and Other Credit Accommodations. The following regulations shall be observed in the grant of loans and other credit accommodations.

§ X304.1 ***General guidelines.*** Consistent with safe and sound banking practices, a bank shall grant loans or other credit accommodations only in amounts and for the periods of time essential for the effective completion of the operation to be financed.

Before granting loans or other credit accommodations, a bank must ascertain that the borrower, co-maker, endorser, surety and/or guarantor, if applicable, is/are financially capable of fulfilling his/their commitments to the bank. For this purpose, a bank shall obtain adequate information on his/their credit standing and financial capacities.

In addition to the usual information sheet about the borrower, a bank shall require from the credit applicant the following:

a. A copy of the latest ITR of the borrower and his co-maker, if applicable, duly stamped as received by the BIR;

b. Except as otherwise provided by law and in other regulations, if the borrower is engaged in business, a copy of the borrower's latest financial statements as submitted for taxation purposes to the BIR; and

c. A waiver of confidentiality of client information and/or an authority of the bank to conduct random verification with the BIR in order to establish authenticity of the ITR and accompanying financial statements submitted by the client.

The documents under Items *"a"* and *"b"* above shall be required to be submitted annually for as long as the loan and/or credit accommodation is outstanding. The consistency of the data/figures in said ITRs and financial statements shall also be checked and considered in the evaluation of the financial capacity and creditworthiness of credit applicants. The waiver of confidentiality of client information and/or an authority of the bank to conduct random verification with the BIR need not be submitted annually since once submitted these documents remain valid unless revoked.

Should the document(s) submitted prove to be spurious or incorrect in any material detail, the bank may terminate any loan or other credit accommodation granted on the basis of said document(s) and shall have the right to demand immediate repayment or liquidation of the obligation. Moreover, the bank may seek redress from the court for any harm done by the borrower's submission of spurious documents.

The required submission of additional documents shall cover loans, other credit accommodations, and credit lines granted, restructured, renewed or extended after 02 November 2006 including any availment and/or re-availment against existing credit lines, except:

(1) Microfinance loans. This represents small loans granted to the basic sectors such as farmer-peasant, artisanal fisherfolk, workers in the formal and informal sector, migrant workers, indigenous peoples and cultural communities, women, differently-abled persons, senior citizens, victims of calamities and disasters, youth and students, children, and urban poor, as defined in the Social Reform and Poverty Alleviation Act of 1997 (R.A. No. 8425), and other loans granted to poor and low-income households for their microenterprises and small businesses. The maximum principal amount of microfinance loans shall not exceed P150,000 and may be amortized on a daily, weekly, semi-monthly or monthly basis, depending on the cash flow conditions of the borrowers. Said loans are usually unsecured, for relatively short

periods of time (180 days) and often featuring joint and several guarantees of one (1) or more persons;

(2) Loans to registered Barangay Micro-Business Enterprises (BMBEs);

(3) Interbank loans;

(4) Loans secured by hold-outs on or assignment of deposits or other assets considered non-risk by the Monetary Board;

(5) Loans to individuals who are not required to file ITRs under BIR regulations, as follows:

(a) Individuals whose gross compensation income does not exceed their total personal and additional exemptions, or whose compensation income derived from one (1) employer does not exceed P60,000 and the income tax on which has been correctly withheld;

(b) Those whose income has been subjected to final withholding tax;

(c) Senior citizens not required to file a return pursuant to R.A. No. 7432, as amended by R.A. No. 9257, in relation to the provisions of the National Internal Revenue Code (NIRC) or the Tax Reform Act of 1997; and

(d) An individual who is exempt from income tax pursuant to the provisions of the NIRC and other laws, general or special; and

(6) Loans to borrowers, whose only source of income is compensation and the corresponding taxes on which has been withheld at source: *Provided*, That the borrowers submitted, in lieu of the ITR, a copy of their Employer's Certificate of Compensation Payment/Tax Withheld (BIR Form 2316) or their payslips for at least three (3) months immediately preceding the date of loan application.

Loans to micro and small enterprises which are not specifically exempted from the additional documentary requirements specified under the third paragraph of this Subsection shall be exempted from said additional documentary requirement up to 31 December 2011.

Consumer loans, with original amounts not exceeding P2.0 million, are exempted from updating requirements or the required annual submission of the same requirements forwarded during the initial submission under this Subsection but not in their restructuring, renewal, or extensions or availment/re-availment against existing credit lines: *Provided,* That these loans are supported by ITRs or by BIR Form 2316 or payslips for at least three (3) months immediately preceding the date of loan application, and financial statements submitted for taxation purposes to the BIR, as may be applicable, at the time the loans were granted, restructured, renewed, or extended.

For purposes of this Subsection, the following definitions shall apply:

1. *Micro and small enterprises* shall be defined as any business activity or enterprise engaged in industry, agribusiness and/or services whether single proprietorship, cooperative, partnership or corporation whose total assets, inclusive of those arising from loans but exclusive of the land on which the particular business entity's office, plant and equipment are situated, must have a value of up to P3.0 million and P15.0 million, respectively, or as may be defined by the SMED Council or other competent government agency.

2. *Consumer loans* is defined to include housing loans, loans for purchase of car, household appliance(s), furniture and fixtures, loans for payment of educational and hospital bills, salary loans and loans for personal consumption, including credit card loans.

(As amended by Circular Nos. 622 dated 16 September 2008 and 549 dated 09 October 2006)

§ X304.2 *Purpose of loans and other credit accommodations.* Before granting a loan or other credit accommodation, banks shall ascertain the purpose of the loan or other credit accommodation which shall be clearly stated in the application and in the contract between the bank and borrower. The proceeds of a loan or other credit accommodation shall be utilized only for the purpose(s) stated in the application and contract; otherwise, the bank may terminate the loan or other credit accommodation and demand immediate repayment of the obligation. Notwithstanding the preceding sentence, the proceeds of a loan or other credit accommodation may be utilized by the borrower for a purpose(s) other than that originally stated in the application and contract: *Provided,* That such other purpose(s) is/are among those for which the lending bank may grant loans and other credit accommodations under existing laws and regulations: *Provided, further,* That such utilization shall be with prior written approval of duly authorized officer(s)/ committee/board of directors of the lending bank and such written approval shall form part of the contract between the bank and the borrower.

§ X304.3 *Prohibited use of loan proceeds.* Banks are prohibited from requiring their borrowers to acquire shares of stock of the lending bank out of the loan or other credit accommodation proceeds from the same bank.

§ X304.4 *Signatories.* Banks shall require that loans and other credit accommodations be made under the signature of the principal borrower and, in the case of unsecured loans and other credit accommodations to an individual borrower, at least one (1) co-maker, except that a co-maker is not required when the principal borrower has the financial capacity and a good track record of paying his obligations.

(As amended by Circular No. 622 dated 16 September 2008)

§ X304.5 - X304.8 *(Reserved)*

§ X304.9 *Policies on loans to non-immigrants and embassy officials.* Banks are allowed to extend peso loans to the following:

a. Non-immigrants holding visas issued under Secs. 9(d) and 9(g) of the Immigration Act of 1940, Special Investor's Resident Visa (SIRV) and visas issued by the Philippine Economic Zone Authority: *Provided*, That such loans shall be limited to peso consumer loans including credit cards, auto loans and appliance loans, but excluding real estate or housing loans: *Provided, further*, That the lending bank institutes measures to mitigate credit risk such as requiring the submission of a Comfort Letter from the visa holder's employer, limiting the term of the loan to the period of the visa's validity, submission of SIRV identification card, as well as subjecting the visa holder to the usual credit processes/requirements; and

b. Embassy officials [foreign diplomats and career consular officials and employees who are physically residing in the Philippines for a term of one (1) year or more]: *Provided*, That such loans shall be limited to consumer loans, including credit cards, auto loans, appliance loans and others that may henceforth be allowed by the Monetary Board: *Provided, further*, That the lending bank institutes measures to mitigate credit risk such as requiring the submission of a Comfort Letter from the Embassy employing said officials.

(M-2007-021 dated 15 August 2007)

Sec. X305 Interest and Other Charges The rate of interest, including commissions, premiums, fees and other charges, on any loan, or forbearance of any money, goods or credits regardless of maturity and whether secured or unsecured shall not be subject to any regulatory ceiling.

§ X305.1 *Rate of interest in the absence of stipulation.* The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of expressed contract as to such rate of interest, shall be twelve percent (12%) per annum.

§ X305.2 ***Escalation clause; when allowable.*** Parties to an agreement pertaining to a loan or forbearance of money, goods or credits may stipulate that the rate of interest agreed upon may be increased in the event that the applicable maximum rate of interest is increased by the Monetary Board: *Provided,* That such stipulation shall be valid only if there is also a stipulation in the agreement that the rate of interest agreed upon shall be reduced in the event that the applicable maximum rate of interest is reduced by law or by the Monetary Board: *Provided, further,* That the adjustment in the rate of interest agreed upon shall take effect on or after the effectivity of the increase or decrease in the maximum rate of interest.

§ X305.3 ***Floating rates of interest.*** The rate of interest on a floating rate loan during each interest period shall be stated on the basis of Manila Reference Rates (MRRs), T-Bill Rates or other market based reference rates plus a margin as may be agreed upon by the parties.

The MRRs for various interest periods shall be determined and announced by the BSP every week and shall be based on the weighted average of the interest rates paid during the immediately preceding week by the ten (10) KBs with the highest combined levels of outstanding deposit substitutes and time deposits, on promissory notes issued and time deposits received by such banks, of P100,000 and over per transaction account, with maturities corresponding to the interest periods for which such MRRs are being determined. Such rates and the composition of the sample KBs shall be reviewed and determined at the beginning of every calendar semester on the basis of the banks' combined levels of outstanding deposit substitutes and time deposits as of 31 May or 30 November, as the case may be.

The rate of interest on floating rate loans existing and outstanding as of 23 December 1995 shall continue to be determined on the basis of the MRRs obtained in accordance with the provisions of the rules existing as of 01 January 1989: *Provided, however,* That the parties to such existing floating rate loan agreements are not precluded from amending or modifying their loan agreements by adopting a floating rate of interest determined on the basis of the TBR or other market based reference rates.

Where the loan agreement provides for a floating interest rate, the interest period, which shall be such period of time for which the rate of interest is fixed, shall be such period as may be agreed upon by the parties.

For the purpose of computing the MRRs, banks shall accomplish the report forms, RS Form 2D and Form 2E (BSP 5-17-34A).

§ X305.4 ***Accrual of interest earned on loans.*** Banks are allowed to accrue interest earned on loans, subject to the following guidelines and/or procedures.

a. No accrual of interest income is allowed if a loan has become non-performing as defined under Sec. X309. Likewise, interest income shall not be accrued for unmatured loans/receivables with indications that collectibility thereof has become doubtful. These indications shall include declaration of bankruptcy, insolvency, cessation of operations, or such other conditions of financial difficulties or inability to meet financial obligations as they mature. Separate appropriate records shall be maintained for these non-accruing unmatured loans.

Interest income on past due loans arising from discount amortization (and not from the contractual interest of the accounts) shall be accrued as provided in PAS 39.

b. Interest earned on extended or renewed loans may be accrued: *Provided,* That there is no previously accrued but uncollected interest thereon.

Interest income on restructured loans (principal plus capitalized interest thereon) may be accrued: *Provided,* That these are:

(1) In current status; and

(2) Fully secured by real estate with loan value of up to sixty percent (60%) of the appraised value of the real estate security and the insured improvements thereon, and such other first class collaterals as may be deemed appropriate by the Monetary Board.

c. Interest on non-performing loan accounts shall be taken up as income only when actual payments thereon are received.

d. Accrued interest earned but not yet collected/received shall not be considered as profits and/or earnings eligible for dividend declaration and/or profit sharing.

e. A contra account to be designated *Allowance for Uncollected Interest on Loans* shall be set up in accordance with *Appendix 18* if accrued interest receivable on loans and loan installments is still uncollected after three (3) months from the date such loans and loan installments have become non-performing.

f. The amount representing *Allowance for Uncollected Interest on Loans* may be chargeable against the excess of outstanding valuation reserves for loans and other risk assets as appearing in the bank's books, over those recommended by the appropriate department of the SES. The balance thereof, if any, shall be chargeable against operations.

g. For all purposes, the *Allowance for Uncollected Interest on Loans* shall be considered a valuation reserve/allowance against the *Accrued Interest Receivable account.*

Sec. X306 Past Due Accounts. Past due accounts of a bank shall, as a general rule, refer to all accounts in its loan portfolio, all receivable components of trading account securities and other receivables, as defined in the Manual of Accounts for Banks, which are not paid at maturity.

§ X306.1 *Accounts considered past due.* The following shall be considered as past due:

a. *Loans or receivables payable on demand* - If not paid on the date indicated on the demand letter, or within three (3) months from date of grant, whichever comes earlier;

b. *Bills discounted and time loans, whether or not representing availments against a credit line* - If not paid on the respective maturity dates of the promissory notes;

c. *Customers' liability on drafts under letters of credit/trust receipts:*

(1) *Sight Bills* - If dishonored upon presentment for payment or not paid within thirty (30) days from date of original entry, whichever comes earlier;

(2) *Usance Bills* - If dishonored upon presentment for acceptance or not paid on due date, whichever comes earlier; and

(3) *Trust receipts* - If not paid on due date.

d. *Bills and other negotiable instruments purchased* - If dishonored upon presentment for acceptance/payment or not paid on maturity date, whichever comes earlier: *Provided, however,* That an out-of-town check and a foreign check shall be considered as past due if outstanding for thirty (30) days and forty-five (45) days, respectively, unless earlier dishonored;

e. *Loans/receivables payable in installments* - The total outstanding balance thereof shall be considered past due in accordance with the following schedule:

Mode of Payment	Minimum No. of Installments In Arrears
Monthly	3
Quarterly	1
Semestral	1
Annual	1

Provided, however, That when the total amount of arrearages reaches twenty percent (20%) of the total outstanding balance of the loan/receivable, the total outstanding balance of the loan/receivable shall be considered as past due, regardless of the number of installments in arrears: *Provided, further,* That for modes of payment other than those listed above (e.g., daily, weekly or semi-monthly), the entire outstanding balance of the loan/receivable shall be considered as past due when the total amount of arrearages reaches ten percent (10%) of the total loan/receivable balance;

For this purpose, the term *"installments"* shall refer to principal and/or interest amortizations that are due on several dates as indicated/specified in the loan documents.

f. *Credit card receivables* - If the minimum amount due or minimum payment required is not paid within two (2) cycle dates, the total amount due stated in the monthly billing statement: *Provided, however,* That the total outstanding balance which includes amortization/s of any fixed monthly installment plan or deferred payment scheme shall be considered and reported past due when the number of monthly installments in arrears is three (3) or more: *Provided, further,* That the bank shall have the right to demand the obligation in full in case of default in any installment thereon if the contract between the bank and the cardholder contains an "*acceleration clause*"; and

g. *(Deleted by Circular No. 202 dated 27 May 1999)*

h. *Microfinance loans* - If a payment has fallen due and remained unpaid. Loan payments are applied first to any interest due, then to any installment of principal that is due but unpaid, beginning with the earliest such installment. The number of days of lateness/delinquency is based on the due date of the earliest loan installment that has not been fully paid.

For the purpose of determining delinquency in the payment of obligations as defined in Subsec. X143.1e, any due and unpaid loan installment or portion thereof, from the time the obligor defaults, shall be considered past due.

§ X306.2 *Demand loans.* Banks shall, in case of non-payment of a demand loan, make a written demand within three (3) months following the grant of such loan. The demand shall indicate a period of payment which shall not be later than three (3) months from date of said demand.

§ X306.3 *Renewals/extensions.* No loan shall be renewed or its maturity date extended unless the corresponding accrued interest receivable shall have been paid.

§ X306.4 *Restructured loans* Restructured loans whose terms of payment have not been complied with and which have become past due shall be governed by the provisions of Sec. X322.

§ X306.5 *Write-off of loans as bad debts*

a. *Approval by board of directors* Banks, upon approval by their board of directors may write-off loans, other credit accommodations, advances, and other assets, regardless of amount, against allowance for probable losses (valuation reserves) or current operations as soon as they are satisfied that such loans, other credit accommodations, advances and other assets are worthless as follows:

(1) In the case of secured loans, banks may write-off loans, other credit accommodations and other assets in an amount corresponding to the booked valuation reserves: *Provided,* That the balance of the secured loans, other credit accommodations, advances and other assets shall remain in the books.

(2) In the case of unsecured loans, other credit accommodations, advances

and other assets, banks shall write-off said loans, other credit accommodations, advances and other assets in full amount outstanding.

However, write-off of loans, other credit accommodations, advances and other assets considered transactions with DOSRI shall be with prior approval of the Monetary Board.

b. *Definitions*. For purposes of this Section, the following terms are hereby defined as follows:

(1) *Loans*. The term *loans s*hall refer to all the accounts under the loan portfolio of a bank as enumerated in the Manual of Accounts for Banks.

(2) *Other credit accommodations*. The term *other credit accommodations* shall refer to exposures of banks other than loans such as sales contract receivables, accounts receivables, accrued interest receivables, lease receivables, and rental receivables.

(3) *Advances*. The term *advances* shall refer to any advance by means of an incidental or temporary overdraft, cash "vale", any advance by means of DAUD and any advances of unearned salary or unearned compensation.

(4) *Other assets*. The term *other assets s*hall refer to investments, placements, ROPAs and all other asset accounts that will not fall under loans and other credit accommodations.

(5) *Bad debts*. The term *bad debts* shall refer to the definition under Subsec. X136.1.

c. *Reporting requirements*. Notice of write-off of loans, other credit accommodations, advances, and other assets shall be submitted in the prescribed form to the appropriate department of SES concerned within thirty (30) days after every write-off with (i) a sworn statement signed by the President of the bank or officer of equivalent rank that write-off did not include transactions with DOSRI and (ii) a copy of board resolution approving the write-off.

The income tax expense deferred corresponding to the amount of loan, other credit accommodation, advances and other asset written-off considered deductible for income tax purposes shall be recognized and reversed in bank's books.

d. *Verification of write-offs*. Write-offs of loans shall be subject to verification during examination.

§ X306.6 *Writing-off microfinance loans as bad debts.* Microfinance loans, regardless of amount that have become past due in accordance with Subsec. X306.1h may be written-off, in conformity with the provisions of Subsec. X306.5: *Provided,* That the notice of write-off and attachments required under Item *"c"* of Subsec. X306.5 are filed within thirty (30) days after every write-off of loans.

§ X306.7 *Updating of information provided to credit information bureaus* Banks which have provided adverse information, such as the past due or litigation status of loan accounts, to credit information bureaus, or any organization performing similar functions, shall submit monthly reports to these bureaus or organizations on the full payment or settlement of the previously reported accounts within five (5) banking days from the end of the month when such full payment was received. For this purpose, it shall be the responsibility of the reporting banks to ensure that their disclosure of any information about their borrowers/clients is with the consent of borrowers/clients concerned.

(Circular No. 589 dated 18 December 2007)

Sec. X307 "Truth in Lending Act" Disclosure Requirement. Banks are required to strictly adhere to the provisions of R.A. No. 3765, otherwise known as the "Truth in Lending Act", and shall make the true and effective cost of borrowing an integral part of every loan contract.

The following regulations shall apply to all banks engaged in the following types of credit transactions:

a. Any loan, mortgage, deed of trust, advance and discount;

b. Any conditional sales contract, any contract to sell, or sale or contract of sale of property or services, either for present or future delivery, under which part or all of the price is payable subsequent to the making of such sale or contract;

c. Any rental-purchase contract;

d. Any contract or arrangement for the hire, bailment, or leasing of property;

e. Any option, demand, lien, pledge, or other claim against, or for delivery of, property or money;

f. Any purchase, or other acquisition of, or any credit upon security of any obligation or claim arising out of any of the foregoing; and

g. Any transaction or series of transactions having a similar purpose or effect.

The following categories of credit transactions are outside the scope of these regulations:

(1) Credit transactions which do not involve the payment of any finance charge by the debtor; and

(2) Credit transactions in which the debtor is the one specifying a definite and fixed set of credit terms such as bank deposits, insurance contracts, sale of bonds, etc.

§ X307.1 *Definition of terms*

a. *Person* means any individual, partnership, corporation, association or other organized group of persons, or the legal successor or representative of the foregoing, and includes the Philippine Government or any agency thereof or any other government, or any of its political subdivisions, or any agency of the foregoing.

b. *Cash price or delivered price,* in case of trade transactions, is the amount of money which would constitute full payment upon delivery of property (except money) or service purchased at the bank's place of business. In the case of financial transactions, cash price represents the amount of money received by the debtor upon consummation of the credit transaction, net of finance charges collected at the time the credit is extended (if any).

c. *Down Payment* represents the amount paid by the debtor at the time of the transaction in partial payment for the property or service purchased.

d. *Trade-in* represents the value of an asset agreed upon by the bank and debtor, given at the time of the transaction in partial payment for the property or service purchased.

e. *Non-finance charges* correspond to the amounts advanced by the bank for items normally associated with the ownership of the property or of the availment of the service purchased which are not incident to the extension of credit. For example, in the case of the purchase of an automobile on credit, the creditor may advance the insurance premium as well as the registration fee for the account of the debtor.

f. *Amounts to be financed* consist of the cash price plus non-finance charges less the amount of the down payment and value of the trade-in.

g. *Finance charge* represents the amount to be paid by the debtor incident to the extension of credit such as interest or discounts, collection fees, credit investigation fees, attorney's fees and other service charges. The total finance charge represents the difference between (a) the aggregate consideration (downpayment plus installments) on the part of the debtor and (b) the sum of the cash price and non-finance charges.

h. *Simple annual rate* is the uniform percentage which represents the ratio, on an annual basis, between the finance charges and the amount to be financed.

In the case of a single payment upon maturity, the simple annual rate (R) in percent is determined by the following method:

$$R = \frac{\text{(finance charge)}}{\text{(amount to be financed)}} \times \frac{12}{\text{(maturity period in months)}} \times 100$$

In the case of the normal installment type of credit of at least one (1) year in duration, where installment payments of equal amount are made in regular time periods spaced not more than one (1) year apart, the R in percent is computed by the following method:

$$R = 2x \frac{\text{(finance charge)}}{\text{(amount to be financed)}} x \frac{\text{(no. of payment in a year)}}{\text{(total no. of payments plus one)}} x\ 100$$

In case where the credit matures in less than one (1) year (e.g., installment payments are required every month for six (6) months) the same formula will apply except that the number of payments in a year would refer to the number of installment periods, as defined in the credit contract if the credit matures in one (1) year. For example, the number of payments a year would be twelve (12) for this purpose in case where six (6) monthly installment payments are called for in the credit transaction.[1]

§ X307.2 *Information to be disclosed* Banks shall furnish each person to whom credit is extended, prior to the consummation of the transaction, a clear statement in writing setting forth the following information:

a. The cash price or delivered price of the property or service to be acquired;

b. The amounts, if any, to be credited as downpayment and/or trade-in;

c. The difference between the amounts set forth under Items *"a"* and *"b"*;

d. The charges, individually itemized, which are paid or to be paid by such person in connection with the transaction but which are not incident to the extension of credit;

e. The total amount to be financed;

f. The finance charges expressed in terms of pesos and centavos; and

g. The percentage that the finance charge bears to the total amount to be financed expressed as a simple annual rate on the outstanding unpaid balance of the obligation.

The contract covering the credit transaction or any other document to be acknowledged and signed by the debtor, shall indicate the above seven (7) items of information. In addition, the contract or document shall specify additional charges, if any, which will be collected in case certain stipulations in the contract are not met by the debtor.

In case any of the seven (7) items of information mentioned is not disclosed in the contract covering the credit transaction, all of the seven (7) items, to the extent applicable, shall be disclosed in another document in a form *(Appendix 19)* prescribed by the Monetary Board, to be signed by the debtor and appended to the main contract. A copy of the disclosure statement shall be furnished the borrower.

§ X307.3 *Inspection of contracts covering credit transactions.* Banks shall keep in their offices or places of business copies of contracts which involve the extension of credit by the bank and the payment of finance charges therefor. Such copies shall be available for inspection or examination by the appropriate department of the SES.

§ X307.4 *Posters.* Banks shall post in conspicuous places in their principal place of business and branches, if any, the following:

[1] This can be determined by dividing twelve, the number of months in a year, by the number or fraction of months between installment payments.

a. An abstract of the provisions of R.A. No. 3765 in the form prescribed by the Monetary Board (*Appendix 20*) which shall be reproduced in a format sixty (60) c.m. wide and seventy-five (75) c.m. long; and

b. Information regarding interest and other charges on loans:

(1) Type of loan;

(2) Simple annual rate of interest;

(3) Manner of interest payment; i.e. whether collected in advance or otherwise; and

(4) Other fees and charges imposed by the bank in connection with the loan.

Sec. X308 Amortization on Loans and Other Credit Accommodations. The amortization schedule of bank loans and other credit accommodations shall be adapted to the nature of the operations to be financed.

In case of loans and other credit accommodations with maturities of more than five (5) years, provisions must be made for periodic amortization payments, but such payments must be made at least annually: *Provided, however,* That when the borrowed funds are to be used for purposes which do not initially produce revenues adequate for regular amortization payments, the bank may permit the initial amortization payment to be deferred until such time as said revenues are sufficient for such purpose, but in no case shall the initial amortization date be later than five (5) years from the date on which the loan or other credit accommodation is granted: *Provided, further,* That in the case of agriculture and fisheries projects with long gestation periods, the initial amortization payment may be deferred for a longer period based on the economic life of the project as provided under Section 24 of R.A. No. 8435 and implemented under Sec. X349.

Sec. X309 Non-Performing Loans

§ X309.1 *Accounts considered non-performing; definitions*

a. Non-performing loans shall, as a general rule, refer to loan accounts whose principal and/or interest is unpaid for thirty (30) days or more after due date or after they have become past due in accordance with existing rules and regulations. This shall apply to loans payable in lump sum and loans payable in quarterly, semi-annual or annual installments, in which case, the total outstanding balance thereof shall be considered non-performing.

b. In the case of loans payable in monthly installments, the total outstanding balance thereof shall be considered non-performing when three (3) or more installments are in arrears.

c. In the case of loans payable in daily, weekly or semi-monthly installments, the total outstanding balance thereof shall be considered non-performing at the same time that they become past due in accordance with Sec. X306, i.e., the entire outstanding balance of the loan/receivable shall be considered as past due when the total amount of arrearages reaches ten percent (10%) of the total loan/receivable balance.

d. Restructured loans shall be considered non-performing in accordance with Subsec. X322.1.

e. All items in litigation as defined in the Manual of Accounts for Banks shall be considered non-performing.

Only the following accounts are qualified to be excluded from the non-performing classification:

(1) Loans previously classified as "*Loss*" by the BSP fully covered by allowance for probable losses; and

(2) Outstanding credit card receivables classified as "*Loss*" in the latest BSP examination plus credit card receivables

classified as "*Loss*" by the bank but not to exceed the total amount classified as "*Loss*" in the latest BSP examination: *Provided*, That information on the outstanding credit card receivables classified as "*Loss*" as of the reporting month shall be reported in a separate item in the Additional Information of the CSOC. Only banks with no unbooked valuation reserves and capital adjustments, even if approved for booking on a staggered basis, are qualified to exclude loans classified as "*Loss*" by the BSP from the non-performing classification: *Provided*, That interest on said loans shall not be accrued and that such loans shall also be deducted from total loan portfolio for purposes of computation.

§ X309.2 - X309.3 *(Reserved)*

§ X309.4 *Reporting requirement* Banks shall report the following data, at the end of each month, as additional information (under Item 7) of the monthly CSOC:

"7. Total Non-Performing Loans	
a. Non-performing regular loans	xxx
b. Non-performing restructured loans	xxx
"7a. Loans classified as *"Loss"* in the latest examination by the BSP which are fully covered by Allowance for Probable Losses, net of write-offs and recoveries	xxx
"7b. Outstanding credit card receivables classifed as *"Loss"* in the latest BSP examination, net of write-offs, recoveries and collections	xxx
"7c. Credit card receivables classified as *"Loss"* by the bank as of this month	xxx

Banks which are not qualified under Subsec. X309.1 to exclude loans classified as "*Loss*" by the BSP from the non-performing classification may opt not to fill up Item *"7a"* of the Additional Information of the monthly CSOC.

Sec. X310 (Reserved)

B. SECURED LOANS

Sec. X311 Loans Secured by Real Estate Mortgages. Loans against real estate security shall not exceed seventy percent (70%) of the appraised value of the respective real estate security plus seventy percent (70%) of the appraised value of insured improvements, and such loans shall not be made unless title to the real estate is in the mortgagor.

In the case of UBs/KBs, the loan values of real estate given as security for any loan granted shall be reduced from seventy percent (70%) to not more than sixty percent (60%) of the appraised value of the real estate security and the insured improvements, except the following which shall be allowed a maximum value of seventy percent (70%) of the appraised value:

a. Any loan not exceeding P3.5 million to finance the acquisition or improvement of residential units; and

b. Housing loans extended or guaranteed under the government's National Shelter Program (NSP) such as the Expanded Housing Loans Program (EHLP) of the Home Development Mutual Fund (HDMF or Pag-IBIG Fund) and the mortgage and guaranty and credit insurance program of the Home Insurance and Guaranty Corporation (HIGC).

§ X311.1 *Loans secured by junior mortgage on real estate.* Banks may also grant loans on the security of junior mortgages on real estate: *Provided,* That for such loans to be considered as adequately secured under Sections 37 and 38 of R.A. No. 8791, the sum total of the loans to be granted and the outstanding balance of the loan granted on the senior mortgage shall not, at any time, exceed the loan value of subject real estate security based on the appraisal of the real estate by the junior mortgagee.

A certified latest statement of account showing the outstanding balance of the loan including interest and arrearages, from the senior mortgagee shall be presented to the bank.

In case several loans are granted on the security of the same property, the total amount of the loans shall not, at any time, exceed the total loan value of the said property.

§ X311.2 ***(Reserved)***

§ 1311.2 ***(Reserved)***

§ 2311.2 ***(Reserved)***

§ 3311.2 ***Eligible real estate collaterals on rural/cooperative bank loans.*** Loans may be granted by RBs/Coop Banks on the security of lands without Torrens Title where the owner of private property can show five (5) years or more of peaceful, continuous and uninterrupted possession in the concept of an owner; or of portions of friar land estates or other lands administered by the Bureau of Lands that are covered by sales contracts and the purchasers have paid at least five (5) years installment thereon, without the necessity of prior approval and consent by the Director of Lands, or of portions of other estates under the administration of the Department of Agrarian Reform (DAR) or other governmental agency which are likewise covered by sales contracts and the purchasers have paid at least five (5) years installments thereon, without the necessity of prior approval and consent of the DAR or corresponding governmental agency; or of homesteads or free patent lands pending the issuance of titles but already approved, the provisions of any law or regulations to the contrary notwithstanding: *Provided,* That when the corresponding titles are issued, the same shall be delivered to the Register of Deeds of the province where such lands are situated for the annotation of the encumbrance: *Provided, further,* That in the case of lands pending homestead or free patent titles, copies or notices for the presentation of the final proof shall also be furnished the creditor RB/Coop Bank and, if the borrower applicants fail to present the final proof within thirty (30) days from date of notice, the creditor RB/Coop Bank may do so for them at their expense: *Provided, furthermore,* That the applicant for homestead or free patent has already made improvements on the land and the loan applied for is to be used for further development of the same or for other productive economic activities: *Provided, finally,* That the appraisal and verification of the status of a land is a full responsibility of the RB/Coop Bank and any loan granted on any land which shall be found later to be within the forest zones shall be for the sole account of the RB/Coop Bank.

§ X311.3 ***Insurance on real estate improvements.*** The required insurance on improvements used as collateral for loan should be such as shall be sufficient to secure seventy percent (70%) of the appraised value of such improvements or if inadequately insured, the loan value shall correspond to the extent of insurance taken on such improvements.

§ X311.4 ***(Reserved)***

§ 1311.4 ***(Reserved)***

§ 2311.4 ***Foreclosure by thrift banks*** The foreclosure of mortgages covering loans granted by TBs and executions of judgment thereon involving real properties levied upon by a sheriff shall be exempt from the publications in newspapers now required by law where the total amount of loan, excluding interests due and unpaid, does not exceed P100,000 or such amount as the Monetary Board may prescribe as may be warranted by prevailing economic conditions and by the nature of service of customers served by each category of the TB. It shall be sufficient publication in such cases if the notices of foreclosure and execution of judgment are posted in the conspicuous area of the TB's premises, municipal building, municipal public market, the barangay hall, and the barangay public market, if there be any, where the land mortgaged is situated within a period of sixty (60) days immediately preceding the public auction of execution of judgment. Proof of publication as required herein shall be accomplished by an affidavit of the sheriff or officer conducting the foreclosure sale or execution of judgment and shall be attached with the records of the case.

A TB shall be allowed to foreclose lands mortgaged to it: *Provided,* That said lands shall be covered under R.A. No. 6657.

§ 3311.4 *Foreclosure by rural/ cooperative banks.* The foreclosure of mortgages covering loans granted by RBs/ Coop Banks and executions of judgment thereon involving real properties levied upon by a sheriff shall be exempt from the publications in newspapers now required by law where the total amount of loan, excluding interests due and unpaid, does not exceed P100,000 or such amount as the Monetary Board may prescribe as may be warranted by prevailing economic conditions. It shall be sufficient publication in such cases if the notices of foreclosure and execution of judgment are posted in the conspicuous area of the municipal building, the municipal public market, the barangay hall, and the barangay public market, if any, where the land mortgaged is situated during the period of sixty (60) days immediately preceding the public auction of execution of judgment. Proof of publication as required herein shall be accomplished by an affidavit of the sheriff or officer conducting the foreclosure sale or execution of judgment and shall be attached with the records of the case: *Provided*, That when a homestead or free patent is foreclosed, the homesteader or free patent holder, as well as his heirs shall have the right to redeem the same within one (1) year from the date of foreclosure in the case of land not covered by a Torrens Title or one (1) year from the date of the registration of the foreclosure in the case of land covered by a Torrens Title.

An RB/Coop Bank shall be allowed to foreclose lands mortgaged to it: *Provided,* That said lands shall be covered under R.A. No. 6657.

§ X311.5 *Redemption of foreclosed real estate mortgage.* In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate, the mortgagor or debtor shall have the right within one (1) year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at the rate specified in the mortgage, and all costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. However, the purchaser at the auction sale concerned shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with the law.

Juridical persons whose property is being sold pursuant to an extra-judicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier.

Sec. X312 Loans and Other Credit Accommodations Secured By Chattels and Intangible Properties. Loans and other credit accommodations on the security of chattels and intangible properties, such as, but not limited to, patents, trademarks, trade names, and copyrights shall not exceed seventy-five percent (75%) of the appraised value of the security, and such loans and other credit accommodations may be made to the title-holder of the unencumbered chattels and intangible properties or his assignees: *Provided,* That in the case of intangible properties, appraisal thereof shall be conducted by an independent appraiser acceptable to the BSP.

Sec. X313 Loans and Other Credit Accommodations Secured By Personal Properties. Loans and other credit accommodations may be secured by unencumbered personal property which may consist of:

a. Bonds and securities issued by the Government. Such bonds and securities may be given loan values equivalent to their face value or cash value, as the case may be;

b. Readily marketable bonds and other high-grade debt securities and "blue chip" stocks, except those issued by the lending entity or by its parent company, which owns more than fifty percent (50%) of its outstanding shares of stocks: *Provided,* That (1) the issuer corporation must be a listed corporation with a net worth of at least P1.0 billion and with annual net earnings during the immediately preceding five (5) years; and (2) the loan value shall be equivalent to fifty percent (50%) of their market value.

c. Expected harvest from the project to be financed or growing crops, up to forty percent (40%) of the calculated market value of the crop for which the loan or other credit accommodation is sought, based on previous production records or, in the absence thereof, on production in the locality of similar plantations;

d. Quedans or warehouse receipts issued by bonded warehouses covering stock deposited in said warehouses up to eighty percent (80%) of the calculated market value of the crop for which the loan or other credit accommodation is sought; and

e. Any other personal property, up to fifty percent (50%) of the fair market value. If the property is newly purchased and the purchase price thereof appears in a bill of sale, then the above percentage shall be based on the price of the said bill of sale.

Sec. X314 Increased Loan Values and Terms of Loans for Home-Building. Loans for home-building and subdivision development for low and middle-income families against real estate security and *housing loans* defined as loans granted for the purpose of constructing, improving or acquiring a residential property which is rented or is occupied or intended to be occupied by the borrower may be granted up to eighty percent (80%) of the appraised value of the real estate security: *Provided,* That:

a. Such loans shall not be made unless the title to the real estate security is in the name of the borrower or mortgagor; and

b. In case of subdivision/housing project, the same or its plan has been approved by the proper authorities;

Provided, further, That the loans may be increased to ninety percent (90%) of the appraised value of the real estate security if such loans are fully guaranteed by the appropriate government agency, in addition to the foregoing conditions.

Sec. X315 Loans Secured by Certificates of Time Deposit. The following rules shall govern the grant of loans secured by hold-out on and/or assignment of CTDs issued by the lending bank, as well as its branches or subsidiaries abroad:

a. The original copy of the CTDs subject to hold-out or assignment shall be surrendered to the lending bank;

b. The depository bank, other than the lending bank, shall be furnished a copy of the Deed of Assignment or hold-out agreement on the deposit used as collateral;

c. If the term of the CTDs subject to hold-out or assignment is shorter than the term of the loan, there shall be an agreement in writing that renewal of the time deposit upon maturity shall be made at least co-terminus with the term of the loan;

d. There shall be no pre-termination of the time deposit without the consent of the lending bank and unless an acceptable substitute collateral for the loan has been made;

e. The lending bank shall keep a complete record of all pertinent loan documents, such as, but not limited to, the original copy of the CTDs subject to assignment or hold-out agreement; deed of assignment or hold-out agreement; and written waiver of the depositor required in Item *"f"* below, which shall be made available for inspection and/or examination by the appropriate department of the SES; and

f. The loan documents shall include a waiver on the part of the depositor of his rights under existing law to the confidentiality of his deposits.

Secs. X316 - X318 (Reserved)

C. UNSECURED LOANS

Sec. X319 Loans Against Personal Security. The grant, renewal, restructuring or extension of unsecured loans shall, in addition to the requirements of Sec. X304, be made under the signature of the principal borrower and at least one (1) co-maker, except that a co-maker is not required when the principal borrower has the financial capacity and a good track record of paying his obligations.
(As amended by Circular No. 622 dated 16 September 2008)

§ X319.1 *General guidelines*

(Deleted by Circular No. 622 dated 16 September 2008)

§ X319.2 *Proof of financial capacity of borrower*

(Deleted by Circular No. 622 dated 16 September 2008)

§ X319.3 *Signatories*

(Deleted by Circular No. 622 dated 16 September 2008)

Sec. X320 Credit Card Operations; General Policy. The BSP shall foster the development of consumer credit through innovative products such as credit cards under conditions of fair and sound consumer credit practices. The BSP likewise encourages competition and transparency to ensure more efficient delivery of services and fair dealings with customers.

Towards this end, the following rules and regulations shall govern the credit card operations of banks and subsidiary/affiliate credit card companies, aligned with global best practices.

§ X320.1 *Definition of terms*

a. *Credit card.* Means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor or services on credit.

b. *Credit card receivables.* Represents the total outstanding balance of credit cardholders arising from purchases of goods and services, cash advances, annual membership/renewal fees as well as interest, penalties, insurance fees, processing/service fees and other charges.

c. *Minimum amount due or minimum payment required.* Means the minimum amount that the credit cardholder needs to pay on or before the payment due date for a particular billing period/cycle as defined under the terms and conditions or reminders stated in the statement of account/billing statement which may include: (1) total outstanding balance multiplied by the required payment percentage or a fixed amount whichever is higher; (2) any amount which is part of any fixed monthly installment that is charged to the card; (3) any amount in excess of the credit line; and (4) all past due amounts, if any.

d. *Default or delinquency.* Shall mean non-payment of, or payment of any amount less than, the *"Minimum Amount Due"* or *"Minimum Payment Required"* within two (2) cycle dates, in which case, the *"Total Amount Due"* for the particular billing period as reflected in the monthly statement of account may be considered in default or delinquent.

e. *Acceleration clause.* Shall mean any provision in the contract between the bank and the cardholder that gives the bank the right to demand the obligation in full in case of default or non-payment of any amount due or for whatever valid reason.

f. *Subsidiary* refers to a corporation or firm more than fifty percent (50%) of the outstanding voting stock of which is directly or indirectly owned, controlled or held with the power to vote by a bank or other FI.

g. *Affiliate* refers to an entity linked directly or indirectly to a bank or other FI through any one or a combination of any of the following:

(1) Ownership, control or power to vote, whether by permanent or temporary proxy or voting trust, or other similar contracts, by a bank or other financial institution of at least ten percent (10%) or more of the outstanding voting stock of the entity, or vice-versa;

(2) Interlocking directorship or officership, except in cases involving independent directors as defined under existing regulations;

(3) Common stockholders owning at least ten percent (10%) of the outstanding voting stock of each FI and the entity; or

(4) Management contract or any arrangement granting power to the bank or other FI to direct or cause the direction of management and policies of the entity, or vice-versa.

§ X320.2 *Risk management system* To safeguard their interests, banks and subsidiary/affiliate credit card companies are required to establish an appropriate system for managing risk exposures from credit card operations which shall be documented in a complete and concise manner. The risk management system shall cover the organizational set-up, records and reports, accounting, policies and procedures and internal control.

Written policies, procedures and internal control guidelines shall be established on the following aspects of credit card operations:

a. Requirements for application;

b. Solicitation and application processing;

c. Determination and approval of credit limits;

d. Pre-approved cards;

e. Issuance, distribution and activation of cards;

f. Supplementary or extension cards;

g. Cash advances;

h. Billing and payments;

i. Deferred payment program or special installment plans;

j. Collection of past due accounts;

k. Handling of accounts for write-off;

l. Suspension, cancellation and withdrawal or termination of card;

m. Renewal of cards, upgrade or downgrade of credit limit;

n. Lost or stolen cards and their replacement;

o. Accounts of DOSRI and employees;

p. Disposition of errors and/or questions about the billing statement/ statement of account and other customers' complaints; and

q. Dealings with marketing agents/ collection agents.

§ X320.3 *Minimum requirements* Before issuing credit cards, banks and/or their subsidiary/affiliate credit card companies must exercise proper diligence by ascertaining that applicants possess good credit standing and are financially capable of fulfilling their credit commitments. The net take home pay of applicants who are employed, the net monthly receipts of those engaged in trade or business, or the net worth or cash flow inferred from deposits of those who are neither employed nor engaged in trade or business or the credit behavior exhibited by the applicant from his other existing credit cards, or other lifestyle indicators such as, but not limited to, club memberships, ownership and location of residence and motor vehicle ownership shall be determined and used as basis for setting credit limits. The gross monthly income may also be used provided reasonable deductions are estimated for income taxes, premium contributions, loan amortizations and other deductions.

All credit card applications, especially those solicited by third party representatives/agents, shall undergo a strict credit risk assessment process and the information stated thereon validated and verified by persons other than those handling marketing.

§ X320.4 *Information to be disclosed* Banks or their subsidiary/affiliate credit card companies shall disclose to each person to whom the credit card privilege is extended in the agreement, contract or any equivalent document governing the issuance or use of the credit card or any amendment thereto or in such other statement furnished the cardholder from time to time, prior to the imposition of the charges and to the extent applicable, the following information:

a. non-finance charges, individually itemized, which are paid or to be paid by the cardholder in connection with the transaction but which are not incident to the extension of credit;

b. the percentage that the interest bears to the total amount to be financed expressed as a simple monthly or annual rate, as the case may be, on the outstanding balance of the obligation;

c. the effective interest rate per annum;

d. for installment loans, the number of installments, amount and due dates or periods of payment schedules to repay the indebtedness;

e. the default, late payment/penalty fees or similar delinquency-related charges payable in the event of late payments;

f. the conditions under which interest may be imposed, including the time period, within which any credit extended may be repaid without interest;

g. the method of determining the balance upon which interest and/or delinquency charges may be imposed;

h. the method of determining the amount of interest and/or delinquency charges, including any minimum or fixed amount imposed as interest and/or delinquency charge;

i. where one (1) or more periodic rates may be used to compute interest, each such rate, the range of balances to which it is applicable, and the corresponding simple annual rate;

j. other fees, such as membership/ renewal fees, processing fees, collection fees, credit investigation fees and attorney's fees; and

k. for transactions made in foreign currencies and/or outside the Philippines, for dual currency accounts (peso and dollar billings), as well as payments made by credit cardholders in any currency other than the billing currency: the application of payments; the manner of conversion from the transaction currency and payment currency to Philippine pesos or billing currency; definition or general description of verifiable blended exchange/conversion rates (e.g., MASTERCARD and/or VISA International rates on the day the item was processed/posted to the billing statement, plus mark-up, if any) including conversion commission; and/or other currency conversion charges and costs arising from the purchase by the card company of foreign currency to settle the customer's transactions shall also be disclosed.

§ X320.5 *Interest accrual on past due loans.* Interest income on past due loans arising from discount amortization (and not from the contractual interest of the accounts) shall be accrued as provided in PAS 39.

§ X320.6 *Finance charges.* The amount of finance charges in connection with any credit card transaction shall refer to interest charged to the cardholder.

§ X320.7 *Deferral charges.* The bank and the cardholder may, prior to the consummation of the transaction, agree in writing to a deferral of all or part of one (1) or more unpaid installments and the bank may collect a deferral charge which shall not exceed the rate previously disclosed pursuant to the provisions on disclosure.

§ X320.8 *Late payment/penalty fees* No late payment or penalty fee shall be collected from cardholders unless the collection thereof is fully disclosed in the contract between the issuer and the cardholder: *Provided,* That late payment or penalty fees shall be based on the unpaid minimum amount due or a prescribed minimum fixed amount: *Provided, further,* That said late payment or penalty fees may be based on the total outstanding balance of the credit card obligation, including amounts payable under installment terms or deferred payment schemes, if the contract between the issuer and the cardholder contains an *"acceleration clause"* and the total outstanding balance of the credit card is classified and reported as past due.

§ X320.9 *Confidentiality of information.* Banks and subsidiary/affiliate credit card companies shall keep strictly confidential the data on the cardholder or consumer, except under the following circumstances:

a. disclosure of information is with the consent of the cardholder or consumer;

b. release, submission or exchange of customer information with other financial institutions, credit information bureaus, credit card issuers, their subsidiaries and affiliates;

c. upon orders of court of competent jurisdiction or any government office or agency authorized by law, or under such conditions as may be prescribed by the Monetary Board;

d. disclosure to collection agencies, counsels and other agents of the bank or card company to enforce its rights against the cardholder;

e. disclosure to third party service providers solely for the purpose of assisting or rendering services to the bank or card company in the administration of its credit card business; and

f. disclosure to third parties such as insurance companies, solely for the purpose of insuring the bank from cardholder default or other credit loss, and the cardholder from fraud or unauthorized charges.

§ X320.10 *Suspension, termination of effectivity and reactivation.* Banks or their subsidiary/affiliate credit card companies shall formulate criteria or parameters for suspension, revocation and reactivation of the right to use the card and shall include in their contract with cardholders a provision authorizing the issuer to suspend or terminate its effectivity, if circumstances warrant.

§ X320.11 *Inspection of records covering credit card transactions.* Banks or their subsidiary/affiliate credit card companies shall make available for inspection or examination by the appropriate department of the SES complete and accurate files on card applicant/cardholder to support the consideration for approval of the application and determination of the credit limit which shall be in accordance with the verified debt repayment ability and/or net worth of the card applicant/cardholder.

§ X320.12 *Offsets.* For purposes of transparency and adequate disclosure, the credit card issuer shall inform/notify the credit cardholder in the agreement, contract or any equivalent document governing the issuance or use of the credit card that, pursuant to the provisions of Articles 1278 to 1290 of the New Civil Code of the Philippines, as amended, the use of his credit card will subject his deposit/s with the bank to offset against any amount/s due and payable on his credit card which have not been paid in accordance with the terms of the agreement/contract.

§ X320.13 *Handling of complaints* Banks or subsidiary/affiliate credit card companies shall give cardholders at least twenty (20) calendar days from statement date to examine charges posted in his/her statement of account and inform the bank/ subsidiary credit card companies in writing of any billing error or discrepancy. Within ten (10) calendar days from receipt of such written notice, the bank/subsidiary credit card company shall send a written acknowledgment to the cardholder unless the action required is taken within such ten (10)-day period.

Not later than two (2) billing cycles or two (2) months which in no case shall exceed ninety (90) days after receipt of the notice and prior to taking any action to collect the contested amount, or any part thereof, banks/subsidiary credit card companies shall make appropriate corrections in their records and/or send a written explanation or clarification to the cardholder after conducting an investigation. Nothing in this Subsection shall be construed to prohibit any action by the bank/subsidiary credit card company to collect any amount which has not been indicated by the cardholder to contain a billing error or apply against the credit limit of the cardholder the amount indicated to be in error.

§ X320.14 *Unfair collection practices* Banks, subsidiary/affiliate credit card companies, collection agencies, counsels and other agents may resort to all reasonable and legally permissible means to collect amounts due them under the credit card agreement: *Provided*, That in the exercise of their rights and performance of duties, they must observe good faith and reasonable conduct and refrain from engaging in unscrupulous or untoward acts. Without limiting the general application of the foregoing, the following conduct is a violation of this Subsection:

a. the use or threat of violence or other criminal means to harm the physical person, reputation, or property of any person;

b. the use of obscenities, insults, or profane language which amount to a criminal act or offense under applicable laws;

c. disclosure of the names of credit cardholders who allegedly refuse to pay debts, except as allowed under Subsec. X320.9;

d. threat to take any action that cannot legally be taken;

e. communicating or threat to communicate to any person credit information which is known to be false, including failure to communicate that a debt is being disputed;

f. any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a cardholder; and

g. making contact at unreasonable/ inconvenient times or hours which shall be defined as contact before 6:00 A.M. or after 10:00 P.M., unless the account is past due for more than sixty (60) days or the cardholder has given express permission or said times are the only reasonable or convenient opportunities for contact.

§ X320.15 *Sanctions.* Violations of the provisions of this Section shall be subject to any or all of the following sanctions depending upon their severity:

a. Disqualification of the bank concerned from the credit facilities of the BSP except as may be allowed under Section 84 of R.A. No. 7653;

b. Prohibition of the bank concerned from the extension of additional credit accommodation against personal security; and

c. Penalties and sanctions provided under Sections 36 and 37 of R.A. No. 7653.

Sec. X321 (Reserved)

D. RESTRUCTURED LOANS

Sec. X322 Restructured Loans; General Policy. Banks shall have full discretion in the restructuring of loans in order to provide flexibility in arranging the repayment of such loans without impairing or endangering the lending bank's financial interest, except in special cases approved by the Monetary Board such as loans funded by foreign currency obligations. However, the restructuring of loans granted to DOSRI should be upon terms not less favorable to the bank than those offered to others. While agreements on loan restructuring should be considered as management tools to maintain or improve the soundness of the bank's lending operations, these should be drawn mainly to assist borrowers towards the settlement of their obligations, taking into account their capacity to pay.

§ X322.1 *Definition; when to consider performing/non-performing.* *Restructured loans* are loans the principal terms and conditions of which have been modified in accordance with a restructuring agreement setting forth a new plan of payment or a schedule of payment on a periodic basis. The modification may include, but is not limited to, change in maturity, interest rate, collateral or increase in the face amount of the debt resulting from the capitalization of accrued interest/ accumulated charges. Items in litigation and loans subject of judicially approved compromise, as well as those covered by petitions for suspension or for new plans of payment approved by the court or the SEC, shall not be classified as restructured loans.

A loan which is restructured shall be considered non-performing except when as of restructuring date -

(1) with updated principal and interest payments; and

(2) fully secured by real estate with loan value of up to sixty percent (60%) of the appraised value of the real estate security and the insured improvements thereon, and such other first class collaterals as may be deemed appropriate by the Monetary Board: *Provided,* That a restructured loan, with or without

capitalized interest, must be yielding a rate of interest equal to or greater than the bank's average cost of funds at the date of restructuring, otherwise, it shall be considered non-performing.

The restoration to a performing loan shall only be effective after a *satisfactory track record* of payments of the required amortizations of principal and/or interest has been established.

For this purpose, a *satisfactory track record* of payments of principal and/or interest shall mean three (3) consecutive payments of the required amortizations of principal and/or interest have been made. However, in the case of a restructured loan with capitalized interest but not fully secured by real estate with loan value of up to sixty percent (60%) of the appraised value of the real estate security and the insured improvements thereon or other first class collaterals, six (6) consecutive payments of the required amortizations of principal and/or interest must have been made.

A restructured loan which has been restored to a performing loan status shall be immediately considered non-performing in case of default of any principal or interest payment.

§ X322.2 *Procedural requirements*

a. A loan may be restructured, subject to the approval of the bank's board of directors in a resolution which shall embody, among other things:

(1) the basis of or justification for the approval;

(2) determination of the borrower's capacity to pay, such as viability of the business; and

(3) the nature and extent of protection of the bank's exposure.

The authority to approve the restructuring of loans may be delegated by the bank's board of directors to a committee or officer(s): *Provided,* That there are board prescribed guidelines specifically on restructuring of loans: *Provided, further,* That said guidelines shall be submitted to the appropriate department of the SES within thirty (30) days following the date of approval thereof. However, loans previously approved by the executive committee as well as those granted to DOSRI shall be subject to approval by the board as provided under existing rules and regulations. Loans restructured other than those approved by the board shall be reported to it for confirmation.

b. A second restructuring of a loan shall be allowed only if there are reasonable justifications: *Provided,* That it shall be considered a non-performing loan and classified, at least, *"Substandard"*. The restoration to a performing loan status and/or upgrading of loan classification, e.g., from *"Substandard"* to *"Loans Especially Mentioned",* if circumstances warrant an upgrading in accordance with the criteria under *Appendix 18,* shall only be allowed after a satisfactory track record of at least six (6) consecutive payments of the required amortization of principal and/or interest has been established.

c. In the restructuring process, the bank shall encourage the borrower to improve the quality of the loan either by strengthening financial capacity or providing additional collateral.

The real estate security and/or other first class collaterals offered shall be appraised at the time of restructuring to ensure that current market values are being used. Real estate security shall be appraised by an independent appraisal company acceptable to the BSP and shall be reappraised every year thereafter.

(1) For UBs/KBs – a loan benchmark is set at P5.0 million, such that loans beyond this amount will require an independent appraisal company: *Provided,* That the appraisal company contracted to do the appraisal is not a subsidiary or an affiliate of the UB/KB.

(2) For TBs – a loan benchmark is set at P1.0 million such that loans beyond this amount will require an independent appraisal company: *Provided,* That the appraisal company contracted to do the appraisal is not a subsidiary or an affiliate of the TB.

A TB may be allowed to use a UB/KB or another TB acceptable to the BSP to do the appraisal for it: *Provided,* That the TB requesting the appraisal is not a subsidiary or affiliate of the UB/KB/other TB contracted to do the appraisal.

(3) For RBs/Coop Banks – the benchmark is set at P500 thousand such that loans beyond this amount will require an independent appraisal company: *Provided,* That the appraisal company contracted to do the appraisal is not a subsidiary or an affiliate of the RB/Coop Bank.

An RB/Coop Bank may be allowed to use a UB/KB or a TB acceptable to the BSP to do the appraisal for it: *Provided,* That the RB requesting the appraisal is not a subsidiary or affiliate of the UB/KB/TB contracted to do the appraisal.

The term *"first class collaterals"* refers to assets and securities which have relatively stable and clearly definable value and/or greater liquidity and are free from lien/encumbrance, such as:

(a) Real estate;

(b) Evidences of indebtedness of the Republic of the Philippines and of the BSP, and other evidences of indebtedness or obligations the servicing and repayment of which are fully guaranteed by the Republic of the Philippines;

(c) Hold-out on and/or assignment of deposits/deposit substitutes maintained in the lending institutions;

(d) "Blue chip" shares of stocks, except those issued by the lending entity or by its parent company which owns more than fifty percent (50%) of its outstanding shares of stocks. For this purpose, the issuer corporation must be a listed corporation with a net worth of at least P1.0 billion and with annual net earnings during the immediately preceding five (5) years; and

(e) Such other collaterals that the Monetary Board may declare as first class collaterals from time to time.

It is understood that the loan value to be assigned the collateral shall be as prescribed under existing regulations.

§ X322.3 *Restructured loans considered past due.* Restructured loans shall be considered past due in case of default of any principal or interest and shall be subject to classification in accordance with Sec. X322.4.

§ X322.4 *Classification.* The classification of a loan prior to restructuring, *e.g., "Loans Especially Mentioned", "Substandard"* or *"Doubtful"* shall be retained: *Provided,* That a loan that is not classified but which is non-performing prior to restructuring shall be classified, at least, *"Loans Especially Mentioned"*: *Provided, further*, That restructured loans with capitalized interest shall be classified, at least, *"Substandard"* and the required valuation reserves shall be set up accordingly: *Provided, finally*, That a more adverse classification may be given, i.e., *"Substandard", "Doubtful"* or *"Loss"*, if the circumstances warrant it as provided under *Appendix 18*.

The upgrading of loan classification, e.g., from *"Substandard"* to *"Loans Especially Mentioned"*, if circumstances warrant an upgrading in accordance with the criteria under *Appendix 18*, shall only be effective after a satisfactory track record of payments of the required amortizations of principal and/or interest has been established.

For this purpose, a *satisfactory track record* of payments of principal and/or interest shall mean three (3) consecutive payments of the required amortizations of principal and/or interest have been made. However, in the case of a restructured loan with capitalized interest but not fully secured by real estate with loan value of up to sixty percent (60%) of the appraised value of the real estate security and the insured improvements thereon or other first class collaterals, six (6) consecutive payments of the required amortizations of principal and/or interest must have been made.

Secs. X323 - X325 (Reserved)

E. LOANS AND OTHER CREDIT ACCOMMODATIONS TO DIRECTORS, OFFICERS, STOCKHOLDERS AND THEIR RELATED INTERESTS

Sec. X326 General Policy. Dealings of a bank with any of its DOSRI should be in the regular course of business and upon terms not less favorable to the bank than those offered to others.

§ X326.1 *Definitions.* For purposes of these regulations, the following definitions shall apply:

a. *Directors* shall refer to bank directors as defined in Subsec. X141.1.

b. *Officers* shall refer to bank officers as defined in Subsec. X142.1.

c. *Stockholder* shall refer to any stockholder of record in the books of the bank, acting personally, or through an attorney-in-fact; or any other person duly authorized by him or through a trustee designated pursuant to a proxy or voting trust or other similar contracts, whose stockholdings in the lending bank, individual and/or collectively with the stockholdings of: (i) his spouse and/or relative within the first degree by consanguinity or affinity or legal adoption; (ii) a partnership in which the stockholder and/or the spouse and/or any of the aforementioned relatives is a general partner; and (iii) corporation, association or firm of which the stockholder and/or his spouse and/or the aforementioned relatives own more than fifty percent (50%) of the total subscribed capital stock of such corporation, association or firm, amount to one percent (1%) or more of the total subscribed capital stock of the bank.

d. *Substantial stockholder* shall mean a person, or group of persons whether natural or juridical, owning such number of shares that will allow such person or group to elect at least one (1) member of the board of directors of a bank or who is directly or indirectly the registered or beneficial owner of more than ten percent (10%) of any class of its equity security.

e. *Related interest* shall refer to any of the following:

(1) Spouse or relative within the first degree of consanguinity or affinity, or relative by legal adoption, of a director, officer or stockholder of the bank;

(2) Partnership of which a director, officer, or stockholder of a bank or his spouse or relative within the first degree of consanguinity or affinity, or relative by legal adoption, is a general partner;

(3) Co-owner with the director, officer, stockholder or his spouse or relative within the first degree of consanguinity or affinity, or relative by legal adoption, of the property or interest or right mortgaged, pledged or assigned to secure the loans or other credit accommodations, except when the mortgage, pledge or assignment covers only said co-owner's undivided interest;

(4) Corporation, association, or firm of which a director or officer of the bank, or his spouse is also a director or officer of such corporation, association or firm, except (a) where the securities of such corporation, association or firm are listed and traded in the big board or commercial and industrial board of domestic stock exchanges and less than fifty percent (50%) of the voting stock thereof is owned by any one (1) person or by persons related to each other within the first degree of consanguinity or affinity; or (b) where the director, officer or stockholder of the bank

sits as a representative of the bank in the board of directors of such corporation: *Provided*, That the bank representative shall not have any equity interest in the borrower corporation except for the minimum shares required by law, rules and regulations, or by the by-laws of the corporation: *Provided, further,* That the borrowing corporation is not among those mentioned in Items *"e(5)", "e(6)", "e(7)" and "e(8)"* of this Section;

(5) Corporation, association or firm of which any or a group of directors, officers, stockholders of the lending bank and/or their spouses or relatives within the first degree of consanguinity or affinity, or relative by legal adoption, hold or own at least twenty percent (20%) of the subscribed capital of such corporation, or of the equity of such association or firm;

(6) Corporation, association or firm wholly or majority-owned or controlled by any related entity or a group of related entities mentioned in Items "*e(2)*", "*e(4)*" and "*e(5)*" of this Section;

(7) Corporation, association or firm which owns or controls directly or indirectly whether singly or as part of a group of related interest at least twenty percent (20%) of the subscribed capital of a substantial stockholder of the lending bank or which controls majority interest of the bank pursuant to Subsec. X303.1; and

(8) Corporation, association or firm which has an existing management contract or any similar arrangement with the parent of the lending bank.

f. *Subsidiary* shall refer to a corporation or firm more than fifty percent (50%) of the outstanding voting stock of which is directly or indirectly owned, controlled or held with power to vote by its parent corporation.

g. *Unencumbered deposits* shall refer to savings, time and demand deposits, which are not subject to an assignment or hold-out agreement or any other encumbrance.

h. *Book value of the paid-in capital contribution* shall mean the proportional amount of the bank's total capital accounts (net of such unbooked valuation reserves and other capital adjustments as may be required by the BSP) as the corresponding paid-in capital contribution of each of the bank's directors, officers, stockholders and their related interests bear to the total paid-in capital of the bank: *Provided,* That as a basis for determining the individual ceiling referred to in Sec. X330, the corresponding book value of the shares of stock of said directors, officers, stockholders and their related interests which are the subject of pledge, assignment or any other encumbrance shall be deducted therefrom.

i. *Net worth* shall mean the total of the unimpaired paid-in capital including paid-in surplus, retained earnings and undivided profit, net of valuation reserves and other adjustments as may be required by the BSP.

j. *Total loan portfolio* shall refer to the sum of all loan accounts outstanding, gross of valuation reserves, as reflected in the bank's consolidated statement of condition, excluding outstanding loans financed by special/specific funds from the government FIs.

k. *Secured loan, borrowing or other credit accommodation* shall refer to any loan, or credit accommodation or portion thereof referred to in Sec. X327 which is secured by:

(1) Real estate mortgage, chattel mortgage on tangible assets, and pledge of jewelry, precious stones and other valuable articles;

(2) Assignment of intangible assets such as patents, trademarks, trade names and copyrights;

(3) Unconditional payment guarantees such as standby letters of credit and letter of indemnity issued by banks/multilateral FIs;

(4) Assignment of, or hold-out on, deposits or deposit substitutes maintained in the lending bank;

(5) Cash margin deposits; or assignment or pledge of government securities or readily marketable bonds and other high-grade debt securities and "blue-chip" stocks, except those issued by the lending entity, or by its parent company which owns more than fifty percent (50%) of its outstanding shares of stocks, subject to the additional provision that the issuer corporation has a net worth of at least P1.0 billion and with annual net earnings during the immediately preceding five (5) years;

(6) Customer's liability under import bills outstanding for not more than thirty (30) days from date of original entry;

(7) Sales contract receivables arising from sale of real property on credit where title to the property is retained by the bank; and

(8) Customer's liability-import bills under trust receipts outstanding for not more than thirty (30) days from date of booking: *Provided,* That the booking under trust receipts shall have been made not later than the thirty-first day from the date of original entry referred to in Item *"(6)"* above.

l. *Unsecured loan, borrowing or other credit accommodation* shall refer to any loan, or other credit accommodation or portion thereof referred in Sec. X327 which is not secured in accordance with Item *"k"* above.

(As amended by Circular No. 560 dated 31 January 2007)

Sec. X327 Transactions Covered. The terms *loans, other credit accommodations and guarantees* as used herein shall refer to transactions of the bank which involve the grant of any loan, advance or other credit accommodation in any form whatsoever, whether renewal, extension or increase, and shall include:

a. Any advance by means of an incidental or temporary overdraft, cash item, "vale", etc.;

b. Any advance of unearned salary or other unearned compensation for periods in excess of thirty (30) days;

c. Any advance by means of DAUDs;

d. Outstanding availments under an established credit line;

e. Drawings against an existing letter of credit;

f. The acquisition of any note, draft, bill of exchange or other evidence of indebtedness upon which the bank's DOSRIs may be liable as makers, drawers, acceptors, endorsers, guarantors or sureties;

g. Indirect lending such as loans or other credit accommodations granted by another financial intermediary to said DOSRIs from funds of the bank invested in the other institution's trust or other department when there is a clear relationship between the transactions;

h. The increase of an existing indebtedness, as well as additional availments under a credit line or additional drawings against a letter of credit;

i. The sale of assets, such as shares of stock, on credit; and

j. Any other transactions as a result of which the bank's DOSRIs become obligated or may become obligated to the lending bank, by any means whatsoever to pay money or its equivalent.

Sec. X328 Transactions Not Covered. The terms *loans, other credit accommodations and guarantees* as used herein shall not refer to the following:

a. Advances against accrued compensation, or for the purpose of providing payment of authorized travel, legitimate expenses or other transactions for the account of the bank or for utilization of maternity and other leave credits;

b. The increase in the amount of outstanding credit accommodations as a result of additional charges or advances made by the bank to protect its interest such as taxes, insurance, etc.;

c. The discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper actually owned by the person negotiating the same, including, but not limited to, the acquisition by a domestic bank of export bills from any of its DOSRI which are drawn in accordance with the terms and conditions of the covering letters of credit: *Provided,* That the transaction shall automatically be subject to the ceilings as herein provided once the DOSRI who is a party to the transaction becomes directly liable to the bank;

d. Transactions with a foreign bank which has stockholdings in the local bank where the foreign bank acts as guarantor through the issuance of letters of credit or assignment of a deposit in a currency eligible as part of the international reserves and held in a bank in the Philippines to secure other credit accommodations granted to another person or entity: *Provided*, That the foreign bank stockholder shall automatically be subject to the ceilings as herein provided in the event that its contingent liability as guarantor becomes a real liability; and

e. Interbank call loan transactions.

§ X328.1 *Applicability to credit card operations.* The credit card operations of banks shall not be subject to these regulations where the credit cardholders are bank's DOSRI: *Provided,* That (a) the privilege of becoming a credit cardholder is open to all qualified persons on the basis of selective criteria which are applied by the bank to all applicants thereof; and (b) the bank's DOSRIs reimburse/pay the bank for the billed amount in full on or before the payment due date in the billing or statement of account, as set by the bank for all other qualified credit card holders on availments made for the same period on their credit cards. However, the transaction shall be subject to applicable DOSRI regulations if the bank's DOSRIs:

a. fail to reimburse/pay the bank within the period mentioned herein; or

b. on the outset, opt for deferred payment scheme, and the availment is booked by the bank.

For purposes of this Section, *stockholders and related interests* refer to individual credit card holders.

§ X328.2-X328.4 *(Reserved)*

§ X328.5 *Loans, other credit accommodations and guarantees granted to subsidiaries and/or affiliates*

a. *Statement of policy*. Dealings of a bank with its subsidiaries and/or affiliates shall be in the regular course of business and upon terms not less favorable to the bank than those offered to others.

b. *Ceilings*. The total outstanding loans, other credit accommodations and guarantees to each of the bank's subsidiaries and affiliates shall not exceed ten percent (10%) of the net worth of the lending bank: *Provided*, That the unsecured loans, other credit accommodations and guarantees to each of said subsidiaries and affiliates shall not exceed five percent (5%) of such net worth: *Provided, further*, That the total outstanding loans, other credit accommodations and guarantees to all subsidiaries and affiliates shall not exceed twenty percent (20%) of the net worth of the lending bank: *Provided, finally,* That these subsidiaries and affiliates are not related interest of any of the director, officer, and/or stockholder of the lending bank, except where such director, officer or stockholder sits in the board of directors or is appointed officer of such corporation as representative of the bank.

c. *Exclusions from the ceilings*. Loans, other credit accommodations and guarantees secured by assets considered as non-risk under existing BSP regulations as well as interbank call loans shall be excluded in determining compliance with the ceilings prescribed under Item *"b"* above.

d. *Procedural requirements*. The following provisions shall apply if a bank grants a loan, other credit accommodation or guarantee to any of its subsidiaries and affiliates.

(1) *Approval of the board, when to obtain*. Except with prior written approval of the majority of all the members of the board of directors, no loan, other credit accommodation and guarantee shall be granted to a subsidiary or affiliate.

(2) *Approval by the board, how manifested*. The approval shall be manifested in a resolution passed by the board of directors during a meeting and made of record.

(3) *Determination of majority of all the members of the board of directors*. The determination of the majority of all the members of the board of directors shall be based on the total number of directors of the bank as provided in its articles of incorporation and by-laws.

(4) *Contents of the resolution*. The resolution of the board of directors shall contain the following information:

(a) Name of the subsidiary or affiliate;

(b) Nature of the loan or other credit accommodation or guarantee, purpose, amount, credit basis for such loan or other credit accommodation or guarantee, security and appraisal thereof, maturity, interest rate, schedule of repayment and other terms;

(c) Date of resolution;

(d) Names of the directors who participated in the deliberation of the meeting; and

(e) Names in print and signatures of the directors approving the resolution: *Provided*, That in instances where a director who participated in the board meeting and who approved such resolution failed to sign, the corporate secretary may issue a certification to this effect indicating the reason for the failure of the said director to sign the resolution.

(5) *Transmittal of copy of board approval; contents thereof*. A copy of the written approval of the board of directors, as herein required, shall be submitted to the appropriate department of the SES within twenty (20) banking days from the date of approval. The copy may be a duplicate of the original, or a reproduction copy showing clearly the signatures of the approving directors: *Provided*, That if a reproduction copy is to be submitted, it shall be duly certified by the corporate secretary that it is a reproduction of the original written approval.

e. *Reportorial requirements*. Each bank shall maintain a record of loans, other credit accommodations and guarantees covered by these regulations in a manner and form that will facilitate verification of such transactions by BSP examiners.

The appropriate department of the SES may require banks to furnish such data or information as may be necessary for purposes of implementing the provisions of the foregoing rules.

f. *Sanctions*. Without prejudice to the criminal sanctions under Sec. 36 of R.A. No. 7653 (The New Central Bank Act), any violation of the provisions of the foregoing rules shall be subject to any or all of the following sanctions:

(1) Restriction or prohibition on the bank from declaring dividends for non-compliance with the herein prescribed ceilings until the outstanding loans, other credit accommodations and guarantees have been reduced to within the herein prescribed ceilings;

(2) For the duration of each violation, imposition of a fine of one tenth (1/10) of one percent (1%) of the excess over the ceilings per day but not to exceed P30,000 a day on the following:

(a) The lending bank;

(b) Each of the directors voting for the approval of the loan, other credit accommodation or guarantee in excess of any of the ceilings prescribed above.

g. *Transitory provisions.* Outstanding loans, other credit accommodation and guarantees to subsidiaries/affiliates that will exceed the ceilings mentioned above shall not be subject to penalty until 09 April 2007 or until said accommodations become past due, or are extended, renewed or restructured, whichever comes later.
(Circular No. 560 dated 31 January 2007)

Sec. X329 Direct or Indirect Borrowings Loans, other credit accommodations and guarantees to DOSRI shall be considered direct or indirect borrowings in accordance with the following criteria:

a. *Direct borrowing.* If the director, officer or stockholder of the lending bank is a party to any of the transactions enumerated in Sec. X327 for himself, or as the representative or agent of others, or if he acts as a guarantor, endorser or surety for loans from the bank, or if the loan or other credit accommodation to another party is secured by a property interest or right of the director, officer or stockholder.

b. *Indirect Borrowing.* If in any of the transactions in Sec. X327 the borrower, guarantor, endorser or surety is a related interest as defined in Item "e", Subsec. X326.1.

Other cases of direct/indirect borrowing shall be resolved on a case-to-case basis.

It shall be the responsibility of the bank concerned to ascertain whether the borrower, guarantor, endorser or surety is related or connected with the bank or with any of the directors, officers or stockholders of the bank in any of the capacities mentioned in Item "e" of Subsec. X326.1.

In determining indirect borrowings, as enumerated above, only those cases involving living relatives shall be considered.

Sec. X330 Individual Ceilings. The total outstanding loans, other credit accommodations and guarantees to each of the bank's DOSRI shall be limited to an amount equivalent to their respective unencumbered deposits and book value of their paid-in capital contribution in the bank: *Provided, however*, That unsecured loans, other credit accommodations and guarantees to each of the bank's DOSRI shall not exceed thirty percent (30%) of their respective total loans, other credit accommodations and guarantees.

§ X330.1 *Exclusions from individual ceiling.* The following loans, other credit accommodations and guarantees shall be excluded in determining compliance with the individual ceiling.

a. Loans, other credit accommodations and guarantees secured by assets considered as non-risk by the Monetary Board;

Assets considered as non-risk shall refer to the following:

(1) Cash;

(2) Debt securities issued by the BSP or the Philippine government;

(3) Deposits maintained in the lending bank and held in the Philippines;

(4) Debt securities issued by the U.S. government;

(5) Debt securities issued by central governments, central banks of foreign countries and multilateral financial institutions such as International Finance Corporation, Asian Development Bank and World Bank, with the highest credit quality given by any two (2) internationally accepted rating agencies; and

(6) Such other assets considered as non-risk by the Monetary Board.

b. Loans, other credit accommodations and advances to officers in the form of fringe benefits granted in accordance with existing regulations; and

c. Loans, other credit accommodations and guarantees extended by a Coop Bank to its cooperative shareholders.

Sec. X331 Aggregate Ceiling; Ceiling on Unsecured Loans, Other Credit Accommodations and Guarantees Except with the prior approval of the Monetary Board, the total outstanding loans, other credit accommodations and guarantees to DOSRI shall not exceed fifteen percent (15%) of the total loan portfolio of the bank or 100% of net worth whichever is lower: *Provided*, That in no case shall the total unsecured loans, other credit accommodations and guarantees to said DOSRI exceed thirty percent (30%) of the aggregate ceiling or the outstanding loans, other credit accommodations and guarantees, whichever is lower. For the purpose of determining compliance with the ceiling on unsecured loans, other credit accommodations and guarantees, banks shall be allowed to average their ceiling on unsecured loans, other credit accommodations and guarantees every week.

In evaluating requests for extension of loans in excess of the aggregate ceiling, the BSP shall consider the credit standing of the borrower, viability of the projects financed by such other credit accommodations in relation to national objectives, collateral or security and other pertinent considerations.

Sec. X332 Exclusions from Aggregate Ceiling. The following loans, other credit accommodations and guarantees shall be excluded in determining compliance with the aggregate ceiling:

a. Credit accommodations or portions thereof to the extent secured by assets considered as non-risk by the Monetary Board;

b. Credit accommodations to a corporate stockholder which meets all the following conditions:

(1) The corporation is a non-financial institution;

(2) Its shares are listed and traded in the domestic stock exchanges; and

(3) No person or group of persons related within the first degree of consanguinity or affinity holds/owns more than twenty percent (20%) of the subscribed capital of the corporation.

c. Credit accommodations to government-owned or controlled corporations, in cases where a director, officer or stockholder of the lending bank is a representative of the government in the borrowing corporation and does not hold any proprietary interest in such corporation: *Provided*, That other rules on loans to DOSRI, such as procedural and reportorial requirements under Sections X334 and X335 are followed.

d. Exclusions from individual ceiling mentioned under Items *"(b)"* and *"(c)"* of Subsec. X330.1.

Sec. X333 Applicability to Branches and Subsidiaries of Foreign Banks. The individual and aggregate ceilings as well as ceilings on unsecured credit accommodations prescribed herein shall also apply to branches and subsidiaries of foreign banks in the Philippines.

Sec. X334 Procedural Requirements. The following provisions shall apply if the bank's DOSRI are parties to, or act as representatives or agents of others in, any of the transactions enumerated under Sec. X327:

a. *Approval of the board, when to obtain*. Except with prior written approval of the majority of the directors, excluding the director concerned, no loan, other credit accommodation and guarantee shall be granted nor shall any of the transactions enumerated under Sec. X327 be entered into.

b. *Approval by the board, how manifested*. The approval shall be manifested in a resolution passed by the board of directors during a meeting and made of record.

c. *Determination of majority of the directors*. The determination of the majority of the directors, excluding the director concerned, shall be based on the total number of directors of the bank as provided in its articles of incorporation and by-laws.

d. *Contents of the resolution*. The resolution of the board of directors shall contain the following information:

(1) Name of the director or officer concerned and his involvement as regards the credit accommodation, such as principal, endorser, spouse of borrower, etc.;

(2) Nature of the loan or other credit accommodation, purpose, amount, credit basis for such loan or other credit accommodation, security and appraisal thereof, maturity, interest rate, schedule of repayment and other terms of the loan or other credit accommodation;

(3) Date of resolution;

(4) Names of the directors who participated in the deliberations of the meeting; and

(5) Names in print and signatures of the directors approving the resolution: *Provided*, That in instances where a director who participated in the board meeting and who approved such resolution failed to sign, the corporate secretary may issue a certification to this effect indicating the reason for the failure of the said director to sign the resolution.

e. *Transmittal of copy of board approval; contents thereof*. A copy of the written approval of the board of directors, as herein required, shall be submitted to the appropriate department of the SES within twenty (20) banking days from the date of approval. The copy may be a duplicate of the original, or a reproduction copy showing clearly the signatures of the approving directors: *Provided*, That if a reproduction copy is to be submitted, it shall contain on its face or reverse side a signed certification by the secretary that it is a reproduction of the original written approval: *Provided, further,* That such written approval shall not be required for loans, other credit accommodations and advances granted to officers under a fringe benefit plan approved by the BSP.

Sec. X335 Reportorial Requirements. Each bank shall maintain a record of loans, other credit accommodations and guarantees covered by these regulations in a manner and form that will facilitate verification of such transactions by BSP examiners.

The appropriate department of the SES may require banks to furnish such data or information as may be necessary for purposes of implementing the provisions of the foregoing rules.

Sec. X336 Sanctions. Any violation of the provisions of the foregoing rules shall be subject to any or all of the following sanctions:

a. Restriction or prohibition on the bank from declaring dividends for non-compliance with the prescribed ceiling on DOSRI until the outstanding loans and other credit accommodations have been reduced to within the herein prescribed ceilings;

b. After due notice to the board of directors of the bank, the office of any bank director or officer who violates the provisions of this Section may be declared vacant and the director or officer shall be subject to the penal provisions of the New Central Bank Act;

c. Application of (1) the borrowing director's or officer's share in the bank's profit sharing program; and (2) the share of the director voting for the approval of the loan or other credit accommodation, against the excess of such loan or other credit accommodation over any of the herein prescribed ceilings; and

d. For the duration of each violation, imposition of a fine of one-tenth of one percent (1/10 of 1%) of the excess over the ceilings per day but not to exceed P30,000 a day on the following:

(1) The lending bank;

(2) The director, officer or stockholder whose borrowing exceeds his individual ceiling; and

(3) Each of the directors voting for the approval of the loan or other credit accommodation in excess of any of the ceilings prescribed in Secs. X330 and X331.

The penalty for exceeding the individual ceiling, aggregate ceiling and ceiling on unsecured loans shall be computed on the average amount of loans in excess of said ceilings during the same week.

Sec. X337 Waiver of Secrecy of Deposit Any director, officer or stockholder who, together with his related interest, contracts a loan or any form of financial accommodation from:

a. his bank; or

b. from a bank

(1) which is a subsidiary of a bank holding company of which both his bank and the lending bank are subsidiaries; or

(2) in which a controlling proportion of the shares is owned by the same interest that owns a controlling proportion of the shares of his bank, in excess of five percent (5%) of the capital and surplus of the bank, or in the maximum amount permitted by law, whichever is lower, shall be required by the lending bank to waive the secrecy of his deposits of whatever nature in all banks in the Philippines. Any information obtained from an examination of his deposits shall be held strictly confidential and may be used by the examiners only in connection with their supervisory and examination responsibility or by the BSP in an appropriate legal action it has initiated involving the deposit account.

Sec. X338 Financial Assistance to Officers and Employees. Banks may provide financial assistance to their officers and employees, as part of their fringe benefits program, to meet the housing, transportation, household and personal needs of their officers and employees. Financing plans and amendments thereto, shall be with prior approval of the BSP.

§ X338.1 *Mechanics.* The mechanics of such financing plan shall have the following minimum features:

a. Participation shall be limited to fulltime and permanent officers and employees of the bank;

b. Financial assistance shall only be for the following purposes:

(1) The acquisition of a residential house and lot, or the construction, renovation or repair of a residential house on a lot owned and to be occupied by the officer or employee;

(2) The acquisition of vehicles, household equipment and appliances for the personal use of the officer or employee or his immediate family; or

(3) To meet expenses for the medical, maternity, education, emergency and other personal needs of the officer or employee or his immediate family;

c. Financial assistance for purposes mentioned in Items *"b(1)" and "b(2)"* of this Subsection shall be granted in the form of a loan, advance or other credit accommodation, installment sale, lease with option to purchase or lease-purchase arrangement where the lessee is obliged to purchase the real estate or equipment;

d. The amount and maturity of financial assistance for each purpose shall be determined by the bank in consonance with the normal requirements thereof: *Provided*, That the maximum amount shall be stated as percentage or multiple of the total monthly compensation of the officer or employee and shall be within the paying capacity of the borrowing officer or employee.

Total monthly compensation shall include the basic salary and all fixed and regular monthly allowances of the officer or employee. Payments for sickness benefits and other special emoluments which are not fixed or regular in nature, or the commutation into cash of unused leave credits shall not be included in the computation of total monthly compensation;

e. The amortization payment shall include amounts necessary to cover mortgage redemption insurance and fire insurance premiums, taxes, special assessments, and other related fees and charges;

f. Availment of the financing plan to construct or acquire a residential house and lot shall be allowed only once during the officer's or employee's tenure with the bank, except where the right over the real estate previously acquired or constructed under the financing plan is absolutely transferred or assigned to another officer or employee of the bank or to a third party: *Provided,* That the bank must be fully paid or reimbursed for the outstanding availment on the financing plan before the officer/ employee is allowed to re-avail himself of the same financing plan.

An officer or employee (or his spouse) who already owns a residential house and lot shall not be qualified to avail himself of financial assistance for purposes of acquiring a residential house and/or lot.

These prohibitions notwithstanding, financial assistance for the repair or renovation of a residential house may be allowed subject to such limitation as may be prescribed by the bank pursuant to Item "d " of this Subsection;

g. Availment of the financing plan for the acquisition of a specific type of equipment or appliance shall be allowed not oftener than once every three (3) years: *Provided,* That re-availment shall be allowed only after previous obligations in connection with the acquisition of the same type of equipment or appliances have been fully liquidated; and

h. The bank shall adopt measures to protect itself from losses such as by incorporating in the plan or contract provisions requiring co-makers or co-signor, chattel, or real estate mortgages, fire insurance, mortgage redemption insurance, assignment of money value of leave credits, pension or retirement benefits.

§ X338.2 ***(Reserved)***

§ 1338.2 ***Funding by foreign banks.*** In the case of local branches of foreign banks, financial assistance for their officers and employees may be funded, through any of the following means:

a. Through a local affiliate by special arrangement with the head office abroad in any of the following forms:

(1) Inward remittance from the head office of the affiliate;

(2) Assignment to the affiliate of equivalent amounts of profits otherwise remittable abroad under existing regulations; or

(3) Direct loans by the foreign bank to the affiliate; or

b. Through the local branch itself by:

(1) Segregation or transfer of undivided profits normally remitted to the head office abroad equivalent to the loans to officers and employees which shall be lodged under *"Other Liabilities-Head Office Accounts"*. This account shall at all times have a balance equivalent to the outstanding loans to officers/employees financed under this scheme; or

(2) Inward remittance; or

c. Through the local branch from local sources without earmarking an equivalent amount of undivided profits: *Provided,* That the aggregate ceilings on such loans as provided under existing regulations shall apply.

Loans under Items *"b(1)"* and *"b(2)"* of this Subsection shall be treated in the branch books as loans granted by its head office. The documentation and collection of such loans shall be handled by the branch for the account of the head office.

Loans financed under Items *"a"* and *"b"* shall be excluded from the computation of the capital to risk assets ratio.

§ 2338.2 ***(Reserved)***

§ 3338.2 ***(Reserved)***

§ X338.3 ***Other conditions/limitations***

a. The investment by a bank in equipment and other chattels under its fringe benefits program for officers and employees shall be included in determining the extent of the investment of the bank in real estate and equipment for purposes of Section 51 of R.A. No. 8791.

b. The investment by a bank in equipment and other chattels contemplated under these guidelines shall not be for the purpose of profits in the course of business for the bank.

c. The aggregate outstanding loans and other credit accommodations granted under the bank's fringe benefits program, inclusive of those granted to officers in the nature of lease with option to purchase, shall not exceed five percent (5%) of the bank's total loan portfolio.

Banks providing financial assistance to their officers/employees shall submit a regular report on "availments of financial assistance to officers and employees" to the BSP within fifteen (15) banking days after end of reference semester.

The appropriate department of the SES may further require banks to submit such data or information as may be necessary to facilitate verification of such transactions by BSP examiners.

Sec. X339 Transitory Provisions

a. The sanctions contained under Sec. X336 shall not apply to outstanding loans, other credit accommodations and guarantees, as well as availments of previously approved loans and committed credit lines not considered as DOSRI accounts prior to 10 April 2004, for a period of up to 09 April 2007 or until said loans, other credit accommodations and guarantees become past due, or are extended, renewed or restructured, whichever comes later.

b. Unsecured outstanding loans, other credit accommodations and guarantees, as well as availments of previously approved loans and committed credit lines not considered as DOSRI accounts prior to 10 April 2004, shall not be deducted from capital accounts for a period of up to 09 April 2007 or until such time that said loans, other credit accommodations and guarantees become past due, or are extended, renewed or restructured, whichever comes later.

c. Banks shall, however, disclose the following information in their financial statements, annual report and the reports being submitted to BSP:

(1) DOSRI;

(i) Loans, other credit accommodations and guarantees classified as DOSRI accounts under regulations existing prior to 10 April 2004; and

(ii) New DOSRI loans, other credit accommodations and guarantees granted starting 10 April 2004.

(2) Non-DOSRI prior to 10 April 2004 Loans, other credit accommodations and guarantees, as well as availments of previously approved loans and committed credit lines not considered DOSRI accounts prior to 10 April 2004 but are allowed a transition period as provided above.

(As amended by Circular No. 532 dated 19 May 2006)

§§ X339.1 - X339.3 ***(Reserved)***

§ X339.4 ***Reportorial requirements***

Financing plans and amendments thereto shall be submitted to BSP within thirty (30) calendar days from approval thereof by the bank's board of directors. The appropriate department of the SES may require the banks concerned to submit a regular report monitoring the various transactions under the bank's financing plans for officers/ employees.

All banks providing financial assistance to bank officers/employees shall submit a report on *"Availments of Financial Assistance to Officers and Employees"* to the BSP within fifteen (15) banking days after end of reference semester.

Sec. X340 Applicability of DOSRI Rules and Regulations to Government Borrowings in Government-Owned or -Controlled Banks. The provisions of Secs. X326 to X337 shall also apply to loans, other credit accommodations, and/or guarantees granted to the National Government or Republic of the Philippines, its political subdivisions and instrumentalities as well as GOCCs, subject to the following clarifications:

a. Loans, other credit accommodations, and/or guarantees to the Republic of the Philippines and/or its agencies/departments/ bureaus shall be considered: (1) non-risk; and (2) not subject to any ceiling;

b. Loans, other credit accommodations, and/or guarantees to: (1) GOCCs; and (2) corporations where the Republic of the Philippines, its agencies/departments/ bureaus, and/or GOCCs own at least twenty percent (20%) of the subscribed capital stock shall be considered indirect borrowings of the Republic of the Philippines and shall form part of the individual ceiling as well as the aggregate ceiling: *Provided,* That the following loans, other credit accommodations, and/or guarantees to GOCCs and corporations where the Republic of the Philippines, its agencies/departments/bureaus, and/or GOCCs own at least twenty percent (20%) of the subscribed capital stock, shall be excluded from the thirty percent (30%) ceiling on unsecured loans under Secs. X330 and X331:

(1) Loans, other credit accommodations, and/or guarantees for the purpose of undertaking priority infrastructure projects consistent with the Medium-Term Development Plan/Medium-Term Public Investment Program of the National Government, duly certified as such by the Secretary of Socio-Economic Planning;

(2) Loans, other credit accommodations, and/or guarantees granted to PFIs in the lending programs of the government wherein the funds borrowed are intended for relending to other PFIs or end-user borrowers; and

(3) Loans, other credit accommodations, and/or guarantees granted for the purpose of providing (i) wholesale and retail loans to the agricultural sector and micro, small and medium enterprises (MSMEs); and/or (ii) rediscounting and guarantee facilities for loans granted to the said sector or enterprises;

c. Loans, other credit accommodations, and/or guarantees granted to state universities and colleges (SUCs) shall be excluded from the thirty percent (30%) ceiling on unsecured loans under Secs. X330 and X331.

d. In view of the fiscal autonomy granted under R.A. No. 7653 and the independence prescribed under the Constitution, the BSP shall be considered an independent entity, hence, not a related interest of the Republic of the Philippines and/or its agencies/departments/bureaus. Loans, other credit accommodations and guarantees of the BSP shall be considered: (1) non-risk; and (2) not subject to any ceiling;

e. LGUs shall be considered separate from the Republic of the Philippines, other government entities, and from one another due to the full autonomy in the exercise of their proprietary functions and in the management of their economic enterprises granted to them under the Local Government Code of the Philippines, subject to certain limitations provided by law, hence, not a related interest of the

Republic of the Philippines and/or its agencies/departments/bureaus;

f. Local Water Districts (LWDs), although GOCCs, shall be considered separate from the Republic of the Philippines, other government entities, and from one another due to their fiscal independence from the national government, hence, not a related interest of the Republic of the Philippines and/or its agencies/department/bureaus, for purposes of these regulations;

g. A director who acts as a government representative in the lending institution shall not be excluded in the deliberation as well as in the determination of majority of the directors in cases of loans, other credit accommodations, and guarantees to the Republic of the Philippines and/or its agencies/departments/bureaus; and

h. A director of the lending institution shall be excluded in the deliberation as well as in the determination of majority of the directors in cases of loans, other credit accommodations, and guarantees to the borrowing government entity other than the Republic of the Philippines, its agencies, departments or bureaus where said director is also a director, officer or stockholder under existing DOSRI regulations.

(Circular No. 514 dated 06 March 2006 as amended by Circular Nos. 635 dated 10 November 2008, 616 dated 30 July 2008, 580 dated 09 September 2007, and 547 dated 21 September 2006)

F. MANDATORY CREDITS

Sec. X341 Agrarian Reform and Agricultural Credit. Pursuant to P.D. No. 717, the following guidelines shall govern the grant of agrarian reform credit and agricultural credit by banks, government or private.

§ X341.1 *Definition of terms.* For purposes of this Section, the following definitions shall apply:

a. *Loanable funds* shall refer to total funds generated after the effectivity of P.D. No. 717, the computation of which is described in Subsec. X341.4.

b. *Agrarian reform credit* shall refer to production and other types of loans granted to beneficiaries of agrarian reform for the following purposes: acquisition of work animals, farm equipment and machinery, seeds, fertilizers, poultry, livestock, feeds and other similar items; acquisition of lands authorized under existing laws; construction and/or acquisition of facilities for production, processing, storage and marketing; and efficient and effective merchandising of agricultural commodities stored and/or processed by the facilities aforecited in domestic and foreign commerce.

c. *Agricultural credit* in general shall include all loans and/or advances granted to borrowers, whether beneficiaries of agrarian reform or not, to finance activities relating to agriculture, and for processing, marketing, storage, and distribution of products resulting from these activities.

d. *Agrarian reform beneficiaries* shall include tillers, tenant-farmers, settlers, agricultural lessees, amortizing owners, owner-cultivators, farmers' cooperatives and compact farms, as determined by the DAR.

The term shall likewise include agricultural enterprises registered under P.D. No. 1159 as well as projects undertaken pursuant to the Corporate Farming Program under General Order (G.O) No. 47: *Provided,* That the borrower submits the following documents to the lending bank:

(1) A certification from the Board of Investments to the effect that the borrower is an agricultural enterprise duly registered under P.D. No. 1159 ; and

(2) An endorsement of the DAR stating that land reform beneficiaries shall benefit from the agricultural enterprises' projects.

§ X341.2 ***Who may borrow; purposes***

a. All beneficiaries of agrarian reform credit mentioned under P.D. No. 717 and its implementing regulations which credit shall be used for agricultural production or for other purposes mentioned therein shall be qualified borrowers under agrarian reform credit.

b. Qualified borrowers under agricultural credit in general are corporations, entities, or private individuals engaged in agricultural production, processing, storage, marketing, or exportation of agricultural products, and importation/manufacture/ distribution of farm machineries and equipment, fertilizers, etc. used for agricultural production.

§ X341.3 ***Required allocation for agrarian reform and agricultural credit in general.*** Banks shall set aside an amount equivalent to at least twenty-five percent (25%) of their loanable funds for agricultural credit in general, of which an amount equivalent to at least ten percent (10%) of the loanable funds shall be made available for agrarian reform credit.

a. *Marketing credits* considered as agrarian reform credits.

(1) Agrarian reform beneficiaries as defined by P.D. No. 717;

(2) Registered agricultural enterprises duly endorsed by the nearest office of the DAR per P.D. No. 1159;

(3) G.O. No. 47 corporations or agro-service corporations employed by G.O. No. 47 corporation which are certified by the DAR as engaged in grains production through linkage arrangements with agrarian reform beneficiaries;

(4) Area marketing cooperatives or Samahang Nayon duly registered with the Cooperatives Development Authority (CDA);

(5) Registered agrarian reform beneficiaries' associations/other farm groups respectively endorsed as agrarian reform beneficiaries by the nearest office of the DAR; CDA; or the Farm Systems Development Corporation (FSDC), National Irrigation Administration (NIA); or

(6) NFA-registered warehousemen/ millers/wholesalers whose grains inventory, subject to a chattel mortgage, trust receipts or pledged quedan, are duly sworn to under oath by grains businessmen-borrowers concurred by the President of the Agrarian Reform Beneficiaries Association in the area as having been produced by agrarian reform beneficiaries; and

(7) The NFA: *Provided,* That it certifies that its palay procurements are obtained through direct/indirect linkage arrangements with agrarian reform beneficiaries, subject to such ceilings as may be imposed by the BSP/Department of Finance (DOF) on the loans/advances to the NFA by banks:

Lendings to NFA are considered as lending to the agricultural and agrarian sector: *Provided,* That such lendings shall be given credit only once for purposes of determining compliance with the required allocation of fund for agrarian reform and agricultural credit in general.

b. Development loan incentives. *[Transferred to Subsec. X341.5, Item "c(1)"].*

c. Loans for high-value crops projects. *[Transferred to Subsec. X341.5, Item "c(2)"].*

§ X341.4 ***Computation of loanable funds.*** Loanable funds shall be:

a. The net increase from 29 May 1975 to date of the report of the individual accounts which represent the following:

(1) The total deposits (demand, savings, time and NOW accounts) excluding foreign currency deposits under Circular No. 1389 and deposits of the BTr representing revenue collections of the BIR and BOC;

(2) Deposits of banks, net of due from other banks;

(3) Bills payable (including borrowings from banks) net of:

(a) Repo agreement by accredited government securities dealers if relent to banks;

(b) Interbank call loans with maturities not exceeding fifteen (15) days;

(c) Proceeds from special on-lending programs like the APEX;

(d) Proceeds from BSP rediscounting (except special time deposits); and

(e) Proceeds from special BSP credit accommodations in the form of emergency advances, overnight repo agreements and availment of overdraft facilities.

(4) Total capital accounts.

b. Total collections from the loan portfolio outstanding as of 31 May 1975 to date of the report; and

c. The sum of Items *"a"* and *"b"* above, less the net increase of the following:

(1) Bank premises, furniture and equipment (net book value);

(2) Real and other property owned or acquired (representing properties acquired in satisfaction of debts);

(3) Other assets;

(4) Required reserves against:

(a) deposit liabilities;

(b) deposit substitutes;

(c) others (excluding reserves for margin deposits);

(5) Provisions for liquidity (fifteen percent (15%) of total deposits and demand liabilities); and

(6) Loans to export-oriented small and medium-scale industries involving accounts not exceeding P1.0 million.

§ X341.5 *Allowable alternative compliance.* In the absence of qualified borrowers, the following shall apply:

a. Agrarian reform credit -

(1) *Eligibility of government securities; conditions.* The amount set aside for agrarian reform credit not actually loaned out may be invested temporarily in government securities expressly declared eligible for the purpose by the BSP, subject to the following conditions:

(a) Such securities shall be held to maturity without prejudice to the right of the holder bank to require the issuing government entity to monetize, encash or repurchase such securities whenever funds are needed by the bank for lending to the beneficiaries of agrarian reform;

(b) Such securities shall not be hypothecated or encumbered in any way or earmarked for any other purposes;

(c) Such securities shall be marked "for agrarian reform credit" and shall be segregated from the bank's investment portfolio; and

(d) Only the buying/lending bank may use, during the holding period, eligible government securities subject of a resale/ repo agreement between private entities for purposes of compliance with this Subsection, subject to the following:

(i) The resale/repurchase should be for terms not less than thirty (30) days without pretermination during the first successive thirty (30) days, which condition shall be embodied in the resale/repo agreement; and

(ii) The buying/lending bank, with the consent of the selling/borrowing entity, shall register with the BSP its holdings of government securities under repo/resale agreement.

(2) *Eligible securities/bonds*

(a) NDC Agri-Agra ERAP Bonds. Investment by banks in NDC Agri-Agra ERAP Bonds as well as the firm underwriting of said bonds by banks or by the subsidiary IH of a UB.

(b) LGU Bonds.

(c) Pag-IBIG P4.0 billion Bond issue (2000 Series).

(d) Five (5)- and Ten (10)-year Special Purpose Treasury Bonds (SPTBs) to finance the CARP-related expenditures, provided the proceeds of the bonds will be exclusively used for the agrarian reform sector.

(e) Zero Coupon Bond Issue by the HGC of up to P7.0 billion 5-year regular series and up to P3.0 billion 7-year special series to finance its guaranty servicing of socialized and low-cost housing projects only to the extent of the present value of the bond computed using the original yield to maturity (as of auction/issue date).

The eligibility of securities under Items *"(2)(a)"*, *"(2)(b)"*, *"(2)(d)"* and *"2(e)"* shall be subject to the conditions in Items *"a(1)(b)"* and *"a(1)(d)"*; Item *"(2)(c)"* to the conditions in Items *"a(1)(b)"* and *"a(1)(d)(i)"*.

b. Agricultural credit in general - The amount set aside for agricultural credit in general not actually loaned out may be invested in commercial papers issued by entities engaged in agricultural production, processing, storage, marketing, or exportation of agricultural products; and importation, manufacture, distribution of farm machineries and equipment, fertilizers, etc. used for agricultural production: *Provided,* That for purposes of compliance with this Subsection, only the buying/lending bank may use commercial papers acquired in a resale/repo agreement during the holding period thereof subject to the conditions in Item *"a(1)(d)"* of this Subsection.

c. Alternative compliance for both agri-agra credit

(1) *Development loans*. Pursuant to Sections 8 and 9 of R.A. No. 7721 (An Act Liberalizing the Entry and Scope of Operations of Foreign Banks in the Philippines and for Other Purposes), loans extended by banks incorporated under the laws of the Philippines, whether Philippine or foreign-owned, to finance educational institutions, cooperatives, hospitals and other medical services, socialized or low-cost housing, and to local government units, without national government guarantee, shall be included for purposes of determining compliance with the provisions of P.D. No. 717, as amended. This provision shall, however, not apply to branches of foreign banks.

For this purpose, the following definitions shall apply:

(a) *Educational institutions* shall refer to all educational establishments duly authorized by or with permit to operate from the Department of Education, Culture and Sports (DECS), or created by special laws or charters.

(b) *Cooperatives* shall refer to duly registered associations of persons with a common bond of interest who have voluntarily joined together to achieve a lawful common social or economic end, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in accordance with universally accepted cooperative principles, as defined in R.A. No. 6938 (Cooperative Code of the Philippines).

(c) *Hospital* shall refer to a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment and care of individuals suffering from illness, disease, injury or deformity, or in need of obstetrical or other medical and nursing care.

It also refers to an institution, building or place where there are installed beds, or cribs, or bassinets for twenty-four (24)-hour use or longer by patients in the treatment of diseases, injuries, deformities or abnormal physical and mental state, maternity cases, and all institutions such as those for convalescence, sanitorial or sanitarial care, infirmaries, nurseries, dispensaries and such other names by which they may be designated.

(d) *Medical services* shall refer to various services like general treatment, physical examination, consultation, medication, dressing, suturing and surgical operation, all pertaining to or dealing with the healing art or the science of medicine, with license to operate from the Department of Health (DOH).

(e) *Socialized housing* refers to housing programs and projects covering houses and lots or home lots only undertaken by the Government or the private sector for the underprivileged and homeless citizens which shall include sites and services development, long-term financing, liberalized terms on interest payments, and such other benefits in accordance with the provisions of R.A. No. 7279 (Urban Development and Housing Act).

(f) *Economic and socialized housing* refers to housing units which are within the affordability level of the average and low-income earners which is thirty percent (30%) of the gross family income as determined by the NEDA from time to time. It also refers to the government-initiated sites and services development and construction of economic and socialized housing projects in depressed areas.

Socialized housing packages shall refer to housing loans not exceeding P225,000 and low-cost housing packages shall consist of *Level 1* which shall refer to housing loans in excess of P225,000 but not more than P500,000 and *Level 2* which shall refer to housing loans in excess of P500,000 but not more than P2.0 million, as prescribed under existing guidelines of the HUDCC for the implementation of various government housing programs, or in such other amounts which HUDCC may prescribe in the future for said housing loans.

(g) *LGU* refers to provinces, cities, municipalities and any other political subdivision created by law enacted by Congress and to barangays created by ordinance passed by the Sanggunian Panlalawigan or the Sanggunian Panglunsod that are located within its territorial jurisdiction, subject to such limitations and requirements prescribed in R.A. No. 7160 (Local Government Code of 1991).

(2) *Loans for high-value crops projects* Pursuant to Section 8 of R.A. No. 7900, a bank participating in the High-Value Crops Development Program that shall lend a minimum of five percent (5%) of its loanable funds, without alternative compliance directly to farmers' associations or cooperatives for high-value crops projects shall be exempted from, or shall be deemed to have complied with the requirement of P.D. No. 717.

For purposes of this item, *high-value crops* shall refer to crops that can be optimally and sustainably produced in key commercial crop production areas identified by the Department of Agriculture (DA) and which can generate revenue higher than that of traditional crops (which refer to rice, corn, coconut and sugar). Such high-value crops include, but are not limited to: coffee and cacao, fruit crops (citrus, cashew, guyabano, papaya, mango, pineapple, strawberry, jackfruit, rambutan, durian, mangosteen, guava, lanzones, and watermelon), root crops (potato and ubi), vegetable crops (asparagus, broccoli, cabbage, celery, carrots, cauliflower, radish, tomato, bell pepper, patola) legume, pole sitao (snap beans and garden pea), spices and condiments (black pepper, garlic, ginger and onion), and cutflower and ornamental foliage plants (chrysanthemum, gladiolus, anthuriums, orchids and statice).

Farmers' associations/organizations shall refer to farmers' cooperatives, associations or corporations duly registered with appropriate government agencies and which are composed primarily of small agricultural producers, farmers, farm workers and other agrarian reform beneficiaries who voluntarily join together to form business enterprises which they themselves, own, control and patronize.

A bank participating in the high-value crop development program shall refer to the LBP, the DBP and any qualified lending institution which has been accredited/

selected as provided in the Implementing Rules and Regulations of R.A. No. 7900 (Joint Administrative Order No. 1, series of 1996 of the DA dated 23 April l996).

(3) *(Transferred to Item "a(2)a" above by CL dated 22 June 2000).*

(4) *Ten (10)-Year Agrarian Reform Bond* issued by the Philippine Government thru the LBP, subject to the conditions prescribed in Subsec. X341.5(a) above;

(5) Investments by banks in the authorized capital stock of Quedan and Rural Credit Guarantee Corporation (Quedancor);

(6) Loans extended by banks to farmers, fishermen, cooperatives, rural workers and rural enterprises covered by the guarantees of Quedancor;

(7) Rediscounting by secondary banks of originating banks' loan receivables having the guarantee of Quedancor, subject to the condition that the originating bank may not use such loans as compliance with P.D. No. 717 and only the secondary (rediscounting) bank may claim such loans as compliance with P.D. No. 717;

(8) Loans secured by the NFAs Palay Negotiable Warehouse Receipts (PNWRs): *Provided*, That the PNWRs shall be printed on security paper by the BSP;

(9) All loans granted to Barangay Micro Business Enterprises (BMBEs) as provided under Subsec. X365.5;

(10) Housing microfinance loans, as provided under Subsec. X361.5; and

(11) Business transactions of larger banks (i.e., securitization, outright purchases, etc.) involving housing microfinance loans, as provided under Subsec. X361.5: *Provided*, That the volume of these banks' housing microfinance loans have already achieved a desirable level.
(As amended by M-2008-015 dated 19 March 2008)

§ X341.6 ***Syndicated type of agrarian reform credit/agricultural credit.*** Banks may grant a syndicated type of loan for agrarian reform credit/agricultural credit in general, either between or among themselves. The mechanics, including the recording of such syndicated type of loan transactions, shall follow existing practices and regulations applicable both to the lead bank and other participating bank(s). Accordingly, the booking of loans shall only be for the amount of actual participation of each syndicate bank concerned. Memorandum entries, references or notations shall be made for the other participating bank(s).

§ X341.7 ***Interest and other charges*** Interest, service fees and other charges shall be governed by existing rules and regulations.

§ X341.8 ***Unused agri-agra funds to be utilized for socialized and low-cost housing*** As a source of non-budgetary funding to augment the Comprehensive and Integrated Shelter and Urban Development Financing Program under R.A. No. 7835, all unused agri-agra allocation funds of banks in the preceding year shall be invested in socialized and low-cost housing if the utilized portion of the agri-agra funds of said banks was solely devoted to agricultural and agrarian reform credits.

§ X341.9 ***Submission of reports.*** A quarterly report on the following shall be submitted to the appropriate department of the SES within the period prescribed in *Appendix 6*.

a. Utilization of loanable funds set aside for agrarian reform credit and agricultural credit in general;

b. Any change in the composition of government securities and commercial papers held as temporary investments for agrarian reform credit and agricultural credit in general, respectively; and

c. A certification under oath by the duly designated officer of the bank of the absence of qualified borrowers for agrarian reform credit or agricultural credit in general shall be submitted to the appropriate department of the SES together with the report as required in this Subsection.

§§ X341.10 - X341.11 *(Reserved)*

§ X341.12 *Consolidated compliance* The compliance with agri-agra mandatory allocation of funds under P. D. No. 717 shall be allowed on a groupwide basis (based on consolidated financial statements of investor-FI or parent bank and its subsidiaries/affiliates): *Provided,* That the subsidiary banks are at least seventy five percent (75%) owned/controlled by the parent bank, subject to the following conditions:

a. The consolidated report shall be submitted by the bank in the prescribed form and shall be supported by the individual reports of the bank and its subsidiaries duly signed by each bank's authorized signatory. The subsidiaries shall continue with their respective submission of the subject report to the appropriate department of the SES within the prescribed period;

b. Either the parent bank or the subsidiary bank can exercise the right to avail itself of/use the excess of its subsidiary bank/parent bank for its own compliance; and

c. In the event of a deficiency in compliance of any parent or subsidiary or all of these banks, the members of the board of directors and its president and the other officers of the parent bank shall be responsible for the group's compliance.

§§ X341.13 - X341.14 *(Reserved)*

§ X341.15 Sanctions. The following sanctions shall be applicable for any violation of this Section:

a. *For non-compliance/undercompliance*

(1) Daily fine in proportion to degree of compliance shall be imposed depending on the total assets of the banks as of the reporting period:

Total Assets	Maximum Daily Fine
₱100.0 million and below	₱ 100
Above ₱100.0 million to ₱200.0 million	- 200
Above ₱200.0 million to ₱500.0 million	- 300
Above ₱500.0 million to ₱1.0 billion	- 500
Above ₱1.0 billion to ₱5.0 billion	- 1,000
Above ₱5.0 billion to ₱10.0 billion	- 3,000
Above ₱10.0 billion to ₱25.0 billion	- 5,000
Above ₱25.0 billion to ₱50.0 billion	- 10,000
Above ₱50.0 billion to ₱100.0 billion	- 15,000
Over ₱100.0 billion	- 30,000

Excess compliance in the ten percent (10%) agrarian reform credit may be used to offset a deficiency, if any, in the fifteen percent (15%) agricultural credit in general, but not vice versa. The daily fine shall be counted from the end of reference quarter until the date the bank has complied with the credit allocation requirements and files an amended report. In case of a violation noted during examination or verification, monetary penalty shall run from the date of findings until the violation is corrected; and

(2) *Non-monetary fines*

In addition to the above daily monetary fines, any or all of the administrative sanctions as provided under Section 37 of R.A. No. 7653, may be imposed upon any bank for non-compliance/undercompliance, willful delay or refusal to submit reports without prejudice to criminal sanctions against culpable persons provided under Sections 34, 35 and 36 of R. A. No. 7653, as follows:

(a) Suspension of rediscounting privileges or access to BSP facilities;

(b) Suspension of lending or FX operations or authority to accept new deposits or make new investments;

(c) Suspension of interbank clearing privileges; and/or

(d) Revocation of QB license.

b. *For non-submission and delayed/ amended reports*

The following fines shall be impose for non-submission and delayed/amended reports on compliance with the mandated credit allocations for agri-agra credit under P.D. No. 717, to be reckoned on the following day after due date of submission or until the proper report is filed with the BSP:

(1)	UBs/KBs/FXBs	₱1,200 per day
(2)	TBs	600 per day
(3)	RBs/Coop Banks	180 per day

Non-submission or delayed submission of reports for two (2) or more times in any four (4)-quarter period shall be subject to twice the prescribed monetary penalty for willful delay or refusal to submit reports.
(As amended by Circular No. 585 dated 15 October 2007)

Sec. X342 Mandatory Allocation of Credit Resources to Micro, Small and Medium Enterprises. The following rules shall govern the mandatory allocation of credit resources to Micro, Small and Medium Enterprises (MSMEs).
(As amended by Circular No. 625 dated 14 October 2008)

§ X342.1 *Definition of terms.* For purposes of this Section, the following definitions shall apply:

a. *Lending institutions* shall refer to all banks, namely: UBs, KBs, TBs and RBs/ Coop Banks, including government-owned banks.

b. *Total loan portfolio* shall include all loans and receivables, other than those booked in the FCDU/EFCDU as defined in the Manual of Accounts Section of the FRP under Subsec. X191.2 (gross of allowance for credit losses) excluding the following:

(1) Interbank loans receivable, other than (a) wholesale lending of a bank to conduit banks/QBs for on-lending to MSMEs, and (b) rediscounting facility granted to another bank for loans to MSMEs;

(2) Wholesale lending of a bank to conduit non-bank FIs without quasi-banking authority, other than those for on-lending to MSMEs;

(3) Loans granted under special financing programs, other than those for MSMEs;

(4) Loans granted to MSMEs, other than to BMBEs, to the extent funded by wholesale lending of, or rediscounted with, another bank;

(5) Agrarian reform credits/other agricultural loans granted under P.D. No. 717, other than those eligible for compliance with the mandatory allocation of credit for MSMEs, as well as development loans incentives under R.A. No. 7721 granted by banks other than branches of foreign banks; and

(6) Loans and receivables arising from repo agreements, certificates of assignment/ participation with recourse and securities lending and borrowing transactions.

c. *MSMEs* shall refer to any business activity within the major sectors of the economy, namely: industry, trade, services, including the practice of one's profession, the operation of tourism-related establishments, and agri-business, which for this purpose refers to any business activity involving the manufacturing, processing, and/or production of agricultural produce, whether single proprietorship, cooperative, partnership or corporation:

(1) whose total assets, inclusive of those arising from loans but exclusive of the land on which the particular business entity's office, plant and equipment are situated, must have a value falling under the following categories:

Micro	: not more than P 3,000,000
Small	: more than P 3,000,000 to P 15,000,000
Medium	: more than P 15,000,000 to P 100,000,000

and

(2) duly registered with the appropriate agencies as presently provided by law except in the case of microenterprises as defined above.

(As amended by Circular No. 625 dated 14 October 2008)

§ X342.2 *Period covered; prescribed portions of loan portfolio to be allocated* Banks shall for a period of ten (10) years from 17 June 2008 to 16 June 2018, allocate at least eight percent (8%) for micro and small enterprises (MSEs) and at least two percent (2%) for medium enterprises (MEs) of their total loan portfolio based on their balance sheet as of the end of previous quarter, and make it available for MSME credit.

Banks may be allowed to report compliance on a groupwide (i.e., consolidation of parent and subsidiary bank/s) basis so that excess compliance of any bank in the group can be used as compliance for any deficient bank in the group: *Provided*, That the subsidiary bank/s is/are at least majority owned by the parent bank: *Provided, further,* That the parent bank shall be held responsible for the compliance of the group.

The consolidated report shall be submitted by the parent bank in the prescribed form and shall be supported by the individual reports of the bank and its subsidiaries duly signed by each bank's authorized signatory.

For purposes of determining compliance with the mandated allocation of credit resources to MSMEs, only eligible credit exposures as enumerated in Subsec. X342.3, other than those booked in the FCDU/EFCDU shall be considered.

(As amended by Circular No. 625 dated 14 October 2008)

§ X342.3 *Eligible credit exposures* Funds set aside in accordance with the foregoing requirement shall be made available for any of the following:

a. *For MSEs*

(1) Actual extension of loans to eligible MSEs, other than to BMBEs which are covered in Item *"c(3)"* hereof: *Provided, however,* That loans granted to MSEs other than BMBEs, to the extent funded by wholesale lending of, or rediscounted with, another bank shall not be eligible as compliance with the mandatory credit allocation; or

(2) Loans granted to export, import, and domestic micro and small scale traders, other than to BMBEs which are covered in Item *"c(3)"* hereof: *Provided, however,* That loans granted to MSEs other than BMBEs, to the extent funded by wholesale lending of, or rediscounted with another bank shall not be eligible as compliance with the mandatory credit allocation; or

(3) Purchase of eligible MSE loans listed in Items *"(1)"* and *"(2)"* above on a "without recourse" basis from other banks and FIs; or

(4) Purchase/discount on a "with or without recourse" basis of MSE receivables, other than BMBE receivables which are covered in Item "c(3)" hereof; or

(5) Wholesale lending or rediscounting facility granted to PFIs for on-lending to MSEs, other than to BMBEs which are covered in Item "c(3)" hereof; or

(6) Wholesale lending or rediscounting facility granted to PFIs for on-lending to export, import, and domestic micro and small scale traders, other than to BMBEs which are covered in Item "c(3)" hereof; or

(7) Commercial letters of credit outstanding, net of margin deposits, issued for the account of MSEs.

b. *For MEs*

(1) Actual extension of loans to eligible MEs: *Provided, however,* That loans granted to MEs to the extent funded by wholesale lending of, or rediscounted with, another bank shall not be eligible as compliance with the mandatory credit allocation; or

(2) Loans granted to export, import, and domestic medium scale traders: *Provided, however,* That loans granted to MEs to the extent funded by wholesale lending of, or rediscounted with, another bank shall not be eligible as compliance with the mandatory credit allocation; or

(3) Purchase of eligible ME loans listed in Items *"(1)"* and *"(2)"* above on a "without recourse" basis from other banks and FIs; or

(4) Purchase/discount on a "with or without recourse" basis of ME receivables; or

(5) Wholesale lending or rediscounting facility granted to PFIs for on-lending to MEs; or

(6) Wholesale lending or rediscounting facility granted to PFIs for on-lending to export, import, and domestic medium scale traders; or

(7) Commercial letters of credit outstanding, net of margin deposits, issued for the account of MEs.

c. *Alternative compliance for either or both MSEs or/and MEs*

(1) Paid subscription/purchase of liability instruments as may be offered by the SB Corporation; or

(2) Paid subscription of preferred shares of stock of the SB Corporation; or

(3) Loans from whatever sources granted to BMBEs as provided under Subsec. X365.5.

(As amended by Circular Nos. 625 dated 14 October 2008 and 570 dated 24 May 2007)

§ X342.4 *Ineligible credit instruments* The purchase of government notes, securities and negotiable instruments other than the instruments offered by SB Corporation, and the granting of loans to MSMEs, other than to BMBEs, to the extent funded by wholesale lending of, or rediscounted with, another bank shall not be deemed compliance with the foregoing requirement.

(As amended by Circular No. 625 dated 14 October 2008)

§ X342.5 *Rights/remedies available to lending institutions not qualified to acquire or hold lands of public domain* Lending institutions which are not qualified to acquire or hold lands of the public domain in the Philippines shall be permitted to bid and take part in sales of mortgaged real property in case of judicial or extra-judicial foreclosure, as well as avail of receivership, enforcement and other proceedings, solely upon default of a borrower, and for a period not exceeding five (5) years from actual possession: *Provided,* That in no event shall title to the property be transferred to such lending institution. If the lending institution is the winning bidder, it may, during said five (5) year period, transfer its rights to a qualified Philippine national, without prejudice to a borrower's rights under applicable laws.

(As amended by Circular No. 625 dated 14 October 2008)

§ X342.6 *Submission of reports.* Banks shall submit reports on compliance with the mandatory credit allocation on a quarterly basis within fifteen (15) banking days from the end of reference quarter to SDC of the BSP. Said report shall be considered *Category A-3* report. It shall become effective starting with the reporting period ending 31 December 2008.

Banks shall maintain appropriate records/details of the reported loans to MSMEs and shall make these available to BSP.

(As amended by Circular No. 625 dated 14 October 2008)

§ X342.7 *Sanctions.* The following administrative sanctions shall be imposed on banks:

a. For non-compliance/under compliance with the prescribed portions of loan portfolio to be allocated to MSEs and MEs:

(1) For zero compliance for both MSEs and MEs – P500,000;

(2) For under compliance:

(a) For MSEs – percentage of under-compliance multiplied by P400,000

(b) For MEs – percentage of under-compliance multiplied by P100,000

to be computed as of end of each quarter.

(3) For willful making of a false or misleading statement to the BSP - P500,000 per quarter-end report without prejudice to the sanctions under Section 35 of R.A. No. 7653.

The imposition of the fines in Items *"(1)"* to *"(2)"* shall be without prejudice to the other administrative sanctions under Section 37 of R.A. No. 7653.

(b) For non-submission/delayed submission of reports on compliance with both the prescribed portions of loan portfolio to be allocated to MSEs and MEs, respectively:

(1) UBs/KBs	-	P1,200
(2) TBs	-	600
(3) RBs/Coop Banks	-	180

per calendar day of delay.

(As amended by Circular No. 625 dated 14 October 2008 and 585 dated 15 October 2007)

§ X342.8 ***Disposition of penalties collected.*** Ninety percent (90%) of penalties collected under Subsec. X342.7 above shall be remitted by the BSP to the MSME Development Council Fund, while the remaining ten percent (10%) shall be retained by the BSP to cover its administrative expenses.

(Circular No. 625 dated 14 October 2008)

§§ X342.9 - X342.14 ***(Reserved)***

§ X342.15 ***Accreditation guidelines for Rural and Thrift Banks under the SME Unified Lending Opportunities for National Growth (SULONG).*** Without prejudice to the refinements as may be suggested by DTI and DOF, the Twelve (12)-Point Accreditation Guidelines for RBs and TBs, and the lending features of short and long term loans for direct or retail lending by participating government FIs under the SULONG, are shown in *Appendix 55.*

G. SPECIAL TYPES OF LOANS

Sec. X343 Interbank Loans. Interbank loan transactions shall include, among other things, (a) interbank call loan (IBCL) transactions; (b) borrowings evidenced by deposit substitute instruments; and (c) purchases of receivables with recourse: *Provided, however,* That only IBCL transactions which are evidenced by interbank loan advice or repayment transfer tickets and settled through the banks' respective DDAs with BSP shall be subject to the reserve requirement prescribed for IBCL in Subsec. X253.1: *Provided, further*, That funds borrowed by banks from trust departments of banks or IHs shall be excluded from the herein definition of interbank loan transactions.

Interbank loan transactions not submitted to the BSP Comptrollership Department by means of interbank loan advice or repayment transfer tickets shall be reported to the BSP in the prescribed form.

§ X343.1 ***Systems and procedures for interbank call loan transactions.*** IBCL transactions of banks shall be governed by the Agreement for the PhilPaSS executed on 12 December 2002 between the BSP and the Bankers Association of the Philippines (BAP)/Chamber of Thrift Banks (CTB)/Rural Bankers Association of the Philippines (RBAP) and any subsequent amendments thereto.

(As superseded by the agreement between the BSP and BAP/CTB/RBAP dated 12 December 2002)

§ X343.2 ***Accounting procedures***

a. Both lending and borrowing banks shall immediately pass the corresponding entries in their books and, upon receipt of a copy of the transfer instruction reported as matched in the Multi-Transaction Interbank Payment System (MIPS), the borrowing bank shall attach the same to the corresponding ticket debiting its *Due from BSP* account in its books and, in the case of the lending bank, to the same ticket passed in its books on the day payment is made.

b. IBCL transactions shall be recorded by the borrowing bank as *Bills Payable Interbank Call Loans*.

c. Banks shall reconcile their demand deposit accounts with the BSP against monthly statements of account to be furnished by the BSP Comptrollership Department**.**

§ X343.3 *Settlement procedures for interbank loan transactions.* Interbank loan transactions (call and term) among banks shall be settled gross with finality subject to the availability of balances in the deposit reserves maintained by banks in the BSP in accordance with the provisions of the Agreement for the PhilPaSS executed on 12 December 2002 between the BSP and the BAP/CTB/RBAP and any subsequent amendments thereto.

(As superseded by the agreement between the BSP and the BAP/CTB/RBAP dated 12 December 2002)

Sec. X344 Loans to Thrift/Rural/ Cooperative Banks

§ X344.1 *Loans under Section 12 of R.A. No. 7353, Section 10 of R.A. No. 7906 and Article 108, R.A. No. 6938.* Banks may rediscount papers of TBs/RBs/Coop Banks. Banks shall specify the nature of papers acceptable for rediscounting as well as the rediscount rate.

§ X344.2 *Loans under Section 14 of R.A. No. 7353.* The following are the guidelines in the grant by the LBP, DBP or any government-owned or controlled bank or FI of a loan to an RB under Section 14 of R.A. No. 7353.

a. *Issuance of certification*. Subject to the qualifications of the RBs prescribed in Item *"b"* hereof, the Monetary Board shall issue the certification required under Section 14 of R.A. No. 7353, which shall be final, after the Monetary Board has determined that:

(1) The resources of the RB are inadequate to meet the legitimate credit needs of the locality wherein the RB is established;

(2) There is dearth of private capital in said locality; and

(3) It is not possible for the stockholders of the RB to increase the paid-up capital thereof.

The appropriate department or office of the BSP may prescribe and require the submission by the RB of papers and documents necessary for such determination.

b. *Qualifications for loan*. In order to qualify for the financial assistance under said provision of law, the RB shall first meet the following requirements:

(1) Its capital-to-risk assets ratio during the last six (6) months immediately preceding the loan application should be at least ten percent (10%);

(2) Its past due loans are not more than twenty-five percent (25%);

(3) It has no deficiency in allowance for probable losses on loans and other risk assets;

(4) It must not have incurred deficiency in its reserves against deposit liabilities for the last six (6) months preceding the filing of the application;

(5) It must have been operating profitably for the last three (3) years;

(6) Its arrearages with the BSP or other government FIs, if any, are being liquidated through an approved plan of payment, the conditions of which are being complied with; and

(7) It is operating substantially in accordance with applicable laws and BSP rules and regulations.

c. *Extension of loan*. The LBP**,** the DBP or any government-owned or controlled bank or FI shall, within sixty (60) days from issuance by the Monetary Board of the certification, and subject to their loan and investment policies, extend to an RB a loan or loans from time to time, repayable in ten (10) years, with concessional rates of interest, against security/ies which the stockholder or stockholders of the RB may offer.

Secs. X345 - X346 (Reserved)

Sec. X347 Standby Letters of Credit. The following shall govern the issuance of standby letters of credit.

§ X347.1 *Domestic standby letters of credit.* Domestic standby letters of credit may be issued or used in transactions other than those involving movement of goods under the following guidelines:

a. The bank's obligation to pay shall be either unconditional (as against presentation of a clean draft) or conditional only upon the presentation of documents and not upon actual existence or non-existence of facts, i.e., the bank must not be called upon to determine disputed questions of facts or law;

b. The bank's obligation shall be limited to a fixed maximum amount;

c. The bank's obligation shall have an expressed expiration date;

d. The standby letters of credit accommodation shall not violate any law or existing BSP directives, rules and regulations, such as the SBL and DOSRI ceilings;

e. The party who opened the standby letters of credit or the ultimate borrower shall not have any past due obligation with the issuing bank for the ninety (90)-day period preceding the date of issuance of the letter of credit; and

f. The party who opened the letter of credit (borrower or principal obligor) must have an unqualified obligation to reimburse the bank on the same condition as the bank has paid.

(As amended by Circular No. 536 dated 18 July 2006)

§ X347.2 *Ceiling.* The total guarantees or similar arrangements, the nature of which requires the guarantor to assume the liabilities/obligations of third parties in case of their inability to pay, that may be issued by a bank and outstanding at any given time, shall not exceed one hundred percent (100%) of the bank's qualifying capital.

Transitory provision. This Subsection is also covered by the last paragraph of Subsec. X303.5.

§ X347.3 *Reports.* Banks shall submit a monthly report of domestic standby letter of credit opened and outstanding in the prescribed form within fifteen (15) banking days after end of reference month to the appropriate department of the SES. The report shall contain the following minimum information:

(1) Date the letter of credit was opened;

(2) Amount, purpose and accountee thereof;

(3) Beneficiary;

(4) Security and value of security;

(5) Expiry date of the letter of credit; and

(6) Certification as to the correctness of the report by an authorized officer of the bank.

Sec. X348 Committed Credit Line for Commercial Paper Issues. The following guidelines shall govern committed credit line agreements as a prerequisite for corporations proposing to issue commercial paper, pursuant to the New Rules on the Registration of Short-Term Commercial Papers (*Appendix 14*).

§ X348.1 *Who may grant line facility* A bank with a net worth of at least P1.0 billion as defined in Sec. X111, may provide a committed credit line facility to a commercial paper issuer.

The bank shall exercise proper caution in ascertaining that the party, in whose favor the credit line shall be granted, is capable of fulfilling his commitments to the bank under the credit line agreement.

A bank or a group of banks may enter into a committed credit line agreement with any corporation proposing to issue commercial paper. Where a group of banks is involved, a lead bank shall be designated from among themselves.

§ X348.2 ***Ceilings.*** The aggregate commitments under committed credit line agreements entered into by each bank pursuant to this Section shall not exceed an amount equivalent to thirty percent (30%) of its net worth, reckoned as of the date of execution of the latest agreement: *Provided,* That in no case shall a bank extend commitments to a single issuer for more than twenty-five percent (25%) of its net worth exclusive of other exposures to the said issuer.

§ X348.3 ***Terms; conditions; restrictions.*** The committed credit line agreement shall incorporate the following terms, conditions and restrictions:

a. That the credit line agreement is executed pursuant to the provisions of this Section;

b. That the bank or banks are committed to make available to the issuer funds equivalent to at least twenty percent (20%) of the aggregate of the commercial paper issued and outstanding at any time;

c. That the commitment of the bank or banks shall be firm and irrevocable and effective for as long as the issues under a particular permit are outstanding, subject to renewal by the bank;

d. That availments pursuant to the credit line agreement shall be for the exclusive purpose of meeting obligations arising from commercial paper issues in accordance with the provisions of the Rules on Registration of Commercial Papers, which availments shall be honored not earlier than three (3) banking days prior to the date of payment of obligation arising from outstanding commercial paper;

e. That the request to avail of the credit line agreement shall be addressed to the bank or to the lead bank acting for a group of banks, which request shall be duly signed by a member of the board of directors and a senior ranking officer of the commercial paper issuer duly authorized for the purpose through an appropriate board resolution, which resolution shall also provide for the designation of the alternate signatories who shall likewise be a member of the board of directors and a senior financial officer of the corporation;

f. That the extent of the commitment of each participant in a group of banks under a credit line agreement shall be stipulated in the agreement; and

g. That the commitment of the bank under the credit line agreement shall be a net risk to the bank and the practice of requiring the commercial paper issuer to maintain a compensating deposit with the bank shall be prohibited.

§ X348.4 ***Reports to the Bangko Sentral.*** The bank or the lead bank, as the case may be, shall report to the BSP:

a. All commitments entered into with commercial paper issuers within ten (10) banking days after the issuer shall have been authorized by the SEC; and

b. Any availment under the committed credit line agreement within three (3) banking days from date of drawdown.

§ X348.5 ***Loan limit.*** The liabilities of a commercial paper issuer to a bank arising from the availment by the issuer of the credit line agreement shall not be counted in determining compliance by the bank with the SBL: *Provided,* That in no case shall they exceed five percent (5%) of the net worth of the bank beyond the normal applicable SBL for a period of 180 days from each availment of the credit line.

Sec. X349 Agriculture and Fisheries Projects with Long Gestation Periods Pursuant to Section 24 of R.A. No. 8435 (Agriculture and Fisheries Modernization Act of 1997), agriculture and fisheries projects with long gestation periods shall be entitled to longer grace periods in repaying the loan based on the economic life of the project. For purposes of this Section, the following definitions and guidelines shall govern the grant of loans for long-gestating agriculture and fisheries projects.

§ X349.1 *Definition of terms*

a. *Gestation period* shall refer to the span of time from the commencement of the project to the time that it is economically productive and producing revenues; and

b. *Grace period* under this Section shall refer to the period that the initial amortization payment on the loan is deferred. All payments, however, must be made on or before the maturity of the loan.

§ X349.2 *Grace period.* Banks are allowed to extend loans/guarantees with a grace period of up to seven (7) years to viable long-gestating agriculture and fisheries projects.

Suggested gestation and grace periods for some of the long-gestating projects are in *Appendix 36*.

§ X349.3 *Responsibility of lending banks.* Lending banks shall institute the necessary safeguards and precautions to ascertain the viability of the projects financed and the capability of the borrower in fulfilling his commitments.

§ X349.4 *Past due loans.* The rule on past due accounts under Sec. X306 shall apply except that the reckoning date shall be the grace period and not the original maturity of the loan.

§ X349.5 *Non-performing loans.* The rule on non-performing loans under Sec. X309 shall apply except that the reckoning date shall be the grace period and not the original maturity of the loan.

Secs. X350 - X360 (Reserved)

Sec. X361 Microfinancing Loans. Pursuant to Sections 40, 43 and 44 of R.A. No. 8791 the following rules, regulations and standards shall govern microfinancing operations of banks.

In the implementation of this Section, banks should be guided by the Notes on Microfinance in *Appendix 45*.

§ X361.1 *Definition*

a. *Microfinancing loans* are small loans granted to the basic sectors, as defined in the Social Reform and Poverty Alleviation Act of 1997 (R.A. No. 8425), and other loans granted to the poor and low-income households for their microenterprises and small businesses so as to enable them to raise their income levels and improve their living standards. These loans are granted on the basis of the borrowers' cash flow and are typically unsecured.

b. *Portfolio-at-Risk (PAR)* is the outstanding principal amount of all loans that have at least one (1) installment past due for one (1) or more days. The amount includes the unpaid principal balance but excludes accrued interest. Under PAR, loans are considered past due if a payment has fallen due and remained unpaid. Loan payments are applied first to any interest due, then to any installment of principal that is due but unpaid, beginning with the earliest installment. The number of days of lateness is based on the due date of the earliest loan installment that has not been fully paid.

c. *Restructured loans* are loans that have been renegotiated or modified to either lengthen or postpone the original scheduled installment payments or substantially alter the original terms of the loans. Any increase in the face amount of the debt resulting from accrued interest and accumulated charges which have been capitalized or made part of the principal of restructured loans shall be recorded in the unearned income/deferred credit account *"Capitalized Interest and Other Charges - Restructured Loans"*. Upon receipt of payment, the realized portion shall be amortized/credited to income.

d. *Refinanced loans* are loans that have been disbursed to enable repayment of prior loans that would not have been paid in accordance with the original installment schedule. Loans granted within a week or less from the date an original loan with more than thirty percent (30%) of the original principal still outstanding had been paid in advance shall be considered as refinanced loans. Refinanced loans shall be classified and reported as restructured loans.

§ X361.2 ***Loan limit; amortization; interest***

a. The maximum principal amount of microfinance loans shall not exceed P150,000. This is equivalent to the maximum capitalization of a microenterprise under R.A. No. 8425.

b. The schedule of loan amortization shall take into consideration the projected cash flow of the borrowers which is adopted into the terms and conditions formulated. Hence, microfinance loans may be amortized on a daily, weekly, bi-monthly or monthly basis, depending on the cash flow conditions of the borrowers.

c. Interest on such microfinancing loans shall be reasonable and just as may be determined by management to be consistent with its credit policies. The interest rate shall not be lower than the prevailing market rates to enable the lending institution to recover the financial and operational costs incidental to this type of microfinance lending.

d. Interest accrued and/or booked shall be reversed and no accrual of interest shall be allowed after the microfinance loan has become past due as defined in Subsec. X306.1.h.

§ X361.3 ***Credit information exemption*** In cases of microfinancing loans which meet the criteria in Subsec X361.2, a bank may not require from its credit applicants, a statement of assets and liabilities, and of their income and expenditures and such information as may be prescribed by law or by rules and regulations of the Monetary Board to enable the bank to properly evaluate the credit application which includes the corresponding financial statements submitted for taxation purposes to the BIR, as prescribed under Section 40 of R.A. No. 8791.

§ X361.4 ***Exemptions from rules on unsecured loans.*** In view of the unique characteristics of microfinance loans, i.e., small unsecured and based on cash flow of borrowers, these loans may be exempted from rules and regulations which may be issued by the Monetary Board with respect to unsecured loans under Section 41 of the General Banking Law of 2000: *Provided,* That the bank has:

a. well-defined standards, credit policies and procedures for microfinance loans which are in conformity with microfinance international best practices;

b. specific measures to be undertaken to ensure collection such as close supervision of borrowers' projects and operations; and

c. Loan Portfolio and Other Risk Assets Review System required under Sec. X302 which would serve as:

(1) An adequate loan tracking system that allows daily monitoring of the status of loan releases, collection and arrearages, any restructuring or refinancing; and

(2) A regular monitoring of past due loans and portfolio at risk.

§ X361.5 ***Housing microfinance loan*** The following provisions govern the grant of housing microfinance loans:

a. Banks that intend to provide the housing microfinance loans must first be accredited by the HUDCC in accordance with the accreditation criteria and conditions provided under the MOA between the BSP and the HUDCC. The loans must likewise be provided pursuant to the terms of the Housing Microfinance Product Manual jointly approved by the BSP and HUDCC.

The approved product has the following salient features:

(1) It has the following basic characteristics:

Subject	Particulars
Purpose	·House construction ·House and/or lot acquisition ·Home improvement/repairs
Eligibility	·Existing microfinance clients ·New clients without access to formal housing finance institutions (but with verifiable proof of income)
Loan Amount	·Up to P300,000 for house construction and/or lot acquisition (must show tenure security) ·Up to P150,000 for home improvement/repairs
Loan Value	·Up to ninety percent (90%) of the appraised value in case of REM ·Acceptable valuation in cases of usufruct, leases, etc. ·Capacity to pay based on cash flow analysis
Payment	·Frequent amortization ·With savings component ·Loan payments should not exceed 60% of clients income as determined by cash flow analysis
Terms	·Up to 10 years for house construction and house and/or lot acquisition ·Up to 5 years for home improvement/repairs

(2) The loan shares the characteristics of the microfinance loan except for the following:

(a) The maximum loan amount is P 300,000 (microfinance loans have a maximum of P150,000).

(b) The loans have longer terms with a maximum of five (5) years for home improvement/repairs and ten (10) years for house construction and house/lot acquisition.

(c) While most clients for housing microfinance loans are existing microfinance clients who have demonstrated a good track record with the bank, new clients may also be accepted subject to certain requirements.

(d) For house construction and house/lot acquisition loans, secure tenure instruments will be used as collateral.

(3) Due to the features that are different from the typical microfinance loan, the following additional risk management features are embedded in the product:

(a) Clients' ability to repay based on cash flow analysis and affordability (loan payment < 60% of income) especially the new clients. In addition, new clients have to demonstrate that they cannot access any other formal housing finance facility;

(b) Savings typically a requirement;

(c) Secure tenure instruments as collateral/collateral substitutes;

(d) Additional risk cover may be availed from HGC cash flow guarantee program;

(e) Adequate loan monitoring, collection, control, provisioning;

(f) Accreditation from the HUDCC with standards approved by the BSP and formalized by a MOA between HUDCC and BSP; and

(g) Mortgage redemption insurance provided in case of death and permanent disability.

b. Banks intending to provide housing microfinance loans not under Item *"a"* hereof shall present the relevant product manual for BSP consideration and approval.

The following are the incentives for housing microfinance loans in addition to existing incentives available for microfinance:

(a) Housing microfinance loans shall be eligible as alternative compliance to the mandatory credit allocation requirement to agrarian reform and other agricultural credit.

(b) The loans shall have an assigned risk-weight of fifty percent (50%) when not guaranteed and zero percent (0%) when guaranteed by the HGC.

(c) When the volume of large banks' housing microfinance loans have reached a desirable level, their business transactions (i.e. securitization, outright purchase, etc.) shall be considered as an alternative compliance with the mandatory credit allocation requirement to agrarian reform and other agricultural credit.

(d) If secured by REM, a ninety percent (90%) loan valuation may be allowed considering the guarantee component.

(e) Secure tenure instruments such as freehold, usufruct, leasehold and right to occupy and/or build shall be recognized as collateral/collateral substitute subject to approved loan valuations *(Appendix 81)*.

(f) Housing microfinance loans shall not exceed thirty percent (30%) of the total loan portfolio.

(g) Recording of portfolio at risk (PAR) and the provisioning requirement for microfinance loans under *Appendix 18* for home improvement/repair loans. Provisioning for house construction and house/lot acquisition shall follow those of regular loans under *Appendix 18*.

Banks which will grant housing microfinance loans must:

(1) include the loan in the bank's microfinance manual as one (1) of the types of services or products offered to prospective clients; and

(2) maintain a sub-control ledger for the loan.

(M-2008-015 dated 19 March 2008)

§§ X361.6 - X361.9 *(Reserved)*

§ X361.10 *Sanctions.* Violations of the provisions of this Section shall be subject to any or all of the following sanctions:

a. Disqualification of the bank concerned from the credit facilities of the BSP except as may be allowed under Section 84 of R.A. No. 7653;

b. Prohibition of the bank concerned from the extension of additional microfinance loans; and

c. Penalties and sanctions provided under Sections 36 and 37 of R.A. No. 7653.

Secs. X362 - X364 (Reserved)

Sec. X365 Loans to Barangay Micro Business Enterprises. The following are the rules and regulations to implement Section 9 and the second paragraph of Section 13 of R.A. No. 9178, otherwise known as the "Barangay Micro Business Enterprises (BMBEs) Act of 2002".

§ X365.1 *Credit delivery.* The LBP, the DBP, the SBGFC, and the Peoples Credit and Finance Corporation (PCFC) shall set up a special credit window that will service the financing needs of duly registered BMBEs consistent with BSP policies, rules and regulations. Said special credit window shall service the credit needs of BMBEs either through retail or wholesale lending, or both, as the concerned FIs may deem consistent with their corporate policies and objectives. The GSIS and the SSS shall likewise set up special credit window that will serve the financing needs of their respective members who may wish to establish a BMBE.

Said FIs are encouraged to wholesale funds to accredited private FIs including community based organizations such as cooperatives, NGOs and people's organizations engaged in granting credit, for relending to BMBEs.

Private banking and other FIs are encouraged to lend to BMBEs.

§ X365.2 *Interest on loans to Barangay Micro Business Enterprises*. Interest on BMBE loans shall be just and reasonable as may be determined by management of the concerned entity to be consistent with its credit policies.

§ X365.3 *Amortization of loans to Barangay Micro Business Enterprises.* The schedule of loan amortization shall take into consideration the projected cash flow of the borrowers. Thus, loans granted to BMBEs may, at the discretion of the lender, be amortized daily, weekly, monthly or at such interval as the conditions of the business of the BMBEs may warrant.

§ X365.4 *Waiver of documentary requirements.* Banks and other FIs shall not require from duly registered BMBE borrowers the submission of ITR as a condition to the grant of loans considering that BMBEs are exempted from income tax for income arising from their operations. They may, at their discretion, also waive the requirement of submission of financial statements from BMBEs: *Provided,* That before granting any loan, banks shall undertake reasonable measures to determine that the borrower is capable of fulfilling his/its commitments.

§ X365.5 *Incentives to participating financial institutions.* To encourage BMBE lendings, the following incentives shall be granted to banks and other FIs as may be applicable:

a. All loans from whatever sources granted to BMBEs under R.A. No. 9178 (BMBEs Act) shall be considered as part of alternative compliance to P.D. No. 717 or to R.A. No. 6977, as amended. For purposes of compliance with P.D. No. 717 and R. A. No. 6977, as amended, loans granted to BMBEs under the BMBEs Act shall be computed at twice the amount of the outstanding balance of the loans: *Provided*, That loans used as alternative compliance with P.D. No. 717 which were computed at twice their outstanding balance shall no longer be eligible as compliance with R.A. No. 6977, as amended during the same period and vice versa: *Provided*, *further*, That said loans may be used as alternative compliance with both P.D. No. 717 and R.A. No. 6977, as amended at the same time at the maximum amount of 100% of their outstanding balance each: *Provided*, *furthermore,* That funds loaned by or rediscounted with government-owned banks and other government FIs to accredited private banking and other FIs for on-lending to BMBEs shall be eligible as part of alternative compliance for P.D. No. 717 or for R.A. No. 6977, as amended, of the government-owned banks and the accredited private banks at the maximum amount of 100% of their outstanding balance each: *Provided, finally*, That loans used as alternative compliance with R.A. No. 6977, as amended, computed at either twice their outstanding balance or their maximum amount of 100% may be used as alternative compliance for either or both the prescribed portions of loan portfolio to be allocated to MSEs and MEs, respectively, as long as the aggregate amount used does not exceed twice their outstanding balance or their maximum amount of 100%, as the case may be.

b. Any existing laws to the contrary notwithstanding, interests, commissions and discounts derived from the loans by the LBP, DBP, PCFC, SBGFC granted to BMBEs as well as loans extended by the GSIS and SSS to their respective member-employees under BMBEs Act and this Section shall be exempt from gross receipt tax (GRT).

(As amended by Circular No. 625 dated 14 October 2008)

§ X365.6 *Credit guarantee.* The SBGFC and the Quedancor under the DA, in case of agri-business activities, shall set up a special guarantee window to provide credit guarantee to BMBEs under their respective guarantee programs.

§ X365.7 *Record.* The LBP, DBP, PCFC and SBGFC shall maintain separate records of loans granted to BMBEs and the GSIS and SSS shall maintain records of loans extended to their respective members who wish to establish BMBEs.

§ X365.8 *Reports to Congress.* The LBP, DBP, PCFC, SBGFC, SSS, GSIS and Quedancor shall report annually to the appropriate Committees of both Houses of Congress, the status of their implementation of the provisions of Section 9 of R.A. No. 9178.

§ X365.9 *Administrative sanctions* Any violation by the concerned government FI of the provisions of Section 9 of R.A. No. 9178 shall be subject to a fine of not less than ₱500 thousand to be imposed by the BSP and which shall be payable to the BMBE Development Fund. In case of a banking institution, the foregoing fine shall be without prejudice to the administrative sanctions provided for under Section 37 of R.A. No. 7653.

Secs. X366 - X375 (Reserved)

H. EQUITY INVESTMENTS

Sec. X376 Scope of Authority. The following rules shall govern the investment of banks in the equities of allied undertakings, whether financial or non-financial, and non-allied undertakings,as well as the establishment/acquisition of subsidiaries and affiliates abroad.

§ X376.1 *Conditions for investment in equities.* A bank shall not invest in the equity of any enterprise, if the investing bank is in any of the following situations:

a. Its capital is impaired, whether by actual losses or unbooked valuation reserves required by the BSP;

b. Its lending operations had been suspended on account of reserve or capital deficiency, until such suspension shall have been lifted for at least one (1) year and sufficient reserves or capital shall have been maintained;

c. It incurred losses from its operations during the preceding year;

d. It has not fully booked the valuation reserves and other capital adjustments required by the BSP;

e. It has exceeded the individual and aggregate ceilings as well as the ceiling on unsecured credit accommodations to DOSRI; and

f. Its ratio of past due loans to total loan portfolio exceeds twenty percent (20%).

§§ X376.2 - X376.4 *(Reserved)*

§ X376.5 *Guidelines for major investments.* The following are the guidelines for major acquisitions or investments by a bank including corporate affiliations or structures to implement Section 50 of R.A. No. 8791.

a**.** *Definition. Major investments* are those investments in allied or non-allied undertakings including corporate affiliations or structures that give the bank significant interest and/or control, such as stockholdings sufficient to elect one (1) member to the acquired entity's board of directors.

b. *Criteria for major investments*. Any major investment by a bank should be approved by the bank's board of directors. In acting on such investments the Board shall consider the following:

(1) Such investment must be in accordance with the bank's business plan and management objectives, taking into consideration the economic developments and future prospects. The interests of the different stakeholders of the bank - shareholders, depositors and creditors - should always be considered before any investment is made.

(2) Such investments will complement/ support the main business of the banks. Extra caution should be taken when investing in activities where the bank has no managerial or technical expertise, or businesses/industries, which are high-risk.

(3) Bank management shall provide for an efficient and effective "exit mechanism" or contingency plan in case the investee's operations fail or do not prosper.

c. *Prior BSP approval; information/ documents required.* Subject to prior approval of the BSP, banks may invest in allied or non-allied undertakings, including corporate affiliations or structures. A bank intending to make such investment shall submit the following information/ documents to the appropriate department of the SES for evaluation:

(1) Name of the company;

(2) Type of business activities;

(3) Board of directors' approval on such investments;

(4) Certification from the bank's board of directors that the criteria enumerated in Item *"b"* are complied with;

(5) Management contract;

(6) Financial information and other information about financial strengths, e.g., projected balance sheet and income statements for the first three (3) years;

(7) Members of the board and senior management;

(8) Interest to be held by the bank and the manner in which such interest will be held; and

(9) Conformity of the investee company for BSP to examine its books.

The BSP may impose conditions on any approval, including conditions to address financial, managerial, safety and soundness, compliance, or other concerns. Further, the BSP may disapprove a proposed investment if it finds that the proposal would constitute an unsafe and unsound practice, or would violate any law, regulation, Monetary Board directive, or any condition imposed by, or written agreement with, the BSP.

The BSP may prescribe other guidelines/regulations as it may consider necessary to ensure that banks' major investments do not expose the banks to undue risks or hinder effective supervision.

Within six (6) months from 07 September 2001, banks shall provide the BSP reliable information on companies in which they have significant interest or control, such as but not limited to:

(i) Name of the companies;

(ii) Type of business activities; and

(iii) Interest held by the bank and the manner in which such interest is held.

d. *Examination and inspection.* Whenever deemed necessary, BSP shall have the authority to examine investee companies or to verify information provided by other supervisory authorities such as the SEC.

The BSP shall have the authority to seek corrective action, to issue orders to terminate activities with or divest an interest in an investee company, if it believes that such action is necessary to prevent or redress unsafe or unsound practice by such company that poses a material risk to the financial safety, soundness or stability of a bank.

Sec. X377 Financial Allied Undertakings With prior BSP approval, banks may invest in equities of the following financial allied undertakings, subject to the limits prescribed under Sec. X378:

a. Leasing companies including leasing of stalls and spaces in a commercial establishment: *Provided*, That bank investment in/acquisition of shares of such leasing company shall be limited/ applicable only in cases of conversion of outstanding loan obligations into equity;

b. Banks;

c. IHs;

d. Financing companies;

e. Credit card companies;

f. FIs catering to small and medium scale industries including venture capital corporation (VCC), subject to the provisions of Sec. X379 and its subsections;

g. Companies engaged in stock brokerage/securities dealership; and

h. Companies engaged in foreign exchange dealership/brokerage.

In addition, UBs may invest in the following as financial allied undertakings:

(1) Insurance companies; and

(2) Holding company: *Provided*, That the investments of such holding company are confined to the equities of allied undertakings and/or non-allied undertakings of UBs allowed under BSP regulations.

The Monetary Board may declare such other activities as financial allied undertakings of banks.

The determination of whether the corporation is engaged in a financial allied undertaking shall be based on its primary purpose as stated in its articles of incorporation and the volume of its principal business.

Sec. X378 Limits on Investment in the Equities of Financial Allied Undertakings The equity investment of a bank in a single financial allied undertaking shall be within the following ratios in relation to the total subscribed capital stock and to the total voting stock of the allied undertaking:

ACTIVITIES	INVESTOR			
	UB		KB	
	Publicly-listed	Not listed	Publicly-listed	Not listed
Allied Enterprises Financial Allied Undertaking				
UBs	100%	49%	100%	49%
KBs	100	49	100	49
TBs	100		100	
RBs	100		100	
Coop Banks	NA		NA	
Insurance Companies	100		NA	
VCCs	60		60	
Others	100		49	

	TB	RB	Coop Banks
Financial Allied Undertaking			
UBs	49%	49%	49%
KBs	49	49	49
TBs	49	49	49
RBs	49	49	100
Coop Banks	NA	NA	30
Insurance Companies	NA	NA	NA
VCCs	60	49	49
Others	40	40	40

To promote competitive conditions, the Monetary Board may further limit the equity investments in QBs of UBs and KBs to forty percent (40%).

A publicly-listed UB or KB may own up to 100% of the voting stock of only one (1) other UB or KB. Otherwise, it shall be limited to a minority holding.

The existing investment of a bank in another bank under R.A. No. 7721 shall be governed by Sec. X105 insofar as it is consistent with R.A. No. 8791.

The guidelines in determining compliance with ceilings on equity investments in financial allied undertakings are shown in *Appendix 79*.

(As amended by Circular Nos. 581 dated 14 September 2007 and 530 dated 19 May 2006)

Sec. X379 Investments in Venture Capital Corporations. The following rules and regulations shall implement Presidential Decree No. 1688 entitled "Authorizing Banks to Invest in the Equity of Venture

Capital Corporations to Assist Small and Medium- Scale Enterprises".

For purposes of this Section, a VCC shall refer to an entity organized jointly by private banks, the National Development Corporation and the Technology Livelihood and Resource Center and/or such other government agency as may be authorized by the appropriate authority, the primary purpose of which is to develop, promote and assist, thru debt or equity financing or any other means, any small and medium-scale enterprise in the country.

§ X379.1 ***Requirements for investors*** Banks may invest in a VCC organized to assist small and medium-scale enterprises, subject to the following conditions:

a. The bank shall have a minimum capital of P100.0 million as defined in Sec. X111;

b. Two (2) or more banks may own up to sixty percent (60%) of the total voting equity and of the total equity of a VCC. A bank shall not be allowed to invest in the equity of more than one VCC;

c. The initial paid-in capital of VCC shall not exceed P5.0 million. Any subsequent increase in paid-in capital of the VCC in which a bank owns equity shall be subject to prior approval of the Monetary Board;

d. Loans which the investor-bank may grant to a VCC shall be limited to such amounts as would enable the VCC to promote equity financing to viable small and medium scale enterprise: *Provided, however*, That unless otherwise authorized by the Monetary Board, the aggregate outstanding loans of such bank to a VCC shall not exceed twice the amount of its equity investment in the VCC: *Provided, further*, That loans to the VCC, or the small and medium-scale enterprises shall not be subject to the ceilings on DOSRI, except where bank DOSRI are likewise stockholders in the VCC or in the small and medium-scale enterprise;

e. The combined equity investments in, and loans of, the bank to its VCC shall not exceed fifteen percent (15%) of the bank's net worth; and

f. The aggregate investments in equities by a bank, including equity investments in a VCC, shall not exceed the prescribed ceilings under Sec. X383 on other limitations and restrictions.

The guidelines in determining compliance with ceilings on equity investments in a VCC are shown in *Appendix 79*.

(As amended by Circular No. 581 dated 14 September 2007)

§ X379.2 ***Equity investments of venture capital corporations.*** Equity investment of a VCC in small and medium-scale enterprises shall be subject to the following conditions:

a. Equity financing by a VCC may be extended to a small and medium-scale enterprise engaged in an industry certified as desirable by the Department of Trade and Industry; and

b. The total assets of the enterprises shall not exceed P4.0 million, including the VCC's equity investment. Should the total assets of the small and medium-scale enterprise subsequently exceed the prescribed P4.0 million maximum, the VCC equity investment therein made before the total assets of the enterprise exceeded P4.0 million, may be maintained but shall not be increased.

§ X379.3 ***Business name of venture capital corporations.*** A VCC shall be known by any name not otherwise appropriated: *Provided, however,* That the words "venture capital corporation" are made a part thereof.

§ X379.4 ***Reportorial requirements; examination by Bangko Sentral.*** A VCC in which a bank owns equity shall be subject to BSP reportorial requirements prescribed for non-bank financial intermediaries and may be subject to examination by the BSP.

§ X379.5 *Interlocking directorships and/or officerships.* Subject to prior approval of the Monetary Board, a person may concurrently hold the position of a director or officer in a bank and a VCC.

Sec. X380 Non-Financial Allied Undertakings. A bank may acquire up to 100% of the equity of a non-financial allied undertaking: *Provided,* That the equity investment of a TB/RB in any single enterprise shall remain less than fifty percent (50%) of the voting shares in that enterprise: *Provided, further,* That prior Monetary Board approval is required if the investment is in excess of forty percent (40%) of the total voting stock of such allied undertaking.

The determination of whether the corporation is engaged in a non-financial allied undertaking shall be based on the primary purpose as stated in its articles of incorporation and the volume of its principal business.

a. *UBs/KBs/TBs*

UBs/KBs and TBs may invest in equities of the following non-financial allied undertakings:

(1) Warehousing companies;

(2) Storage companies;

(3) Safe deposit box companies;

(4) Companies primarily engaged in the management of mutual funds but not in the mutual funds themselves;

(5) Management corporations engaged or to be engaged in an activity similar to the management of mutual funds;

(6) Companies engaged in providing computer services;

(7) Insurance agencies/brokerages;

(8) Companies engaged in home building and home development;

(9) Companies providing drying and/ or milling facilities for agricultural crops such as rice and corn;

(10) Service bureaus, organized to perform for and in behalf of banks and NBFIs the services allowed to be outsourced enumerated in Sec. X162: *Provided*, That data processing companies may be allowed to invest up to forty percent (40%) in the equity of service bureaus;

(11) Philippine Clearing House Corporation (PCHC), Philippine Central Depository, Inc. and Fixed Income Exchange; and

(12) Such other similar activities as the Monetary Board may declare as non-financial allied undertakings of banks.

UBs may further invest in health maintenance organizations (HMOs).

In addition, TBs may also invest in the equities of companies enumerated in Item *"b"* of this Section.

b. *RBs/Coop Banks*

RBs/Coop Banks may invest, as a non-financial undertaking, in the equities of companies engaged in the following:

(1) Warehousing and other postharvest facilities;

(2) Fertilizer and agricultural chemical and pesticides distribution;

(3) Farm equipment distribution;

(4) Trucking and transportation of agricultural products;

(5) Marketing of agricultural products;

(6) Leasing;

(7) Automated Teller Machine (ATM) networks; and

(8) Other undertakings as may be determined by the Monetary Board.

The guidelines in determining compliance with ceilings on equity investments in non-financial allied undertakings are shown in *Appendix 79*.

(As amended by Circular Nos.581 dated 14 September 2007 and 563 dated 16 March 2007)

Sec. X381 (Reserved)

Sec. 1381 Investments in Non-Allied or Non-Related Undertakings. Only UBs may invest in the equity of an enterprise engaged in non-allied or non-related activities.

The guidelines in determining compliance with ceilings on equity investments in non-allied or non-related undertakings are shown in *Appendix 79*.

(As amended by Circular No. 581 dated 14 September 2007)

§ 1381.1 *Non-allied undertakings eligible for investment by universal banks* The broad category of non-allied undertakings in which a UB may invest directly or through its subsidiary shall require prior approval of the Monetary Board: *Provided,* That individual equity investments in the following broad categories shall not require prior Monetary Board approval, except as may be required in Subsec. X376.5:

a. Enterprises engaged in physically productive activities in agriculture, mining and quarrying, manufacturing, public utilities, construction, wholesale trade and community and social services following the industrial groupings in the Philippine Standard Industrial Classification (PSIC) as enumerated in *Appendix 22;*

b. Industrial park projects and/or industrial estate developments;

c. Financial and commercial complex projects (including land development and buildings constructed thereon) arising from or in connection with the Government's privatization program; and

d. Such other broad categories as the Monetary Board may declare as appropriate: *Provided, further,* That the bank shall submit within thirty (30) banking days after the investment, the following information/documents to the appropriate department of the SES:

(1) The amount of investment;

(2) The name of investee company; and

(3) The nature of business, accompanied by such pertinent documents as articles of incorporation, articles of partnership or registration certificate, whichever may be applicable.

§ 1381.2 *Limits on investments in non-allied enterprises*

a. The equity investment of a UB, or of its wholly or majority-owned subsidiaries, in a single non-allied enterprise shall not exceed thirty-five percent (35%) of the total equity in that enterprise nor shall it exceed thirty-five percent (35%) of the voting stock in that enterprise.

For the purpose of determining compliance with the ceiling prescribed in the preceding paragraph, (i) the equity investment of the bank; and (ii) the equity investment of the bank's subsidiaries, shall be combined.

b. In no case shall the total equity investments in a single non-allied enterprise of UBs, NBFIs performing QB functions and their subsidiaries, whether or not the parent financial intermediaries have equity investments in the enterprise, amount to fifty percent (50%) or more of the voting stock of that enterprise: *Provided, however,* That equity investments in excess of the ceilings prescribed herein as of 01 April 1980 may be maintained but may not be increased and if reduced, shall not be increased thereafter beyond the ceiling prescribed herein.

§ 1381.3 *Report on outstanding equity investments in and outstanding loans to non-allied enterprises.* UBs shall submit to the appropriate department of the SES within fifteen (15) banking days, a report as of June 30 and December 31 of each year showing the following:

a. Their outstanding equity investments in non-allied enterprises;

b. Outstanding equity investments of their wholly or majority-owned subsidiaries in non-allied enterprises;

c. Their outstanding loans to non-allied enterprises in which they have equity investments;

d. Outstanding loans of their wholly or majority-owned subsidiaries to non-allied enterprises in which these wholly or majority-owned subsidiaries have equity investments; and

e. Their outstanding loans to non-allied enterprises in which their wholly or majority- owned subsidiaries have equity investments.

For purposes of this Subsection, a wholly-owned subsidiary is a corporation 100% of the voting stock of which is owned by the reporting bank while a majority-owned subsidiary is a corporation more than fifty percent (50%) but less than 100% of the voting stock of which is owned by the reporting bank.

Sec. X382 Investments in Subsidiaries and Affiliates Abroad. The establishment or acquisition of subsidiaries or affiliates abroad shall require prior approval of the BSP.

§ X382.1 *Application for authority to establish or acquire subsidiaries and affiliates abroad.* The application for such authority shall be signed by the president of the bank and shall be accompanied, as a minimum, by the following information/ documents:

a. Certified true copy of the resolution of the bank's board of directors authorizing the establishment or acquisition of a subsidiary or an affiliate abroad;

b. Economic justification for such establishment, indicating the services to be offered, the minimum outlay for furniture, fixture and equipment, rental and other expenses;

c. A certification that an application for such establishment has been filed with the appropriate government agency of the host country;

d. Organizational set-up of the proposed banking office showing the proposed positions and the names, qualifications and experience of the proposed manager and other officers; and

e. Certification signed by the president or the executive vice-president that the bank has complied with all the requirements enumerated under Subsec. X382.2.

§ X382.2 *Requirements for establishing subsidiaries or affiliates abroad.* In addition to the standard pre-qualification requirements for the grant of banking authorities in *Appendix 5,* the applicant bank shall comply with the following:

a. The citizenship, ownership ceilings and other limitations on voting stockholdings in banks under existing law and regulations; and

b. The experience and expertise in international banking operations with proof to the effect that:

(1) It must have conducted international banking for at least three (3) years prior to the date of application; and

(2) Its international banking operations must have contributed a substantial portion to its total earnings.

§ X382.3 *Conditions for approval of application.* The approval of the application to establish or acquire a subsidiary of an affiliate abroad shall be subject to the following conditions:

a. Without prejudice to the qualification requirements of the country where the subsidiary or the affiliate is to be established, the proposed officer(s), at the time of appointment, must be at least:

(1) Twenty-five (25) years of age;

(2) A college graduate, preferably with training and experience abroad;

(3) With three (3) years experience in international banking; and

(4) Must not be disqualified as an officer under existing regulations.

b. The applicant shall also comply with the licensing requirements of the host country and the necessary license to operate shall be secured from the appropriate government agency of the host country;

c. The outward investment representing initial capital outlay and other outlays shall be subject to existing regulations;

d. All dividends earned shall be inwardly remitted to the Philippines within reasonable period after the date of payment;

e. The proposed subsidiary or affiliate shall submit the reports required by the BSP;

f. The proposed subsidiary or affiliate shall not carry any of the business of a bank contemplated within the context of the Philippine banking system;

g. The proposed subsidiary or affiliate shall not engage in stock trading activity;

h. The applicant shall submit a certification from the host country that the duly authorized personnel/examiners of the BSP will be authorized to examine the proposed subsidiary or affiliate; and

i. The applicant shall defray the necessary cost and expenses to be incurred by the appropriate department of the SES in the examination of the foreign subsidiary.

§§ X382.4 - X382.7 *(Reserved)*

§ X382.8 *Investment of a bank subsidiary in a foreign subsidiary.* The following guidelines shall govern the investment in a foreign subsidiary by a bank subsidiary:

a. The investment of a bank subsidiary in the equity of a subsidiary located abroad shall be subject to prior BSP approval;

b. The bank subsidiary may invest in a subsidiary if it meets the following pre-qualification requirements:

(1) It has complied with the minimum capital requirement of the host country;

(2) It has booked the required valuation reserves and other capital adjustments, if any; and

(3) Its operations in the preceding three (3) years were profitable; otherwise, the feasibility study on the proposed subsidiary should show profits in the first two (2) years of operations.

c. The application for authority of a bank subsidiary shall be accompanied by the following:

(1) Certified true copy of the resolution authorizing the investment by the board of directors of the parent bank and the bank subsidiary;

(2) Feasibility studies on the proposed subsidiary indicating, among others, the economic justification, the type of industry and organizational expenses to be incurred, including the capital expenditures; and

(3) Proposed organizational structures, including the proposed officers and their qualifications.

d. The applicant parent subsidiary shall comply with the licensing requirements of the host country and the necessary license to operate shall be secured from the appropriate government agency of the host country;

e. The proposed subsidiary may invest in another subsidiary with prior approval of the BSP;

f. Any outward investment representing initial capital and other outlays shall be subject to existing regulations;

g. At least fifty percent (50%) of the yearly net profits of the proposed subsidiary shall be declared and paid as cash dividends to the parent subsidiary;

h. The proposed subsidiary shall be subject to -

(1) the applicable reportorial requirements such as the submission of quarterly SOC and SIE; and

(2) the supervision and examination by the BSP and the cost of such examination shall be charged against the grandparent bank; and

i. Any additional funding or advances of the parent bank in the Philippines to its subsidiaries abroad or the subsidiary will require prior BSP approval.

Sec. X383 Other Limitations and Restrictions. The following limitations and restrictions shall also apply regarding equity investments of banks.

a. *In any single enterprise*. The equity investments of UBs and KBs in any single enterprise shall not exceed at any time twenty-five percent (25%) of the net worth of the investing banks as defined in Sec. X111 and Subsec. X105.5.

b. *Aggregate limits*. The total amount of investments in equities in all enterprises shall not exceed the following ratios in relation to the net worth of the investing bank:

	UB	KB	TB	RB	Coop Bank
LIMIT:	50%	35%	25%	25%	25%

c. *Exclusion of underwriting exposure from ceiling*. The exposure of a bank with UB authority arising from the firm underwriting of equity securities of enterprises shall not be counted in determining compliance with the ceilings prescribed in this Section and Subsec. 1381.2 for a period of two (2) years from the acquisition of such equity securities.

d. The guidelines in determining compliance with the other limitations and restrictions on equity investments of banks are shown in *Appendix 79*.

(As amended by Circular No. 581 dated 14 September 2007)

Sec. X384 (Reserved)

Sec. X385 Sanctions. The following sanctions shall be imposed for equity investments made without prior Monetary Board approval:

a. *First Offense* - If the investment is not allowable under existing regulations, divestment of the investment and reprimand on officer/director who recommended/approved the investment.

b. *Subsequent Offense* -

On the Bank. If the investment is not allowable under existing regulations, divestment of the investment.

On the Director/Officer. Fine of P20,000 for each investment to be imposed on the members of the board and the executive officers who recommended/approved the investment per investment and to be shouldered personally by the officer/director: *Provided*, That if the subsequent offense is an investment in a non-allied enterprise, the fine shall be P40,000.

I. (RESERVED)

Secs. X386 - X387 (Reserved)

J . OTHER OPERATIONS

Sec. X388 Purchase of Receivables and Other Obligations. The following regulations shall govern the purchase of receivables and other obligations.

§ X388.1 *Yield on purchase of receivables.* The rate of yield, including commissions, premiums, fees and other charges, from the purchase of receivables and other obligations, regardless of maturity, that may be charged or received by banks shall not be subject to any regulatory ceiling.

§ X388.2 *Purchase of receivables on a "without recourse" basis.* The total exposure of a bank to a maker of promissory notes resulting from the purchase of receivables on a *without recourse* basis shall be subject to the SBL of the bank: *Provided,* That the bank shall evaluate the credit worthiness of the maker of such promissory notes.

§ X388.3 *Purchase of commercial paper.* Before purchasing registered commercial paper, banks authorized to engage in quasi-banking functions shall -

a. Require the issuing entity to submit a duly certified true copy of its Certificate of Registration and Authority to Issue Commercial Paper; and

b. Ascertain that the registration number and expiry date indicated in the commercial paper are the same as those in the certificate of registration submitted.

Any violation or failure to comply with the provisions of this Subsection shall subject the erring bank to suspension or revocation of its authority to engage in quasi-banking functions.

§ X388.4 *Reverse repurchase agreements with Bangko Sentral* Reverse repo agreements with the BSP shall be governed by Subsec. X601.2.

§ X388.5 *Investment in debt and readily marketable equity securities.* The following rules and regulations shall govern investment in debt securities and marketable equity securities.

a. Banks may invest in the following:

(1) Readily marketable bonds and other debt securities which are of such use or demand as to make them the subject of constant dealings in securities markets, with such frequent quotations of price as to make the price easily and definitely ascertainable, and the security easy to realize upon sale at any time: *Provided,* That the bonds and other debt securities have complied with the new rules on registration of commercial papers: *Provided, further,* That in the case of RBs/ Coop Banks, the bonds and other securities have been approved by the BSP.

TBs may invest in evidences of indebtedness which are registered with the SEC but are not readily marketable securities: *Provided,* That these evidences of indebtedness shall be acquired with recourse against a bank or a QB.

It shall be the responsibility of the investing bank to undertake the necessary investigation to satisfy itself with regard to the particular security.

(2) Evidences of indebtedness of the Republic of the Philippines or the BSP, and any other evidences of indebtedness or obligations the servicing and repayment of which are guaranteed by the Republic of the Philippines.

b. The classification, accounting procedures, valuation and sales and transfers of investments in all debt securities and marketable equity securities shall be in accordance with the guidelines in *Appendices 33* and *33a*.

c. *Penalties and sanctions.* The following penalties and sanctions shall be imposed on FIs and concerned officers found to violate the provisions of these regulations:

(1) Fines to be imposed on FIs for each violation, reckoned from the date the violation was committed up to the date it was corrected:

(i) P20,000/day for UBs;

(ii) P10,000/day for KBs;

(iii) P2,000/day for TBs; and

(iv) P1,000/day for RBs/Coop Banks.

(2) Sanctions to be imposed on concerned officers:

(i) First offense - reprimand the officers responsible for the violation; and

(ii) Subsequent offenses - suspension of ninety (90) days without pay for officers responsible for the violation.

(As amended by Circular Nos. 628 dated 31 October 2008, 626 dated 23 October 2008 and 585 dated 15 October 2007, M-2007-006 dated 28 February 2007; Circular Nos. 558 dated 22 January 2007, 546 dated 17 November 2006 and 509 dated 01 February 2006)

Sec. X389 (Reserved)

Sec. 1389 Guidelines on the Investment of UBs and KBs in Credit-Linked Notes, Structured Products and Securities Overlying Securitization Structures. In line with the policy of encouraging banks to diversify their investment portfolios and to foster the development of a market for new financial products, the BSP has issued guidelines on the investment of UBs and KBs in (1) CLNs and similar products (Sec. 1628), (2) foreign currency denominated structured products (Secs. 1635 and 1636) and (3) securities overlying securitization structures (Sec. 1648).

No prior BSP approval is required to enter into authorized transactions. However, it shall be the responsibility of UBs/KBs to fully comply with appropriate risk management standards including, as a minimum, those prescribed under relevant Sections. The regulatory requirements enumerated in *Appendix 66* shall be fully complied with by UBs/KBs investing in products allowed under Secs./Subsecs. 1628, 1635 and X115.3.

The guidelines on the accounting for investments in CLNs and other SPs, in addition to those prescribed under PAS 39, is provided in *Appendix 66a*.

(As amended by M-2008-010 dated 07 March 2008)

Sec. 2389 (Reserved)

Sec. 3389 (Reserved)

Secs. X390 - X392 (Reserved)

K. MISCELLANEOUS PROVISIONS

Sec. X393 Loans-to-Deposits Ratio. The following policies and guidelines shall govern the loans-to-deposits ratio (LDR) of head offices and branches.

(As amended by Circular No. 613 dated 18 June 2008)

§ X393.1 *Statement of policy.* It is the policy of the BSP to promote healthy competition within the banking system as well as provide enhanced banking statistics necessary for informed decision-making.

(As amended by Circular No. 613 dated 18 June 2008)

§ X393.2 *Regional loans-to-deposits ratio.* An individual bank's regional LDR is a measure of the extent of its lending activity vis-à-vis deposits generated in a region. On an aggregate basis, the regional LDR for the banking system is an indicator of the level of bank deposits which have been transformed into investments in a region. The latter may be used by banks as a benchmark in assessing their regional lending and deposit operations as against that of the industry and their peer group.

(As amended by Circular No. 613 dated 18 June 2008)

§ X393.3 *Computation of the regional loans-to-deposits ratio.* The individual bank's regional LDR shall be computed by dividing a bank's aggregate loans by its aggregate deposit liabilities on a per region basis as of the same reporting cut-off date. A bank, in computing its regional LDR, shall be guided by the following:

a. Loans shall be reported by a bank in the region where the loan proceeds were utilized or channeled to, i.e., location of the end-users.

b. Deposits, on the other hand, shall be reported by a bank in the region wherein these were generated.

For purposes of this Section, *loans* shall refer to the amortized cost of a bank's total loan portfolio, excluding "Loans to BSP", "Interbank Loans Receivable" and loans granted by a bank's FCDU/EFCDU. *Deposits,* on the other hand, shall refer to a bank's total deposit liabilities, excluding FCDU/EFCDU deposits.

(As amended by Circular No. 613 dated 18 June 2008)

Sec. X394 Acquired Assets in Settlement of Loans. The following rules shall govern assets acquired in settlement of loans.

§ X394.1 *Posting.* Banks shall post at all times in a conspicuous place in the premises of their head office and each of their branches and other banking offices a list of acquired assets together with the corresponding lowest price at which the bank is willing to sell such property. However, this requirement shall not relieve the bank from the requirement under Section 52 of R.A. No. 8791 to dispose of such acquired assets.

§ X394.2 *Booking*

a. ROPA in settlement of loans through foreclosure or dation in payment shall be booked under the ROPA account as follows:

(1) Upon entry of judgment in case of judicial foreclosure;

(2) Upon execution of the Sheriff's Certificate of Sale in case of extrajudicial foreclosure; and

(3) Upon notarization of the Deed of Dacion in case of dation in payment (*dacion en pago*).

ROPA shall be booked initially at the carrying amount of the loan (i.e., outstanding loan balance adjusted for any unamortized premium or discount less allowance for credit losses computed based on PAS 39 provisioning requirements, which take into account the fair value of the collateral) plus booked accrued interest less allowance for credit losses (computed based on PAS 39 provisioning requirements) plus transaction costs incurred upon acquisition (such as non-refundable capital gains tax and documentary stamp tax paid in connection with the foreclosure/purchase of the acquired real estate property): *Provided*, That if the carrying amount of ROPA exceeds P5.0 million, the appraisal of the foreclosed/purchased asset shall be conducted by an independent appraiser acceptable to the BSP.

b. The carrying amount of ROPA shall be allocated to land, building, other non-financial assets and financial assets (e.g., receivables from third party or equity interest in an entity) based on their fair values, which allocated carrying amounts shall become their initial costs.

c. The non-financial assets portion of ROPA shall remain in ROPA and shall be accounted for as follows:

(1) Land and buildings shall be accounted for using the cost model under PAS 40 "Investment Property";

(2) Other non-financial assets shall be accounted for using the cost model under PAS 16 "Property Plant and Equipment";

(3) Buildings and other non-financial assets shall be depreciated over the remaining useful life of the assets, which shall not exceed ten (10) years and three (3) years from the date of acquisition, respectively; and

(4) Land, buildings and other non-financial assets shall be subject to the impairment provisions of PAS 36 "Impairment".

d. Financial assets, shall be reclassified and booked according to intention under HFT, DFVPL, AFS, HTM, INMES, Unquoted Debt Securities Classified as Loans or Loans and Receivable and accounted for in accordance with the provisions of PAS 39, except interests in subsidiaries, associates and joint ventures, which shall be booked under Equity Investments in Subsidiaries, Associates and Joint Ventures and accounted for in accordance with the provisions of PAS 27, 28 and 31, respectively.

e. ROPAs that comply with the provisions of PFRS 5 "Non-Current Assets Held for Sale" shall be reclassified and accounted for as such.

f. Claims arising from deficiency judgments rendered in connection with the foreclosure of mortgaged properties shall be lodged under the real account "Deficiency Judgment Receivable"; while probable claims against the borrower arising from the foreclosure of mortgaged properties shall be lodged under the contingent account "Deficiency Claims Receivable".

g. *Appraisal of properties*. Before foreclosing or acquiring any property in settlement of loans, it must be properly appraised to determine its true economic value. If the amount of ROPA to be booked exceeds P5.0 million, the appraisal must be conducted by an independent appraiser acceptable to the BSP. An in-house appraisal of all ROPAs shall be made at least every other year: *Provided,* That immediate re-appraisal shall be conducted on ROPAs which materially decline in value.

h. *Non-cash payment for interest*. FIs that accept non-cash payments for interest on their borrowers' loans shall book the acquired assets as ROPA. The amount to be booked as ROPA shall be the booked accrued interest less allowance for credit losses (computed based on PAS 39 provisioning requirements): *Provided,* That if the carrying amount of ROPA exceeds P5.0 million, the appraisal of the foreclosed/ purchased asset shall be conducted by an independent appraiser acceptable to the BSP. The carrying amount of ROPA shall be allocated in accordance with Item *"b"* and shall be subsequently accounted for in accordance with Item *"c"* of this Subsection.

The provisions of this Subsection shall be applied retroactively to all outstanding ROPAs and sales contract receivables: *Provided:* That for properties acquired before 01 January 2005, the carrying amount of the acquired properties when initially booked under ROPA shall be the cost subject to depreciation and impairment testing, which shall be reckoned from the time of acquisition.

(As amended by Circular Nos. 555 dated 12 January 2007 and 520 dated 20 March 2006)

§ X394.3 *Sales contract receivable*

a. Sales Contract Receivable (SCR) shall be recorded based on the present value of the installments receivables discounted at the imputed rate of interest. Discount shall be accreted over the life of the SCR by crediting interest income using the effective interest method. Any difference between the present value of the SCR and the derecognized assets shall be recognized in profit or loss at the date of sale in accordance with the provisions of PAS 18 "Revenue": *Provided, furthermore*, That SCR shall be subject to impairment provision of PAS 39.

The provisions of this Subsection shall be applied retroactively to all outstanding ROPAs and SCRs: *Provided*: That for properties acquired before 01 January 2005, the carrying amount of the acquired properties when initially booked under ROPA shall be the cost subject to depreciation and impairment testing, which shall be reckoned from the time of acquisition.

b. SCRs which meet all the requirements/conditions enumerated below are hereby considered performing assets and therefore, not subject to classification:

(1) That there has been a downpayment of at least twenty percent (20%) of the agreed selling price or in the absence thereof, the installment payments on the principal had already amounted to at least twenty percent (20%) of the agreed selling price;

(2) That payment of the principal must be in equal installments or in diminishing amounts and with maximum intervals of one (1) year;

(3) That any grace period in the payment of principal shall not be more than two (2) years; and

(4) That there is no installment payment in arrear either on principal or interest: *Provided,* That an SCR account shall be automatically classified "Substandard" and considered non-performing in case of non-payment of any amortization due: *Provided, further,* That an SCR which has been classified "Substandard" and considered non-performing due to non-payment of any amortization due may only be upgraded restored to unclassified and/or performing status after a satisfactory track record of at least three (3) consecutive payments of the required amortization of principal and/or interest has been established.

(As amended by Circular No. 520 dated 20 March 2006)

§§ X394.4 - X394.9 *(Reserved)*

§ X394.10 *Transfer/sale of non-performing assets to a special purpose vehicle or to an individual.* The procedures governing the transfer/sale of non-performing assets (NPAs) to a Special Purpose Vehicle (SPV) or to an individual that involves a single family residential unit, or transactions involving *dacion en pago* by the borrower or third party of an NPL, for the purpose of obtaining the Certificate of Eligibility (COE) which is required to avail of the incentives provided under R.A. No. 9182 are presented in *Appendix 56*.

The accounting guidelines on the sale of NPAs to SPVs and to qualified individuals for housing under the SPV Act of 2002 are presented in *Appendix 56a*.

The significant timelines related to the implementation of R.A. No. 9182, also known as the "Special Purpose Vehicle Act" as amended by R.A. No. 9343 are presented in *Appendix 56b*.

(As amended by M-2008-014 dated 17 March 2008, M-2008-005 dated 04 February 2008, M-2007-013 dated 11 May 2007 and M-2006-001 dated 11 May 2006)

§§ X394.11 - X394.14 *(Reserved)*

§§ X394.15 *Joint venture of banks with real estate development companies*

a. Statement of policy. It is the policy of the BSP to encourage banks to dispose of their ROPAs in settlement of loans and other advances either through foreclosure or *dacion en pago* as well as other properties acquired as a consequence of a merger/consolidation which are no longer necessary for their banking operations. Towards this end, banks are hereby authorized to enter into Joint Venture Agreements (JVA) with real estate development companies for the development of said properties, subject to the requirements prescribed under this Subsection.

b. For purposes of this Subsection, *joint venture* shall refer to a contractual arrangement/undertaking between a bank and a duly registered real estate development company (developer) for the purpose of developing the abovementioned properties of the bank. The bank contributes said properties to the undertaking while the developer contributes all the development funds, resources, technical expertise, equipment, personnel and all other requirements desired or needed for the implementation and completion of the undertaking including marketing, where applicable. The bank and the developer shall be bound by the contract that establishes joint control of the undertaking. Although the developer may be designated as operator or manager of the undertaking, it does not, however, absolutely control the undertaking but only acts in accordance with the authorities granted to him under the JVA.

c. Forms of a joint venture. A bank and a developer may undertake a joint venture under the following forms:

(1) A jointly-controlled operation/ undertaking, which does not involve the

establishment of a corporation, partnership or other entity, or a financial structure that is separate from the bank and the developer themselves. Under this form of joint venture, the rights and obligations of the bank and the developer shall be governed primarily by their contract that must clearly specify the following:

(a) authority of the developer to develop/subdivide the property and subsequently, to sell the individual lots under a special power of attorney;

(b) sharing in the sales proceeds of the developed ROPAs or in the developed lots;

(c) sharing in taxes;

(d) sharing in the assets of the joint venture particularly in the developed/ subdivided lots should there still be unsold lots at the time of termination of the joint venture; and

(e) name under which the subdivided lots shall be registered pending their sale.

(2) A jointly-controlled entity, which involves the establishment of a new juridical entity, preferably a corporation that is separate and distinct from the bank and the developer. A jointly controlled corporation may be established either for the purpose of developing properties of banks for immediate sale or converting them into earning assets such as hotels and shopping malls.

d. *Requirements and limitations in a joint venture*. A bank desiring to enter into a JVA with a developer for the purpose of developing its ROPAs and/or other properties acquired as a consequence of merger/consolidation shall comply with the following:

(1) The JVA shall be approved by the board of directors of the bank.

(2) The bank's contribution to the joint venture, in whatever form undertaken, shall be limited to ROPAs and properties acquired as a consequence of the bank's merger/consolidation with another bank/ financial institution.

(3) The bank shall not recognize income out of its contribution to the joint venture, regardless of the agreed valuation of said properties.

(4) The bank shall not provide funds to the joint venture either as a loan or capital contribution.

(5) The JVA or contractual arrangement shall clearly stipulate the rights and obligations of the bank and the developer.

(6) The bank shall secure prior Monetary Board approval of the JVA.

e. *Application for authority to enter into JVA*. A bank desiring to enter into a JVA with a developer for the purpose of developing its ROPAs and other properties acquired as a consequence of its merger/ consolidation with another bank/FI shall secure prior Monetary Board approval of said agreement. For that purpose, the concerned bank shall submit an application for Monetary Board approval to the appropriate department of the SES. The application shall be signed by the bank's president or officer of equivalent rank and shall be accompanied by the following documents/information:

(1) The name of the developer;

(2) Name of the principal stockholders and officers as well as members of the board of directors of said company;

(3) Relationship of the bank with the developer, if any;

(4) List and brief description of the properties to be contributed by the bank including their market values, book values and the valuation agreed upon under the proposed JVA;

(5) Certification by the bank's president or officer of equivalent rank that the JVA is strictly in compliance or will strictly comply with the requirements of this Subsection; and

(6) Such other documents/information that the concerned department of the SES may require.

f. *Non-financial allied undertaking.* All types of banks are hereby authorized to invest in the equities of companies engaged in real estate development as a non-financial allied undertaking, subject to the following conditions:

(1) Investments shall be limited to ROPAs and other properties acquired as a consequence of a bank's merger/consolidation with another bank/FI;

(2) Investments shall be subject to existing BSP requirements applicable to investments in non-financial allied undertakings; and

(3) If there is already an existing subsidiary or affiliate relationship between the bank and the investee corporation prior to the investment, the bank shall not recognize income out of its invested properties. The excess of the value of the capital stock received by the bank over the book value of its invested properties shall be booked as "Deferred Credits".

g. *Accounting treatment.* Accounting treatment of the properties contributed by a bank to a joint venture or invested in the equities of developers.

(1) In a joint venture in the form of a jointly controlled operations/undertaking, which does not involve the establishment of a corporation or other entity, the bank shall continue to recognize in its books the properties contributed to the undertaking. However, the regular provisioning against probable losses required under existing regulations may be discontinued upon execution and implementation of the JVA.

(2) In a joint venture in which a corporation is created, the bank shall book the properties contributed to the undertaking as investment pursuant to the provisions of PAS 31. It shall also recognize its interest in the corporation using the proportionate consolidation method or the equity method as long as it continues to have joint control over the corporation: *Provided,* That the bank shall not recognize income out of its contribution to the joint venture. The excess of the value of the capital stock received by the bank over the book value of the contributed properties shall be credited to the account "Deferred Credits".

(3) Properties invested in equities of developers shall be booked in accordance with the PAS: *Provided,* That the bank shall not recognize income out of the properties invested if there is already an existing subsidiary or affiliate relationship between the bank and the investee corporation prior to the investment, regardless of the agreed valuation of said properties. The excess of the agreed valuation of said properties over their book value shall be booked as "Deferred Credits".

h. *Coverage.* The provisions of this Subsection shall apply to ROPAs existing, as well as those which may be acquired by banks in settlement of non-performing or past due loans and advances outstanding, as of 09 March 2006 and to properties acquired as a consequence of merger or consolidation which are outstanding in the books of banks as of said date.

i. *Sanctions.* Any violation of the provisions of this Subsection and/or any misrepresentation in the certification and information required to be submitted to the BSP under this Subsection shall subject the bank and the officer or officers responsible therefore, to the penalties provided under Sections 35, 36 and 37 of R. A. No. 7653.
(Circular No. 518 dated 09 March 2006)

Sec. X395 Credit Policies of Government-Owned Corporations Government-owned corporations which perform banking or credit functions shall coordinate their general credit policies with the Schedule of Credit Priorities embodied in *Appendix 23*. Within the provision of their respective charters, these corporations shall limit their credits to the economic activities falling under Priority II of said schedule to fifty percent (50%) of their outstanding loans at any time.

Sec. X396 Parcellary Plans on Crop Loans. Banks shall require the submission of parcellary plans a requisite for granting crop loans to sugarcane planters.

Sec. X397 (Reserved)

Sec. 1397 Limits on Real Estate Loans of UBs/KBs. Total real estate loans of UB/KBs, excluding*:*

a. Loans extended to individual households for purposes of financing the acquisition, construction, and/or improvement of housing units and acquisition of any associated land that is or will be occupied by the borrower, regardless of amount;

b. Loans extended to land developers/ construction companies for the purpose of development and/or construction of socialized and low-cost residential properties as defined under existing guidelines of the HUDCC for the implementation of government housing programs, which are intended for sale to individual households;

c. Loans to the extent guaranteed by the HGC; and

d. Loans to the extent collateralized by non-risk assets under existing regulations shall not exceed twenty percent (20%) of the total loan portfolio, net of interbank loans.

For this purpose, real estate loans shall refer to loans granted to:

(1) individual households for the acquisition, construction and/or improvement of housing units and acquisition of any associated land that is or will be occupied by the borrower, including loans granted to bank officers and employees for the same purpose which are covered by bank's fringe benefit plan and which plan was approved by the Monetary Board; and

(2) land developers/construction companies and other borrowers for the acquisition and development of land and/or construction of buildings and structures, including housing units for sale/lease and/or for use in retail/ wholesale, manufacturing or other income-generating purposes, including loans for the land development and construction of residential properties.

It shall not include loans for construction of highways, streets, bridges, tunnels, railways, and other infrastructure for public use.

Purchase by banks of receivables under Contract to Sell (CTS) executed between the real estate developers and home buyers on a with recourse basis shall be considered loans to real estate developers and shall be classified as commercial real estate loans.

Trust departments of UBs/KBs shall be exempted from the prescribed limit on real estate loans.

Under existing HUDCC guidelines, socialized and low-cost housing loans are defined as follows:

Housing Package	Loan Ceiling
Low-cost	
Level 1-A (Socialized)	P300,000 and below
Level 1-B	Above P300,000 to P500,000
Level 2	Above P500,000 to P1,250,000
Level 3	Above P1,250,000 to P3,000,000

(As amended by Circular No. 600 dated 04 February 2008)

Sec. 2397 (Reserved)

Sec. 3397 (Reserved)

Sec. X398 Debt Service Limit on Local Government Borrowings. To ensure the effective implementation of the debt service limit on local government borrowings as stipulated in Section 324 (b) of the Local Government Code of 1991, all banks shall require each borrowing LGU to present a certificate of its debt service and borrowing capacity, duly certified by the Bureau of Local Government Finance – Department of Finance (BLGF-DOF).

Sec. X399 General Provision on Sanctions. Any violation of the provisions of this Part shall be subject to Sections 36 and 37 of R.A. No. 7653.

The guidelines for the imposition of monetary penalty for violations/offenses with sanctions falling under Section 37 of R. A. No. 7653 on banks, their directors and/or officers are shown in *Appendix 67*.

PART FOUR

TRUST, OTHER FIDUCIARY BUSINESS AND INVESTMENT MANAGEMENT ACTIVITIES

Section X401 Statement of Principles The cardinal principle common to all trust and other fiduciary relationships is fidelity. Policies predicated upon this principle are directed towards confidentiality, scrupulous care, safety and prudent management of property including reasonable probability of income with proper accounting and appropriate reporting thereon. Practices are designed in accordance with the basic standards for trust, other fiduciary and investment management accounts in *Appendix 83* to promote efficiency in administration and operation; to adhere and conform to the terms of the instrument or contract; and to maintain absolute separation of property free from any intrusion of conflict of interest.

A bank authorized to engage in trust and fiduciary business is under no obligation, either legal or moral, to accept any such business being offered nor has it the right to accept if the same is contrary to law, rules, regulations, public order and public policy. It shall advertise its services in a dignified manner and enter such business only when demand for such service is evident, when specially equipped to render such service and upon full appreciation of the responsibilities involved. It shall be ready and willing to give full disclosure of the services being offered and shall conduct its dealing with transparency. Harmonious relationship shall likewise be pursued with other professions to achieve the common goal of mutual service to the public and protection of its interest.

Banks may not receive or hold as trustee, agent, administrator, financial manager, or other similar capacity, any fund or money from the Government and government entities: *Provided, however,* That government-owned banks may receive or hold as trustee, agent, administrator, financial manager, or other similar capacity, the following:

a. Funds of local government units (LGUs) which are expected to be available for investment purposes for a relatively long period of time: *Provided, further,* That the amounts held in trust or otherwise managed/ advised for and in behalf of the LGUs shall be invested only in government securities, specifically, evidences of indebtedness of the National Government, the BSP and other evidences of indebtedness or obligations of government entities, the servicing and repayment of which are fully guaranteed by the National Government; and

b. Funds of government and government entities which are authorized by special laws to be placed in trust.

(As amended by Circular No. 618 dated 20 August 2008)

Sec. X402 Scope of Regulations. These regulations shall govern the grant of authority to and the management, administration and conduct of *trust, other fiduciary business and investment management activities* (as these terms are defined in Sec. X403) of banks.

The regulations are divided into three (3) Sub-Parts where:

A. *Trust and Other Fiduciary Business* shall apply to banks authorized to engage in trust and other fiduciary business including investment management activities;

B. *Investment Management Activities* shall apply to banks without trust authority but with authority to engage in investment management activities; and

C. *General Provisions* shall apply to both.

Sec. X403 Definitions. For purposes of regulating the operations of trust and other fiduciary business and investment management activities, unless the context clearly connotes otherwise, the following shall have the meaning indicated.

a. *Trust business* shall refer to any activity resulting from a trustor-trustee relationship (trusteeship) involving the appointment of a trustee by a trustor for the administration, holding, management of funds and/or properties of the trustor by the trustee for the use, benefit or advantage of the trustor or of others called beneficiaries.

b. *Other fiduciary business* shall refer to any activity of a trust-licensed bank resulting from a contract or agreement whereby the bank binds itself to render services or to act in a representative capacity such as in an agency, guardianship, administratorship of wills, properties and estates, executorship, receivership, and other similar services which do not create or result in a trusteeship. It shall exclude collecting or paying agency arrangements and similar fiduciary services which are inherent in the use of the facilities of the other operating departments of said bank. Investment management activities, which are considered as among other fiduciary business, shall be separately defined in the succeeding item to highlight its being a major source of fiduciary business.

c. *Investment management activity* shall refer to any activity resulting from a contract or agreement primarily for financial return whereby the bank (the investment manager) binds itself to handle or manage investible funds or any investment portfolio in a representative capacity as financial or managing agent, adviser, consultant or administrator of financial or investment management, advisory, consultancy or any similar arrangement which does not create or result in a trusteeship.

d. *Trust* is a relationship or an arrangement whereby a person called a trustee is appointed by a person called a trustor to administer, hold and manage funds and/or property of the trust or for the benefit of a beneficiary.

e. *Trust agreement* is an instrument in writing covering the terms and conditions of the trust.

f. *Trustee* is any person who holds legal title to the funds and/or property of a trust.

g. *Trustor* is any person who creates a trust.

h. *Beneficiary* is any person for whose benefit a trust is created.

i. *Fiduciary* shall refer to any person or entity engaged in any of the other fiduciary business as herein defined where no trustor-trustee relation exists.

j. *Agency* shall refer to a contract whereby a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.

k. *Principal* shall refer to the person who grants authority to another person called an agent, under a contract to enter into transactions in his behalf.

l. *Agent* shall refer to a person who acts in representation or on behalf of another with the latter's authority.

m. *Trust department* shall refer to the department, office, unit, group, division or any aggrupation which carries out the trust and other fiduciary business of a bank.

n. *Trust officer* shall refer to the designated head or officer-in-charge of the trust department.

o. *Trust account* shall refer to an account where transactions arising from a trusteeship are kept and recorded.

p. *Common trust fund (*CTF) shall refer to a fund maintained by a bank authorized to perform trust functions under a written and formally established plan, exclusively for the collective investment and reinvestment of certain money representing participation in the plan received by it in its capacity as the trustee.

q. *Fiduciary account* shall refer to an account where transactions arising from any of the other fiduciary businesses are kept and recorded.

r. *Investment Manager* shall refer to any person or entity engaged in investment management activities as herein defined.

s. *Investment Management Department* shall refer to the department, unit, group, division or any aggrupation which carries out the investment management activities of a bank that does not have an authority to engage in trust and other fiduciary business.

t. *Investment Management Officer* shall refer to the designated head or officer-in-charge of the investment management department of a bank which does not have the authority to engage in trust and other fiduciary business.

u. *Investment management account* shall refer to an account where transactions arising from investment management activities are kept and recorded.

A. TRUST AND OTHER FIDUCIARY BUSINESS

Sec. X404 Authority to Perform Trust and Other Fiduciary Business. With prior approval of the Monetary Board, banks may engage in trust and other fiduciary business under Chapter VII of R.A. No. 337, as amended.

If a bank is found to engage in unauthorized trust and other fiduciary business and/or investment management activities, whether as its primary, secondary or incidental business, the Monetary Board may impose administrative sanctions against such bank or its principal officers and/or majority stockholders or proceed against them in accordance with law.

The Monetary Board may take such action as it may deem proper such as, but may not be limited to, requiring the transfer or turnover of any trust and other fiduciary and/or investment management account to duly incorporated and licensed entities of the choice of the trustor, beneficiary or client, as the case may be.

No bank shall advertise or represent itself as being engaged in trust and other fiduciary business or in investment management activities or represent itself as trustee or investment manager or use words of similar import; and/or use in connection with its business title the words *trust*, *trust corporation*, *trust company*, *trust plan* or words of similar import, without having obtained the required authority to do so.

§ X404.1 *Application for authority to perform trust and other fiduciary business* Banks desiring to perform trust and other fiduciary business shall file an application with the appropriate supervising and examining department. The application shall be signed by the bank's president or officer of equivalent rank and shall be accompanied by the following documents:

a. Certified true copy of the resolution of the institution's board of directors authorizing the application; and

b. A certification signed by the president or the officer of equivalent rank that the institution has complied with all conditions/prerequisites for the grant of authority to perform trust and other fiduciary business.

§ X404.2 *Required capital.* Banks applying for authority to perform trust and other fiduciary business must have minimum capital accounts as follows:

UBs/KBs. The amount required under Sec. X111 or such amount as may be required by the Monetary Board in the future.

Branches of foreign banks. The amount required under Sec. X105 or such amount as may be required by the Monetary Board in the future.

TBs. P650.0 million or such amounts as may be required by the Monetary Board in the future.

Banks authorized to perform and are actually performing trust and other fiduciary business prior to 20 August 2002 whose capital accounts are lower than the above-prescribed minimum capital accounts shall, before declaring any dividend, carry to surplus at least fifty percent (50%) of their net income from all operations since the last preceding dividend until such time that their capital accounts meet the above requirement.

§ X404.3 ***Prerequisites for engaging in trust and other fiduciary business.*** Before it may engage in trust and other fiduciary business, a bank shall comply with the following requirements:

a. The applicant has been duly licensed or incorporated as a bank or created as such by special law or charter;

b. The articles of incorporation or governing charter of the institution shall include among its powers or purposes, acting as trustee or administering any trust or holding property in trust or on deposit for the use, or in behalf of others;

c. The by-laws of the institution shall include among other things, provisions on the following;

(1) The organization plan or structure of the department, office or unit which shall conduct the trust and other fiduciary business of the institution;

(2) The creation of a trust committee, the appointment of a trust officer and subordinate officers of the trust department; and

(3) A clear definition of the duties and responsibilities as well as the line and staff functional relationships of the various units, officers and staff within the organization;

d. The bank's operation during the preceding calendar year and for the period immediately preceding the date of application has been profitable;

e. The bank is well capitalized whose risk-based capital adequacy ratio is not lower than twelve percent (12%) at the time of filing the application;

f. It has not incurred net weekly reserve deficiencies during the eight (8)-week period immediately preceding the date of application;

g. It has generally complied with banking laws, rules and regulations, orders or instructions of the Monetary Board and/ or BSP Management in the last two (2) preceding examinations prior to the date of application, particularly on the following:

(1) election of at least two (2) independent directors;

(2) attendance by every member of the board of directors in a special seminar for board of directors conducted or accredited by the BSP;

(3) the ceilings on credit accommodations to DOSRI;

(4) liquidity floor requirements for government deposits;

(5) single borrower's limit; and

(6) investment in bank premises and other fixed assets;

h. It maintains adequate provisions for probable losses commensurate to the quality of its asset portfolio but not lower than the required valuation reserves as determined by the BSP;

i. It does not have float items outstanding for more than sixty (60) calendar days in the "Due From/To Head Office/Branches/Other Offices" accounts and the "Due from Bangko Sentral" account exceeding one percent (1%) of the total resources as of date of application;

j. It has no past due obligations with the BSP or with any government financial institution;

k. It has established a risk management system appropriate to its operations characterized by clear delineation of responsibility for risk management, adequate risk measurement systems, appropriately structured risk limits, effective internal controls and complete, timely and efficient risk reporting system;

l. It has a CAMELS composite rating of at least "3" in the last regular examination with management rating of not lower than "3"; and

m. It is a member of the PDIC in good standing.

Compliance with the foregoing as well as with other requirements under existing regulations shall be maintained up to the time the trust license is granted. A bank that fails in this respect shall be required to show compliance for another test period of the same duration.

§ X404.4 *Pre-operating requirements* A bank authorized to engage in trust and other fiduciary business shall, before engaging in actual operations, submit to the BSP the following:

a. Government securities acceptable to the BSP amounting to P500,000 as minimum basic security deposit for the faithful performance of trust and other fiduciary duties required under Subsec. X405.1;

b. Organization chart of the trust department which shall carry out the trust and other fiduciary business of the bank; and

c. Names and positions of individuals designated as chairman and members of the trust committee, trust officer and other subordinate officers of the trust department with their respective bio-data and statement of duties and responsibilities.

Sec. 1404 (Reserved)

Sec. 2404 Grant of Authority to Engage in Limited Trust Business to Thrift Banks

a. *Statement of policy*. It is hereby declared the policy of the BSP to promote healthy competition in order to improve the delivery of banking services especially in the countryside. Towards this end, authority to engage in limited trust business shall be granted to qualified TBs which meet the minimum capital required for the grant of such authority, among others.

b. *Scope of limited trust business* Limited trust business shall be confined to:

(1) court trusts or trusts under orders of court of competent jurisdiction, such as acting as:

(a) executor or administrator of a will; and

(b) guardian of the estate of a minor or incompetent; and

(2) administration of properties.

c. *Application for authority to engage in limited trust business*. A TB desiring to engage in a limited trust business shall file an application with the Centralized Application and Licensing Group (CALG) of the SES. The application shall be signed by the bank president or officer of equivalent rank and shall be accompanied by the following documents:

(1) Certified true copy of the resolution of the bank's board of directors authorizing the application; and

(2) Certification signed by the bank president or officer of equivalent rank that the bank has complied with all the conditions/pre-requisites for the grant of authority to engage in a limited trust business.

d. *Required capital*. A TB applying for authority to engage in limited trust business must have minimum capital accounts under existing regulations or P100.0 million, whichever is higher, or such amounts as may be required by the Monetary Board in the future.

e. *Pre-requisites for the grant of authority to engage in limited trust business*. A TB applying for authority to engage in limited trust business must comply with the following requirements:

(1) The bank's operation during the preceding calendar year and for the period

immediately preceding the date of application has been profitable;

(2) The bank is well capitalized whose risk-based CAR is not lower than twelve percent (12%) at the time of filing the application;

(3) It has not incurred net weekly reserve deficiencies within eight (8) weeks immediately preceding the date of application;

(4) It has generally complied with banking laws, rules and regulations, orders or instructions of the Monetary Board and/or BSP Management in the last two (2) preceding examinations prior to the date of application, more particularly:

(a) election of at least two (2) independent directors;

(b) attendance by every member of the board of directors in a special seminar for board of directors conducted or accredited by the BSP;

(c) the ceilings on credit accommodations to DOSRI;

(d) liquidity floor requirements for government deposits;

(e) SBL; and

(f) investment in bank premises and other fixed assets;

(5) It maintains adequate provisions for probable losses commensurate to the quality of its asset portfolio but not lower than the required valuation reserves as determined by the BSP;

(6) It does not have float items outstanding for more than sixty (60) calendar days in the "Due From/To Head Office/Branches/Offices" accounts and the "Due From Bangko Sentral" account exceeding one percent (1%) of the total resources as of date of application;

(7) It has no past due obligations with the BSP or with any government FI;

(8) It has established a risk management system appropriate to its operations characterized by clear delineation of responsibility for risk management, adequate risk measurement systems, appropriately structured risk limits, effective internal controls and complete, timely and efficient risk reporting system;

(9) It has a CAMELS composite rating of at least "3" in the last regular examination with Management rating not lower than "3"; and

(10) It is a member of the PDIC in good standing;

f. *Requirements for engaging in limited trust business.* A TB authorized to engage in limited trust business shall comply with the following requirements:

(1) The articles of incorporation of the bank shall include among its powers or purposes, acting as trustee or administering trust or holding property in trust or on deposit for the use, or in behalf of others;

(2) The by-laws of the bank shall include among others, provisions on the following:

(a) The organization plan or structure of the department, office or unit which shall conduct the trust and other fiduciary business of the bank;

(b) The creation of a trust committee, to be composed of at least three (3) members who are all members of the board of directors and who are not operating officers of the bank, and at least two (2) of whom are independent directors: *Provided*, That if the bank decides to have a trust committee composed of at least five (5) members, the provisions of Subsec. X406.2 shall apply;

(c) The appointment of a trust officer and subordinate officers of the trust department, office or unit: *Provided*, That the trust officer shall have the following:

(i) At least two (2) years of actual experience in trust operations; or

(ii) At least one (1) year of actual experience in trust operations and completion of a training program in trust operations acceptable to the BSP; or

(iii) At least two (2) years of actual experience as officer of a bank and completion of a training program in trust operations acceptable to the BSP; and

(d) A clear definition of the duties and responsibilities as well as the line and staff functional relationships of the various units, officers and staff within the organization.

g. *Administration of properties held in trust*. The properties held in trust or other fiduciary capacity shall be administered in accordance with the terms of the instrument creating the trust and/or order of the court. Unless otherwise directed in writing by the court, investments of fiduciary funds shall be limited to:

(1) Bank deposits; and

(2) Evidences of indebtedness of the Republic of the Philippines or of the BSP, and any other evidences of indebtedness or obligations the servicing and repayment of which are fully guaranteed by the Republic of the Philippines;

h. *Applicability of the rules and regulations on trust, other fiduciary business and investment management activities*. The provision of this Part which are not inconsistent with the provisions of this Section shall apply to TBs authorized to engage in limited trust business.

(Circular No. 583 dated 24 September 2007)

Sec. 3404 Grant of Authority to Engage in Limited Trust Business to Rural Banks

a. *Statement of policy*. It is hereby declared the policy of the BSP to promote healthy competition in order to improve the delivery of banking services especially in the countryside. Towards this end, authority to engage in limited trust business shall be granted to qualified RBs which meet the minimum capital required for the grant of such authority, among others.

b. *Scope of limited trust business* Limited trust business shall be confined to:

(1) court trusts or trusts under orders of court of competent jurisdiction, such as acting as:

(a) executor or administrator of a will; and

(b) guardian of the estate of a minor or incompetent; and

(2) administration of properties.

c. *Application for authority to engage in limited trust business*. An RB desiring to engage in a limited trust business shall file an application with the CALG of the SES. The application shall be signed by the bank president or officer of equivalent rank and shall be accompanied by the following documents:

(1) Certified true copy of the resolution of the bank's board of directors authorizing the application; and

(2) Certification signed by the bank president or officer of equivalent rank that the bank has complied with all the conditions/ pre-requisites for the grant of authority to engage in a limited trust business.

d. *Required capital*. An RB applying for authority to engage in limited trust business must have minimum capital accounts of P100.0 million, or such amounts as may be required by the Monetary Board in the future.

e. *Pre-requisites for the grant of authority to engage in limited trust business*. An RB applying for authority to engage in limited trust business must comply with the following requirements;

(1) The bank's operation during the preceding calendar year and for the period immediately preceding the date of application has been profitable;

(2) The bank is well capitalized whose risk-based CAR is not lower than twelve percent (12%) at the time of filing the application;

(3) It has not incurred net weekly reserve deficiencies within eight (8) weeks immediately preceding the date of application;

(4) It has generally complied with banking laws, rules and regulations, orders or instructions of the Monetary Board and/or BSP Management in the last two (2)

preceding examinations prior to the date of application, more particularly;

(a) election of at least two (2) independent directors;

(b) attendance by every member of the board of directors in a special seminar for board of directors conducted or accredited by the BSP;

(c) the ceilings on credit accommodations to DOSRI;

(d) liquidity floor requirements for government deposits;

(e) SBL; and

(f) investment in bank premises and other fixed assets;

(5) It maintains adequate provisions for probable losses commensurate to the quality of its asset portfolio but not lower than the required valuation reserves as determined by the BSP;

(6) It does not have float items outstanding for more than sixty (60) calendar days in the "Due From/To Head Office/Branches/Offices" accounts and the "Due From Bangko Sentral" account exceeding one percent (1%) of the total resources as of date of application;

(7) It has no past due obligations with the BSP or with any government FI;

(8) It has established a risk management system appropriate to its operations characterized by clear delineation of responsibility for risk management, adequate risk measurement systems, appropriately structured risk limits, effective internal controls and complete, timely and efficient risk reporting system;

(9) It has a CAMELS composite rating of at least "3" in the last regular examination with Management rating not lower than "3"; and

(10) It is a member of the PDIC in good standing.

f. *Requirements for engaging in limited trust business*. An RB authorized to engage in limited trust business shall comply with the following requirements:

(1) The articles of incorporation of the bank shall include among its powers or purposes, acting as trustee or administering trust or holding property in trust or on deposit for the use, or in behalf of others;

(2) The by-laws of the bank shall include among others, provisions on the following:

(a) The organization plan or structure of the department, office or unit which shall conduct the trust and other fiduciary business of the bank;

(b) The creation of a trust committee, to be composed of at least three (3) members who are all members of the board of directors and who are not operating officers of the bank, and at least two (2) of whom are independent directors: *Provided*, That if the bank decides to have a trust committee composed of at least five (5) members, the provisions of Subsec. X406.2 shall apply;

(c) The appointment of a trust officer and subordinate officers of the trust department, office or unit: *Provided*, That the trust officer shall have the following:

(i) At least two (2) years of actual experience in trust operations; or

(ii) At least one (1) year of actual experience in trust operations and completion of a training program in trust operations acceptable to the BSP; or

(iii) At least two (2) years of actual experience as officer of a bank and completion of a training program in trust operations acceptable to the BSP; and

(d) A clear definition of the duties and responsibilities as well as the line and staff functional relationships of the various units, officers and staff within the organization.

g. *Administration of properties held in trust*. The properties held in trust or other fiduciary capacity shall be administered in accordance with the terms of the instrument creating the trust and/or order of the court. Unless otherwise directed in writing by the court, investments of fiduciary funds shall be limited to:

(1) Bank deposits; and

(2) Evidences of indebtedness of the Republic of the Philippines or of the BSP, and any other evidences of indebtedness or obligations the servicing and repayment of which are fully guaranteed by the Republic of the Philippines;

h. *Applicability of the rules and regulations on trust, other fiduciary business and investment management activities.* The provision of this Part which are not inconsistent with the provision of this Section shall apply to RBs authorized to engage in limited trust business.

(Circular No. 583 dated 24 September 2007)

Sec. X405 Security for the Faithful Performance of Trust and Other Fiduciary Business

§ X405.1 ***Basic security deposit.*** A bank authorized to engage in trust and other fiduciary business shall deposit with the BSP eligible government securities as security for the faithful performance of its trust and other fiduciary duties equivalent to at least one percent (1%) of the book value of the total volume of trust, other fiduciary and investment management assets: *Provided*, That at no time shall such deposit be less than P500,000.

Scripless securities under the Registry of Scripless Securities (RoSS) System of the Bureau of Treasury (BTr) may be used as basic security deposit for trust and other fiduciary duties using the Guidelines enumerated in *Appendix 34* of this Manual.

§ X405.2 ***Eligible securities.*** Government securities which shall be deposited in compliance with the above basic security deposit shall consist of:

a. Evidences of indebtedness of the Republic of the Philippines and of the BSP and any other evidences of indebtedness or obligations the servicing and repayment of which are fully guaranteed by the Republic of the Philippines; and such other kinds of securities which may be declared eligible by the Monetary Board: *Provided,* That such securities shall be free, unencumbered, and not utilized for any other purpose: *Provided, further,* That such securities shall have remaining maturity of not more than three (3) years from the date of deposit with the BSP; and

b. NDC Agri-Agra ERAP Bonds which are not being used as alternative compliance with P.D. No. 717. The requirement that the securities used shall have a remaining maturity of not more than three (3) years shall not apply**.**

c. Five (5)- and Ten (10)-year SPTBs to finance the CARP-related expenditures, provided such bonds shall not be hypothecated in any way or earmarked for any other purpose and they meet the three (3)-year remaining maturity requirement to ensure that such bonds are liquid.

d. Securities backed by the unreleased IRAs of LGUs (issued by a Special Purpose Trust administered by the DBP under the IRA Monetization Program of the Union of Local Authorities of the Philippines) the release of which IRA on scheduled date of payment has been certified by the DBM as not being subject to any conditionalities: *Provided*, That such securities shall be eligible only to the extent of the present value of the bond computed using the original yield to maturity (as of auction/issue date): *Provided, further*, That for reserve for trust and other fiduciary duties, the remaining maturities of the securities shall not exceed three (3) years; and

e. Zero Coupon Bond Issue by the HGC of up to P7.0 billion five (5)-year regular series and up to P3.0 billion seven (7)-year special series to finance its guaranty servicing of socialized and low-cost housing projects: *Provided*, That they meet the three (3)-year remaining maturity requirement to ensure that such bonds are liquid: *Provided, further,* That such bonds shall qualify as eligible reserve for trust and other fiduciary duties only to the extent of the present value of the bond computed using the original yield to maturity (as of auction/issue date).

f. Tobacco Excise Tax Receivable Monetization Program Investment Certificates (TEXTR Certificates) backed by receivables representing the unreleased portion of the obligation of the National Government to its LGUs for their share of the Tobacco Excise Taxes under R.A. No. 7171 amounting to ₱1.85 billion and covering the years 2001 and 2002: *Provided,* That such securities shall be eligible only to the extent of the present value of the securities computed using the original yield to maturity as of auction/issue date.

g. Securities received, pursuant to the Domestic Debt Exchange Offer of the Republic of the Philippines, in exchange for securities that are eligible reserves for trust duties.

(As amended by Circular No. 509 dated 01 February 2006)

§ X405.3 *Valuation of securities and basis of computation of the basic security deposit requirement.* For purposes of determining compliance with the basic security deposit under this Section, the amount of securities so deposited shall be based on their book value, that is, cost as increased or decreased by the corresponding discount or premium amortization.

The base amount for the basic security deposit shall be the average of the month-end balances of total trust, investment management and other fiduciary assets of the immediately preceding calendar quarter.

§ X405.4 *Compliance period; sanctions* The trustee or fiduciary shall have thirty (30) calendar days after the end of every calendar quarter within which to deposit with the BSP the securities required under this Section.

The following sanctions shall be imposed for any deficiency in the basic security deposit for the faithful performance of trust, investment management and other fiduciary duties:

a. *On the bank:*

i. Monetary penalty/ies:

		Trust Asset Size \ Offense	First	Second	Third and subsequent offense(s)
Penalty per Calendar Day	TBs/RBs with Limited Trust Authority		P300.00	P400.00	P500.00
Penalty per Calendar Day	UBs/KBs/TBs with Full Trust Authority and with Trust Assets of	Up to P500 million	P600.00	P700.00	P800.00
Penalty per Calendar Day	UBs/KBs/TBs with Full Trust Authority and with Trust Assets of	Above P500 million but not exceeding P1 billion	P1,000.00	P1,250.00	P1,500.00
Penalty per Calendar Day	UBs/KBs/TBs with Full Trust Authority and with Trust Assets of	Above P1 billion but not exceeding P10 billion	P2,000.00	P3,000.00	P4,000.00
Penalty per Calendar Day	UBs/KBs/TBs with Full Trust Authority and with Trust Assets of	Above P10 billion but not exceeding P50 billion	P5,000.00	P6,000.00	P7,000.00
Penalty per Calendar Day	UBs/KBs/TBs with Full Trust Authority and with Trust Assets of	Above P50 billion	P8,000.00	P9,000.00	P10,000.00

ii. Non-monetary penalty beginning with the third offense (all banks) - Prohibition against the acceptance of new trust and other fiduciary accounts, and from renewing expiring trust and other fiduciary contracts up to the time the violation is corrected.

b. On the trust officer and/or other officer(s) responsible for the deficiency/ non-compliance:

(1) *First offense* - warning that subsequent violations shall be dealt with more severely;

(2) *Second offense* - written reprimand with a stern warning that subsequent violations shall be subject to suspension;

(3) *Third offense* - thirty (30) calendar day-suspension without pay; and

(4) *Subsequent offense(s)* - sixty (60) calendar day-suspension without pay.

For purposes of determining the frequency of the violation, the bank's compliance profile for the immediately preceding three (3) years or twelve (12) quarters will be reviewed: *Provided,* That for purposes of determining appropriate penalty on the trust officer and/or other responsible officer(s), any offense committed outside the preceding three (3) year or twelve (12) quarter- period shall be considered as the first offense: *Provided, further*, That in the case of trust officer, all offenses committed by him in the past as trust officer of other institution(s) shall also be considered: *Provided, finally*, That if the offense cannot be attributed to any other officer of the bank, the trust officer shall be automatically held responsible since the ultimate responsibility for ensuring compliance with the regulation rests upon him, as evidence may warrant.

(As amended by Circular Nos. 617 dated 30 July 2008 and 585 dated 15 October 2007)

§ X405.5 *Reserves against peso-denominated common trust funds and trust and other fiduciary accounts - others*

a. *Reserves against peso-denominated* CTFs. In addition to the basic security deposit, a bank authorized to engage in trust and other fiduciary business shall maintain reserves on:

(1) peso-denominated CTF; and

(2) such other managed peso funds which partake the nature of collective investment of a peso-denominated CTF as may be indicated by the presence of the following features:

(a) The funds are composed of contributions from two (2) or more investors;

(b) The funds are managed/ administered as a vehicle for collective investment and reinvestment;

(c) The trustee/administrator/agent has the exclusive management and control over the funds and the sole right at any time to sell, convert, invest, exchange, transfer or otherwise change or dispose of the assets comprising the funds; and

(d) Investments/contributions to, or withdrawals from, the funds are being allowed at anytime or as of a fixed date in the future, and/or the income, net of all expenses incurred in the management of the fund plus the fee of the trustee/ administrator/agent, are being distributed among the participants of the funds, without the need to liquidate all assets of the funds.

The required reserves against peso-denominated CTFs and such other managed peso funds which partake the nature of collective investment of peso-denominated CTFs shall be as follows:

UBs/KBs	-	10%[1]
TBs	-	5%[2]
RBs	-	4%

In addition to the regular reserve requirement, the liquidity reserves against peso-denominated CTFs and such other peso funds which partake the nature of collective investment of peso-denominated CTFs shall be as follows:

UBs/KBs	-	11%[1]
TBs	-	4%[2]

The liquidity reserve shall be maintained in the Reserve Deposit

[1] Under Circular 491 dated 12 July 2005, regular reserve and liquidity reserve rates shall be 10% and 11%, respectively, effective the reserve week starting 15 July 2005.

[2] Under MAB dated 29 December 2004, regular reserve and liquidity reserve rates shall be 6% and 2%, respectively, effective the reserve week starting 07 January 2005.

Account (RDA) with the BSP, or may be in the form of the following: *Provided,* That it complies with the guidelines shown in *Appendix 71*.

(i) *Short-term market-yielding government securities* purchased directly from the BSP-Treasury Department (TD);

(ii) *NDC Agri-Agra ERAP Bonds* which are not being used as alternative compliance with P.D. No. 717. The requirement that the securities used shall have a term of not more than one (1) year shall not apply; and

(iii) PEACe bonds only to the extent of the original gross issue proceeds determined at the time of the auction, plus capitalized interest on the underlying zero-coupon Treasury Notes as and when the corresponding interest is earned over the life of the bonds;

Any deficiency in the liquidity reserves shall continue to be in the forms or modes prescribed under existing regulations for the composition of required reserves.

The reserves on peso-denominated CTFs and such other managed peso funds shall be provided out of such funds.

b. *Reserves against TOFA - Others.* In addition to the basic security deposit, banks shall maintain reserves on TOFA-Others, except accounts held under (1) *Administratorship;* (2) *Bond Issues/Other Obligations Under Deed of Trust or Mortgage;* (3) *Custodianship and Safekeeping;* (4) *Depository and Reorganization;* (5) *Employee Benefit Plans Under Trust;* (6) *Escrow;* (7) *Personal Trust* (testamentary or living trust)*;* (8) *Executorship;* (9) *Guardianship;* (10) *Life Insurance Trust;* and (11) *Pre-need Plans* (institutional/individual).

The required reserves against TOFA Others shall be as follows:

UBs/KBs	-	6%
TBs	-	5%
RBs	-	4%

The liquidity reserve, which is in addition to the regular reserve, shall be as follows:

UBs/KBs	-	11%[1]
TBs	-	4%
RBs	-	0%

The liquidity reserve shall be maintained in the RDA with the BSP, or may be in the form of the following: *Provided,* That it complies with the guidelines shown in *Appendix 71*.

(1) *Short-term market-yielding government securities* purchased directly from the BSP-TD: *Provided,* That the reserves on TOFA-Others shall be provided out of such funds;

(2) *NDC Agri-Agra ERAP Bonds* which are not being used as alternative compliance with P.D. No. 717. The requirement that the securities used shall have a term of not more than one (1) year shall not apply; and

(3) PEACe bonds only to the extent of the original gross issue proceeds determined at the time of the auction, plus capitalized interest on the underlying zero-coupon Treasury Notes as and when the corresponding interest is earned over the life of the bonds.

Any deficiency in the liquidity reserves shall continue to be in the forms or modes prescribed under existing regulations for the composition of required reserves.

The reserves on TOFA-Others shall be provided by the institution out of said funds.
(As amended by Circular Nos. 551 dated 17 November 2006 and 539 dated 09 August 2006)

§ X405.6 *Composition of reserves*

a. The provisions of Sec. X254 shall govern the composition of reserves against peso-denominated CTFs and such other managed peso funds, as well as TOFA-Others, of banks authorized to engage in trust and other fiduciary business.

[1] Under Circular 491 dated 12 July 2005, regular reserve and liquidity reserve rates shall be 10% and 11%, respectively, effective the reserve week starting 15 July 2005.

For purposes of this Subsection, a special deposit account shall be maintained by banks with the BSP exclusively for trust reserves. Deposits maintained by banks authorized to engage in trust and other fiduciary business with the BSP up to forty percent (40%) of the required reserves against peso-denominated CTFs (less the percentage allowed to be maintained in the form of short-term market-yielding government securities), as well as the required reserves on TOFA-Others (less the percentage allowed to be maintained in the form of short-term market-yielding government securities), shall be paid interest at four and one-half percent (4½%) (for UBs/KBs and TBs) and four percent (4%) (for RBs) per annum effective 09 October 1998 based on the average daily balance of said deposits to be credited quarterly.

Effective 01 July 2003, published interest rates that will be applied on BSP's SDAs of banks shall be inclusive of the ten percent (10%) VAT.

b. The required reserves which may be in the form of short-term market-yielding government securities shall be purchased directly from the BSP Treasury Department at one-half percent (½%) below the prevailing market rate for an equivalent term and volume and subject to BSP's firm commitment to buy back at any time at prevailing market rates. Such reserves in the form of government securities shall be in addition to other forms of eligible reserves such as cash in vault or on deposit with BSP.

All purchases of said government securities shall be under the RoSS system of the BTr. Transactions covering said securities shall be recorded in accordance with the guidelines in *Appendix 34*.

§ X405.7 ***Computation of reserve position.*** A bank authorized to engage in trust and other fiduciary business shall calculate daily the required and available reserves on the value per books of its peso-denominated CTFs and such other managed peso funds, as well as on TOFA-Others, based on the seven-day week, starting Friday and ending Thursday including Saturdays, Sundays, holidays, non-banking days or days when there is no clearing: *Provided,* That with reference to holidays, non-banking days and days where there is no clearing, the reserve position at the close of banking day immediately preceding such holidays, non-banking days or days where there is no clearing, shall apply. For the purpose of computing reserve position, the principal office in the Philippines and all branches and agencies located therein shall be treated as a single unit.

The required reserves in the current period (reference reserve week) shall be computed based on the corresponding levels of peso-denominated CTFs and such other managed peso funds, as well as on TOFA-Others of the prior week.

For purposes of computing the required and available statutory and liquidity reserves for peso-denominated CTFs and such other managed peso funds, as well as TOFA-Others, the term *value per books* shall refer to the total volume of CTFs, other managed peso funds, as well as TOFA-Others less booked "Allowance for Probable Losses".

(As amended by Circular No. 535 dated 04 July 2006)

§ X405.8 ***Reserve deficiencies; sanctions.*** The provisions of Sec. X257 shall govern the computation of reserve deficiencies for peso-denominated CTFs and such other managed peso funds, as well as TOFA-Others, of banks authorized to engage in trust and other fiduciary business, including the sanctions provided in said Section.

§ X405.9 ***Report of compliance.*** Every bank shall submit a report to the BSP of its daily required and available reserves on peso-denominated CTFs and such other managed peso funds, as well as TOFA-Others, in such frequency and within the deadline stated in *Appendix 6*.

Sec. X406 Organization and Management

§ X406.1 *Organization.* A bank authorized to engage in trust and other fiduciary business shall, pursuant to Subsec. X404.1, include in its by-laws, provisions on the organization plan or structure of the department, office or unit which shall conduct such business. The by-laws shall also include provisions on the creation of a trust committee, the appointment of a trust officer and other subordinate officers and a clear definition of their duties and responsibilities as well as their line and staff functional relationships within the organization which shall be in accordance with the following guidelines.

a. Trust and other fiduciary business of a bank shall be carried out through a trust department which shall be organizationally, operationally, administratively and functionally separate and distinct from the other departments and/or businesses of the institution.

A bank which is also engaged in investment management activities, shall conduct the same only through its trust department and the responsibilities of the board of directors, trust committee and trust officer shall be construed to include the proper administration and management of investment management activities.

No bank shall undertake any of the trust and other fiduciary business and, whenever applicable, investment management activities outside the direct control, authority and management of the trust department or through any department or office which is involved in the other businesses of the bank, such as the Treasury, Funds Management or any similar department, otherwise, any such business shall be considered part of the bank's real liabilities.

The bank proper and the trust department may share the following activities: (1) electronic data processing; (2) credit investigation; (3) collateral appraisal; and (4) messengerial, janitorial and security services.

b. The trust department, trust officer and other subordinate officers of the trust department shall only be directly responsible to the bank's trust committee which shall, in turn, be only directly responsible to the bank's board of directors.

No director, officer or employee taking part in the management of trust and other fiduciary accounts shall perform duties in other departments or the audit committee of the bank and vice versa. However, branch managers duly authorized by the board of directors may, for or on behalf of the trust officer, sign predrawn trust instruments such as CTFs.

c. The organization structure and definition of duties and responsibilities of the trust committee, officers and employees of the trust department shall reflect adherence to the minimum internal control standards prescribed by the BSP.

d. Provisions shall be made by the bank to have legal assistance readily available in the review of proposed and/or existing trust and fiduciary agreements and documents and in the handling of legal and tax matters related thereto.

§ X406.2 *Composition of trust committee.* The trust committee shall be composed of at least five (5) members including the president, the trust officer and directors who are appointed by the board of directors on a regular rotation basis and who are not officers of the bank proper. No member of the audit committee, if the bank has any, shall be concurrently designated as a member of the trust committee: *Provided*, That in the case of a trust committee composed of more than five (5) members, the appointment therein of an operating officer may be allowed only if the required balance in the membership of at least three (3) members of the board for every operating officer shall be maintained: *Provided, further,* That the Philippine branch of a foreign bank may appoint its resident manager or chief executive officer in lieu of the president while the positions allotted for members of the board may be filled up by the area manager and/or officers/representatives from the Head Office who are not involved in audit-related activities.

For purposes of this Subsection, the term *officer* shall include the president, executive vice-president, general manager, corporate secretary, treasurer and others mentioned as officers of the bank, or those whose duties as such are defined in the by-laws, or are generally known to be officers of the bank (or any of its branches and offices other than the Head Office) either through announcement, representation, publication or any kind of communication made by the bank.

The board of directors shall duly note in the minutes the committee members and designate the chairman who shall be one of the directors referred to above.

§ X406.3 *Qualifications of committee members, officers and staff.* The bank's trust department shall be staffed by persons of competence, integrity and honesty. Directors, committee members and officers charged with the administration of trust and other fiduciary activities shall, in addition to meeting the qualification standards prescribed for directors and officers of banks, possess the necessary technical expertise in such business: *Provided*, That trust officers who shall be appointed shall have at least two (2) years of actual experience or training in trust operations.

§ X406.4 *Responsibilities of administration*

a. *Board of Directors.* The board of directors is responsible for the proper administration and management of trust and other fiduciary business. Funds and properties held in trust or in any fiduciary capacity shall be administered with the skill, care, prudence and diligence necessary under the circumstances then prevailing that a prudent man, acting in like capacity and familiar with such matters, would exercise in the conduct of an enterprise of like character and with similar aims.

The responsibilities of the board of directors shall include, but need not be limited to, the following:

(1) It shall determine and formulate general policies and guidelines on the: (a) acceptance, termination, or closure of trust and other fiduciary accounts; (b) proper administration and management of each trust and other fiduciary account; and (c) investment, reinvestment and disposition of funds or property held in its capacity as trustee or fiduciary;

(2) It shall direct and review the actions of the trust committee and all officers and employees designated to manage the trust and other fiduciary accounts, especially accounts without specific agreements on investments or discretionary accounts;

(3) It shall approve or confirm the acceptance, termination or closure of all trust and other fiduciary accounts and shall record such in its minutes;

(4) Upon the acceptance of an account, it shall immediately review all non-cash assets received for management. Likewise, it shall make a review of the trust and/or fiduciary assets at least once every twelve (12) months to determine the advisability of retaining or disposing of such assets;

(5) It shall be responsible for taking appropriate action on the examination reports of supervisory agencies, internal and/or external auditors on the bank's trust

and other fiduciary business and recording such actions thereon in the minutes;

(6) It shall designate the members of the trust committee, the trust officer and subordinate officers of the trust department and shall be responsible for requiring reports from said committee and officers and recording its actions thereon in the minutes; and

(7) It shall establish an appropriate staffing pattern and adopt operating budgets that shall enable the trust department to effectively carry out its functions. It shall likewise be responsible for providing the officers and staff of the bank with appropriate training programs in the administration and operation of all phases of trust and other fiduciary business.

The board of directors may, by action duly entered in the minutes, delegate its authority for the acceptance, termination, closure or management of trust and other fiduciary accounts to the trust committee or to the trust officer, subject to certain guidelines approved by the board.

b. *Trust Committee*. The trust committee duly constituted and authorized by the board of directors shall act within the sphere of authority which may be provided in the by-laws and/or as may be delegated by the board, such as, but not limited to, the following:

(1) The acceptance and closing of trust and other fiduciary accounts;

(2) The initial review of assets placed under the trustee's or fiduciary's custody;

(3) The investment, reinvestment and disposition of funds or property;

(4) The review and approval of transactions between trust and/or fiduciary accounts; and

(5) The review of trust and other fiduciary accounts at least once every twelve (12) months to determine the advisability of retaining or disposing of the trust or fiduciary assets, and/or whether the account is being managed in accordance with the instrument creating the trust or other fiduciary relationship.

For this purpose, the trust committee shall meet whenever necessary and keep minutes of its actions and make periodic reports thereon to the board.

c. *Trust Officer*. The trust officer designated by the board of directors as head of the Trust Department shall act and represent the bank in all trust and other fiduciary matters within the sphere of his authority as may be provided in the by-laws or as may be delegated by the board. His responsibilities shall include, but need not be limited to the following:

(1) The administration of trust and other fiduciary accounts;

(2) The implementation of policies and instructions of the board of directors and the trust committee;

(3) The submission of reports on matters which require the attention of the trust committee and the board of directors;

(4) The maintenance of adequate books, records and files for each trust or other fiduciary account; and

(5) The maintenance of necessary controls and measures to protect assets under his custody and held in trust or other fiduciary capacity.

§ X406.5 – X406.8 *(Reserved)*

§ X406.9 *Outsourcing services in trust departments.* Trust departments of banks performing trust and other fiduciary business and investment management activities are covered by the requirement of prior BSP approval for outsourcing services under Subsec. X162.3.
(M-2007-009 dated 22 March 2007)

Sec. X407 Non-Trust, Non-Fiduciary and/or Non-Investment Management Activities. The basic characteristic of trust, other fiduciary and investment management relationship is the absolute non-existence of a debtor-creditor relationship, thus, there is no obligation on the part of the trustee, fiduciary or investment manager to guarantee returns on the funds or properties regardless of the results of the investment. The trustee, fiduciary or investment manager is entitled to fees/ commissions which shall be stipulated and fixed in the contract or indenture and the trustor or principal is entitled to all the funds or properties and earnings less fees/ commissions, losses and other charges. Any agreement/arrangement that does not conform to these shall not be considered as trust, other fiduciary and/or investment management relationship.

The following shall not constitute a trust, other fiduciary and/or investment management relationship:

a. When there is a preponderance of purpose or of intent that the arrangement creates or establishes a relationship other than a trust, fiduciary and/or investment management;

b. When the agreement or contract is itself used as a certificate of indebtedness in exchange for money placement from clients and/or as the medium for confirming placements and investment thereof;

c. When the agreement or contract of an account is accepted under the signature(s) of those other than the trust officer or subordinate officer of the trust department or those authorized by the board of directors to represent the trust officer;

d. Where there is a fixed rate or guaranty of interest, income or return in favor of its client or beneficiary: *Provided, however*, That where funds are placed in fixed income-generating investments, a quotation of *income expectation* or like terms, shall neither be considered as arrangements with a fixed rate nor a guaranty of interest, income or return when the agreement or indenture categorically states in bold letters that the quoted *income expectation* or like terms is neither assured nor guaranteed by the trustee or fiduciary and it does not, therefore, entitle the client to a fixed interest or return on his investments: *Provided, further*, That any of the following practices or practices similar and/or tantamount thereto shall be construed as fixing or guaranteeing the rate of interest, income or return:

(1) Issuance of certificates, side agreements, letters of undertaking or other similar documents providing for fixed rates or guaranteeing interest, income or return;

(2) Paying trust earnings based on indicated or expected yield regardless of the actual investment results;

(3) Increasing or reducing fees in order to meet a quoted or expected yield;

(4) Entering into any arrangement, scheme or practice which results in the payment of fixed rates or yield on trust investments or in the payment of the indicated or expected yield regardless of the actual investment results; and

e. Where the risk or responsibility is exclusively with the trustee, fiduciary or investment manager in case of loss in the investment of trust, fiduciary or investment management funds, when such loss is not due to the failure of the trustee or fiduciary to exercise the skill, care, prudence and diligence required by law.

Trust, other fiduciary and investment management activities involving any of the foregoing which are accepted, renewed or extended after 16 October 1990 shall be reported as deposit substitutes and shall be subject to the reserve requirement for deposit substitutes from the time of inception, without prejudice to the imposition of the applicable sanctions provided for in Sections 36 and 37 of R.A. No. 7653.

Sec. X408 Unsafe and Unsound Practices Whether a particular activity may be considered as conducting business in an unsafe or unsound manner all relevant facts must be considered. An analysis of the impact thereof on the bank's operations and financial conditions must be undertaken, including evaluation of capital position, asset condition, management, earnings posture and liquidity position.

In determining whether a particular act or omission, which is not otherwise prohibited by any law, rule or regulation affecting banks, may be deemed as conducting business in an unsafe or unsound manner, the Monetary Board, upon report of the head of the supervising or examining department based on findings in an examination or a complaint, shall consider any of the following circumstances:

a. The act or omission has resulted or may result in material loss or damage, or abnormal risk or danger to the safety, stability, liquidity or solvency of the bank;

b. The act or omission has resulted or may result in material loss or damage or abnormal risk to the bank's depositors, creditors, investors, stockholders or to the BSP or to the public in general;

c. The act or omission has caused any undue injury, or has given unwarranted benefits, advantage or preference to the bank or any party in the discharge by the director or officer of his duties and responsibilities through manifest partiality, evident bad faith or gross inexcusable negligence; or

d. The act or omission involves entering into any contract or transaction manifestly and grossly disadvantageous to the bank, whether or not the director or officer profited or will profit thereby.

The list of activities which may be considered unsafe and unsound is shown in *Appendix 48*.

In line with the statement of principles governing trust and other fiduciary business under Sec. X401, the trustee, fiduciary or investment manager shall desist from the following unsound practices:

a. Entering in an arrangement whereby the client is at the same time the borrower of his own fund placement, or whereby the trustor or principal is a borrower of other trust, fiduciary or investment management funds belonging to the same family or business group of such trustor or principal;

b. Granting loans or accommodations to any trust committee member, officer and employee of the trust department except where such loans are obtained by said persons as members of an employee benefit fund of the trustee's own institution;

c. Borrowing from, or selling trust, other fiduciary and/or investment management assets to, the bank proper to cover portfolio losses and/or to guarantee the return of principal or income;

d. Granting new loans to any borrower who has a past due and/or classified loan account with the bank proper or the trust department; and

e. Requiring clients to sign documents in blank.

§§ X408.1 – X408.8 *(Reserved)*

§ X408.9 *Sanctions*. The Monetary Board may, at its discretion and based on the seriousness and materiality of the acts or omissions, impose any or all of the following sanctions provided under Section 37 of R.A. No. 7653 and Section 56 of R.A. No. 8791, whenever a bank conducts business in an unsafe and unsound manner:

a. Issue an order requiring the bank to cease and desist from conducting business in an unsafe and unsound manner and may further order that immediate action be taken to correct the conditions resulting from such unsafe or unsound practice;

b. Fines in amounts as may be determined by the Monetary Board to be appropriate, but in no case to exceed P30,000 a day on a per transaction basis taking into consideration the attendant circumstances, such as the gravity of the act or omission and the size of the bank, to be imposed on the bank, their directors and/or responsible officers;

c. Suspension of interbank clearing privileges/immediate exclusion from clearing;

d. Suspension of rediscounting privileges or access to BSP credit facilities;

e. Suspension of lending or foreign exchange operations or authority to accept new deposits or make new investments;

f. Suspension of responsible directors and/or officers;

g. Revocation of quasi-banking license; and/or

h. Receivership and liquidation under Section 30 of R.A. No. 7653.

All other provisions of Sections 30 and 37 of R.A. No. 7653, whenever appropriate, shall also be applicable on the conduct of business in an unsafe or unsound manner.

The imposition of the above sanctions is without prejudice to the filing of appropriate criminal charges against culpable persons as provided in Sections 34, 35 and 36 of R.A. No. 7653.

Sec. X409 Trust and Other Fiduciary Business. The conduct of trust and other fiduciary business shall be subject to the following regulations.

§ X409.1 *Minimum documentary requirements.* Each trust or fiduciary account shall be covered by a written document establishing such account, as follows:

a. In the case of accounts created by an order of the court or other competent authority, the written order of said court or authority.

b. In the case of accounts created by corporations, business firms, organizations or institutions, the voluntary written agreement or indenture entered into by the parties, accompanied by a copy of the board resolution or other evidence authorizing the establishment of, and designating the signatories to, the trust or other fiduciary account.

c. In the case of accounts created by individuals, the voluntary written agreement or indenture entered into by the parties.

The voluntary written agreement or indenture shall include the following minimum provisions:

(1) Title or nature of contractual agreement in noticeable print;

(2) Legal capacities, in noticeable print, of parties sought to be covered;

(3) Purposes and objectives;

(4) Funds and/or properties subject of the arrangement;

(5) Distribution of the funds and/or properties;

(6) Duties and powers of trustee or fiduciary;

(7) Liabilities of the trustee or fiduciary;

(8) Reports to the client;

(9) Termination of contractual arrangement and, in appropriate cases, provision for successor-trustee or fiduciary;

(10) The amount or rate of the compensation of trustee or fiduciary;

(11) A statement in noticeable print to the effect that trust and other fiduciary business are not covered by the PDIC and that losses, if any, shall be for the account of the client; and

(12) Disclosure requirements for transactions requiring prior authority and/ or specific written investment directive from the client, court of competent jurisdiction or other competent authority.

§ X409.2 *Lending and investment disposition.* Assets received in trust or in other fiduciary capacity shall be administered in accordance with the terms of the instrument creating the trust or other fiduciary relationship.

When a trustee or fiduciary is granted discretionary powers in the investment disposition of trust or other fiduciary funds and unless otherwise specifically enumerated in the agreement or indenture and directed in writing by the client, court of competent jurisdiction or other competent authority, loans and investments of the fund shall be limited to:

a. Evidences of indebtedness of the Republic of the Philippines and of the BSP, and any other evidences of indebtedness or obligations the servicing and repayment of which are fully guaranteed by the Republic of the Philippines or loans against such government securities;

b. Loans fully guaranteed by the Republic of the Philippines as to the payment of principal and interest;

c. Loans fully secured by a hold-out on, assignment or pledge of deposits maintained either with the bank proper or other banks, or of deposit substitutes of the bank, or of mortgage and chattel mortgage bonds issued by the trustee or fiduciary;

d. Loans fully secured by real estate or chattels in accordance with Section 78 of R.A. No. 337, as amended, and subject to the requirements of Sections 75, 76, and 77 of R.A. No. 337, as amended; and

e. Investment in the BSP special deposit account (SDA) facility made in accordance with the guidelines in *Appendix 78*.

The specific directives required under this Subsection shall consist of the following information:

(1) The transaction to be entered into;
(2) The borrower's name;
(3) Amount involved; and
(4) Collateral security(ies), if any.

(As amended by M-2007-038 dated 29 November 2007 and M-2007-011 dated 08 May 2007)

§ X409.3 *Transactions requiring prior authority.* A trustee or fiduciary shall not undertake any of the following transactions for the account of a client, unless prior to its execution, such transaction has been fully disclosed and specifically authorized in writing by the client, beneficiary, other party-in-interest, court of competent jurisdiction or other competent authority:

a. Lend, sell, transfer or assign money or property to any of the departments, directors, officers, stockholders or employees of the trustee or fiduciary, or relatives within the first degree of consanguinity or affinity, or the related interest of such directors, officers and stockholders; or to any corporation where the trustee or fiduciary owns at least fifty percent (50%) of the subscribed capital or voting stock in its own right and not as trustee nor in a representative capacity;

b. Purchase or acquire property or debt instruments from any of the departments, directors, officers, stockholders, or employees of the trustee or fiduciary, or relatives within the first degree of consanguinity or affinity, or the related interest of such directors, officers and stockholders; or from any corporation where the trustee or fiduciary owns at least fifty percent (50%) of the subscribed capital or voting stock in its own right and not as trustee nor in a representative capacity;

c. Invest in equities of, or in securities underwritten by, the trustee or fiduciary or a corporation in which the trustee or fiduciary owns at least fifty percent (50%) of the subscribed capital or voting stock in its own right and not as trustee nor in a representative capacity; and

d. Sell, transfer, assign, or lend money or property from one trust or fiduciary account to another trust or fiduciary account except where the investment is in any of those enumerated in Items *"a"* to *"d"* of Subsec. X409.2.

DOSRIs covered by this Subsection shall be those considered as such under existing regulations on loans to DOSRI in

Part III - E of this Manual. The procedural and reportorial requirements in said regulations shall also apply.

The disclosure required under this Subsection shall consist of the following minimum information:

(1) The transactions to be entered into;

(2) Identities of the parties involved in the transactions and their relationships (shall not apply to Item *"d"* of this Subsection);

(3) Amount involved; and

(4) Collateral security(ies), if any.

The above information shall be made known to clients in a separate instrument or in the very instrument creating the trust or fiduciary relationship.

§ X409.4 ***Ceilings on loans.*** Loans funded by trust accounts shall be subject to the SBL and DOSRI ceilings imposed on banks under Secs. X303, X330 and X331. For purposes of determining compliance with said ceilings, the total amount of said loans granted by the trust department and the bank to the same person, firm or corporation shall be combined.

§ X409.5 ***Funds awaiting investment or distribution.*** Funds held by the trustee or fiduciary awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account.

§ X409.6 ***Other applicable regulations on loans and investments.*** The loans and investments of trust and other fiduciary accounts shall be subject to pertinent laws, rules and regulations for banks that shall include but need not be limited to the following:

a. Requirements of Sections 76 and 77 of R.A. No. 337, as amended;

b. Provisions of Section 4(e) of the New Rules on Registration of Short-Term Commercial Papers and Section 7(f) of the New Rules on Registration of Long-Term Commercial Papers issued by the SEC *(Appendices 13 and 14*).

c. Criteria for past due accounts; and

d. Qualitative appraisal of loans, investments and other assets that may require provision for probable losses which shall be booked in accordance with the Manual of Accounts for Trust and Other Fiduciary Business and Investment Management Activities**.**

§ X409.7 ***Operating and accounting methodology.*** Trust and other fiduciary accounts shall be operated and accounted for in accordance with the following:

a. The trustee or fiduciary shall administer, hold or manage the fund or property in accordance with the instrument creating the trust or other fiduciary relationship; and

b. Funds or property of each client shall be accounted separately and distinctly from those of other clients herein referred to as *individual account accounting*.

§ X409.8 ***Tax-exempt individual trust accounts.*** The following shall be the features/requirements of individual trust accounts which may be exempted from the twenty percent (20%) final tax under Section 24(B)(1) of R.A. No. 8424 (The Tax Reform Act of 1997):

a. The tax exemption shall apply to trust indentures/agreements contracted on or after 03 January 2000;

b. The trust indenture/agreement shall only be between individuals who are Filipino citizens or resident aliens and banks acting as trustee. The trust indenture/agreement shall be non-negotiable and non-transferable;

c. The trust indenture/agreement shall indicate that pursuant to Section 24(B)(1) of R.A. No. 8424, interest income of the trust fund derived from investments in interest-bearing instruments (e.g., time deposits, government securities, loans and other debt instruments) which are otherwise subject to the twenty percent (20%) final tax shall be exempt from said final tax provided the fund was held by the trustee-bank for at least five (5) years. If said fund was held for a period less than five (5) years, interest income shall be subject to a final tax based on the following schedule –

Holding Period	Rate of Tax
Four (4) years to less than five (5) years	5%
Three (3) years to less than four (4) years	12%
Less than three (3) years	20%

Necessarily, the trust indenture/ agreement shall clearly indicate the date when the trustee-bank actually received the trust funds which shall serve as basis for determining the holding period of the funds.

d. A trustee may accept additional funds for inclusion in trust accounts which have been established as tax-exempt under R.A. No. 8424. However, the receipt of additional funds shall be properly documented by indicating that they are part of existing tax-exempt trust accounts and that the interest income of the additional funds derived from investments in interest-bearing instruments shall be exempt from the twenty percent (20%) final tax under the same conditions mentioned in the preceding item. The document shall also indicate the date when the funds were received by the trustee-bank to serve as basis for determining the minimum five (5)-year holding period for tax exemption purposes of the additional funds; and

e. Tax-exempt individual trust accounts established under this Subsection shall be subject to the provisions of Subsecs. X409.1(c) and X409.2 up to X409.7.

§ X409.9 ***Living trust accounts.*** The guidelines on living trust accounts are as follows:

a. *Definition. Living trust* is defined under the Manual of Accounts for Trust, as a personal trust created by agreement.It becomes operational during the lifetime of the trustor as soon as the agreement is accomplished.

Under a living trust, the trustor (also known as settlor) conveys property or a sum of money to be managed by the trustee, as the agreement dictates, for the benefit of the trustor and third person(s) or third person(s) only. However, the trustor/s cannot create a trust with himself/themselves as the sole beneficiary/(ies). The functions and authorities of the trustee as defined in the agreement shall include:

(1) the purpose or intention of the trust;

(2) the nature and value of the property or sum of money that comprise the trust;

(3) the trustee's investment powers;

(4) the name(s) of the beneficiaries; and

(5) the terms and conditions under which the income and/or principal of the trust is to be paid or to be disposed of during the lifetime and ultimately, upon the death of the trustor or upon the occurrence of a specified event(s).

A living trust may either be revocable or irrevocable.

b. *Minimum criteria*. In line with such definition, transactions considered as living trust accounts should meet the following minimum criteria:

(1) Minimum entry amount and maintaining balance shall at least be P100,000: *Provided,* That living trust accounts with balances of up to P500,000 shall only be invested in deposits and government securities;

(2) Living trust accounts shall be maintained for a minimum period of six (6) months. The termination of the living trust agreement, for any cause, within the minimum holding period shall render the trustor ineligible from opening a new living trust account within a period of one (1) year from termination date;

(3) Reversion of any part of the principal to the trustor, except in cases

provided under the dispositive portion, shall be allowed only upon termination of the living trust agreement: *Provided,* That in no case can there be a complete or substantial reversion of the principal pursuant to the dispositive portion within the minimum holding period nor can the principal fall below P100,000;

(4) Any living trust account that does not meet the requirement on the minimum entry and minimum maintaining balance or is not invested in qualified outlets shall be considered as other fiduciary accounts subject to applicable reserve and other requirements;

(5) Pre-printed living trust agreements may be allowed for expediency: *Provided,* That the sections for the trust purpose and the dispositive provision are left blank and shall only be filled-up upon the client's signing thereof. The purpose shall categorically state the real intention of the trustor, which may include, but need not be limited to:

(a) providing his/her and beneficiary/(ies) present and/or future financial support;

(b) protecting his/her beneficiary/(ies) against his/her inexperience in business matters;

(c) preventing him/her from making imprudent expenditures;

(d) prevent the beneficiary/(ies) from living beyond their means in case of outright disposition of assets in their favor;

(e) protecting the beneficiary/(ies) against unforeseen contingencies such as incompetency, incapacity, physical disability or similar misfortune; and

(f) setting aside and segregating particular assets, proceeds or payments for administration and distribution pursuant to a court decree or by agreement.

The dispositive provision should clearly and specifically define the terms and conditions under which the principal and/or income shall be distributed in order to accomplish such purpose/(s), by taking into consideration the frequency of redemption; the respective interests of each beneficiary; and to whom the proceeds shall be payable. Redemption of funds shall strictly be in accordance with the said terms and conditions; and

(6) A living trust account may be opened jointly under one (1) living trust agreement by related individuals up to the second degree of consanguinity or affinity; *Provided*, That the requirements under Item *"5" above* are fully complied with. Unrelated individuals or those beyond the second degree of consanguinity or affinity may likewise open a joint living trust account under one (1) living trust agreement: *Provided*, That the minimum contribution of each individual is at least P100,000: *Provided further*, That the trust is for a common purpose and: *Provided finally*, That the requirements under Item *"5"* are fully complied with.

c. *Marketing***.** Officers and personnel of the bank proper, including branch managers, shall not be allowed to market living trust products and sign pre-printed living trust agreements. However, branch managers/officers may be allowed to refer clients to the Trust Department and give short introduction on the living trust products to prospective clients.

d. *Transitory provision***.** Outstanding living trust accounts that do not meet the foregoing additional requirements shall be given twelve (12)[1] months from 11 April 2006 to comply with the aforestated requirements; otherwise, such accounts shall be considered as Other Fiduciary Accounts subject to applicable reserve requirements.

e. *Sanctions*. Any violation of the provisions of this Subsection shall be subject to the sanctions provided under Section 37 of R.A. No. 7653 (The New Central Bank Act).

(Circular Nos. 553 dated 22 December 2006 and 521 dated 21 March 2006)

[1] Original 6 months transitory period under Cir. 521 extended by another 6 months under Cir. 553

§§ X409.10 - X409.15 ***(Reserved)***

§ X409.16 ***Qualification and accreditation of private banks acting as trustee on any mortgage or bond issuance by any municipality, government-owned or controlled corporation, or any body politic***

a. *Applicability*. Private banks duly accredited by the BSP may act as trustee on any mortgage or bond issued by any municipality, GOCC, or any body politic.

b. *Application for accreditation*. A private bank desiring to act as trustee on any mortgage or bond issued by any municipality, GOCC, or any body politic shall file an application for accreditation with the appropriate supervising and examining department of SES. The application shall be signed by the president or officer of equivalent rank of the bank and shall be accompanied by the following documents:

(1) certified true copy of the resolution of the institution's board of directors authorizing the application;

(2) a certification signed by the president or officer of equivalent rank that the institution has complied with all the qualification requirements for accreditation.

c. *Qualification requirements*. A bank applying for accreditation to act as trustee on any mortgage or bond issued by any municipality, government-owned or controlled corporation, or any body politic must comply with the requirements in *Appendix 5b*.

d. *Independence of the trustee*. A bank is prohibited from acting as trustee of a mortgage or bond issuance if any elective or appointive official of the LGU, GOCC, or body politic which issued said mortgage or bond and/or his related interests own such number of shares of the bank that will allow him or his related interests to elect at least one (1) member of the board of directors of such bank or is directly or indirectly the registered or beneficial owner of more than ten percent (10%) of any class of its equity security.

e. *Investment and management of the funds*. A domestic bank designated as trustee of a mortgage or bond issuance may hold and manage, in accordance with the provisions of the trust indenture or agreement, the proceeds of the mortgage or bond issuance and such assets and funds of the issuing municipality, corporation, or body politic as may be required to be delivered to the trustee under the trust indenture/agreement, subject to the following conditions/restrictions:

(1) Pending the utilization of such funds pursuant to the provisions of the trust indenture/agreement, the same shall only be deposited in any bank, other than the trustee/bank proper, its subsidiary or affiliate authorized to accept deposits from the Government or government entities, or invested in peso-denominated treasury bills acquired/purchased from any securities dealer/entity, other than the trustee or any of its unit/department, its subsidiary or affiliate.

(2) Investments of funds constituting or forming part of the sinking fund created as the primary source for the payment of the principal and interests due the mortgage or bonds shall also be limited to deposits in any bank, other than the trustee/bank proper, its subsidiary or affiliate, authorized to accept deposits from the Government or government entities and investments in government securities that are consistent with such purpose which must be acquired/purchased from any securities dealer/entity, other than the trustee or any of its unit/department, its subsidiary or affiliate.

f. *Waiver of confidentiality*. A bank designated as trustee of any mortgage or bond issued by any municipality, GOCC, or any body politic shall submit to the appropriate supervising and examining department of SES a waiver of the confidentiality of information under Sections 2 and 3 of R.A. No. 1405, as amended, duly executed by the issuer of the mortgage or bond in favor of the BSP.

g. *Reportorial requirements.* A bank authorized by the BSP to act as trustee of the proceeds of mortgage or bond issuance of a municipality, GOCC or controlled corporation, or body politic shall comply with reportorial requirements that may be prescribed by the BSP.

h. *Applicability of the rules and Regulations on Trust, Other Fiduciary Business and Investment Management Activities.* The provisions of the Rules and Regulations on Trust, Other Fiduciary Business and Investment Management Activities not inconsistent with the provisions of this Subsection shall form part of these rules.

i. *Sanctions.* Without prejudice to the penal and administrative sanctions provided for under Sections 36 and 37, respectively, of the R.A. No. 7653, violation of any provision of this Subsection shall be subject to the following sanctions/penalties depending on the gravity of the offense:

(1) *First offense* –

(a) Fine of up to P10,000 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected; and

(b) Reprimand for the directors/officers responsible for the violation.

(2) *Second offense* –

(a) Fine of up to P20,000 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected;

(b) Suspension for ninety (90) days without pay for directors/officers responsible for the violation; and

(c) Revocation of the authority to act as trustees on any mortgage or bond issuance by any municipality, GOCCs, or body politic.

(3) *Subsequent offense* –

(a) Fine of up to P30,000 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected;

(b) Suspension or revocation of the trust license;

(c) Suspension for one hundred twenty (120) days without pay of the directors/officers responsible for the violation.

§ X409.17 *Trust fund of pre-need companies*. The following rules and regulations shall govern the acceptance, management and administration of the trust funds of pre-need companies by banks and other entities authorized to perform trust and other fiduciary functions.

a. *Administration of trust fund.* In line with the policy of providing greater protection to pre-need planholders, prudential measures are hereby laid out in the administration of trust funds of preneed companies. The trust fund, inclusive of earnings, shall be administered and managed by the trustee with the skill, care, prudence and diligence necessary under the circumstances then prevailing that a prudent man, acting in the same capacity and familiar with such matters, would exercise in the conduct of an enterprise of a like character and similar aims.

The trustee shall have exclusive management and control over the trust fund and the right at any time to sell, convert, invest, change, transfer or otherwise dispose of the assets comprising the funds.

b. *Trustee.* No trust entity shall act as a trustee or administer or hold a trust fund established by a pre-need company, which is a subsidiary or affiliate, as defined under existing BSP regulations, of such trust entity. Trust entities currently holding or administering trust funds of an affiliate pre-need company may continue to act as trustee of such funds after the transition period provided under Item *"g"* only upon prior approval of the Monetary Board on the basis of a clear showing that no potential conflict of interest will arise. An absence of any exception or finding on conflicts of interest during an examination of the trust entity shall be deemed as *prima facie* evidence that no potential conflict of interest will arise.

c. *Investment of the trust fund.* Unless otherwise allowed under existing laws or regulations issued by the agency having jurisdiction and supervision over pre-need companies, or with prior written approval by said agency, loans and investments of the trust funds shall be limited to:

(1) Evidences of indebtedness of the Republic of the Philippines and of the BSP, and any other evidences of indebtedness or obligations wherein the servicing and repayment of which are fully guaranteed by the Republic of the Philippines or loans against such government securities;

(2) Commercial papers duly registered with the SEC with a credit rating of one (1) for short term and "AAA" for long-term or their equivalent;

(3) Loans fully guaranteed by the Republic of the Philippines, as to the payment of principal and interest;

(4) Loans fully secured by a hold-out on, assignment or pledge of deposits maintained either with the bank proper or other banks, and/or of deposit substitutes or of mortgage and chattel mortgage bonds issued by the trustee/fiduciary or by other banks;

(5) Loans fully secured by real estate in accordance with Section 37 and subject to the requirements of Sections 39 and 40 of R.A. No. 8791 and their implementing regulations; and

(6) Loans fully secured by unconditional payment guarantees (such as standby letters of credit and letter of indemnity) issued by banks/multilateral financial institutions.

d. *Transactions with DOSRI.* The trustee shall not, for the account of the trustor or the beneficiary of the trust, purchase or acquire property from, or sell, transfer, assign or lend money or property to, or purchase debt instruments of, any of the departments, directors, officers, stockholders, employees, subsidiaries and affiliates of the trustee and/or the trustor, and relatives within the first degree of consanguinity or affinity, or the related interests, of such directors, officers and stockholders, without prejudice to any rule that may be issued by the agency having jurisdiction and supervision over such preneed company allowing such transaction with the prior written approval of such agency. Such written approval shall clearly specify the amount of the loan and/or investment including the name of the concerned director, officer, stockholder and their related interests.

e. *Applicability of the Rules and Regulations on Trust, Other Fiduciary Business and Investment Management Activities (Trust Rules).* The provisions of the Trust Rules consistent with the provisions of this Subsection shall supplementarily apply to trust funds of pre-need companies.

f. *Penalties and sanctions.* Any violation of the provisions of this Subsection shall be a ground for prohibiting the concerned entity from accepting, managing and administering trust funds of pre-need companies without prejudice to the imposition of the applicable sanctions prescribed or allowed under the Trust Rules.

g. *Transitory provisions.* Banks which are presently administering and managing trust funds of pre-need companies are hereby given a period of one (1) year from 25 April 2006 to comply with the requirements hereof.

(Memorandum to All Banks and NBFIs dated 28 March 2006)

Sec. X410 Unit Investment Trust Funds/ Common Trust Funds.[1] The following rules and regulations shall govern the creation, administration and investment/s of Unit Investment Trust (UIT) Funds.

[1] The regulations on common trust funds (CTFs) were relocated to *Appendix 60*. UIT Funds regulations took effect on 01 October 2004 (effectivity of Circular 447 dated 03 September 2004).

The rules and regulations on Common Trust Funds (CTFs) are in *Appendix 60*.

§ X410.1 *Definitions*

a. *Unit Investment Trust Funds*. Unit Investment Trust Funds are open-ended pooled trust funds denominated in pesos or any acceptable currency, which are operated and administered by a trust entity and made available by participation. The term Unit Investment Trust Funds is synonymous to CTFs. As an open-ended fund, participation or redemption is allowed as often as stated in its plan rules.

UIT Funds shall not include long term funds designed for the primary purpose of availing the tax incentives/exemption under Section 24(B)(1) of R.A. No. 8424 (The Tax Reform Act of 1997).

b. *Trust entity*. Any bank, IH or a stock corporation duly authorized by the Monetary Board to engage in trust, investment management and fiduciary business.

c. *Board of directors*. For this purpose, the term shall include a trust entity's duly constituted board of directors or its functional oversight equivalent which shall include the country head in the case of foreign banks.

§ X410.2 *Establishment of a Unit Investment Trust Fund.* Any trust entity authorized to perform trust functions may establish, administer and maintain one (1) or more UIT Funds subject to applicable provisions under this Section.

§ X410.3 *Administration of a Unit Investment Trust Fund.* The trustee shall have exclusive management and control of each UIT Fund under its administration, and the sole right at any time to sell, convert, reinvest, exchange, transfer or otherwise change or dispose of the assets comprising the fund: *Provided,* That no participant in a UIT Fund shall have or be deemed to have any ownership or interest in any particular account or investment in the UIT Fund but shall have only its proportionate beneficial interest in the fund as a whole.

§ X410.4 *Relationship of trustee with Unit Investment Trust Fund.* A trustee administering a UIT Fund shall not have any other relationship with such fund other than its capacity as trustee of the UIT Fund: *Provided, however,* That a trustee which simultaneously administers other trust, fiduciary or investment management funds may invest such funds in the trustee's UIT Fund, if allowed under a policy approved by the board of directors.

§ X410.5 *Operating and accounting methodology.* A UIT Fund shall be operated and accounted for in accordance with the following:

a. The total assets and accountabilities of each fund shall be accounted for as a single account referred to as pooled-fund accounting method.

b. Contributions to each fund by clients shall always be through participation in units of the fund and each unit shall have uniform rights or privileges, as any other unit.

c. All such participations shall be pooled and invested as one (1) account (referred to as collective investments).

d. The beneficial interest of each participation unit shall be determined under a unitized net asset value per unit (NAVPu) valuation methodology defined in the written plan of the UIT Fund, and no participation shall be admitted to, or redeemed from, the fund except on the basis of such valuation. To arrive at a fund's NAVPu, the fund's total Net Assets is divided by the total outstanding units. *Total Net Assets* is a summation of the market value of each investment less fees, taxes, and other qualified expenses, as defined under the plan rules.

§ X410.6 ***Plan rules.*** Each UIT Fund shall be established, administered and maintained in accordance with a written trust agreement drawn by the trustee, referred to as the *"Plan"* which shall be approved by the board of directors of the trustee and a copy of which shall be submitted to the BSP for processing and approval prior to its implementation. Each new UIT Fund Plan filed for approval shall be charged a processing fee of ₱10,000.00.

The *Plan* shall contain the following minimum elements:

a. *Title of the Plan*. This shall correspond to the product/brand name by which the UIT Fund is proposed to be known and made available to its clients. The Plan rules shall state the classification of the UIT Fund (e. g., money market fund, bond fund, balanced fund and equity fund).

b. *Manner by which the fund is to be operated*. A statement of the fund's investment objectives and policies including limitations, if any.

c. *Risk disclosure*. The Plan rules shall state both the general risks and risks specific to the type of fund.

d. *Investment powers of the trustee with respect to the fund, including the character and kind of investments, which may be purchased, by the fund*. There must be an unequivocal statement of the full discretionary powers of the trustee as far as the fund's investments are concerned. These powers shall be limited only by the duly stated investment objective and policies of the fund.

e. The unitized NAVPu valuation methodology as prescribed under Subsec. X410.5.d shall be employed.

f. *Terms and conditions governing the admission or redemption of units of participation in the fund*. The Plan rules shall state that the trustee, prior to admission of a client's initial participation in the UIT Fund, shall conduct a client suitability assessment to profile the risk-return orientation and suitability of the client to the specific type of fund. If the frequency of admission or redemption is other than daily; that is, any business day, the same should be explicitly stated in the Plan rules: *Provided,* That the admission and redemption prices shall be based on the end of day NAVPu of the fund computed after the cut-off time for fund participation and redemption for that reference day, in accordance with existing BSP regulations on mark to market valuation of investment securities.

g. *Aside from the regular audit requirement applicable to all trust accounts, an external audit of each UIT Fund shall be conducted annually by an independent auditor acceptable to the BSP and the results thereof made available to participants*. The external audit shall be conducted by the same external auditor engaged for the audit of the trust entity.

h. *Basis upon which the fund may be terminated*. The Plan rules shall state the rights of participants in case of termination of the fund. Termination of the fund shall be duly approved by the trustee's board of directors and a copy of the resolution submitted to the appropriate department of the BSP.

i. *Liability clause of the trustee*. There must be a clear and prominent statement adjacent to where a client is required to sign the participating trust agreement that (1) the UIT Fund is a trust product and not a deposit account or an obligation of, or guaranteed, or insured by the trust entity or its affiliates or subsidiaries; (2) the UIT Fund is not insured or governed by the PDIC; (3) due to the nature of the investment, yields and potential yields cannot be guaranteed; (4) any loss/income arising from market fluctuations and price volatility of the securities held by the UIT Fund, even if invested in government securities, is for the account of the client/ participant; (5) as such, the units of participation of the investor in the UIT Fund, when redeemed, may be worth more or be worth less than his/her initial investment/contributions; (6) historical performance, when presented, is purely for reference purposes and is not a guarantee of similar future result; and (7) the trustee is not liable for losses unless upon willful default, bad faith or gross negligence.

j. *Amount of fees/commission and other charges to be deducted from the fund.* The amount of fees that shall be charged to a fund shall cover the fund's fair and equitable share of the routine administrative expenses of the trustee such as salaries and wages, stationery and supplies, credit investigation, collateral appraisal, security, messengerial and janitorial services, EDP expenses, BSP supervision fees and internal audit fees. However, the trustee may charge a UIT Fund for special expenses in case such expenses are (1) necessary to preserve or enhance the value of the fund, (2) payable to a third party covered by a separate contract, and (3) disclosed to participants. The trustee shall secure prior BSP approval for outsourcing services provided under existing regulations. No other fees shall be charged to the fund.

Marketing or other promotional related expenses shall be for the account of the trustee and shall be presumed covered by the trust fee.

k. Such other matters as may be necessary or proper to define clearly the rights of participants in the UIT Fund. The provisions of the Plan shall govern participation in the fund including the rights and benefits of persons having interest in such participation, as beneficiaries or otherwise. The Plan may be amended by a resolution of the board of directors of the trustee: *Provided, however,* That participants in the fund shall be immediately notified of such amendments and shall be allowed to withdraw their participations within a reasonable time but in no case less than thirty (30) calendar days after the amendments are approved, if they are not in conformity with the amendments made thereto: *Provided further,* That amendments to the Plan shall be submitted to the BSP within ten (10) business days from approval of the amendments by the board of directors. For purposes of imposing monetary penalties provided under Subsec. X192.2 for delayed submission of reports, the amendments to the Plan shall be considered as *"Category A-3"* report. The amendments shall be deemed approved after thirty (30) business days from date of completion of requirements.

A copy of the Plan shall be available at the principal office of the trustee during regular office hours, for inspection by any person having an interest in the fund or by his authorized representative. Upon request, a copy of the Plan shall be furnished such interested person.

(As amended by Circular No. 593 dated 08 January 2008)

§ X410.7 *Minimum disclosure requirements*

a. *Disclosure of UIT Fund investments.* A list of prospective and outstanding investment outlets shall be made available by the trustee for the review of all UIT Fund clients. Such disclosure shall be substantially in the form as shown in *Appendix 62*. The list of investment outlets shall be updated quarterly.

b. *Distribution of investment units.* The trustee may issue such conditions or rules, as may affect the distribution of investment units subject to the minimum conditions enumerated hereunder.

(1) *Marketing materials.* All printed marketing materials related to the sale of a UIT Fund shall clearly state:

(a) The designated name and classification of the fund and the fund's trustee.

(b) Minimum information regarding:

(i) The general investment policy and applicable risk profile. There shall be a clear description/explanation of the general risks attendant with investing in a UIT Fund, including risk specific to a type of fund. Technical terms should likewise be defined in laymen's terms[1].

(ii) Particulars or administrative and marketing details like pricing and cut-off time.

(iii) All charges made/to be made against the fund, including trust fees, other related charges.

(iv) The availability of the Plan Rules governing the fund, upon the client's request.

(v) Client and Product Suitability Standards. Prior to admission, the trustee shall perform a client profiling process for all UIT Fund participants under the general principles on client suitability assessment to guide the client in choosing investment outlets that are best suited to his objectives, risk tolerance, preferences and experience. The profiling process shall, at the minimum, require the trustee to obtain client information through the Client Suitability Assessment (CSA) form, classify the client according to his financial sophistication and communicate the CSA results to the subject client. The general principles on CSA shall also require the trustee to adopt a notice mechanism whereby clients are advised and/or reminded of the explicit requirement to notify the trustee or its UIT Fund marketing personnel of any change in their characteristics, preferences or circumstances to enable the trustee to update client's profile at least every three (3) years.

(c) The participation is not a "deposit account" but a trust product; and that any loss/income is for the account of the participant; that the trustee is not liable for losses unless upon willful default, bad faith or gross negligence.

(d) A balanced assessment of the possible gains and losses of the UIT Fund and that the participation does not carry any guaranteed rate of return, and is not insured by the PDIC.

(e) An advisory that the investor must read the complete details of the fund in the Plan Rules, make his/her own risk assessment, and when necessary, he/she must seek independent/professional opinion, before making an investment.

(2) Evidence of participation. Every UIT Fund participant shall be given -

(a) A participating trust agreement. Such agreement shall clearly indicate that (1) the UIT Fund is a trust product and not a deposit account or an obligation of, or guaranteed, or insured by the trust entity or its affiliates or subsidiaries; (2) the UIT Fund is not insured or governed by the PDIC; (3) due to the nature of the investment, yields and potential yields cannot be guaranteed; (4) any loss/income arising from market fluctuations and price volatility of the securities held by the UIT Fund, even if invested in government securities, is for the account of the client/participant; (5) as such, the units of participation of the investor in the UIT Fund, when redeemed, may be worth more or be worth less than his/her initial investment/contributions; (6) historical performance, when presented, is purely for reference purposes and is not a guarantee of similar future result; and (7) the trustee is not liable for losses unless upon willful default, bad faith or gross negligence.

In addition to the agreement, every UIT Fund participant shall be provided with -

(1) CSA form to be accomplished during the profiling process required under the general principles on CSA. This is designed to ensure that based on relevant information about the client, his investment

[1] Example: "Fixed income securities" does not really mean a guarantee of fixed earnings on the investor's participation; "Risk-free" government securities which may be sovereign "risk-free" but not interest rate "risk-free"

profile is matched against the investment parameters of the UIT Fund. At the minimum, client information shall include personal or institutional data, investment objective, investment horizon, investment experience, and risk tolerance; and

(2) Risk disclosure statement, which in reference to Subsec. X410.6c, shall describe the attendant general and specific risks that may arise from investing in the UIT Fund. Such statement shall be substantially similar to the form in *Annex A* of *Appendix 62a*.

Both documents shall be signed by the client/participant and the UIT marketing personnel who assessed and explained to the concerned client his/her ability to bear the risks and potential losses.

(b) A confirmation of participation and redemption made to/from the fund that shall contain the following information:

(i) NAVPu of the fund on day of purchase/redemption;

(ii) Number of units purchased/ redeemed; and

(iii) Absolute peso or foreign currency value.

No indicative rates of return shall be provided in the trust participating agreement. Marketing materials may present relevant historical performance purely for reference and with clear indication that past results do not guarantee similar future results.

(3) A participating trust agreement or confirmation of contribution/redemption need not be manually signed by the trustee or his authorized representative if the same is in the form of an electronic document that conforms with the implementing rules and regulations of R.A. No. 8792, otherwise known as the E-Commerce Act.

c. *Regular publication/computation/ availability of the fund's* NAVPu. Trust entities managing a UIT Fund shall cause at least the weekly publication of the NAVPu of such fund in one (1) or more newspaper of national circulation: *Provided,* That a pooled weekly publication of such NAVPu shall be considered as substantial compliance with this requirement. The said publication, at the minimum, shall clearly state the name of the fund, its general classification, the fund's NAVPu and the moving return on investment (ROI) of the fund on a year-to-date (YTD) and year-on-year (YOY) basis.

NAVPu shall be computed daily and shall be made available to participants and prospective participants upon request.

d. *Marketing personnel*. To ensure the competence and integrity of all duly designated UIT marketing personnel, all personnel involved in the sales of these funds shall be required to undergo standardized training program in accordance with the guidelines of this Subsection. This training program may be conducted by their respective trust entities in accordance with the minimum training program guidelines provided by the Trust Officers Association of the Philippines (TOAP). Such training program shall however be regularly validated by TOAP.
(As amended by Circular No. 593 dated 08 January 2008)

§ X410.8 *Exposure limit to single person/entity*. The combined exposure of the UIT Fund to any entity and its related parties shall not exceed fifteen percent (15%) of the market value of the UIT Fund: *Provided,* That, a UIT Fund invested, partially or substantially, in exchange traded equity securities shall be subject to the fifteen percent (15%) exposure limit to a single entity/issuer: *Provided, further*, That, in the case of an exchange traded equity security which is included in an index and tracked by the UIT Fund, the exposure of the UIT Fund to a single entity shall be the actual benchmark weighting of the issuer or fifteen percent (15%), whichever is higher.

This limitation shall not apply to non-risk assets as defined by the BSP.

In case the limit is breached due to the marking-to-market of certain investment/s or any extraordinary circumstances, e.g., abnormal redemptions which are beyond the control of the trustee, the trustee shall be given thirty (30) days from the time the limit is breached to correct the same.

(As amended by Circular No. 577 dated 17 August 2007).

§ X410.9 *Allowable investments and valuation.* UIT Fund investments shall be limited to bank deposits and the following financial instruments:

(a) Securities issued by or guaranteed by the Philippine government, or the BSP;

(b) Tradable securities issued by the government of a foreign country, any political subdivision of a foreign country or any supranational entity;

(c) Exchange-listed securities;

(d) Marketable instruments that are traded in an organized exchange;

(e) Loans traded in an organized market; and

(f) Such other tradable investments outlets/categories as the BSP may allow:

Provided, That a financial instrument is regarded as tradable if quoted two-way prices are readily and regularly available from an exchange, dealer, broker, industry group, pricing service or regulatory agency, and those prices represent actual and regularly occurring market transactions on an arm's length basis.

The UIT Fund may avail itself of financial derivatives instruments solely for the purpose of hedging risk exposures of the existing investments of the Fund, provided these are accounted for in accordance with existing BSP hedging guidelines as well as the trust entity's risk management and hedging policies duly approved by the Trust Committee and disclosed to participants.

The use of hedging instruments shall also be disclosed in the "Plan" as provided in Item *"c"* of Subsec. X410.6 and specified in the quarterly "list of investment outlets" as provided in Item *"a"* of Subsec. X410.7.

§ X410.10 *Other related guidelines on valuation of allowable investments*

a. In pricing debt securities, interpolated yields shall be used for securities with odd or off-the-run tenors using the straight-line basis and generally accepted market convention.

b. In case outstanding UIT Fund investments may deteriorate in quality, i.e., no longer tradable as defined under Subsec. X410.9, the trustee shall immediately provision to reflect fair value in accordance with generally accepted accounting principles or as may be prescribed by the BSP. If no fair value is available, the instrument shall be assumed to be of no market value.

§ X410.11 *Unit Investment Trust Fund administration support*

a. *Backroom operations.* Administrative rules on backroom under Sec. X421 shall be applicable to UIT Fund. Adequate systems to support the daily marking-to-market of the fund's financial instruments shall be in place at all times. In this respect, a daily reconcilement of the fund's resultant marked-to-market value with the unrealized market losses and gains (respective contra asset balance) versus the book value of the fund for investments in financial instruments shall be done and all differences resolved within the day.

b. *Custody of securities.* Investments in securities of a UIT Fund shall be held for safekeeping by BSP accredited third party custodians which shall perform independent marking-to-market of such securities.

§ X410.12 *Counterparties*

a. *Dealings with related interests/bank proper/holding company/subsidiaries/affiliates and related companies.* A trustee of a UIT Fund shall be transparent at all times and maintain an audit trail for all transactions with related parties or entities. The trustee shall observe the principle of best execution and no purchase/sale shall be made with related counterparties without considering at least two (2) competitive quotes from other sources.

b. *Accreditation of counterparties.* The Fund shall only invest with approved counterparties qualified in accordance with the policy duly approved by the Trust Committee. Counterparties shall be subject to appropriate limits in accordance with sound risk management principles.

§ X410.13 *Foreign currency-denominated unit investment trust funds* UIT Fund denominated in any acceptable foreign currency provided under existing BSP rules and regulations may be established. Such fund may only be invested in allowable investments denominated in pesos or any acceptable foreign currency as expressly allowed under the fund's plan rules and properly disclosed to fund participants.

§ X410.14 *Exemptions from statutory and liquidity reserves, single borrower's limit, director, officers, stockholders and their related interests.* The provisions on reserves, single borrower's limit and DOSRI ceilings under Subsec. X405.5, and Secs. X303, X330 and X331, respectively, applicable to trust funds in general shall not be made applicable to UIT Funds.

Sec. X411 Investment Management Activities. The conduct of investment management activities shall be subject to the following regulations.

§ X411.1 *Minimum documentary requirements.* An investment management account shall be covered by a written document establishing such account, as follows:

a. In the case of accounts created by corporations, business firms, organizations or institutions, the voluntary written agreement or indenture entered into by the parties, accompanied by a copy of the board resolution or other evidence authorizing the establishment of and designating the signatories to, the investment management account.

b. In the case of accounts created by individuals, the voluntary written agreement or indenture entered into by the parties.

The voluntary written agreement or contract shall include the following minimum provisions:

(1) Pre-numbered contractual agreement form;

(2) Title or nature of contractual agreement in noticeable print;

(3) Legal capacities, in noticeable print, of parties sought to be covered;

(4) Purposes and objectives;

(5) The initial amount of funds and/or value of securities subject of the arrangement delivered to the investment manager;

(6) Statement in underlined noticeable print that:

(a) The agreement is an agency and not a trust agreement. As such, the client shall at all times retain legal title to funds and properties subject of the arrangement;

(b) The arrangement does not guaranty a yield, return or income by the investment manager. As such, past performance of the account is not a guaranty of future performance and the income of investments can fall as well as rise depending on prevailing market conditions; and

(c) The investment management agreement is not covered by the PDIC and that losses, if any, shall be for the account of the client;

(7) Duties and powers of the investment manager;

(8) Liabilities of the investment manager;

(9) Reports to the client;

(10) The amount or rate of the compensation of the investment manager;

(11) Terms and conditions governing withdrawals from the account;

(12) Termination of contractual arrangement; and

(13) Disclosure requirements for transactions requiring prior authority and/ or specific written investment directives from the client.

A sample investment management agreement which conforms to the foregoing requirements is shown as *Appendix 24*.

§ X411.2 ***Minimum size of each investment management account.*** No investment management account shall be accepted or maintained for an amount less than P1.0 million. An investment management account reduced to less than P1.0 million due to investment losses shall be exempt from this requirement.

§ X411.3 ***Commingling of funds.*** Two (2) or more individual investment management accounts shall not be commingled except for the purpose of investing in government securities or in duly registered commercial papers: *Provided,* That the participation of each of the aforementioned accounts in the commingled account shall not be less than P1.0 million: *Provided, further,* That such commingling has been duly disclosed and specifically agreed in writing by the clients.

§ X411.4 ***Lending and investment disposition.*** Assets received in investment management capacity shall be administered in accordance with the terms of the instrument creating the investment management relationship.

When an investment manager is granted discretionary powers in the investment disposition of investment management funds and unless otherwise specifically enumerated in the agreement or indenture and directed in writing by the client, loans and investments of the fund shall be limited to:

a. Evidences of indebtedness of the Republic of the Philippines and of the BSP, and any other evidences of indebtedness or obligations the servicing and repayment of which are fully guaranteed by the Republic of the Philippines or loans against such government securities;

b. Loans fully guaranteed by the Republic of the Philippines as to the payment of principal and interest;

c. Loans fully secured by a hold-out on, assignment or pledge of deposits maintained either with the bank proper or other banks, or of deposit substitutes of the bank, or mortgage and chattel mortgage bonds issued by the investment manager; and

d. Loans fully secured by real estate or chattels in accordance with Sections 37 and 38 of R.A. No. 8791, and subject to the requirements of Sections 39 and 40 of R.A. No. 8791.

The specific directives required under this Subsection shall consist of the following information:

(1) The transaction to be entered into;

(2) Borrower's name;

(3) Amount involved; and

(4) Collateral security(ies), if any.

§ X411.5 ***Transactions requiring prior authority.*** An investment manager shall not undertake any of the following transactions for the account of a client, unless prior to its execution, such transaction has been fully disclosed and specifically authorized in writing by the client:

a. Lend, sell, transfer or assign money or property to any of the departments, directors, officers, stockholders, or employees of the investment manager, or relatives within the first degree of consanguinity or affinity, or the related interests of such directors, officers and stockholders; or to any corporation where the investment manager owns at least fifty percent (50%) of the subscribed capital or voting stock in its own right and not as trustee nor in a representative capacity;

b. Purchase or acquire property or debt instruments from any of the departments, directors, officers, stockholders, or employees of the investment manager, or relatives within the first degree of consanguinity or affinity, or the related interests of such directors, officers and stockholders; or from any corporation where the investment manager owns at least fifty percent (50%) of the subscribed capital or voting stock in its own right and not as trustee nor in a representative capacity;

c. Invest in equities of, or in securities underwritten by, the investment manager or a corporation in which the investment manager owns at least fifty percent (50%) of the subscribed capital or voting stock in its own right and not as trustee nor in a representative capacity; and

d. Sell, transfer, assign or lend money or property from one trust, fiduciary or investment management account to another trust, fiduciary or investment management account except where the investment is in any of those enumerated in Items *"a"* to *"d"* of Subsec. X411.4.

Directors, officers, stockholders, and their related interests covered by this Subsection shall be those considered as such under existing regulations on loans to DOSRI in Part III-E of this Manual. The procedural and reportorial requirements in said regulations shall also apply.

The disclosure required under this Subsection shall consist of the following minimum information:

(1) The transaction to be entered into;

(2) Identities of the parties involved in the transaction and their relationships (shall not apply to Item *"d"* of this Subsection);

(3) Amount involved; and

(4) Collateral security(ies), if any.

The above information shall be made known to clients in a separate instrument or in the very instrument creating the investment management relationship.

§ X411.6 *Title to securities and other properties.* Securities such as promissory notes, shares of stocks, bonds and other properties of the portfolio shall be issued or registered in the name of the principal or of the investment manager: *Provided*, That in case of the latter, the instrument shall indicate that the investment manager is acting in a representative capacity and that the principal's name is disclosed thereat.

§ X411.7 *Ceilings on loans.* Loans funded by investment management accounts shall be subject to the DOSRI ceilings imposed on banks and IHs under Secs. X330 and X331. For purposes of determining compliance with said ceilings, the total amount of said loans granted by the trust department and the bank proper to the same person, firm or corporation shall be combined.

§ X411.8 *Operating and accounting methodology.* Investment management accounts shall be operated and accounted for in accordance with the following:

a. The investment manager shall administer, hold, or manage the fund or property in accordance with the instrument creating the investment management relationship; and

b. Funds or property of each client shall be accounted separately and distinctly from those of other clients herein referred to as individual account accounting.

§ X411.9 *Tax-exempt individual investment management accounts.* The following shall be the features/ requirements of investment management accounts of individuals which may be exempted from the twenty percent (20%) final tax under Section 24(B)(1) of R.A. No. 8424 (The Tax Reform Act of 1997):

a. The tax exemption shall apply to investment management agreements contracted on or after 03 January 2000;

b. The investment management agreement shall only be between individuals who are Filipino citizens or resident aliens and investment manager-banks. The agreement shall be non-negotiable and non-transferable;

c. The minimum amount of investment for an investment management account shall be P1.0 million;

d. The investment management agreement shall indicate that pursuant to Section 24(B)(1) of R.A. No. 8424, interest income of the investment management funds derived from investments in interest-bearing instruments (e.g., time deposits, government securities, loans and other debt instruments) which are otherwise subject to the twenty percent (20%) final tax, shall be exempt from said final tax provided the funds are held under investment management by the investment manager for at least five (5) years. If said funds are held by the investment manager for a period less than five (5) years, interest income shall be subject to a final tax which shall be deducted and withheld from the proceeds of the investment management account based on the following schedule–

Holding Period	Rate of Tax
Four (4) years to less than five (5) years	5%
Three (3) years to less than four (4) years	12%
Less than three (3) years	20%

Necessarily, the investment management agreement shall clearly indicate the date when the investment manager actually received the funds which shall serve as basis for determining the holding period of the funds;

e. The investment manager may accept additional funds for inclusion in investment management accounts which have been established as tax-exempt under R.A. No. 8424. However, the receipt of additional funds shall be properly documented by indicating that they are part of existing tax-exempt investment management accounts and that the interest income of the additional funds derived from investments in interest-bearing instruments shall be exempt from the twenty percent (20%) final tax under the same conditions mentioned in the preceding item. The document shall also indicate the date when the additional funds were received by the investment manager-bank to serve as basis for determining the minimum five (5)-year holding period for tax exemption purposes of the additional funds; and

f. Tax-exempt individual investment management accounts established under this Subsection shall be subject to the provisions of Subsecs. X411.1(b) and X411.2 up to X411.8.

Sec. X412 Foreign Currency Deposit Unit/ Expanded Foreign Currency Deposit Unit Trust Accounts. Only a bank with authority to operate a foreign currency deposit unit (FCDU) or an expanded foreign currency deposit unit (EFCDU) under R.A. No. 6426, as amended, may accept foreign currency-denominated trust accounts.

§ X412.1 *Banks with trust authority* A bank authorized to engage in trust business under Section 79 of R.A. No. 8791, which is also authorized to operate an FCDU or EFCDU under R.A. No. 6426, as amended, shall include FCDU/EFCDU trust accounts among those managed or administered by its trust department under the responsibility of the board of directors, the trust committee and the trust officer.

§ X412.2 ***Banks without trust authority*** A bank not authorized to engage in the trust business under Section 79 of R.A. No. 8791, which accepts FCDU/EFCDU trust accounts under R.A. No. 6426, as amended, shall manage such trust accounts in its FCDU/EFCDU as an exception to Item *"a"* of Subsec. X406.1. Pursuant to the provisions of Subsec. X406.4, the board of directors shall be responsible for the proper administration and management of FCDU/EFCDU trust accounts: *Provided*, That the board of directors may, by action duly entered in the minutes, constitute an FCDU or EFCDU trust committee to which the administration and management of such accounts may be delegated.

The FCDU or EFCDU trust committee shall be composed of three (3) directors, who shall be appointed on a regular rotation basis, one of whom shall be designated as chairman. The three (3) directors shall meet the qualification requirements under Subsec. X406.3 and shall not be operating officers or members of the audit committee of the bank.

§ X412.3 ***Additional deposit for the faithful performance of trust duties.*** A bank authorized to engage in trust business that accepts FCDU/EFCDU trust accounts shall deposit with the BSP additional eligible government securities under Subsec. X405.2 as security for the faithful performance of trust duties equivalent to at least one percent (1%) of the value of the FCDU/EFCDU trust assets based on the average of the month-end balances of such assets during the immediately preceding quarter as converted in the local currency at the prevailing foreign exchange rate. Such securities shall be deposited within thirty (30) banking days after the end of every calendar quarter.

§ X412.4 ***Liquidity requirement for foreign currency deposit unit/expanded foreign currency deposit unit common trust funds.*** In addition to the basic security deposit, each FCDU/EFCDU CTF shall be required to set up at least ten percent (10%) of the book value of the fund for liquidity purposes: *Provided*, That such liquidity requirement shall be in any or a combination of the following: (a) readily marketable foreign currency securities with maturity of not more than three (3) years; and (b) foreign currency deposits with foreign banks: *Provided, further*, That the liquidity requirement of EFCDUs may, in addition to the foregoing, also be in the form of foreign currency deposits with other EFCDUs or resident offshore banking units. The base amount of the liquidity requirement shall be the average of the month-end balances of the CTFs within a given quarter.

§ X412.5 ***Applicability of rules and regulations.*** Unless otherwise revised by the provisions of this Section, the rules and regulations governing the administration of trust accounts, including CTFs, shall be observed, whether the FCDU/EFCDU trust accounts are administered by the bank's trust department or by its FCDU/EFCDU. Also applicable are rules and regulations on the operations of FCDUs/EFCDUs that include, among other things, regulations on acceptable foreign currencies, eligible and ineligible foreign currency sources; foreign currency cover requirements; and allowable loans and investments.

Sec. X413 Required Surplus. A bank authorized to engage in trust and other fiduciary business shall, before the declaration of dividends, carry to surplus at least ten percent (10%) of its net profits realized out of its trust, investment management and other fiduciary business since the last preceding dividend declaration until the surplus shall amount to twenty percent (20%) of its authorized capital stock and no part of such surplus shall at any time be paid out in dividends but losses accruing in the course of its business may be charged against surplus.

B. INVESTMENT MANAGEMENT ACTIVITIES

Sec. X414 Authority to Perform Investment Management. Banks may be authorized by the Monetary Board to act as managing agent, adviser, consultant or administrator of investment management/ advisory/consultancy account under Section 53.4 of R.A. No. 8791. However, such authority shall not be construed to include the authority to engage in trust and other fiduciary business under Chapter IX of R.A. No. 8791.

If a bank is found to engage in unauthorized investment management activities, the Monetary Board may impose administrative sanctions against such bank or its principal officers and/or majority stockholders or proceed against them in accordance with law.

The Monetary Board may take such action as it may deem proper such as, but may not be limited to, requiring the transfer or turnover of any investment management account to duly incorporated and licensed entities of the choice of the client.

A bank not authorized to engage in investment management activities shall not advertise or represent itself as being engaged in investment management activities or represent itself as investment manager or use words of similar import.

§ X414.1 *Prerequisites for engaging in investment management activities.* A bank before it may engage in investment management activities shall comply with the following requirements:

a. The bank has been duly licensed by the BSP or created by special law or charter.

b. The articles of incorporation or charter of the bank shall include among its powers or purposes the authority to engage in investment management activities.

c. The by-laws of the bank shall include, among other things:

(1) The organization plan or structure of the department, office or unit which shall conduct the investment management activities of the institution;

(2) The creation of an investment management committee, the appointment of an investment management officer and subordinate officers of the investment management department; and

(3) A clear definition of the duties and responsibilities as well as the line and staff functional relationships of the various units, officers and staff within the organization.

d. The applicant shall also meet the following additional requirements:

(1) It has continuously complied with its net worth-to-risk assets ratio, liquidity floor, and ceilings on DOSRI loans for the last sixty (60) days immediately preceding the date of application;

(2) It has not incurred net weekly reserve deficiency against deposit liabilities and deposit substitutes during the last eight (8) weeks immediately preceding the date of application; and

(3) It has shown substantial compliance with other pertinent laws, rules and regulations, policies and instructions of the BSP; and has not been cited for serious violations or exceptions affecting its solvency, liquidity and profitability.

Compliance with the foregoing as well as with other requirements under existing regulations, shall be maintained up to the time the trust license is granted. A bank that fails in this respect shall be required to show compliance for another test period of the same duration.

§ X414.2 *Pre-operating requirements* A bank authorized to engage in investment management activities shall, before engaging in actual operations, submit to the BSP the following:

a. Government securities acceptable to the BSP amounting to P500,000 as minimum basic security deposit for the faithful performance of investment management duties required under Subsec. X415.1;

b. Organization chart of the investment management department which shall carry out the investment management activities of the bank; and

c. Names and positions of individuals designated as chairman and members of the investment management committee, investment management officer and other subordinate officers of the investment management department.

Sec. X415 Security for the Faithful Performance of Investment Management Activities

§ X415.1 ***Basic security deposit.*** A bank authorized to engage in investment management activities shall deposit with the BSP eligible government securities as security for the faithful performance of its investment management activities equivalent to at least one percent (1%) of the book value of the total investment management assets: *Provided*, That at no time shall such deposit be less than P500,000.

Scripless securities under the RoSS system of the BTr may be used as basic security deposit for the faithful performance of investment management activities using the guidelines enumerated in *Appendix 33*.

§ X415.2 ***Eligible securities.*** Securities enumerated in Subsec. X405.2 shall be eligible as security deposit for faithful performance of investment management activities.

§ X415.3 ***Valuation of securities and basis of computation of the basic security deposit requirement.*** For purposes of determining compliance with the basic security deposit under this Section, the amount of securities so deposited shall be based on their book value, that is, cost as increased or decreased by the corresponding discount or premium amortization.

The base amount for the basic security deposit shall be the average of the month-end balances of the total assets of investment management funds of the immediately preceding calendar quarter.

§ X415.4 ***Compliance period; sanctions*** The investment manager shall have thirty (30) calendar days after the end of every calendar quarter within which to deposit with the BSP securities required under this Section.

The following sanctions shall be imposed for any deficiency in the basic security deposit for the faithful performance of investment management activity:

a. On the bank:

i. Monetary penalty/ies:

		Offense / Trust Asset Size	First	Second	Third and subsequent offense(s)
Penalty per Calendar Day		TBs/RBs with Limited Trust Authority	P300.00	P400.00	P500.00
	UBs/KBs/TBs with Full Trust Authority and with Trust Assets of	Up to P500 million	P600.00	P700.00	P800.00
		Above P500 million but not exceeding P1 billion	P1,000.00	P1,250.00	P1,500.00
		Above P1 billion but not exceeding P10 billion	P2,000.00	P3,000.00	P4,000.00
		Above P10 billion but not exceeding P50 billion	P5,000.00	P6,000.00	P7,000.00
		Above P50 billion	P8,000.00	P9,000.00	P10,000.00

ii. Non-monetary penalty beginning with the third offense (all banks) - Prohibition against the acceptance of new investment management accounts and from renewing expiring investment management contracts up to the time the violation is corrected.

b. On the Head of the Investment Management Department and/or other officers responsible for the deficiency/non-compliance:

(1) *First offense* - warning that subsequent violations shall be dealt with more severely;

(2) *Second offense* - written reprimand with a stern warning that subsequent violations shall be subject to suspension;

(3) *Third offense* - thirty (30) calendar day-suspension without pay; and

(4) *Subsequent offense(s)* - sixty (60) calendar day-suspension without pay.

For purposes of determining the frequency of the violation, the bank's compliance profile for the immediately preceding three (3) years or twelve (12) quarters will be reviewed: *Provided*, That for purposes of determining appropriate penalty on the head of the Investment Management Department and/or other responsible officer(s), any offense committed outside the preceding three (3) year or twelve (12) quarter - period shall be considered as the first offense: *Provided, further*, That in the case of the head of the Investment Management Department, all offenses committed by him in the past as the head of the Investment Management Department of other institution(s) shall also be considered: *Provided, finally*, That if the offense cannot be attributed to any other officer of the bank, the head of the Investment Management Department shall be automatically held responsible since the ultimate responsibility for ensuring compliance with the regulation rests upon him, as evidence may warrant.

(As amended by Circular Nos. 617 dated 30 July 2008 and 585 dated 15 October 2007)

Sec. X416 Organization and Management The provisions of Sec. X406 up to Subsec. X406.9 shall govern the organization and management of banks without trust license which are engaged in investment management activities only. The following terms shall, however, be used:

a. *Investment management activities,* in lieu of trust and other fiduciary business;

b. *Investment management accounts*, in lieu of trust and other fiduciary accounts;

c. *Investment management committee,* in lieu of trust committee;

d. *Investment management officer,* in lieu of trust officer; and

e. *Investment management department,* in lieu of trust department.

(As amended by M-2007-009 dated 22 March 2007)

Sec. X417 Non-Investment Management Activities. The provisions of Sec. X407 shall apply in determining non-investment management activities except that the terms *trust*, *other fiduciary*, *trustee* and *fiduciary* shall be disregarded.

Sec. X418 Unsound Practices. The provisions of Sec. X408 shall govern the unsound practices for investment management accounts.

Sec. X419 Conduct of Investment Management Activities. The provisions of Sec. X411 shall govern the conduct of investment management activities of a bank without a trust license.

Sec. X420 Required Surplus. A bank authorized to engage in investment management activities shall, before the declaration of dividends, carry to surplus at least ten percent (10%) of its net profits realized out of its investment management activities since the last preceding dividend declaration until the surplus shall amount to twenty percent (20%) of its authorized capital stock and no part of such surplus shall at any time be paid out in dividends, but losses accruing in the course of its business may be charged against surplus.

C. GENERAL PROVISIONS

Sec. X421 Books and Records. The bank's trust department or investment management department shall keep books and records on trust, other fiduciary and investment management accounts separate and distinct from the books and records of its other businesses and shall follow the Manual of Accounts for Trust and Other Fiduciary Business and Investment Management Activities prescribed by the BSP.

Each trust, other fiduciary or investment management account shall have a record separate from all other accounts except only in the case of CTFs where the trustee can maintain common records utilizing *pooled fund accounting* method for each fund: *Provided*, That the trustee shall clearly indicate in the records the trustors owning participation in the CTF and the extent of the interest of such trustors.

Books and records shall contain full information relative to each trust, other fiduciary or investment management account and shall be supported by duplicate signed copies of related documents. Said records and duplicate signed copies of related documents shall be compiled and kept as to allow inspection by BSP examiners and submission of information or reports as may be required by competent authorities.

The bank's trust department or investment management department shall maintain separate general ledger accounts and other relevant sub-accounts for tax-exempt individual trust accounts, CTFs and individual management accounts established under Section 24(B)(1) of R.A. No. 8424 and Subsecs. X409.8, X411.9, and Item *"8"* of *Appendix 60*. The bank's trust department or investment management department shall also adopt appropriate systems, internal control procedures and audit trail mechanisms to ensure that the correct amount of final tax is withheld or exempted from such accounts.

Sec. X422 Custody of Assets. All moneys, properties or securities received by a bank in its capacity as trustee, fiduciary, or investment manager shall be kept physically separate and distinct from the assets of its other businesses and shall be under the joint custody of at least two (2) persons, one of whom shall be an officer of the trust or investment management department, designated for that purpose by the board of directors.

The investment of each trust, other fiduciary or investment management account shall be kept physically separated from those of other trust, other fiduciary or investment management accounts, and adequately identified as the assets or property of the relevant account.

Sec. X423 Fees and Commissions. A bank acting as trustee, fiduciary or investment manager shall be entitled to reasonable fees and commissions which shall be determined on the basis of the cost of services rendered and the responsibilities assumed: *Provided*, That where the trustee, fiduciary or investment manager is acting as such under appointment by a court, the compensation shall be that allowed or approved by the court: *Provided, further,* That in the case of CTFs, the fee which a trustee may charge each participant shall be fully disclosed by the trustee in the CTF plan, prospectus, flyers, posters and in all forms of advertising materials to market the funds and in the documents given to clients as proof of participation in the fund. In no case shall such fees and commissions be based on the excess of the income of the trust, other fiduciary or investment management funds over a certain amount or percentage.

No trustee, fiduciary or investment manager shall solicit or receive rebates on commissions, fees and other payments for the services rendered to the trust, other fiduciary or investment management account or beneficiaries of the trust, other fiduciary or investment management account by stockbrokers, real estate brokers, insurance agents and similar persons or entities unless the rebates, fees and other payments shall accrue to the benefit of the trust, other fiduciary or investment management account or the beneficiaries thereof.

Officers and employees of the trust department or investment management department of banks, while serving as such, shall be prohibited from retaining any compensation for acting as co-trustee or fiduciary in the administration of a trust, other fiduciary or investment management account.

No bank shall collect, for its own account, referral and/or arrangement fees, or any other fees that take the nature of payment to the bank from whatever source, in connection with loans sourced from trust funds managed by its trust department: *Provided,* That if such fees are collected, the same shall be properly disclosed to the trustor, and shall accrue to the benefit of the trust, in accordance with the provisions of Secs. X401 and X407.

(As amended by Circular No. 541 dated 30 August 2006)

Sec. X424 Taxes. The terms and conditions of trust, other fiduciary or investment management agreements including CTF plans shall contain provisions regarding the applicability of regulations governing taxation on the income of trust, other fiduciary or investment management accounts. For this purpose, the trustee, fiduciary or investment manager shall maintain adequate records and shall include information such as the amount of final income tax withheld at source and the amount withheld by the trustee, fiduciary or investment manager in the periodic reports submitted to trustors, beneficiaries, principals and other parties in interest.

With respect to tax-exempt CTFs, individual trust and investment management accounts established under Section 24(B)(1) of R.A. No. 8424, the bank's trust department or investment management department shall be responsible for obtaining the tax-exemption certifications which may be required by the BIR for the interest-bearing instruments where the CTFs, individual trust funds and investment management funds will be invested. Likewise, the banks shall ensure that the correct amount of final tax on the interest income on the interest-bearing instruments is withheld/deducted from the proceeds from the CTF participation, trust or investment management account and remitted to the BIR in the event said tax becomes due such as when funds are withdrawn before the required five (5)-year holding period or when corporations happen to invest in the tax-exempt trust instruments created within the purview of R.A. No. 8424.

Sec. X425 Reports Required

§ X425.1 *To trustor, beneficiary, principal.* A bank acting as trustee, fiduciary or investment manager shall render reports on the trust, other fiduciary or investment management accounts to the trustor, beneficiary, principal or other party in interest or the court concerned or any party duly designated by the court order, as the case may be, under the following guidelines:

a. The reports shall be in such forms as to apprise the party concerned of the significant developments in the administration of the account and shall consist of:

(1) A balance sheet;
(2) An income statement;
(3) A schedule of earning assets of the account; and
(4) An investment activity report.

b. Items *(3)* and *(4)* above shall include at least the following:

(1) Name of issuer or borrower;
(2) Type of instrument;
(3) Collateral, if any;
(4) Amount invested;
(5) Earning rate or yield;
(6) Amount of earnings;
(7) Transaction date; and
(8) Maturity date;

c. The reports shall be prepared in such frequency as required under the agreement but shall not in any case be longer than once every quarter; and

d. The reports shall be made available to clients not later than twenty (20) calendar days from the end of the reference date/period in Item *"c"* above.

§ X425.2 *To the Bangko Sentral.* A bank acting as trustee, fiduciary or investment manager shall submit periodic reports prescribed by the appropriate department of the SES on the bank's trust and other fiduciary business and investment management activities within the deadlines indicated in *Appendix* 6.

§ X425.3 *Post-Bond Flotation Report* The LGU or its representative or its trustee bank, as the case may be, shall submit to the BSP the post-bond flotation report required in the Revised Guidelines on the Flotation of Bonds by LGUs (Without National Government Guarantee) (*Appendix 57*) that will indicate the actual amount of the issue as well as the final terms and conditions of the issue within the deadline indicated in *Appendix* 6; and such other reports as may be required by the BSP.

Sec. X426 Audits

§ X426.1 *Internal audit.* The bank's internal auditor shall include among his functions, the conduct of periodic audits of the trust department or investment management department at least once every twelve (12) months. The board of directors, in a resolution entered in its minutes, may also require the internal auditor to adopt a suitable continuous audit system to supplement and/or to replace the periodic audit. In any case, the audit shall ascertain whether the institution's trust and other fiduciary business and investment management activities have been administered in accordance with laws, BSP rules and regulations, and sound trust or fiduciary principles.

§ X426.2 *External audit.* The trust and other fiduciary business and investment management activities of a bank shall be included in the annual financial audit by independent external auditors required under Sec. X165.

The audit of the assets and accountabilities of the trust department/ investment management department of a bank authorized to engage in trust and other fiduciary business, investment management activities, which shall cover at the minimum a review of the trust investment management operations, practices and policies, including audit and internal control system, shall be subject to auditing standards to the extent necessary to express an opinion on the financial statements.

The audit of the trust/investment management department of a bank authorized to engage in trust and other fiduciary business/investment management activities shall be covered by a separate supplemental audit report to be submitted to the bank's board of directors and to the

BSP within the prescribed period containing, among others things, the statements of condition of trust funds and managed funds and the related statements of earnings of both funds presented separately.

§ X426.3 ***Board action.*** A report of the foregoing audits, together with the actions thereon, shall be noted in the minutes of the board of directors of the bank.

Sec. X427 Authority Resulting from Merger or Consolidation. In merger of FIs, the authority to engage in trust and other fiduciary business and in investment management activities shall continue to be in effect if the surviving institution has such authority and the same has not been withdrawn by the BSP. In case the surviving institution does not have previous authority but desires to engage in trust and other fiduciary business and in investment management activities, it shall secure the prior approval of the Monetary Board to engage in such business as part of its application for merger to enable it to incorporate such among its powers or purpose clause in its articles of incorporation, articles of merger, by-laws and such other pertinent documents.

In the consolidation of FIs where the resulting entity is an entirely new one, it shall secure from the Monetary Board an authority to engage in trust and other fiduciary business or in investment management activities before it may engage in such business.

Sec. X428 Receivership. Whenever a receiver is appointed by the Monetary Board for a bank which is authorized to engage in trust and other fiduciary business or in investment management activities, the receiver shall, pursuant to the instructions of the Monetary Board, proceed to close the trust, other fiduciary and investment management accounts promptly and/or transfer all other accounts to substitute trustees, fiduciaries or investment managers acceptable to the trustors, beneficiaries, principals or other parties in interest: *Provided,* That where the trustee, fiduciary or investment manager is acting as such under appointment by a court, the receiver shall proceed pursuant to the instructions of said court.

Sec. X429 Surrender of Trust or Investment Management License. Any bank which has been authorized to engage in trust and other fiduciary business or in investment management activities and which intends to surrender said authority shall file with the BSP a certified copy of the resolution of its board of directors manifesting such intention. The appropriate department of the SES shall then conduct an examination of the bank's trust, other fiduciary business and investment management activities. If the bank is found to have satisfactorily discharged its duties and responsibilities as trustee, fiduciary or investment manager, and has provided for the orderly closure or transfer of its trust, fiduciary or investment management accounts, the Monetary Board, on the basis of the recommendation of the examining department, shall order the withdrawal of the bank's authority to engage in trust and other fiduciary management activities.

Secs. X430 – X440 (Reserved)

Sec. X441 Securities Custodianship and Securities Registry Operations. The following rules and regulations shall govern securities custodianship and securities registry operations of banks.

The guidelines to implement the delivery by the seller of securities to the buyer or to his designated third party custodian are shown in *Appendix 68*.

Violation of any provision of the guidelines in *Appendix 68* shall be subject to the sanctions/penalties under Subsec. X441.29.

(As amended by M-2007-002 dated 23 January 2007, M-2006-009 dated 06 July 2006, M-2006-002 dated 05 June 2006 and Circular No. 524 dated 31 March 2006)

§ X441.1 ***Statement of policy.*** It is the policy of the BSP to promote the protection of investors in order to gain their confidence and encourage their participation in the development of the domestic capital market. Therefore, the following rules and regulations are promulgated to enhance transparency of securities transactions with the end in view of protecting investors.

§ X441.2 ***Applicability of this regulation*** This regulation shall govern securities custodianship and securities registry operations of banks and NBFIs under BSP supervision. It shall cover all their transactions in securities as defined in Section 3 of the Securities Regulation Code (SRC), whether exempt or required to be registered with the SEC, that are sold, borrowed, purchased, traded, held under custody or otherwise transacted in the Philippines where at least one (1) of the parties is a bank or an NBFI under BSP supervision. However, this regulation shall not cover the operations of stock and transfer agents duly registered with the SEC pursuant to the provisions of SRC Rule 36-4.1 and whose only function is to maintain the stock and transfer book for shares of stock.

§ X441.3 ***Prior Bangko Sentral approval.*** Banks may act as securities custodian and/or registry only upon prior Monetary Board approval.

§ X441.4 ***Application for authority*** A bank desiring to act as securities custodian and/or registry shall file an application with the appropriate supervising and examining department of the BSP. The application shall be signed by the highest ranking officer of the bank and shall be accompanied by a certified true copy of the resolution of the bank's board of directors authorizing the bank to engage in securities custodianship and/or registry and, in the case of a branch of a foreign bank, approval by its highest ranking regional officer with proof of delegated authority from the bank's board of directors.

§ X441.5 ***Pre-qualification requirements for a securities custodian/registry***

a. It must be a bank;

b. It must have complied with the minimum capital accounts required under existing regulations, as follows:

(1) *Domestic banks.* Its adjusted capital account is at least equal to the amount required under Subsec. X111.1 or the amount required for TBs operating in Metro Manila, whichever is higher.

(2) *Branches of foreign banks.* The minimum capital required under Subsec. X105.4.

c. Its risk-based capital adequacy ratio is not lower than twelve percent (12%) at the time of filing the application;

d. It must have a CAMELS composite rating of at least "4" (as rounded off) in the last regular examination;

e. It must have in place a comprehensive risk management system approved by its board of directors (or equivalent management committee in the case of foreign bank branches) appropriate to its operations characterized by a clear delineation of responsibility for risk management, adequate risk measurement systems, appropriately structured risk limits, effective internal control and complete, timely and efficient risk reporting systems. In this connection, a manual of operations (which includes custody and/or registry operations) and other related documents embodying the risk management system must be submitted to the appropriate supervising and examining department at the time of application for authority and within thirty (30) days from updates;

f. It must have adequate technological capabilities and the necessary technical expertise to ensure the protection, safety and integrity of client assets, such as:

(1) It can maintain an electronic registry dedicated to recording of accountabilities to its clients; and

(2) It has an updated and comprehensive computer security system covering system, network and telecommunication facilities that will:

(a) limit access only to authorized users;

(b) preserve data integrity; and

(c) provide for audit trail of transactions.

g. It has complied, during the period immediately preceding the date of application, with the following:

(1) ceilings on credit accommodation to DOSRI; and

(2) single borrower's limit.

h. It has no reserve deficiencies during the eight (8) weeks immediately preceding the date of application;

i. It has set up the prescribed allowances for probable losses, both general and specific, as of date of application;

j. It has not been found engaging in unsafe and unsound practices during the last six (6) months preceding the date of application;

k. It has generally complied with laws, rules and regulations, orders or instructions of the Monetary Board and/or BSP Management;

l. It has submitted additional documents/information which may be requested by the appropriate supervision and examination department, such as, but not limited to:

(1) Standard custody/registry agreement and other standard documents;

(2) Organizational structure of the custody/registry business;

(3) Transaction flow; and

(4) For those already in the custody or registry business, a historical background for the past three (3) years;

m. It shall be conducted in a separate unit headed by a qualified person with at least two (2) years experience in custody/registry operations; and

n. It can interface with the clearing and settlement system of any recognized exchange in the country capable of achieving a real time gross settlement of trades.

§ X441.6 *Functions and responsibilities of a securities custodian.* A securities custodian shall have the following basic functions and responsibilities:

a. Safekeeps the securities of the client;

b. Holds title to the securities in a nominee capacity;

c. Executes purchase, sale and other instructions;

d. Performs at least a monthly reconciliation to ensure that all positions are properly recorded and accounted for;

e. Confirms tax withheld;

f. Represents clients in corporate actions in accordance with the direction provided by the securities owner;

g. Conducts mark-to-market valuation and statement rendition;

h. Does earmarking of encumbrances or liens such as, but not limited to, Deeds of Assignment and court orders;

In addition to the above basic functions, it may perform the following value-added service to clients:

i. Acts as a collecting and paying agent: *Provided,* That the management of funds that may be collected shall be clearly defined in the custody contract or in a separate document or agreement attached thereto: *Provided, further,* That the custodian shall immediately make known to the securities owner all payments made and collections received with respect to the securities under custody; and

j. Securities borrowing and lending operations as agent.

§ X441.7 *Functions and responsibilities of a securities registry*

a. Maintains an electronic registry book;

b. Delivers confirmation of transactions and other documents within agreed trading periods;

c. Issues registry confirmations for transfers of ownership as it occurs;

d. Prepares regular statement of securities balances at such frequency as may be required by the owner on record but not less frequent than every quarter; and

e. Follows appropriate legal documentation to govern its relationship with the Issuer.

§ X441.8 *Protection of securities of the customer.* A custodian must incorporate the following procedures in the discharge of its functions in order to protect the securities of the customer:

a. *Accounting and recording for securities.* Custodians must employ accounting and safekeeping procedures that fully protect customer securities. It is essential that custodians segregate customer securities from one another and from its proprietary holdings to protect the same from the claims of its general creditors.

All securities held under custodianship shall be recorded in the books of the custodian at the face value of said securities in a separate subsidiary ledger account *"Securities Held Under Custodianship"* if booked in the Bank Proper or the subsidiary ledger account *"Safekeeping and Custodianship – Securities Held Under Custodianship",* if booked in the Trust Department: *Provided,* That securities held under custodianship where the custodian also performs securities borrowing and lending as agent shall be booked in the Trust Department.

b. *Documentation.* The appropriate documentation for custodianship shall be made and it shall clearly define, among others, the authority, role, responsibilities, fees and provision for succession in the event the custodian can no longer discharge its functions. It shall be accepted in writing by the counterparties.

The governing custodianship agreement shall be pre-numbered and this number shall be referred to in all amendments and supplements thereto.

c. *Confirmation of custody.* The custodian shall issue a custody confirmation to the purchaser or borrower of securities to evidence receipt or transfer of securities as they occur. It shall contain, as a minimum, the following information on the securities under custody:

(1) Owner of securities;
(2) Issuer;
(3) Securities type;
(4) Identification or serial numbers;
(5) Quantity;
(6) Face value; and
(7) Other information, which may be requested by the parties.

d. *Periodic reporting.* The custodian shall prepare at least quarterly (or as frequent as the owner of securities will require) securities statements delivered to the registered owner's address on record. Said statement shall present detailed information such as, but not limited to, inventory of securities, outstanding balances, and market values.

§ X441.9 *Independence of the registry and custodian.* A BSP-accredited securities registry must be a third party with no subsidiary/affiliate relationship with the issuer of securities while a BSP-accredited custodian must be a third party with no subsidiary/affiliate relationship with the issuer or seller of securities. A bank accredited by BSP as securities custodian may, however, continue holding securities it sold under the following cases:

a. where the purchaser is a related entity acting in its own behalf and not as agent or representative of another;

b. where the purchaser is a non-resident with existing global custody agreement governed by foreign laws and conventions wherein the bank is designated as custodian or sub-custodian; and

c. upon approval by the BSP, where the purchaser is an insurance company whose custody arrangement is either governed by a global custody agreement where the bank is designated as custodian or sub-custodian or by a direct custody agreement with features at par with the standards set under this Subsection drawn or prepared by the parent company owning more than fifty percent (50%) of the capital stock of the purchaser and executed by the purchaser itself and its custodian.

Purchases by non-residents and insurance companies that are exempted from the independence requirement of this Section shall, however, be subject to all other provisions of this Subsection.

§ X441.10 ***Registry of scripless securities of the Bureau of the Treasury*** The Registry of Scripless Securities (RoSS), operated by the Bureau of the Treasury, which is acting as a registry for government securities is deemed to be automatically accredited for purposes of this Section and is likewise exempted from the independence requirement under Subsec. X441.9. However, securities registered under the RoSS shall only be considered delivered if said securities were transferred by means of book entry to the appropriate securities account of the purchaser or his designated custodian. Book entry transfer to a sub-account for clients under the primary account of the seller shall not constitute delivery for purposes of this Section and of Subsecs. X235.5 and X238.1.

§ X441.11 ***Confidentiality.*** A BSP-accredited securities custodian/registry shall not disclose to any unauthorized person any information relative to the securities under its custodianship/registry. The Management shall likewise ensure the confidentiality of client accounts of the custody or registry unit from other units within the same organization.

§ X441.12 ***Compliance with anti-money laundering laws/regulations.*** For purposes of compliance with the requirements of R.A. No. 9160, otherwise known as the "Anti-Money Laundering Act of 2001," as amended, particularly the provisions regarding customer identification, record keeping and reporting of suspicious transactions, a BSP-accredited custodian may rely on referral by the seller issuer of securities: *Provided,* That it maintains a record of such referral together with the minimum identification, information/documents required under the law and its implementing rules and regulations.

A BSP accredited custodian must maintain accounts only in the true and full name of the owners of the security. However, said securities owners may be identified by number or code in reports and correspondences to keep his identity confidential.

Securities subject of pledge and/or deed of assignment as of 14 October 2004 (date of Circular 457), may be held by a lending bank up to the original maturity of the loan or full payment thereof, whichever comes earlier.

§ X441.13 ***Basic security deposit*** Securities held under custodianship whether booked in the Trust Department or carried in the regular books of the bank shall be subject to a security deposit for faithful performance of duties at the rate of 1/25 of one percent (1%) of the total face value or P500,000 whichever is higher.

However, securities held under custodianship where the custodian also performs securities borrowing and lending as agent shall be subject to a higher basic security deposit of one percent (1%) of the total face value. For this purpose, the following subsidiary ledger account shall be created in the Trust Department Books:

"Safekeeping and Custodianship - Securities Held Under Custodianship with Securities Borrowing and Lending As Agent"

Compliance shall be in the form of government securities deposited with the BSP eligible pursuant to existing regulations governing security for the faithful performance of trust and other fiduciary business.

§ X441.14 ***Reportorial requirements*** An accredited securities custodian shall comply with reportorial requirements that may be prescribed by the BSP, which shall include as a minimum, the face and market value of securities held under custodianship.

§§ X441.15 – X441.28 ***(Reserved)***

§ X441.29 ***Sanctions.*** Without prejudice to the penal and administrative sanctions provided for under Sections 36 and 37, respectively, of the R.A. No. 7653, violation of any provision of this Section shall be subject to the following sanctions/ penalties:

a. *First offense* –

(1) Fine of up to P10,000 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected; and

(2) Reprimand for the directors/officers responsible for the violation.

b. *Second offense* -

(1) Fine of up to P20,000 a day for the institution for each violation reckoned from the date the violation was committed up to the date it was corrected; and

(2) Suspension for ninety (90) days without pay of directors/officers responsible for the violation.

c. *Subsequent offenses* –

(1) Fine of up to P30,000 a day for the institution for each violation from the date the violation was committed up to the date it was corrected;

(2) Suspension or revocation of the authority to act as securities custodian and/or registry; and

(3) Suspension for one hundred twenty (120) days without pay of the directors/ officers responsible for the violation.

Secs. X442 – X498 (Reserved)

D. GENERAL PROVISION ON SANCTIONS

Sec. X499 Sanctions. Any violation of the provisions of this Part shall be subject to Sections 36 and 37 of R.A. No. 7653 without prejudice to the imposition of other sanctions as the Monetary Board may consider warranted under the circumstances that may include the suspension or revocation of a bank's authority to engage in trust and other fiduciary business or in investment management activities, and such other sanctions as may be provided by law.

The guidelines for the imposition of monetary penalty for violations/offenses with sanctions falling under Section 37 of R.A. No. 7653 on banks, their directors and or officers are shown in *Appendix 67*.

PART FIVE

FOREIGN CURRENCY DEPOSIT SYSTEM AND OTHER OPERATIONS IN FOREIGN CURRENCY

Section X501 Foreign Currency Deposit System. The foreign currency deposit operations of banks under R.A. No. 6426, as amended, shall be governed by the following rules and regulations.

§ X501.1 *Definition of terms.* The following terms and phrases shall mean as follows:

a. *FCDU* and *EFCDU* shall refer to a unit of a local bank or of a local branch of a foreign bank authorized by the BSP to engage in foreign currency-denominated transactions, pursuant to the provisions of R.A. No. 6426, as amended.

b. *Local bank* shall refer to a KB, UB or TB organized under the laws of the Republic of the Philippines.

c. *Local branch of a foreign bank* shall refer to a branch of a foreign bank doing business in the Philippines.

d. *Short-term loans and securities* shall refer to those with maturities of one (1) year or less.

e. *Medium-term loans and securities* shall refer to those with maturities of more than one (1) year but not more than five (5) years.

f. *Long-term loans and securities* shall refer to those with maturities of more than five (5) years.

§ X501.2 *Qualification requirements*

a. KBs/UBs may be authorized to operate an FCDU or EFCDU: *Provided,* That they meet the minimum capital requirements as prescribed under Sec. X111 and Subsecs. X111.1 and X111.2, and in the case of branches of foreign banks, Subsecs. X105.4 and X105.5.

b. TBs with net worth or combined capital accounts of at least ₱325.0 million if located in Metro Manila or ₱52.0 million if located outside Metro Manila may, subject to prior Monetary Board approval, operate an FCDU. A TB desiring to operate an FCDU shall file an application with the appropriate department of the SES. The application shall be signed by the bank president or officer of equivalent rank and shall be accompanied by the following documents:

(1) Certified true copy of the resolution of the bank's board of directors authorizing the application.

(2) A certification signed by the president or the officer of equivalent rank that the bank has complied with all conditions/prerequisites for the grant of authority to operate an FCDU in *Appendix 5a*.

Transitory provisions. TBs authorized to operate and are actually operating an FCDU are hereby given a period of two (2) years reckoned from 07 March 2002 within which to comply with the minimum capital requirements for FCDU: *Provided,* That this requirement may be substituted by a capital build-up program for a period of not more than five (5) years or only up to 31 December 2007 and which must be approved by the Monetary Board: *Provided, further,* That annual cash infusion shall be included in the capital build-up program adopted for this purpose. The amount of cash infusion shall be evenly distributed over the capital build-up program period. Banks which failed to comply with the required capitalization upon expiration of said two (2)-year period given them or those which failed to comply with approved capital build-up program shall liquidate their FCDU business within one (1) year and shall surrender to the BSP their corresponding FCDU licenses. The license of TBs already authorized to operate FCDU but not yet operating the same shall be automatically revoked if they do not comply with the above minimum capital requirements as of 07 May 2002.

In addition, the standard pre-qualification requirements prescribed under *Appendix 5* shall be complied with by a bank applying for an FCDU/EFCDU license.

c. RBs/Coop Banks may, subject to prior Monetary Board approval, be authorized to operate an FCDU: *Provided,* That they meet the minimum capital under Subsec. X151.3 or ₱20.0 million, whichever is higher. An RB/Coop Bank desiring to operate an FCDU shall file an application with the appropriate department of the SES. The application shall be signed by the bank president or officer of equivalent rank and shall be accompanied by the following documents:

(1) Certified true copy of the resolution of the bank's board of directors authorizing the application.

(2) Certification signed by the president or the officer of equivalent rank that the bank has complied with all the conditions/prerequisites for the grant of authority to operate an FCDU in *Appendix 5a*.

In addition to requirements under existing regulations, an RB/Coop Bank authorized to operate an FCDU shall:

(a) Have the capacity to operate an FCDU. An RB/Coop Bank may, however, upgrade its capacity by appointing as officer who will be in-charge of the FCDU operations either, (i) an individual with actual experience in another bank as in-charge or assistant in-charge of the same operations for at least one (1) year, or (ii) an individual who has attended a specialized training course on FCDU transactions or operations conducted by the BSP Institute or an institution or bank duly accredited by the BSP; and

(b) Establish a risk management system appropriate to its operations, characterized by clear delineation of responsibility for risk management, adequate risk measurement system, appropriately structured risk limits, effective internal control system and complete, timely and efficient risk reporting system.

(As amended by Circular Nos. 582 dated 17 September 2007, 579 dated 23 August 2007, and 522 dated 23 March 2006)

§ X501.3 *Authorized transactions*

a. Banks which are granted a certificate of authority to operate an FCDU are authorized to engage in the following transactions in any acceptable foreign currency:

(1) Accept deposits and trust accounts from residents and non-residents;

(2) Deposit, regardless of maturity, with foreign banks abroad, OBUs and other FCDUs/EFCDUs;

(3) Invest in readily marketable foreign currency denominated debt instruments. For this purpose, *readily marketable debt instruments* shall refer to debt instruments that are quoted in an active market and the quoted prices are readily and regularly available from an exchange, dealer, broker, industry group, pricing service or regulatory agency, and those prices represent actual and regularly occurring market transactions on an arm's length basis;

(4) Grant short-term foreign currency loans as may be allowed by BSP regulations;

(5) Borrow, (a) regardless of maturity, from EFCDUs, foreign banks abroad and OBUs, subject to existing rules on foreign/ foreign currency borrowings; and (b) on short-term maturity, from other FCDUs;

(6) Engage in foreign currency-foreign currency swap with the BSP, OBUs and other FCDUs/EFCDUs;

(7) Engage in securities lending activities as lender subject to the provisions in Sec. X531;

(8) Engage in repo agreements involving foreign currency denominated government securities subject to the provisions in Sec. X532;

(9) Purchase foreign currency denominated government securities under resale agreements from other banks' EFCDU/FCDU, non-resident FIs and OBUs, subject to the following conditions:

(a) That the government securities purchased shall be limited to those issued by central governments and/or central banks of foreign countries with the highest credit quality given by any two (2) internationally accepted rating agencies (i.e., currently the equivalent of Standard and Poor's AA- or Moody's Aa3 or better);

(b) That for TBs which are granted a certificate of authority to operate an FCDU, the maximum term of the resale agreements shall be one (1) year; and

(c) That such government securities purchased under resale agreements shall be classified as "Trading Account Securities - Loans" and booked under the sub-account "Government Securities Purchased under Resale Agreements – EFCDU/FCDU";

(10) Issue HT1 capital instruments; and

(11) Engage in US dollar denominated repo agreements with the BSP, as provided under Subsec. X601.1.

RBs/Coop Banks which are authorized to operate FCDUs shall be governed by the provisions of Circular 1389 dated 13 April 1993, as amended, and by all existing regulations applicable to FCDUs. They may undertake all transactions which TBs with FCDUs are authorized to enter into, except the granting of loans to producers/ manufacturers, including oil companies and public utility concerns.

b. UBs/KBs which are authorized to operate under the expanded foreign currency deposit system may engage in the following transactions in any acceptable foreign currency:

(1) Accept deposits and trust accounts from residents and non-residents;

(2) Deposit with foreign banks abroad, OBUs and other FCDUs/EFCDUs;

(3) Invest in foreign currency-denominated debt instruments;

(4) Grant foreign currency loans as may be allowed by the BSP;

(5) Borrow from other FCDUs/ EFCDUs and from non-residents and OBUs, subject to existing rules on foreign borrowings;

(6) Engage in foreign currency-foreign currency swap;

(7) Engage in foreign exchange trading and, with prior BSP approval, engage in financial futures and options trading;

(8) On request/instructions of its foreign correspondent bank:

(a) issue letters of credit for a non-resident importer in favor of a non-resident exporter;

(b) pay, accept or negotiate drafts/ bills of exchange drawn under the letter of credit; and

(c) make payment to the order of the non-resident exporter:

Provided, That the foreign correspondent bank shall deposit sufficient foreign exchange with the EFCDU issuing the letter of credit to cover all drawings;

(9) Engage in direct purchase of export bills of resident exporters, subject to the following conditions:

(a) Export transactions covered by usance or sight letters of credit shall be allowed to be purchased by EFCDUs; and

(b) Export bills negotiated/purchased by the bank's Regular Unit and outstanding in its books shall not be allowed to be purchased by its EFCDU;

(10) Engage in securities lending activities as lender subject to the provisions in Sec. X531;

(11) Engage in repo agreements involving foreign currency denominated

government securities subject to the provisions in Sec. X532;

(12) Invest in foreign currency denominated structured products issued by banks and SPVs of high credit quality subject to the provisions in Sec. 1636;

(13) Purchase foreign currency denominated government securities under resale agreements from other banks' EFCDU/FCDU, non-resident FIs and OBUs, subject to the following conditions:

(a) That the government securities purchased shall be limited to those issued by central governments and/or central banks of foreign countries with the highest credit quality given by any two (2) internationally accepted rating agencies (i.e., currently the equivalent of Standard and Poor's AA - or Moody's Aa3 or better); and

(b) That such government securities purchased under resale agreements shall be classified as "Trading Account Securities -Loans" and booked under the sub-account "Government Securities Purchased under Resale Agreements – EFCDU/FCDU";

(14) Issue HT1 capital instruments; and

(15) Engage in US dollar denominated repo agreements with the BSP, as provided under Subsec. X601.1.

c. Excess FCDU/EFCDU funds of UBs and KBs may be lent to RBU to fund the latter's on-balance sheet foreign exchange trade transactions, subject to the following conditions –

(1) FCDU/EFCDU may lend funds to RBU only after it has fully complied with the prescribed 100% asset cover/thirty percent (30%) liquid asset cover on FCDU/EFCDU liabilities.

(2) FCDU/EFCDU lending to RBU shall be -

(a) Capped at the lower of total outstanding balance on RBU's on-balance sheet foreign currency trade assets[1] or thirty percent (30%) of the level of FCDU/ EFCDU deposit liabilities, computed at the average daily balance (using 2-month rolling data) as of end of the second week prior to the reference week (refer to *Appendix 51a* for sample computation). Total outstanding balance of FCDU/ EFCDU lending to RBU shall, at all times, be within the prescribed cap. Any breach thereon shall be subject to the imposition of a monetary penalty of ₱30,000 per day, commencing on the day the cap was breached until the same is corrected.

(b) Charged interest at prevailing market rates, computed monthly at the average daily balance of the receivable from RBU.

(c) On short-term maturity, or for a period of one (1) year or less. Balances shall be settled, within a year from availment, by way of actual transfer of foreign currency assets from the RBU books to the FCDU/EFCDU books.

(3) The lending transaction shall be booked as "Lending-RBU" in the FCDU/ EFCDU books and "Borrowing-FCDU/ EFCDU" in the RBU books.

(4) The "Lending-RBU" account balance [net of transactions outstanding for more than one (1) year] shall qualify as eligible asset cover, but not as liquid asset cover, for FCDU/EFCDU liabilities.

(5) Banks shall establish and maintain systems to -

(a) monitor the foreign currency funds flow of RBU and the average daily balances of foreign currency trade assets, with minimum database covering a two (2) - month rolling period; and

(b) account for the utilization of funds borrowed from FCDU/EFCDU.

The systems as well as periodic reports generated therefrom shall be made available to the BSP examiners for verification.

(6) Banks shall submit to the appropriate department of the SES, within five (5) banking days from end of reference month,

[1] i.e., Customers' Liability on Import Bills-Foreign, Customers' Liability under Trust Receipts-Foreign, Customers' Liability for this Bank's Acceptances Outstanding-Foreign, Export Bills Purchased and Foreign Bills Purchased-Documentary, excluding past due accounts and Items in Litigation.

a certification under oath (prescribed format shown in *Appendix 51*), signed by the bank's president or country manager, in case of local branch/subsidiary of foreign banks, compliance officer and head of treasury, to the effect that, at any day of the reference month, the outstanding balance on funds borrowed from FCDU/EFCDU did not exceed the prescribed cap [i.e., lower of total outstanding balance on RBU's on-balance sheet foreign currency trade assets or thirty percent (30%) of the level of FCDU/EFCDU deposit liabilities] and were utilized by RBU solely for foreign currency trade transactions.

The foregoing rule shall be subject to quarterly review by BSP.

(As amended by Circular Nos. 627 dated 23 October 2008, 590 dated 27 December 2007, 565 dated 03 May 2007, 522 dated 23 March 2006 and 519 dated 16 March 2006)

§ X501.4 ***Foreign currency cover requirements.*** Depository banks under the foreign currency deposit and expanded foreign currency deposit systems shall maintain at all times a 100% cover for their foreign currency liabilities, except US dollar denominated repo agreements with the BSP: *Provided,* That violation of the terms and conditions of the US dollar denominated repo agreements facility shall subject the borrowings of the bank to the FCDU/EFCDU asset and liquid asset cover requirements. For purposes of complying with this requirement, the principal offices in the Philippines of the authorized banks and all its branches located therein shall be considered as a single unit. The foreign currency cover shall consist of the net carrying amount of the following:

a. For banks authorized to operate an FCDU -

(1) Foreign currency cash on hand;

(2) Foreign currency checks and other cash items;

(3) Due from BSP – Foreign Currency;

(4) Due from other banks (other FCDUs/EFCDUs, OBUs, and non-resident banks);

(5) Derivatives with Positive Fair Value Held for Trading and/or Hedging (Derivatives with Negative Fair Value Held for Trading and/or Hedging shall require corresponding asset/liquid asset cover);

(6) Investments in readily marketable foreign currency-denominated debt instruments, booked under the following control accounts:

(a) Held for Trading (HFT);

(b) Designated at Fair Value through Profit or Loss (DFVPL);

(c) Available for Sale (ASS); and

(d) Held to Maturity (HTM).

Foreign currency-denominated debt securities sold/lent in repo agreements/securities lending and borrowing transactions shall be considered as eligible asset cover for the 100% asset cover requirement. The same treatment shall likewise apply to foreign currency denominated debt securities used as additional collateral in repo agreements or as collateral by borrowing bank in securities lending and borrowing transactions;

(7) Foreign currency loans and receivables maturing within one (1) year authorized by the BSP, booked under the following:

(a) Loans to BSP;

(b) Interbank loans receivable; and

(c) Loans and receivables – others.

Loans and receivables authorized by the BSP shall refer to those granted pursuant to Circular No. 1389 dated 13 April 1993, as amended, and shall include the following:

(a) those with specific approval by the BSP under Section 23 of Circular No. 1389, as amended (Loans Requiring Prior BSP Approval);

(b) those short term loans to resident private and public sector borrowers which under existing regulations require no prior BSP approval but allowed to be serviced using foreign exchange purchased from the banking system (i.e., loans to commodity and service exporters, indirect exporters, producers/manufacturers, including oil companies and public utility concerns) under Section 24.4 of Circular No. 1389, as amended, (Loans Not Requiring Prior BSP Approval); and

(c) those loans to resident private sector borrowers to be serviced using foreign exchange purchased from outside of the banking system under Section 24.1.a of Circular No. 1389, as amended:

Provided, That all applicable banking rules and regulations are complied with including single borrower's limit as provided in Sec. X303;

(8) Loans and receivables arising from repo agreements, certificates of assignment/ participation with recourse, and securities lending and borrowing transactions, maturing within one (1) year;

(9) Foreign currency accrued interest income from financial assets;

(10) Accounts receivable arising from sale of financial assets under the trade date accounting pending actual settlement/ delivery of the underlying securities; (Accounts payable arising from the purchase of financial assets under the trade date accounting pending actual settlement/ receipt of the underlying securities shall require corresponding asset/liquid asset cover);

(11) Loans to RBU [net of transactions outstanding for more than one (1) year]: *Provided,* That the conditions under Item "*(c)*" of Subsec. X501.3 are complied with;

(12) Receivable from the RBU book arising from the exercise of warrants paired with ROP Global Bond Holdings in the FCDU/EFCDU book: *Provided*, That it shall be settled by the RBU book to the FCDU/EFCDU book within six (6) months from the date of receipt of the Exchange Securities; and

(13) Such other assets as may be determined by the Monetary Board as eligible asset cover.

b. For banks authorized to operate an EFCDU - The foregoing accounts, regardless of maturity, and in the case of investment in foreign currency denominated debt instruments (including debt instruments booked under Unquoted Debt Securities Classified as Loans and investments in structured products), regardless of maturity and marketability, shall all be considered as eligible asset cover. Loans to resident private and public sector borrowers which under Section 24.4 of Circular No. 1389, as amended, require no prior BSP approval and allowed to be serviced using foreign exchange purchased from the banking system (i.e., loans to commodity and service exporters, indirect exporters, producers/manufacturers, including oil companies and public utility concerns) shall however have short-term maturity.

In addition, the following shall also be considered as eligible asset cover:

(1) Loans and receivables granted by EFCDU pursuant to Section 24 of Circular No. 1389 dated 13 April 1993, as amended, i.e., those loans of non-residents from EFCDUs, to be serviced using foreign exchange purchased from outside the banking system under Section 24.1.b of Circular No. 1389, as amended: *Provided,* That all applicable banking rules and regulations are complied with including single borrower's limit as provided in Sec. X303;

(2) Outstanding export bills purchased in the EFCDU books, booked under the following control accounts:

(a) Interbank loans receivable - if without recourse; and

(b) Loans and receivables – others - if with recourse.

For this purpose, *net carrying amount* shall refer to the gross amount of financial asset, plus or minus, as the case may be, the following: (i) unamortized premium/ (discount) determined using the effective interest method; (ii) any accumulated market gains/(losses) in the case of ASS financial assets; and (iii) any allowance for credit losses determined based on existing regulations.

c. Further, at least thirty percent (30%) of the cover requirement for foreign currency liabilities in the FCDU/EFCDU shall be in the form of liquid assets as follows:

(1) Foreign currency cash on hand;

(2) Foreign currency checks and other cash items;

(3) Due from BSP – Foreign currency with remaining maturity of one (1) year or less regardless of funding: *Provided*, That such deposit/placement is not encumbered or is not being utilized for any other purposes;

(4) Due from other banks (other FCDUs/EFCDUs, OBUs and non-resident banks);

(5) Investments in readily marketable foreign currency denominated debt instruments, booked under the following control accounts:

(a) HFT;

(b) DFVPL;

(c) ASS; and

(d) HTM;

except for the following:

(a) those which are sold/lent in repo agreements/securities lending and borrowing transactions and those used as additional collateral in repo agreements or as collateral by borrowing bank in securities lending and borrowing transactions; and

(b) those investments in structured products;

(6) Loans and receivables authorized by the BSP booked under the following:

(a) Loans to BSP maturing within one (1) year;

(b) Interbank loans receivable maturing within one (1) year;

(c) Loans and receivables – Others that is any of the following:

(i) Outstanding export bills purchased in the EFCDU books; and

(ii) Short-term EFCDU loans to exporters in the form of export packing credits, whether rediscounted or not under BSP's Export Dollar Facility, up to the extent guaranteed by TIDCORP or SBGFC: *Provided,* That these credits are not overdue;

(7) Loans and receivables arising from repo agreements, certificates of assignment/participation with recourse and securities lending and borrowing transactions, maturing within one (1) year;

(8) Accounts receivable arising from sale of financial assets under the trade date accounting pending actual settlement/ delivery of the underlying securities pertaining to readily marketable foreign currency denominated debt instruments; and

(9) Receivable from the RBU book arising from the exercise of warrants paired with ROP Global Bond Holdings in the FCDU/EFCDU book: *Provided*, That it shall be settled by the RBU book to the FCDU/ EFCDU book within six (6) months from the date of receipt of the Exchange Securities.

The 100% asset cover and thirty percent (30%) to be held in the form of liquid assets enumerated above, shall be unencumbered, except as otherwise provided in second paragraph of Item "*a(6)*" hereof.

d. The Due from Other Banks - Non-Resident (DFOB-Non-Resident) account representing cover for foreign currency liabilities of FCDU/EFCDU shall be kept separate and distinct from the DFOB - Non-Resident account for the RBU.

(As amended by Circular Nos. 627 dated 23 October 2008, 602 dated 13 February 2008, 601 dated 13 February 2008, 575 dated 17 July 2007 and 559 dated 26 January 2007)

§ X501.5 ***Foreign currency deposit with the Bangko Sentral.*** Foreign currency deposit with the BSP equivalent to at least fifteen percent (15%) as a form of foreign currency cover referred to in Section 4 of R.A. No. 6426, as amended, shall be optional on FCDUs of KBs/UBs and TBs. The BSP may pay interest on the foreign currency deposit and if requested, shall exchange the foreign currency notes and coins into foreign currency instruments drawn on its depository banks.

§ X501.6 ***Currency composition of the cover.*** FCDUs of TBs shall maintain the foreign currency cover in the same currency as that of the corresponding foreign currency deposit liability.

FCDUs/EFCDUs of KBs/UBs shall maintain not less than seventy percent (70%) of the foreign currency cover in the same currency as that of the liability and thirty percent (30%) or less, at the option of the FCDU/EFCDU, may be denominated in other acceptable foreign currencies.

§ X501.7 ***Secrecy of deposits.*** All foreign currency deposits are absolutely confidential. Except upon the written permission of the depositor, in no instance shall such foreign currency deposits be examined, inquired or looked into by any person, government official, bureau or office, whether judicial, administrative or legislative, or any other entity, whether public or private.

§ X501.8 ***Numbered accounts.*** FCDUs/ EFCDUs may adopt a numbered account system.

§ X501.9 ***Withdrawability and transferability of deposits.*** There shall be no restrictions on the withdrawal by the depositor of his deposit or on the transfer of the same abroad, except those arising from the contract between the depositor and the bank.

§ X501.10 ***Insurance coverage*** Foreign currency deposits shall be insured under the provisions of R.A. No. 3591, as amended. Depositors are entitled to receive payment in the same currency in which the insured deposits are denominated.

§ X501.11 ***Rates of interest.*** Foreign currency deposits shall not be subject to interest ceilings.

§ X501.12 ***Eligibility as collateral*** Deposits under the Foreign Currency Deposit System are eligible as collateral for peso loans or for foreign currency loans to residents and non-residents.

§ X501.13 ***Taxes.*** All foreign currency deposits, including interest and all other income or earnings of such deposits, are exempt from any and all taxes whatsoever, irrespective of whether or not these deposits are made by residents or non-residents, so long as the deposits are eligible or allowed under these rules, and in the case of non-residents, irrespective of whether or not they are engaged in trade or business in the Philippines.

§ X501.14 ***Exemption from court order or process.*** Foreign currency deposits shall be exempt from attachment, garnishment or any other order or process of any court, legislative body, government agency or any administrative body whatsoever.

§ X501.15 ***Inapplicability of the Usury Law.*** The provisions of R.A. No. 2655, as amended (Usury Law), shall not apply to banks in respect to their foreign currency transactions under this Section.

§ X501.16 ***Accounting.*** The foreign currency deposits and their corresponding cover shall be considered as funds separate and distinct from the regular assets and liabilities of the authorized banks. Authorized banks shall maintain a separate accounting for transactions covered by these rules that will enable preparation of the Balance Sheet and Profit and Loss Statement covering said funds.

For purposes of preparing the FCDU/ EFCDU financial statements, the bank shall use the US dollar (USD) as its

functional currency. However, for purposes of consolidating the FCDU/ EFCDU financial statements with the RBU financial statements, these shall be translated into the presentation currency, i.e., Philippine Peso (Php).
(As amended by Circular No. 601 dated 13 February 2008)

§ X501.17 *Supervision.* The Governor and the head of the appropriate department of the BSP, personally or by deputies, are authorized to verify the books of account and transactions of each authorized bank, to verify the eligible cover, as well as review all other requirements under these regulations and the bank's compliance with the provisions of law and these regulations.

§ X501.18 *Sanctions*

a. Any willful violation of R.A. No. 6426, as amended, or any regulation duly promulgated by the Monetary Board pursuant thereto, shall subject the offender upon conviction to an imprisonment of not less than one (1) year nor more than five (5) years or a fine of not less than ₱5,000 nor more than ₱25,000 or both such fine and imprisonment, at the discretion of the court.

The BSP may revoke or suspend the authority of a bank to accept new foreign currency deposits for violation of R.A. No. 6426, as amended, or these regulations, or if such bank ceases to possess the minimum qualifications required.

b. Violation on the monthly reportorial requirement required under Subsec. X501.3c shall be subject to:

(1) Maximum monetary penalty of ₱30,000 per day (reckoned from due date until date corrected) for any false/erroneous certification issued, without prejudice to the imposition, on the erring bank and/or the concerned bank officers, of the penal sanctions provided under Sections 35 and 36 of R.A. No. 7653.

(2) Monetary penalty of ₱1,200 per day for delayed and/or incomplete certifications.

c. Any deficiency in the 100% FCDU/EFCDU cover and/or thirty percent (30%) liquid asset cover that may be incurred due to violation of the conditions in Subsec. X501.3c shall be subject to the imposition of a monetary penalty of one-tenth of one percent (1/10 of 1%) of the deficiency, converted to its peso equivalent at the exchange rate prevailing on the date the deficiency was incurred but not to exceed ₱30,000 per deficiency, per day.

Sec. X502 Other Transactions in Foreign Currency. All categories of banks duly licensed by the BSP (including RBs/Coop Banks) are considered authorized agent banks (AABs) and therefore, can, subject to compliance with the provisions of Circular No. 1389 dated 13 April 1993, as amended, buy and sell foreign exchange (FX) from the public even without an FCDU license and prior BSP approval. They are likewise required to comply with the requirements under Sec. X801, particularly on the "Know Your Customer" (KYC) rules, record keeping and reporting of covered and suspicious transactions.

The operation of mobile foreign currency booths and off-site automatic multi-currency money changers (OAMMC) shall be governed by this Section.
(As amended by Circular No. 522 dated 22 March 2006)

§ X502.1 *Mobile foreign exchange booths.* Without prior authority from the BSP, banks may operate mobile foreign currency booths, subject to the following guidelines:

a. The bank shall advise the BSP of the number of mobile foreign currency booths it will operate, the date it will start operations, the areas of operation and the branch where the foreign exchange acquisition will be turned over and booked;

b. The services of the mobile foreign currency booths shall be solely for changing foreign exchange currency into peso notes and coins, and not pesos to other foreign currency;

c. The mobile foreign currency booths shall not accept deposit or perform other banking functions other than purchase of foreign currencies;

d. The internal control system of the proposed mobile foreign currency booths shall be submitted to the appropriate department of the SES, as well as other security measures adopted therein; and

e. The mobile foreign currency booths shall be covered by insurance to protect adequately the bank against losses of whatever nature arising from its operations.

§ X502.2 *Off-site automatic multi-currency money changers.* With prior approval of the BSP, banks which have shown general compliance with banking laws, rules and regulations may install an OAMMC, subject to the following conditions:

a. The OAMMC shall be installed only in centers of activities like shopping centers, supermarkets, hotels and airports: *Provided,* That the site is within the area where the applicant bank has a regular branch to service the money changers;

b. The applicant bank shall maintain adequate internal control and security measures, which shall include immediate rejection and detection of fake currencies by the machines;

c. The transactions of the money changers shall be booked in specific branches which must be identified at the time of application for the putting up of an OAMMC; and

d. The services of the OAMMC shall be solely for changing foreign exchange currency into peso notes and coins, and not pesos to other foreign currencies.

Sec. X503 Recognition of Positions Arising from Banks' Foreign Currency Options in the Computation of Net Open FX Position The following are the guidelines for the recognition of positions arising from banks' foreign currency options in the computation of the net open FX position:

a. *Scope*. For purposes of complying with Circular No. 1327 dated 30 January 1992, as amended, UBs and KBs with expanded derivatives authority shall include the net delta weighted positions of foreign currency options in their computation of the net FX position. UBs and KBs without expanded derivatives authority shall include the notional amounts of purchased options that are in or at the money and exclude those that are out of the money in their computation of the net FX position.

b. *Reporting.* The USD equivalent of the positions arising from foreign currency options shall be reported as a manual adjustment to the net FX position amount reported in the bank's Consolidated Foreign Exchange Position Report (CFXPR). For banks with expanded derivatives authority, the USD equivalent of the foreign currency options position is equal to the sum of long delta-weighted positions minus the sum of short delta-weighted positions arising from FX options contracts. The breakdown of the options positions by currency and a listing of outstanding contracts shall be annexed to the CFXPR.

Secs. X504 – X530 (Reserved)

Sec. X531 Securities Lending. Banks with EFCDU/FCDU license may engage in securities lending activities as lender subject to the following conditions:

a. The securities to be lent shall be limited to securities lodged under the account *"Trading Account Securities (TAS) - Investments"* (for UBs and KBs only) and *"ASS - Foreign"*.

The use of IBODI holdings shall also be allowed in securities lending, subject to the following conditions:

(1) The lending bank had the positive intention and ability to maintain or recover control of the same or substantially similar securities as those lent.

(2) The counterparty's failure to redeliver the securities lent at maturity or at the date agreed upon could not have been reasonably anticipated by the lender at the time of the transaction.

(3) In case of failure or default of the counterparty to redeliver the securities lent, the same shall be immediately replaced by identical or substantially similar securities. For this purpose, a replacement security may only be considered substantially similar to the securities lent if all of the following circumstances are present:

(a) the security must have the same primary obligor and must have the same guarantor under the same terms and conditions, if guaranteed;

(b) the security must be identical in form and type so as to give the same risks and rights to the holder; and

(c) the debt instrument must have the same maturity and interest rate.

Sanctions. Without prejudice to the criminal and administrative sanctions provided for under Sections 36 and 37, respectively, of R. A. No. 7653, violation of any provision of Item *"a"* of this Section shall be a ground for considering all IBODI of the concerned entity as TAS subject to mark-to-market requirements and shall disqualify said entity from carrying in its books the account *"Investment in Bonds and Other Debt Instruments"* for a period of two (2) years reckoned from the date the violation was committed or discovered, whichever comes later.

b. The lending activity shall have prior approval of the bank's board of directors and shall be governed by adequate written policies and procedures duly approved by the board of directors;

c. The securities lending shall be done through reputable internationally - recognized and experienced third-party lending agent/intermediary which must be a regulated entity in its country of operation;

d. The securities lending transaction shall be subject to a written legal agreement between the lending bank and the lending agent which must clearly specify the -

(1) relationship as well as the respective duties and responsibilities of each counterparty;

(2) obligation of the borrower to redeliver a like quantity of the same issue or series as the loaned securities;

(3) guidelines for selecting investments for cash collateral, which shall include a provision that cash collateral will not be reinvested in liabilities of the lender, its subsidiaries or affiliates; and

(4) lending fee or compensation;

e. The loaned securities must be fully secured by debt securities of countries or entities with highest credit quality, cash in currencies acceptable as part of international reserves, letters of credit and certificates of deposits issued by banks with highest credit quality. For this purpose, a foreign country and a bank with highest credit quality refer to a foreign country and a bank given the highest credit rating by any two (2) of the following internationally accepted rating agencies:

Rating Agencies	Highest Rating
• Moody's	"Aa3"
• Standard and Poors's	"AA"
• Fitch IBCA	"AA"
• Others as may be approved by the Monetary Board	

Collateral value shall initially be at least 102% of the current market value of the loaned securities and maintained at 100% of the value of the loaned securities plus accrued interest thereon during the course of the loan;

f. The lender shall do daily mark-to-market on the loaned securities and on the securities where cash collateral is invested/reinvested;

g. The lender shall require from the lending agent/intermediary timely and comprehensive reports on the lending activity;

h. For proper identification and monitoring, the outstanding book balance on the loaned securities shall be reclassified to "Government Securities Lent under Securities Lending Agreements";

i. The bank has in place a risk management system commensurate to the nature, volume and complexity of its operations and characterized by clear delineation of responsibility for risk management, adequate risk measurement systems, appropriately structured risk limits, effective internal controls and complete, timely and efficient risk reporting system: *Provided,* That this requirement shall be automatically considered complied with by banks with derivatives license;

j. The bank's CAMELS composite rating in the last BSP regular examination is at least "3", with a minimum score of "3" on management; and

k. The foreign currency-denominated debt securities lent or used as collateral by the borrowing bank in securities lending and borrowing transactions shall be considered as eligible asset cover for the 100% cover requirement. However, these shall not be eligible for the thirty percent (30%) liquid asset cover.

(As amended by Circular No. 601 dated 13 February 2008)

Sec. X532 Repurchase Agreements Involving Foreign Currency-Denominated Government Securities. Banks may engage in repo agreements involving foreign currency-denominated government securities, subject to the following conditions:

a. Such repo agreements shall be limited to:

(1) Trading Account Securities (TAS) held under the FCDU/EFCDU books. The government securities subject of repo agreements are to be booked under the account "Government Securities Sold under Repo Agreements-FCDU/EFCDU".

(2) IBODI holdings, subject to the following conditions:

(a) The selling bank had the positive intention and ability to maintain or recover control of the same or substantially similar securities as those sold.

(b) The counterparty's failure to redeliver the securities sold at maturity or at the date agreed upon could not have been reasonably anticipated by the seller at the time of the transaction.

(c) In case of failure or default of the counterparty to redeliver the securities sold, the same shall be immediately replaced by identical or substantially similar securities. For this purpose, a replacement security may only be considered substantially similar to the securities sold if all of the following circumstances are present:

(i) the security must have the same primary obligor and must have the same guarantor under the same terms and conditions, if guaranteed;

(ii) the security must be identical in form and type so as to give the same risks and rights to the holder; and

(iii) the debt instrument must have the same maturity and interest rate.

The provisions/requirements under Sec. X531 which are not inconsistent with the foregoing shall be strictly observed by the bank concerned.

(3) ASS held under the FCDU/EFCDU books. HFT and ASS under the RBU of UBs and KBs are also allowed to be used in repo agreements.

(4) Securities booked as HFT and ASS Debt Securities under the RBU of UBs and KBs are also allowed to be used in repo agreements.

Sanctions. Without prejudice to the criminal and administrative sanctions provided for under Sections 36 and 37, respectively, of R.A. No. 7653, violation of any provision of Item *"a(2)"* of this Section shall be a ground for considering all IBODI of the concerned entity as TAS subject to mark-to-market requirements and shall disqualify said entity from carrying in its books the account "*Investment in Bonds and Other Debt Instruments*" for a period of two (2) years reckoned from the date the violation was committed or discovered, whichever comes later.

b. The borrowings shall only be from FCDUs/EFCDUs, non-resident FIs and OBUs;

c. For TBs which are granted a certificate of authority to operate an FCDU, the maximum term of the repo agreements shall be one (1) year;

d. The borrowings shall be booked under *"Bills Payable"* and included in the computation of the total FCDU/EFCDU liabilities subject to the mandatory 100% asset cover and thirty percent (30%) liquid asset cover;

e. The foreign currency-denominated debt securities sold or used as additional collateral in repo agreements shall be considered as eligible asset cover for the 100% cover requirement. However, these shall not be eligible for the thirty percent (30%) liquid asset cover;

f. Banks shall, at all times, comply with the 100% FCDU/EFCDU asset cover and thirty percent (30%) liquid asset cover; and

g. Banks shall monitor and assess the risks inherent in these repo transactions.

(As amended by Circular No. 601 dated 13 February 2008)

Secs. X533 – X563 (Reserved)

Sec. X564 Transfer of Undivided Profits/ (Losses) from Foreign Currency Deposit Unit/Expanded Foreign Currency Deposit Unit to Regular Banking Unit Books. The transfer of *Undivided Profits/(Losses) – FCDU/EFCDU* to the *Retained Earnings – Free* (and in the case of Philippine branches of foreign banks, *Net Due to H. O./ Branches/Agencies Abroad)* account in the RBU book shall refer to realized FCDU/ EFCDU profits/(losses) only and shall exclude the following:

1. Unrealized Gains/(Losses) from Marking to Market of Financial Assets and Liabilities HFT;
2. Unrealized Gains/(Losses) from Marking to Market of Financial Assets and Liabilities DFVPL;
3. Foreign Exchange Profit/(Loss);
4. Unrealized Gains/(Losses) from Remeasurement of Hedging Instruments; and
5. Unrealized Gains/(Losses) from Remeasurement of Hedged Items

(collectively referred to as Net Unrealized Gains/(Losses) from Operations in this Section): *Provided*, That prior to the transfer of realized Undivided Profits/(Losses) - FCDU/EFCDU to the Retained Earnings - Free in the RBU book, the FCDU/EFCDU shall fully provide for its classified accounts.

a. The transfer of realized FCDU/ EFCDU profits to the RBU book shall be made initially by a debit to Undivided Profits/(Losses) – FCDU/EFCDU and a credit to Retained Earnings – Free - FCDU/ EFCDU at the end of the calendar year or fiscal year adopted by the bank, and subsequently by a corresponding transfer of eligible foreign currency assets from the FCDU/EFCDU to the RBU books within a period of one month from the end of the calendar year or fiscal year adopted by the bank. The foreign currency assets shall be in the form of:

(1) Due from BSP – Foreign Currency;

(2) Due from other banks (other FCDUs/ EFCDUs, OBUs and non-resident banks);

(3) Investments in readily marketable foreign currency denominated debt instruments, except for the following:

(a) those which are sold/lent in repo agreements/securities lending and borrowing transactions and those used as additional collateral in repo agreements or as collateral of the borrowing bank in securities lending and borrowing transactions;

(b) those investments in structured products: and

(c) those Philippine debt papers which were restructured during the period of moratorium in the payment of external debt. *Provided*, That these shall likewise be booked under the same category in the RBU book as they were before the transfer from FCDU/EFCDU.

The transfer of the abovementioned eligible foreign currency assets representing realized FCDU/EFCDU profits to RBU book shall be made by a debit to Retained Earnings – Free - FCDU/EFCDU.

b. The transfer of realized FCDU/EFCDU losses to the RBU book shall be made immediately and shall be accompanied by a corresponding transfer of the abovementioned eligible foreign currency assets from the RBU book to the FCDU/EFCDU: *Provided*, That investments in readily marketable foreign currency denominated debt instruments shall likewise be booked under the same category in the FCDU/EFCDU as they were before the transfer from RBU book.

The transfer of the abovementioned eligible foreign currency assets representing realized FCDU/EFCDU losses during the interim period from the RBU book shall be made by a credit to Due to RBU – FCDU/EFCDU Realized Losses from Operations, which account shall not be subject to asset and liquid asset cover requirements, and which account shall be credited to the Undivided Profits/(Losses) – FCDU/EFCDU at the end of the calendar year or fiscal year adopted by the bank.

The amount of eligible foreign currency assets to be transferred from the RBU book to the FCDU/EFCDU shall be that which will bring the balance of Due to RBU - FCDU/EFCDU Realized Losses from Operations, equal to the cumulative net realized losses incurred from the beginning of the calendar year or fiscal year adopted by the bank.

Whenever the balance of Due to RBU - FCDU/EFCDU Realized Losses from Operations exceeds the cumulative net realized losses incurred from the beginning of the calendar year or fiscal year adopted by the bank, the excess shall be settled by the FCDU/EFCDU to the RBU by a credit to the abovementioned eligible foreign currency assets at the end of the reference month.

c. The items comprising the Net Unrealized Gains/(Losses) from Operations in the FCDU/EFCDU, on the other hand, shall be credited/debited to Undivided Profits/(Losses) - FCDU/EFCDU at the end of each month, which account shall be credited/debited to Retained Earnings - Free - FCDU/EFCDU at the end of the calendar year or fiscal year adopted by the bank.

Whenever the total of the following FCDU/EFCDU book accounts:

(1) Retained Earnings - Free - FCDU/EFCDU, representing cumulative unrealized gains/(losses) from operations from prior years;

(2) Items comprising the Net Unrealized Gains/(Losses) from Operations credited/debited to Undivided Profits/(Losses), as well as those not yet credited/debited to Undivided Profits/(Losses);

(3) Net Unrealized Gains/(Losses) on ASS Financial Assets recognized directly in equity; and

(4) Gains/(Losses) on Fair Value Adjustments of Hedging Instruments recognized directly in equity;

results to a net debit balance, the bank shall transfer from the RBU book to the FCDU/EFCDU immediately the abovementioned eligible foreign currency assets by a credit to the Due to RBU - FCDU/EFCDU Unrealized Losses Recognized in Profit or Loss and in Equity, which account shall not be subject to asset and liquid asset cover requirements.[1]

The amount of eligible foreign currency assets to be transferred from the RBU book to the FCDU/EFCDU shall be that which will bring the balance of Due to RBU - FCDU/EFCDU Unrealized Losses Recognized in Profit or Loss and in Equity equal to the net debit balance of the immediately preceding Items *"1" to "4"* above.

Whenever the Due to RBU - FCDU/EFCDU Unrealized Losses Recognized in Profit and Loss and in Equity exceeds the net debit balance of the immediately preceding Items *"1" to "4"* above, the excess shall be settled by the FCDU/EFCDU to the RBU book by a credit to the abovementioned eligible foreign currency assets at the end of the reference month.

The illustrative accounting entries are shown in *Appendix 85*.

(Circular No. 601 dated 13 February 2008 as amended by Circular No. 629 dated 31 October 2008)

Sec. X565 Conversion to Peso Loans/Real and other Properties Acquired and Transfer to Regular Banking Unit of Foreign Currency Deposit Unit/Expanded Foreign Currency Deposit Unit Loans/Real and other Properties Acquired. The following are the policy guidelines on the conversion and transfer of foreign currency-denominated loans, and ROPA in the books of the FCDU/EFCDU to peso loans and ROPA in the books of the RBU:

a. FCDU/EFCDU loans may be transferred to the RBU without prior BSP approval, subject to the following conditions:

(1) the FCDU/EFCDU loan to be transferred must meet the following criteria: (a) current and performing; and (b) eligible to be serviced by the banking system: *Provided,* That a past due FCDU/EFCDU loan may be transferred to the RBU if it meets the following criteria: (a) eligible to be serviced by the banking system; (b) fully secured by real estate mortgage; (c) foreclosure of the collateral shall be effected within six (6) months from the date of transfer to the RBU if the loan remains to be past due; and (d) they are not eligible to be serviced by the banking system but loan is already outstanding as of 27 October 2000: *Provided, further,* That a past due partially secured or unsecured FCDU/EFCDU loan shall only be eligible for conversion/transfer to RBU if part of a multi-creditor rehabilitation or work-out plan acceptable to all creditors where the said plan requires the conversion of FCDU/EFCDU loans to peso;

(2) there shall be actual settlement in foreign currency, simultaneous with the transfer, by the RBU to the FCDU/EFCDU of the total amount of foreign currency-denominated loans being transferred to the RBU using the prevailing foreign exchange/conversion rate at the time of transfer;

(3) the transfer and conversion of foreign currency-denominated loans from the FCDU/EFCDU books to the RBU books including the prevailing foreign exchange/conversion rate to be used shall have the prior approval of the bank's board of directors, or the Country Head, in case of branches of foreign banks, and the prior written consent of the borrower whose account will be transferred/converted, except for loans covered by credit/loan agreement allowing the bank to unilaterally convert and transfer the FCDU/EFCDU loan in which case the prior written consent requirement may be dispensed with;

(4) the converted/transferred FCDU/EFCDU loans are properly documented/

[1] From 31 October 2008 to 31 March 2009, banks may add back the resulting net debit balance in the total of Item Nos. *"1"* to *"4"* above to total assets in the FCDU/EFCDU book for purposes of determining compliance with the 100% asset cover requirement instead of transferring eligible foreign currency assets from the RBU book to FCDU/EFCDU book.

covered by a written agreement/contract: *Provided,* That if the original loan agreement allows the bank to unilaterally convert/transfer the FCDU/EFCDU loan to peso, the said loan agreement should indicate the general terms and conditions of the converted/ transferred peso loan: *Provided, further,* That upon conversion/transfer, the borrower must be informed in writing of the peso loan's new terms and conditions: *Provided, finally,* That once converted/ transferred to a peso loan, the same loan should not be converted back to an FCDU/ EFCDU loan;

(5) no income shall be recognized by the FCDU/EFCDU or RBU on the transfer of FCDU/EFCDU loans to RBU;

(6) the status of the FCDU/EFCDU loan prior to the transfer, i.e., current or past due, performing or non-performing, and the loan classification, i.e., especially mentioned, substandard, doubtful or loss, shall be retained once the loan is transferred to the RBU books, which transfer shall also include the corresponding booked allowance for probable losses;

b. FCDU/EFCDU ROPAs may also be transferred to the RBU without prior BSP approval, subject to Items *"(2)"* to *"(6)"* above;

c. Conversions and transfers of FCDU/EFCDU loans and ROPA to RBU books that do not meet the above guidelines shall be subject to prior Monetary Board approval; and

d. All foreign currency-denominated loans and ROPA in the FCDU/EFCDU converted to peso and transferred to the books of the RBU shall be reported monthly to the appropriate department of the SES within ten (10) banking days from end of reference month. The report, classified as *Category B*, shall include name of borrower, date transferred/ converted, outstanding balance in foreign currency in the FCDU/EFCDU, peso amount booked in the RBU, prevailing foreign exchange rate used, status and classification on date of transfer, collateral (if any) and date approved by bank's board/Country Head. A report is not required if no transfers were effected during the month.

The prescribed accounting entries on the conversion and transfer of FCDU/ EFCDU loans and ROPA to RBU books are shown in *Appendix 59*.

Secs. X566 – X598 (Reserved)

Sec. X599 General Provision on Sanctions Any violation of the provisions of this Part shall be subject to Sections 36 and 37 of R.A. No. 7653.

The guidelines for the imposition of monetary penalty for violations/offenses with sanctions falling under Section 37 of R.A. No. 7653 on banks, their directors and/or officers are shown in *Appendix 67*.

PART SIX

TREASURY AND MONEY MARKET OPERATIONS

A. OTHER OPERATIONS

Section X601 Open Market Operations The following rules and regulations shall govern the buying and selling of government securities in the open market, pursuant to Section 91 of R.A. No. 7653.

a. The BSP may buy and sell in the open market for its own account:

(1) Evidences of indebtedness issued directly by the Government of the Philippines or its political subdivisions; and

(2) Evidences of indebtedness issued by government instrumentalities and fully guaranteed by the Government.

The above evidences of indebtedness must be freely negotiable and regularly serviced. Purchases and sales in the open market shall be made through banks, QBs and accredited government securities dealers.

b. Outright purchases and sales of government securities shall be effected at prevailing market prices.

c. Repo agreements shall be open to banks (except RBs), QBs, and accredited government securities dealers and shall be made under the terms provided for in Subsec. X601.1 and the following:

(1) The repo agreement may be paid at any time before maturity, subject to mutual agreement of both parties;

(2) In the event the securities covered by the repo agreement are not repurchased by the issuer of such agreement, the same may be sold in the open market or transferred to the BSP portfolio; and

(3) Should an issuer of a repo agreement become no longer qualified as such, its outstanding repo agreement shall immediately become due and payable. If settlement of the amount due is not made within three (3) days from the date of its disqualification, the BSP shall proceed to collect said amount in accordance with the preceding paragraph.

d. Reverse repo agreements covering the sale of portion of the security holdings of the BSP portfolio may be made under the terms provided for in Subsec. X601.2.

e. The purchase and sale of government securities by the National Treasury and government-owned or controlled corporations shall be made only with (a) the BSP; (b) the DBP, the LBP, the SSS, the GSIS, the Al-Amanah Islamic Investment Bank of the Philippines and banks that are wholly-owned or controlled by these institutions; and (c) the Philippine Veterans Bank. Transactions shall be done with the bank proper and not through its trust department.

§ X601.1 *Repurchase agreements with Bangko Sentral*

a. Repo agreements may be effected with the BSP subject to the following terms and conditions:

(1) *Rate*. The rates on the repo agreement facility shall be set by the Treasury Department, with the concurrence of the Governor, taking into account prevailing liquidity/market conditions.

(2) *Term*. At the option of the Treasury Department, availments may be for a minimum of one (1) day (overnight) and a maximum of ninety-one (91) days.

(3) *Security*. Only obligations of the National Government and its instrumentalities and political subdivisions, which are fully guaranteed by the Government, with a remaining maturity of not more than ten (10) years and which are freely negotiable and regularly serviced, shall be eligible as underlying instruments

for repo agreements subject to the collateral requirement prescribed by the BSP.

(4) *Delivery*. Delivery of the underlying instruments shall be made to the BSP at the prescribed time. For overnight repo agreements, delivery of the underlying instruments shall be made not later than 12:00 noon of the date of transaction.

Government securities which are held by the issuer of the repo agreement under the book-entry system with the BSP may be used as underlying instruments only with the conformity of the BSP.

(5) Upon termination of the repo agreement, the issuer of such agreement shall claim and take delivery of the underlying instruments at the Treasury Department, BSP. Failure to claim and take delivery of the underlying instruments immediately upon such termination shall relieve the BSP of any liability or responsibility for the loss or misplacement of said instruments.

b. US dollar (USD) denominated repo agreement facility may likewise be effected with the BSP, subject to the following terms and conditions, and as may be provided under the repo agreement facility:

(1) *Eligible borrowers*. The USD denominated repo agreement facility shall only be available to banks with legitimate foreign currency denominated funding needs as may be provided under the repo agreement facility: *Provided*, That the borrowing shall be for the account of the applicant bank and shall not be used to fund liquidity requirements of foreign branches, affiliates, or subsidiaries.

(2) *Collateral*. Only USD denominated obligations of the National Government of the Republic of the Philippines shall be eligible as collateral.

(3) The guidelines on the availment of USD denominated repo agreement with the BSP are shown in *Appendix 86*.

The Monetary Board may, at its discretion, impose any or all of the following sanctions to a bank and/or its director/s or officer/s found to be responsible for violation of the provisions on the terms and conditions of the USD denominated repo agreement with the BSP:

(1) Termination of eligibility and pre-termination of any outstanding balance through repayment and/or sale of the collateral;

(2) Fine of up to P30,000 per transaction per day of violation reckoned from the time the violation was committed up to the date it is corrected;

(3) Suspension of interbank clearing privileges/immediate exclusion from clearing;

(4) Suspension of access to BSP rediscounting facilities;

(5) Suspension of lending or foreign exchange operations or authority to accept new deposits or make new investments;

(6) Revocation of authority to perform trust operations;

(7) Revocation of quasi-banking license;

(8) Suspension for 120 days without pay of the officers and/or directors responsible for the violation; and

(9) Other sanctions as may be provided by law.

(As amended by Circular Nos. 631 dated 12 November 2008, 627 dated 23 October 2008, M-2008-034 dated 12 November 2008 and M-2008-031 dated 23 October 2008)

§ X601.2 *Reverse repurchase agreements with Bangko Sentral.* Reverse repo agreements may be effected with the BSP subject to the following terms and conditions:

a. *Rate*. The rates shall be set by the Treasury Department, with the concurrence of the Governor, taking into account the prevailing liquidity/market conditions.

b. *Term*. At the option of the Treasury Department, availments may be for a minimum of one (1) day (overnight) and a maximum of 364 days.

c. *Security*. The collateral shall consist of obligations of the National Government and other freely negotiable securities in the BSP portfolio valued at 100%.

d. *Delivery*. No delivery of the collateral shall be made, but a custody receipt shall be issued instead.

e. *Reservation*. Prepayment may be made by the BSP at its option anytime before maturity.

Effective 01 July 2003, published interest rates that will be applied on BSP's reverse repo agreements with banks shall be inclusive of Value Added Tax (VAT).

Reverse repo agreements entered into by the BSP with any AAB are included in the definition of the term "deposit substitutes" under Sec. 22 (y) Chapter 1 of the National Internal Revenue Code of 1997.

The BSP shall withhold twenty percent (20%) Final Withholding Tax (FWT) on its overnight reverse repo agreements starting January 01, 2008, under the following guidelines:

(1) All overnight reverse repo agreements with the BSP shall be subject to the twenty percent (20%) FWT in the same manner as term reverse repo agreements, which tax is deducted on each maturity date and remitted to the BIR;

(2) The total twenty percent (20%) FWT on the overnight reverse repo agreements due starting 01 January 2008 until 08 September 2008 shall be divided equally in the remaining months of taxable year 2008. The installments due will be deducted every end of the month from the RDDA of concerned banks; and

(3) Concerned banks shall issue the corresponding debit authority to the BSP to cover the twenty percent (20%) FWT on their overnight reverse repo agreements with the BSP mentioned in Item "2" above.

(As amended by Circular No. 619 dated 22 August 2008)

§ X601.3 *Settlement procedures on the purchase and sale of government securities under repurchase agreements with the Bangko Sentral.* Purchase and sale of government securities under repo agreements (GS/repo agreements) between and among banks and QBs and BSP in connection with the latter's open market operations shall be settled in accordance with the provisions of the agreement for the PhilPaSS executed on 12 December 2002 between the BSP and BAP/CTB/RBAP and any subsequent amendments thereto.

(As superseded by the agreement between the BSP and BAP/CTB/RBAP dated 12 December 2002)

§§ X601.4 - X601.5 *(Reserved)*

§ X601.6 *Bangko Sentral trading windows and services during public sector holidays.* The guidelines on BSP's trading windows and services during public sector holidays are shown in *Appendix 84*.

(M-2008-025 dated 13 August 2008)

Secs. X602 - X610 (Reserved)

B. FINANCIAL INSTRUMENTS

Sec. X611*(2008 - X602)* Derivatives. A bank may engage in authorized derivatives activities: *Provided,* That the bank:

a. Understands, measures, monitors and controls the risks assumed from its derivatives activities;

b. Adopts effective risk management practices whose sophistication are commensurate to the risks being monitored and controlled; and

c. Maintains capital commensurate with the risk exposures assumed.

Further, a bank may likewise engage in financial derivatives activities in accordance with these guidelines. The transacting bank shall have the responsibility to comply with the guidelines set out in this Section, including the relevant appendices, and other applicable laws, rules and regulations governing derivatives transaction. In case of derivatives instruments involving foreign currencies and/or other foreign currency - denominated assets, the transacting bank shall observe the pertinent FX rules and regulations. For purposes of these guidelines, a bank that transacts (i.e., transacting bank) whether as end-user, broker or dealer, in derivatives instruments is considered to be engaging in a derivatives activity.

Derivative is broadly defined as a financial instrument that primarily derives its value from the performance of an underlying variable. For purposes of these guidelines, a *financial derivative* is any financial instrument or contract with all of the following characteristics:

a. Its value changes in response to a change in a specified interest rate, financial instrument price, commodity price, FX rate, index of prices or rates, credit spread, credit rating or credit index or other variables not prohibited under existing laws, rules and regulations (the "underlying");

b. It requires either no initial net investment or an initial net investment that is smaller than would be required for other types of contracts that would be expected to have a similar response to changes in market factors; and

c. It is settled at a future date.

Financial derivatives activities shall also include transactions in cash instruments with embedded derivatives that reshape the risk-return profile of the host instrument, such as credit-linked notes ("CLNs") and other structured products ("SPs").

A market participant may take any of the following roles in a derivatives transaction:

a. An *end-user* is defined as a financial market participant that enters, for its own account, in a derivatives transaction for legitimate economic purposes. These purposes may include, but are not limited to, the following: hedging, proprietary trading, managing capital or funding costs, obtaining indirect exposures to desired market factors, investment, yield-enhancement, and/or altering the risk-reward profile of a particular item or an entire balance sheet.

An end-user may be classified according to its financial sophistication:

(1) *Market counterparty* - refers to any UB or KB, only with respect to the instruments for which it is authorized to engage in as a dealer.

(2) *Institutional counterparty* - refers to an institution which is not a market counterparty and has the level of net worth, knowledge, expertise, and experience to deal with financial derivatives.

(3) *Sophisticated individual end-user* - refers to an individual who has demonstrated to the bank as having the level of net worth, knowledge and experience in dealing with financial products, including financial derivatives. An individual may register as a sophisticated individual end-user with the Centralized Applications and Licensing Group of the BSP.

(4) *Other end-user* - This refers to all other institutional or individual clients not categorized as market counterparty, institutional counterparty or sophisticated individual end-user.

b. A *broker* is a financial market participant that facilitates a derivatives transaction between a dealer and its client, for a fee or commission. The counterparties to the derivatives contract are the client and an authorized dealer.

c. A *dealer* is defined as a financial market participant that engages in a derivatives activity as an originator of derivatives products or as market-maker in derivatives products. A dealer can distribute

its own derivatives products, including those of others. A dealer can also act as broker and/or end-user of derivatives instruments.
(As amended by Circular No. 594 dated 08 January 2008)

§ X611.1 *(2008 - X602.1) Generally authorized derivatives activities*. A bank may engage in the following derivatives activities without need of prior BSP approval: *Provided,* That it observes the provisions of *Appendix 25* and meets the following conditions:

a. UBs and KBs may transact in the following derivatives in the capacities specified:

(1) *As a dealer*. A UB or KB may originate and distribute the following "organized market"-traded financial derivatives:

(a) FX forwards, FX swaps, currency swaps and analogous financial futures with a tenor of three (3) years or less; and

(b) Interest rate swaps, forward rate agreements and analogous financial futures with a tenor of ten (10) years or less: *Provided*, That the issuance of sub-participation in any derivatives held as an end-user shall be deemed as undertaking the role of a dealer: *Provided, further,* That the dealer UB or KB observes the provisions of *Appendix 26* and other pertinent securities laws, rules and regulations.

For purposes of this Subsection, an *organized market* refers to an exchange or a BSP-recognized over-the-counter market governed by transparent and binding market conventions on price transparency, trade reporting, market surveillance and orderly conduct/ operations of the market.

(2) *As end-user*[1].

(a) A UB or KB, including its trust department, may enter in any financial derivatives transaction for the purpose of hedging its own risks: *Provided*, That it observes all the requirements for hedging transactions under PAS.

(b) A UB or KB may trade with counterparties in order to take positions for its own account in "organized market" - traded financial instruments enumerated under Item *"1"* above. It can also take long positions in naked FX options with a tenor of three (3) years or less.

(c) RBU and EFCDU of UBs and KBs, including its trust departments, may invest, for their own account, in the following SPs:

(i) Principal-protected foreign currency-denominated SPs, the revenue streams of which are linked to interest rate indices, interest rate instruments, listed equity shares or indices, FX rates, credit rating or index, or gold: *Provided*, That the maximum contractual maturity shall be five (5) years;

(ii) Plain vanilla single-name CLNs where the reference asset is an obligation issued or guaranteed by the Republic of the Philippines.

Provided, That the bank or trust entity shall comply with the following conditions:

(aa) Total carrying value of all investments in SPs shall not exceed 100% of the bank's qualifying Tier 1 capital or fifty percent (50%) of a trust entity's trust assets; and

(bb) For investments in SPs under the EFCDU, total carrying value of SPs as defined herein shall also not exceed twenty percent (20%) of the total FCDU assets: *Provided,* That SPs which are not booked in an investment account (e.g., booked as inter-bank loans), for this purpose, shall be considered as part of the EFCDU assets.

An SP is considered principal-protected if the minimum all-in return for such investment is at least zero and such minimum all-in return is guaranteed by an

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[1] All transactions involving warrants issued under the ROP's "Paired Warrants Program" shall be considered as among the generally authorized derivatives activities that banks (including TBs and RBs/Coop Banks) may engage in as end-user, without need for additional derivatives authority required under this Subsection: *Provided,* That banks holding such instruments shall comply with the requirements of *Appendix 25*, where applicable.

entity (i.e., issuer or a third party) rated at least "A" or its equivalent by an international rating agency acceptable to the BSP or fully collateralized by an asset with equivalent credit quality.

(3) *As a broker*. A UB or KB may facilitate derivatives transactions between dealers and market and/or institutional counterparties and/or sophisticated individual end-users: *Provided,* That the UB/KB, acting as broker, ensures that its client fully understands its limited responsibility as a broker: *Provided further,* That the bank adheres to procedures for evaluating client suitability, including risk disclosures, as prescribed in *Appendix 26*: *Provided finally*, That the bank complies with other pertinent securities laws, rules and regulations.

b. TBs, RBs and Coop Banks may enter in derivatives transactions as end-user with BSP - authorized dealers and brokers solely for hedging purposes: *Provided*, That they observe all the requirements for hedging transactions under PAS[1]. A TB, RB or Coop Bank may apply for a Type 3 authority to enter into derivatives transactions as end-user for purposes other than hedging: *Provided*, That the applicant bank agrees to be covered by all regulations prescribing capital for market risk, notwithstanding any provision to the contrary; and

c. A trust department of a UB or KB may transact, as an institutional counterparty, with financial derivatives instruments enumerated under Subsec. X611.1(a)(2) on behalf of its trustor/ principal/s as may be authorized by such trustor/ principal/s: *Provided,* That the trust department observes the relevant provisions of *Appendices 25* and *26*. Trust entities other than that within a UB or KB may apply for a Type 3 authority to enter on behalf of its trustor/principal/s in derivatives transactions under Subsec. X611.1(a)(2). Any trust entity may also apply for Type 3 authority in order to transact as end-user on behalf of its trustor/ principal/s with derivatives instrument outside those enumerated under Subsec. X611.1(a)(2).

(As amended by Circular Nos. 605 dated 05 March 2008 and 594 dated 08 January 2008)

§ X611.2*(2008 - X602.2) Activities requiring additional derivatives authority.* A bank shall apply for prior BSP approval of additional derivatives authority to engage in all other financial derivatives activities not expressly allowed in Subsec. X611.1. A bank may apply for two (2) or more additional authorities. A bank applying for additional derivatives authority/ies must have and maintain a risk management system commensurate to the additional authority/ies being applied for, in accordance with the provisions of *Appendix 25* and meet other conditions specified under this Subsection.

a. *Classification of additional derivatives authority*

(1) Type 1 - *Expanded dealer authority*

A UB or KB may apply for a Type 1 authority. A bank with Type 1 authority may transact in any financial derivatives as a dealer: *Provided,* That a bank with Type 1 authority shall comply with the sales and marketing guidelines prescribed in *Appendix 26*. A bank with Type 1 authority may likewise transact in any financial derivatives as a broker and an end-user.

The BSP expects banks applying for Type 1 authority to institutionalize a (a) comprehensive and integrated risk management system; and (b) sales and marketing practices that are deemed appropriate and adequate for the different derivatives activities it expects to engage

[1] All transactions involving warrants issued under the ROP's "Paired Warrants Program" shall be considered as among the generally authorized derivatives activities that banks (including TBs and RBs/Coop Banks) may engage in as end-user, without need for additional derivatives authority required under this Subsection: *Provided,* That banks holding such instruments shall comply with the requirements of *Appendix 25,* where applicable.

in. It must be rated at least CAMELS (or ROCA for branches of foreign banks) of *"4"* or better over-all, notwithstanding any provision to the contrary.

(2) Type 2 - *Limited dealer authority*

A UB or KB may apply for a Type 2 authority. A bank with Type 2 authority may operate as a dealer in specific types of derivatives products with specific underlying reference, as applied for by the bank, outside those financial derivatives instruments under Subsec. X611.1(a)(1): *Provided,* That a bank with Type 2 authority shall comply with the sales and marketing guidelines prescribed in *Appendix 26*. The Type 2 authority also carries authority to transact as broker and end-user of the said specific derivatives instruments.

(3) Type 3 - *Limited user authority*

Any bank may apply for a Type 3 authority. A bank with Type 3 authority may transact, as an end-user, in specific types of derivatives products, with specific underlying reference, as applied for by the bank, outside of those instruments under Subsec. X611.1(a)(2). However, as regards a TB, RB or Coop Bank and trust entity other than that within a UB or KB, a Type 3 authority will enable said bank/entity to transact as end-user of a derivative instrument as may be applied for by the bank/entity.

(4) Type 4 - *Special broker authority*

A bank, other than a UB or KB, may apply for a Type 4 authority. A bank with Type 4 authority may facilitate a derivatives transaction between a UB or KB, as dealer, and market and institutional counterparties and sophisticated individual end-users: *Provided,* That the bank, acting as broker, ensures that its client fully understands its limited responsibility as a broker and observes the provisions of *Appendix 26.*

A UB or KB may likewise apply for a Type 4 authority to enable itself to broker a derivatives transaction for or with other end-users.

A bank with additional Type 1, 2 or 4 authorities shall be responsible for complying with pertinent securities laws, rules and regulations.

For purposes of this Subsection, the types of derivatives are classified as follows: forwards, swaps and options. Underlying reference pertains to the following: interest, FX, equity, credit and commodity.

b. *Qualification requirements*. A bank applying for additional authority to engage in expanded derivatives activities shall:

(1) Demonstrate adequate competence in its general operations as evidenced by:

(a) CAMELS (or ROCA for branches of foreign banks) composite rating of at least *"3"* with a similar rating for Management;

(b) No unresolved major safety and soundness issues that threaten liquidity or solvency; and

(c) Substantial compliance with regulations on anti-money laundering, corporate governance and risk management.

(2) Hold capital commensurate to the risks assumed or to be assumed from the derivatives activities. The BSP expects a bank applying for or holding additional derivatives authority to have adequate capital to accommodate existing and future risks from additional and generally authorized derivatives activities as well as risks arising from the bank's other business activities. For this purpose, the BSP may require capital higher than the minimum required under prudential regulations.

(3) Have and maintain a risk management system that conforms to the principles and complies with the minimum standards prescribed in *Appendix 25.*

c. *Applicability to trust entities.* Trust entities may apply for Type 3 authority: *Provided*, That they comply with the requirements prescribed and observe the provisions of *Appendix 26.*

d. *Application procedures*. The applicant shall submit to the Capital Markets Specialist Group, SES of the BSP a written application for additional derivatives authority/ies accompanied by:

(1) A copy of the board resolution (or equivalent management review body in the case of branches of foreign banks or trust committee, in case of trust entities) approving the application for a specific type of derivatives authority;

(2) A notarized certification signed jointly by the president, treasurer and compliance officer of the applicant-bank (or two (2) authorized signatories of equivalent rank of the trust committee in case of trust entities), stating that the bank complies with all the requirements for the authority being applied for specified in Subsec. X611.2; and

(3) A list of the types of derivatives and underlying reference the bank intends to engage in, including the following information for each derivatives class or type:

(a) Target customers for such derivatives;

(b) The capacity in which the bank intends to engage in such derivatives;

(c) Description of each type of derivatives and underlying reference with which it will deal;

(d) Analysis of the risks involved in transacting in each type of derivatives;

(e) Procedures/methodologies that the bank will implement to measure, monitor (including risk management reports) and control the risks inherent in the types of derivatives;

(f) Relevant accounting guidelines, including pro-forma accounting entries;

(g) Analysis of any actual or potential legal/regulatory restrictions; and

(h) Process flow chart, from deal initiation to risk reporting, indicating the departments and personnel involved in identified processes.

(4) Payment of a non-refundable processing fee amounting to:

Authority	Amount	
Type 1	P 200,000	
Type 2	100,000	(UBs and KBs)
Type 3	50,000	
	25,000	(other applicants)
Type 4	25,000	(all banks)

(5) The BSP will not accept applications lacking any of the above-stated requirements. The BSP, however, may require additional documents to aid its evaluation of the application. By virtue of the application, the applicant automatically authorizes the BSP to conduct an on-site evaluation of the applicant's risk management capabilities, if this is deemed necessary.

(6) Type 1 authority shall be subject to approval by the Governor, upon recommendation of the Deputy Governor, SES. All other applications for additional authority/ies shall be subject to approval by the Deputy Governor, SES.

(7) A bank whose application for additional derivatives authority/ies or an upgrade thereof (e.g., from Type 2 to Type 1 authority) has been denied cannot submit a new application for additional derivatives authorities until after six (6) months from receipt of denial. The same rule applies for a bank whose authorities have been limited or downgraded.

(8) A bank that holds an additional derivatives authority may apply for additional derivatives authorities (e.g., currently holding Type 3 authority who wish to apply for Type 4 authority) or an upgrade thereof only after the lapse of six (6) months from the grant of the previous additional derivatives authority.

(As amended by Circular No. 594 dated 08 January 2008)

§ X611.3 ***(2008 - X602.3) Intra-group transactions.*** All derivatives transactions between a bank and any of its subsidiaries and affiliates shall comply with minimum risk management standards for related-

party transactions outlined in *Appendix 25,* as part of the bank's internal control procedures. The BSP expects banks to establish internal reporting and monitoring system for derivatives activities for related-party transactions. Failure to comply with minimum standards shall be a ground for citing non-compliance with Subsecs. X611.1 and X611.2 without prejudice to other BSP rules and regulations such as those related to corporate governance and unsafe and unsound banking practices.
(As amended by Circular No. 594 dated 08 January 2008)

§ X611.4 ***(2008 - X602.4) Accounting guidelines.*** A bank that engages in derivatives activities must strictly account for such transactions in accordance with PAS.
(As amended by Circular No. 594 dated 08 January 2008)

§ X611. 5 ***(2008 - X602.5) Reporting requirements.*** A bank or trust department/ entity engaged in any derivatives transaction shall submit, in addition to the derivatives reports enumerated under the BSP FRP, a monthly report on derivatives transactions/outstanding derivatives within fifteen (15) banking days from end of the reference month. The reports shall be certified by the treasurer.
(As amended by Circular No. 594 dated 08 January 2008)

§ X611.6 ***(2008 - X602.6) Sanctions***

a. *Unauthorized transactions*. Sanctions prescribed under Sections 36 and 37 of R.A. No. 7653 shall be imposed on any bank (including its directors and officers) found to have engaged in an unauthorized derivatives activity.

A bank undertaking unauthorized derivatives activities may be considered as conducting its business in an unsafe and unsound manner under Section 56 of R.A. No. 8791.

b. *Delayed/erroneous/inaccurate reporting*. Banks failing to submit the reports required under Subsec. X611.5 within the prescribed deadline shall be subject to monetary penalties applicable for delayed reporting under existing regulations. Moreover, submission of incomplete, uncertified or improperly certified or otherwise erroneous reports shall be considered non-reporting, subject to applicable penalties for amended/ delayed reports. For purposes of imposing monetary penalties, the reports shall be classified as a *Category A-1* report. Habitual delayed or erroneous reporting may be a ground for further sanction, including limitation of generally authorized activities and/or additional authorities and/or suspension of authority to engage in such derivatives activities.

c. *Non-compliance with the provisions of Sec. X611 and its Subsections and Appendices 25 and 26*. Any bank/trust entity found violating any of the provisions of Sec. X611 and its Subsections, and/or *Appendices 25* and/or *26* shall be sanctioned with the penalties prescribed under Sections 36 and 37 of R.A. No. 7653 in accordance with the gravity/seriousness of the offense taking into consideration the number of times the offense was committed, possible consequent losses on the clients, effect on the financial markets and other relevant factors.

d. *Curtailment of derivatives authority*. The BSP reserves the right to suspend, modify, downgrade, limit or revoke any bank's derivatives authority (including any or all of those generally authorized activities) for prudential reasons as may be evidenced by any or all of the following:

(1) The bank is assigned a CAMELS (or ROCA in the case of branches of foreign banks) composite rating or component management rating of lower than that prescribed under Subsec. X611.2, in the most recent regular examination.

(2) The bank has not maintained adequate risk management systems given the level and type of derivatives activities it has engaged in as may be determined

by the BSP in any on-site evaluation and confirmed by the Monetary Board.

(3) The Monetary Board has confirmed an SES finding that the bank has conducted business in an unsafe and unsound manner.

An erring bank may apply for reinstatement of its derivatives authority only after six (6) months from lapse of the implementation of the sanction: *Provided,* That the bank has satisfactorily addressed all BSP concerns.

Transitory provisions. Expanded or any other derivatives authority granted prior to 30 January 2008 shall be operative for one (1) year from the said date: *Provided,* That a bank undertaking any derivatives activities pursuant thereto shall immediately comply with the pertinent provisions of *Appendices 25* and *26*. A bank which intends to continue its existing derivatives authority not covered by those generally authorized under Subsec. X611.1, must submit an application for the appropriate additional derivatives authority within the one (1) - year transitory period. After the lapse of the one (1) - year transitory period, a bank can only perform those activities which are permissible under Sec. X611 and its Subsections.

A bank whose SPs, as of 30 January 2008, exceed the prudential limits prescribed under Subsec. X611.1(a)(3) may maintain existing positions but cannot increase its exposures or invest in additional SPs until such time when its exposure levels are within the prescribed limits.
(As amended by Circular No. 594 dated 08 January 2008)

Secs. X612 - X624 (Reserved)

Sec. X625 ***(2008 - X602.14)*** **Forward and Swap Transactions.** The following guidelines shall govern the forward and swap transactions in Philippine peso

§ X625.1 ***(2008 - X602.14) Statement of policy.*** It is the policy of the BSP to support the deepening of the Philippine financial markets. In line with this policy, customers may, thru FX forwards, hedge their market risks arising from FX obligations and/or exposures: *Provided,* That forward sale of FX (deliverable and non-deliverable) may only be used when the underlying transaction is eligible for servicing by the banking system under Circular No. 1389 dated 13 April 1993, as amended. Customers may, likewise, cover their funding requirements thru FX swaps.

Banks may only engage in FX forwards and swap transactions with customers if the latter is hedging market risk or covering funding requirements. There shall be no double/multiple hedging such that at any given point in time, the total notional amount of the FX derivatives transaction/s shall not exceed the amount of the underlying FX obligation/exposure.

The customer shall no longer be allowed to buy FX from the banking system for FX obligations/exposures that are fully covered by deliverable FX forwards and FX swaps.

The following guidelines, as well as minimum documentary requirements, shall cover FX forward and swap transactions involving the Philippine peso between authorized dealer banks and their customers.
(As amended by Circular No. 591 dated 27 December 2007)

§ X625.2 ***(2008 - X602.15) Definition of terms***

a. *Credit default swaps* (CDS) - refers to a financial contract between two (2) parties, the protection buyer and protection seller, with reference to a certain notional value of a reference credit or a basket of reference credits, whereby the former pays a premium to the latter, and in return the latter agrees to make certain protection payments to the former contingent upon the occurrence of a credit event with respect to the reference entity(ies)/asset(s).

b. *Credit-linked note* (CLN) - refers to a pre-funded credit derivative instrument under which the note holder effectively accepts the transfer of credit risk pertaining to a reference asset or basket of assets issued by a reference entity/ies. The repayment of the principal to the note holder is contingent upon the occurrence of a defined credit event. In consideration thereof, the note holder receives an economic return reflecting the underlying credit risk of the reference assets. For purposes of Sec. X611, the term shall generically include similar instruments such as credit-linked deposits (CLDs) and credit-linked loans (CLLs). Unless otherwise stated, the term shall refer only to plain vanilla CLNs. Plain vanilla CLNs are composed of a debt or deposit instrument and a CDS. Non-plain vanilla CLNs are those that are leveraged and/or include features of other SPs (e.g., coupon payments linked to interest or FX rate movements) and/or contains more than one (1) embedded derivative.

c. *Currency swaps* - refers to an arrangement in which two parties exchange a series of cash flows in one (1) currency for a series of cash flows in another currency, at specified exchange and/or interest rates and at agreed intervals over an agreed period.

d. *Forward FX contracts* - refers to an agreement for delayed delivery of a foreign currency in which the buyer agrees to purchase and the seller agrees to deliver at a specified future date a specified amount at a specified exchange rate.

e. *Forward rate agreement (FRA)* - refers to an agreement fixing the interest rates for a specified period whereby the buyer receives (or pays) and the seller pays (or receives) the interest rate differential if the reference rate rises above (or falls below) the contract rate, respectively.

f. *FX exposure* - refers to an FX risk arising from an existing commitment to or from a non-resident or AAB which leads to payment of an FX obligation or receipt of an FX asset based on verifiable documents on deal date.

g. *FX obligation* - refers to an actual FX commitment to a non-resident or any AAB where the amount, payment tenor and party have been determined.

h. *FX options* - refers to option contracts which convey the right or the obligation depending upon whether the bank is the purchaser or the writer, respectively to buy or sell at a specified price by a specified future date, for a fee or a premium, two (2) different currencies at a specified exchange rate.

i. *FX swaps* - refers to an agreement involving an initial exchange of two (2) currencies, usually at the prevailing spot rate, and a simultaneous commitment to reverse the exchange of the same two (2) currencies at a date further in the future at a rate (different from the rate applied to the initial exchange) agreed on deal date.

j. *Interest rate swaps (IRS)* - refers to an agreement in which the parties agree to exchange interest cash flows on a principal amount at certain times in the future according to an agreed upon formula.

k. *Non-deliverable forward (NDF)* - refers to a forward FX contract where only the net difference between the contracted forward rate and the market rate shall be settled at maturity.

l. *Non-resident* - refers to an individual, a corporation or other juridical person not included in the definition of resident.

m. *Resident* - refers to:

(1) An individual citizen of the Philippines residing therein; or

(2) An individual who is not a citizen of the Philippines but is permanently residing therein; or

(3) A corporation or other juridical person organized under the laws of the Philippines; or

(4) A branch, subsidiary, affiliate, extension office or any other unit of corporations or juridical persons which are organized under the laws of any country and operating in the Philippines, except OBUs.

n. *Structured product (SP)* - refers to a financial instrument where the total return is a function of one (1) or more underlying indices, such as interest rates, equities and exchange rates. It is composed of a host contract (e.g., plain vanilla debt or equity securities) and an embedded derivative (e.g., swaps, forwards or options) that re-shape the risk-return pattern of the hybrid instrument. For purposes of guidelines under Sec. X611, the term SP does not include asset-backed securities. Provisions under Sec. 1648 shall continue to apply for securities overlying securitization structures.

(As amended by Circular Nos. 594 dated 08 January 2008 and 591 dated 27 December 2007)

§ X625.3 *(2008 - X602.16) Documentation* Minimum documentary requirements for FX forward and swap transactions in *Appendix 58* shall be presented on or before deal date to the banks unless otherwise indicated.

FX selling banks shall stamp the supporting documents upon presentation by customers as follows:

a. For hedging transactions: "*FX hedged/deliverable*" or "*FX hedged/ non-deliverable*";

b. For funding transactions: "*FX sold*", indicating the contract date and amount involved, and signed by the bank's authorized officer. Copies of all duly marked supporting documents shall be retained by the banks and made available to the BSP for verification. The retained copies shall also be marked "*Documents Presented as Required*" and signed by the bank's authorized officer.

(As amended by Circular No. 591 dated 27 December 2007)

§ X625.4 *(2008 - X602.17) Tenor/ maturity and settlement*

a. *Forward sale of FX (whether deliverable or non-deliverable).* The tenor/ maturity of such contracts shall not be longer than: (i) the maturity of the underlying FX obligation; or (ii) the approximate due date or settlement of the FX exposure. For deliverable FX forward contracts, the tenor/ maturity shall be co-terminus with the maturity of the underlying obligation or the approximate due date or settlement of the FX exposure. This shall not preclude pretermination of the contract due to prepayment of the underlying obligation or exposure: *Provided,* That for foreign currency loans, prior BSP approval has been obtained for the prepayment and a copy of such approval is presented to the bank counterparty.

b. *FX Swaps* - No restriction on tenor.

c. *Settlement of NDFs* - All NDF contracts with residents shall be settled in pesos.

d. *Remittance of FX proceeds of deliverable forward and swap contracts* FX proceeds of deliverable forward and swap contracts shall be delivered by the bank counterparty directly to the beneficiaries concerned except for foreign investments where said FX proceeds are reconverted to Philippine pesos and reinvested in eligible peso instrument such as those listed in Item "*A.2.2*" of *Appendix 58*. For this purpose, beneficiaries shall refer to the FCDU of a bank or a nonresident entity (e.g., creditor, supplier, investor) to whom the customer is committed to pay/remit FX.

(As amended by Circular No. 591 dated 27 December 2007)

§ X625.5 *(Reserved)*

§ 1625.5 *(2008 - 1602) Forward contracts with non-residents.* All forward contracts to sell foreign exchange to non-residents (including OBUs) with no full delivery of principal, including cancellations, roll-overs/renewals shall be submitted for prior clearance to the BSP. However, every roll-over of short-term (ST) deliverable forward contracts with non-residents need not be prior-approved, provided:

a. The underlying transaction for each ST deliverable FX forward contract is a foreign investment in long-term (LT) Philippine government securities for which a Bangko Sentral Registration Document (BSRD) has been issued;

b. The roll-over is effected during the tenor of the underlying LT Philippine government securities;

c. The actual delivery/settlement of the forward contract coincides with the date of the intended capital repatriation of the BSP-registered investments;

d. The value of the forward contract does not exceed the foreign currency equivalent of the maturity value/net proceeds of the BSP-registered investments computed at the agreed forward exchange rate; and

e. The repatriation of capital and remittance of income for the BSP-registered investment complies with documentary requirements under existing BSP rules.

(As amended by Circular No. 591 dated 27 December 2007)

§ 2625.5 ***(Reserved)***

§ 3625.5 ***(Reserved)***

§ X625.6 ***(2008 - X602.18) Cancellations, roll overs or non-delivery of FX forward contracts.*** All cancellations, roll-overs or non-delivery of all FX deliverable forward contracts and the forward leg of swap contracts shall be subject to the following guidelines to determine the validity thereof:

a. *Eligibility test* - Contracts must be supported by documents listed in *Appendix 58* hereof.

b. *Frequency test* - the reasonableness of the cancellation, roll-over or non-delivery shall be based on the results of the evaluation of the justification/explanation submitted by banks as evidenced by appropriate documents.

c. *Counterparty test* - the cancellation or roll-over of contracts must be duly acknowledged by the counterparty to the contract as shown in documents submitted by banks, e.g., there should be *conforme* of counterparty as evidenced by the counterparty signature on pertinent documents.

d. *Mark-to-Market test* - the booking or recording in the books of accounts of the profit or loss on contracts and cash flows/ settlement to counterparties must be fully supported by appropriate documents such as authenticated copy of debit/credit tickets, schedules showing among others, mark-to-market valuation computation, etc.

(As amended by Circular No. 591 dated 27 December 2007)

§ X625.7 ***(2008 - X602.19) Non-deliverable forward contracts with non-residents.*** NDF contracts to sell FX to non-residents shall be covered by the provisions of Subsection 1625.5.

§ X625.8 ***(2008 - X602.20) Compliance with anti-money laundering rules.*** All transactions under Sec. X625 and Subsecs. X625.1 to X625.9 shall comply with existing regulations on anti-money laundering under Sec. X801.

(As amended by Circular No. 591 dated 27 December 2007)

§ X625.9 ***(2008 - X602.21) Reporting requirements.*** Banks duly authorized to engage in derivatives transactions shall continue to be covered by the BSP's existing reporting requirements on financial derivatives. Cancellations, roll-overs or non-delivery of deliverable FX forward contracts and under the forward leg of swap contracts shall be reported electronically in Excel format to the BSP not later than five (5) banking days after reference month as indicated in *Appendix 6*.

Swap contracts with counterparties involving purchase of FX by banks at the initial leg shall likewise be reported electronically in Excel format to the BSP not later than five (5) banking days after reference month as indicated in *Appendix 6*.

The reports shall be transmitted to the International Department at iod@bsp.gov.ph, copy furnished the SDC at the following addresses: sdcfxkbdom@bsp.gov.ph (for domestic banks) and sdcfxkbfor@bsp.gov.ph (for foreign banks).

(As amended by Circular No. 591 dated 27 December 2007)

§§ X625.10 - X625.13 *(Reserved)*

§ X625.14 *(2008 - X602.26) Sanctions* Violations of Sec. X625 and Subsecs. X625.1 to X625.9 shall be subject to the penalty provisions under R.A. No. 7653 (The New Central Bank Act) and other existing banking laws and regulations.

Failure to comply with Subsec. X625.6 shall result in the exclusion of the forward contracts in the computation of the bank's consolidated daily position starting from day one, i.e., when the individual contracts were entered into. Violations of the prescribed FX position limits shall be subject to the following sanctions provided under Circular Letter dated 13 March 1998:

a. Monetary Penalties

Per Calendar Month	Daily Penalty
1st banking day	₱10,000
2nd banking day	20,000
3rd banking day of violation, and onwards, or if the excess FX position of the bank is thirty percent (30%) or more of the allowable limits in any banking day, regardless of whether a bank is in the first, second, third or more days of violation	30,000

b. In addition, the following non-monetary sanctions shall be imposed on the bank committing violations considered as:

(1) *"chronic"*, i.e., when the violation continues beyond three (3) banking days within a calendar month, but the excess position is less than thirty percent (30%) of the allowable limit; and

(2) *"abusive"*, i.e., when the violation continues beyond three (3) business days within a calendar month and excess position is thirty percent (30%) or more of the allowable limit.

"Chronic" violation	Suspension of the bank's rediscounting privileges, cash dividend declaration and branching privileges until the violation is corrected but in no case shall such suspension be less than thirty (30) calendar days.
"Abusive" violation	Suspension of the bank's rediscounting privileges, cash dividend declaration and branching privileges until the violation is corrected but in no case shall such suspension be less than sixty (60) calendar days.

c. The Monetary Board may impose other non-monetary sanctions on a bank for violations determined by BSP as "chronic" or "abusive" on a case-to-case basis, pursuant to Sec. 37 of R.A. No. 7653.

d. Banks shall be duly advised by the BSP of their violations and the corresponding sanctions imposed for such violations.

e. A monetary penalty imposed on a bank shall be paid to the BSP Cash Department, within three (3) banking days from the bank's receipt of advice of said penalty imposition.

For purposes of imposing sanctions for delayed, erroneous or unsubmitted reports, reports required under Subsec. X625.9 are classified as *Category B* reports and subject to corresponding penalties.

Counterparties that habitually cancel deliverable forwards without proper justification may be subject of a BSP watchlist.
(As amended by Circular No. 591 dated 27 December 2007)

Secs. X626 - X628 (Reserved)

Sec. 1628 ***(2008 - 1633)*** **Credit-linked Notes and Similar Credit Derivative Products.** The following are the guidelines for the capital treatment of investments in credit-linked notes and similar credit derivative products such as credit-linked deposits and credit linked loans.

§ 1628.1*(2008 - 1633) Definitions*

(1) A credit-linked note (CLN) pertains to a pre-funded credit derivative instrument under which the note holder effectively accepts the transfer of credit risk pertaining to a reference asset or basket of assets issued by a reference entity/ies. The repayment of the principal to the note holder is contingent upon the occurrence of a defined credit event. In consideration, the note holder receives an economic return reflecting the underlying credit risk of the reference asset/s.

All references to CLNs in this Section shall be taken to generically include similar instruments, such as Credit-Linked Deposits (CLDs) and Credit-Linked Loans (CLLs).

(2) An SPV, for purposes of this Section, refers to an entity specifically established to issue CLNs of a single, homogeneous risk class that are fully collateralized as to principal by high-grade securities purchased out of the proceeds of the note issuance. Collateral shall be limited to securities with an assignable risk weight of not more than twenty percent (20%) under existing regulations.

§ 1628.2 ***(2008 - 1633) Qualified banks***
In general, only banks with expanded derivatives authority may invest in CLNs as defined above on the principle that such banks have already demonstrated a more sophisticated ability to manage risks. Subject to the provisions in Sec. 1648, they may also invest in SPV-issued CLNs that co-exist with other CLNs of different seniority of claims against the reference asset pool. As an exception to the general rule, a UB/KB without expanded derivatives authority may invest in single name CLNs where the reference asset is a direct ROP obligation or an obligation fully guaranteed by the ROP.

§ 1628. 3 ***(2008 - 1633) Capital treatment of investments in CLNs***

(1) Banking book. Positions in CLNs in the banking book shall be reported in the computation of the risk-based capital adequacy ratio covering credit risks under Sec. X116.

Through holding a CLN, a bank acquires credit exposure on two (2) fronts - to the reference entity of the note and also to the note issuer. The on-balance sheet exposure arising from the CLN should be weighted by the higher of the risk weight of the reference entity or the risk weight of the note issuer. The amount of exposure is the book value of the note. If the CLN principal is fully collateralized by securities that are acceptable as credit risk mitigant under Sec. X116 and provided such collateral is constituted in a legally effective manner as to give priority to the note holders' interest in the event of bankruptcy of the note issuer, the risk weight of the note issuer is substituted with the risk weight associated with the relevant security.

When the CLN is referenced to a basket of reference entities and the contract terminates and pays out on the first entity to default in the basket, capital should be held to consider the cumulative risk of all the reference entities in the basket. This means that the risk weights of all the reference entities are added up and the sum compared with the risk weight of the note issuer. If the sum of the risk weights of all the reference entities in the basket is higher than the risk weight of the note issuer, then this sum is adopted. The resultant risk-weighted exposure to the basket is, however, capped at ten (10) times the book value of the note. Accordingly, the maximum capital charge is 100% of the book value of the note. The multiplier ten (10) is the reciprocal of the BSP-required minimum capital adequacy ratio of ten percent (10%).

If, on the other hand, the risk weight of the note issuer is still higher than the sum of the risk weights of all the reference entities in the basket, then the risk weight of the note issuer is adopted.

When the contract terminates and pays out on the n^{th} (other than the first) entity to default in the basket, the treatment above shall apply except that in aggregating the risk weights of reference entities, the risk weight/s of n–1 entity/ies is/are excluded from the computation. The bank may choose which entity/ies to exclude.

If a CLN that pays out on the n^{th} entity to default is rated such that it meets the criteria of a security with the "highest credit quality" as defined under *Appendix 46*, only the highest risk weight in the basket of reference entities is compared with the risk weight of the note issuer.

If the CLN is issued by an SPV, the bank is exposed to both the reference entity and the collateral held by the SPV. Thus, the risk weight/s of the reference entity/ies should be compared with the risk weight of the riskiest eligible collateral for purposes of computing the risk-weighted exposure of the note and the corresponding capital charge.

Subject to prior BSP clearance, a bank may disapply the additive rule when a very strong correlation among the reference entities in the basket can be demonstrated.

A CLN which is referenced to entities in the basket proportionately should be risk-weighted according to each reference entity's share of protection under the contract. Thus, if there are two (2) reference entities in a P100.0 million contract, one (1) with a 100% risk weight and a twenty percent (20%) share and the other with a twenty percent (20%) risk weight and an eighty percent (80%) share, the risk weighted exposure is P36.0 million, i.e., P100.0 million x 20% x 100% + P100.0 million x 80% x 20%. The corresponding capital charge is P3.6 million (P36.0 million x 10%).

(2) *Trading book.* Positions in CLNs taken up in the trading book should be reported in the computation of the adjusted risk-based capital adequacy ratio covering combined credit risk and market risk under *Appendix 46*.

(a) *Standardized approach*

The following describes the positions to be reported for investments in CLNs for purposes of calculating specific risk and general market risk charges under the standardized approach.

A CLN investment is treated as a position in the note itself, with an embedded credit default product. The CLN is subject to the specific risk associated with the issuer or the collateral when the issuer is an SPV. In addition, it is subject to general market risk that is a function of the maturity and coupon or interest rate of the note. The embedded credit default product creates a notional position in the specific risk of the reference obligation (with no additional general market risk position created).

Specific risk

A CLN investment should be reported as a long position on the reference obligation and a long position on the note itself.

When a CLN is referenced to multiple obligations in a basket, the positions reported shall depend on the structure of the contract. When the contract terminates and pays out on the first obligation to default in the basket, the note should be reported as long positions in each of the reference obligations in the basket, with the total capital charge for the product capped at the book value of the note.

When the contract terminates and pays out on the n^{th} (other than the first) entity to default in the basket, the treatment above shall apply except that in aggregating the risk weights of the reference obligations, the risk weight/s of n-1 obligations is/are excluded from the computation. The bank may choose which obligations to exclude.

Subject to prior BSP clearance, a bank may disapply the additive rule when a very strong correlation among the reference obligations in the basket can be demonstrated.

The additive treatment may also be disapplied when an n^{th}-to-default CLN is rated such that it meets the criteria of a security with the *"highest credit quality"* as defined under *Appendix 46*. Positions in the reference obligations can be reported as a single long position in a debt security with the *"highest credit quality"*. A long position on the note should also be reported whether or not the CLN meets the criteria of a security with the *"highest credit quality"*.

When the CLN is referenced to multiple obligations under a proportionate structure, positions in the reference obligations should be reported according to their respective proportions in the contract.

General market risk

A CLN investment creates a long position in the note itself.

(b) Internal models approach

Banks may seek the BSP's approval to include CLNs in their recognized models for calculating capital charges. The detailed requirements relating to the use of internal models are set out in *Annex A* of *Appendix 46*.

While some banks may not be able to run full internal models to calculate market risk capital charges, they may, with the necessary expertise and systems, use preprocessing techniques to calculate capital charge for CLNs. Banks wishing to adopt these techniques should seek BSP's prior consent. The preprocessing models are subject to verification by the BSP.

§ 1628.4 *(2008 - 1633) Risk management* CLN structures are considered to be exposed to greater risks than comparable investments in direct obligations. In particular, investing banks should be aware of the potential legal risk arising from an unenforceable contract. They should consult their legal advisors about these and related legal issues before engaging in such transactions. In addition, all investments in CLNs must be duly approved by a bank's board of directors and subjected to appropriate risk management procedures.

§ 1628.5 *(2008 - 1633) Transitional arrangements*. Banks which have outstanding investments in CLNs, but which have not been authorized under this Section to invest in such, shall be given a period of ninety (90) calendar days from 25 February 2004 (effectivity of Circular No. 417) to divest themselves of such investments.

§ 1628.6 *(2008 - 1633) Bangko Sentral approval not required*. No prior BSP approval is required to invest in CLNs and similar products. However, it shall be the responsibility of UBs/KBs to fully comply with appropriate risk management standards including, as a minimum, those prescribed under this Section. The regulatory requirements enumerated in *Appendix 66* shall be fully complied with by UBs/KBs investing in products allowed under this Section.

Sec. 2628 (Reserved)

Sec. 3628 (Reserved)

Secs. X629 - X635 (Reserved)

Sec. 1635 Banks' Exposures to Structured Products. The following rules and regulations shall govern the capital treatment of banks' exposures to structured products.

§ 1635.1 *Statement of policy*. The BSP aims to foster the development of a market for new financial products in the country, while at the same time ensure that banks hold sufficient capital commensurate to the risks inherent in these products.

§ 1635.2 *Definition.* A *structured product* refers to a financial instrument where the return is a function of one (1) or more underlying indices, such as interest rates, equities and exchange rates. There may also be embedded derivatives such as swaps, forwards, options, caps, and floors that reshape the risk-return pattern. For purposes of this Subsection, structured products do not include asset-backed securities, credit-linked notes and other similar instruments.

§ 1635.3 *Qualified banks.* As a general rule, only UBs and KBs with expanded derivatives license may obtain exposures in structured products. Banks without expanded derivatives license may only invest in structured products duly approved by the BSP.

§ 1635.4 *Capital treatment of banks' exposures to structured products*

a. Banking book

(1) Risk weights. Capital charge for structured products held in the banking book shall depend on the rating of the issuing entity, or rating of the collateral in case of structured products issued by special purpose vehicles (SPVs), given by the following BSP-recognized international credit rating agencies:

(a) Moody's;
(b) Standard & Poor's;
(c) Fitch Ratings; and
(d) Such other international rating agencies as may be approved by the Monetary Board.

In cases where there are two (2) or more types of collateral, capital charge shall depend on the lowest rated collateral.

The mapping of ratings to the corresponding risk weights shall be as follows:

Risk weight	Moody's	Standard & Poor's	Fitch Ratings
50%	Aaa to Aa3	AAA to AA-	AAA to AA-
100%	A1 to A3	A+ to A-	A+ to A-
150%	Baa1 to Baa3	BBB+ to BBB-	BBB+ to BBB-
Deduction from total of Tier 1 and	Below Baa3	Below BBB-	Below BBB-
Tier 2 capital	Unrated		

(2) *Use of ratings*. If an issuer of a structured product has only one (1) rating by any of the BSP-recognized international rating agencies, that rating shall be used to determine the risk weight of the product; in cases where there are two (2) or more ratings which map into different risk weights, the higher of the lowest two (2) risk weights should be used.

b. Trading book. Capital charge for structured products held in the trading book shall be determined in accordance with *Appendix 45*.

§ 1635.5 *Bangko Sentral approval not required.* No prior BSP approval is required to enter into authorized transactions. However, it shall be the responsibility of UBs/KBs to fully comply with appropriate risk management standards including, as a minimum, those prescribed under this Section. The regulatory requirements enumerated in *Appendix* 66 shall be fully complied with by UBs/KBs investing in products allowed under this Section.

Sec. 2635 (Reserved)

Sec. 3635 (Reserved)

Sec. X636 (Reserved)

Sec. 1636 Expanded Foreign Currency Deposit Units Investments in Foreign Currency Denominated Structured Products. The following guidelines allow UBs and KBs without expanded derivatives authority to invest in certain specified structured products.

§ 1636.1 *Statement of policy.* The BSP encourages banks to diversify their EFCDU investment portfolios in order to stabilize earnings, control maturity mismatches and minimize over concentration of exposures.

§ 1636.2 *Scope.* EFCDUs of UBs and KBs without expanded derivatives authority may invest, for their own account, in foreign currency-denominated structured products issued by banks and SPVs of high credit quality: *Provided*, That the revenue streams of such products may only be linked to interest rate indices and/or foreign exchange rates other than those that involve the Philippine Peso: *Provided, further,* That the minimum all-in return of such investments may not be lower than zero. For purposes of this Section, structured products do not include asset backed securities, credit-linked notes and other similar instruments.

§ 1636.3 *Other conditions*

a. *Maturity* - The maximum contractual maturity of any investment in structured products shall be five (5) years.

b. *Credit quality of issuer* - Acceptable issuers are banks and SPVs collateralized by securities rated at least "A" or its equivalent by an international rating agency acceptable to the Monetary Board.

c. *Booking* - Investments in structured products as herein defined shall be booked under banking book accounts as follows: (1) DFVPL, (2) AFS, (3) Held to Maturity (HTM); or (4) Unquoted Debt Securities Classified as Loans, which shall be accounted for in accordance with Subsecs. X186.1, X388.5 and *Appendix 33*, but not under the HFT category.

d. *Prudential limits* - The total carrying value of all investments in structured products as defined herein at any given point in time must not exceed twenty percent (20%) of the total investment portfolio of the EFCDU [combined amount of Trading Account Securities (TAS), ASS and IBODI].

e. *Risk management* - Investing banks must have established internal processes to identify, evaluate, monitor and manage the risk exposures, e.g., credit risk, market risk, liquidity risk, operational risk, legal risk, compliance risk, created by their investments in structured products. As a minimum:

(1) Such investments must be specifically approved by the board of directors and be subject to appropriate internal limits and periodic reporting to the Board.

(2) Banks must comply with generally accepted accounting and disclosure standards and/or rules and regulations prescribed by the BSP.

(3) An independent risk management function must be in place.

(4) Banks should have the ability to value their investments on a continuing and consistent basis and to measure their sensitivity to market movements. This should include performing, at regular intervals, stress tests that reflect extreme market conditions. As part of the valuation exercise, banks should be able to obtain bid

prices from the issuers of the investment instruments on a monthly basis.

(5) Management should ensure that the risks of the investments are accurately aggregated in risk reports on a timely basis.

§ 1636.4 *Capital treatment of structured products.* The capital treatment shall be in accordance with existing rules and regulations as modified for structured instruments.

§ 1636.5 *Bangko Sentral approval not required*. No prior BSP approval is required to enter into authorized transactions. However, it shall be the responsibility of UBs/KBs to fully comply with appropriate risk management standards including, as a minimum, those prescribed under this Section. The regulatory requirements enumerated in *Appendix* 66 shall be fully complied with by UBs/KBs investing in products allowed under this Section.

§ 1636.6 *Sanctions.* Non-compliance with the provisions of this Section shall subject the bank to a fine of one-tenth of one percent (1/10 of 1%) of the outstanding investment per day, but not to exceed P30,000 per day, to be reckoned from the day the bank is deemed in violation of regulations, until the day the bank has complied with the requirements. Banks may also be temporarily or permanently prohibited from such investments as circumstances may warrant.

Sec. 2636 (Reserved)

Sec. 3636 (Reserved)

Secs. X637 - X648 (Reserved)

Sec. 1648 Investments in Securities Overlying Securitization Structures. The following rules shall govern banks' investments in securities overlying securitization structures.

§ 1648.1 *Statement of policy.* The BSP aims to foster the development of a market for new financial products in the country and provide banks with expanded opportunities for investment diversification, while at the same time ensure that they hold sufficient capital commensurate to the risks inherent in these products.

§ 1648.2 *Definition.* *Securitization structures* refer to:

a. structures where the cash flow from an underlying pool of exposures is used to service at least two (2) different stratified risk positions or tranches reflecting different degrees of credit risk (also known as traditional securitization); or

b. structures with at least two (2) different stratified risk positions or tranches that reflect different degrees of credit risk, where credit risk of an underlying pool of exposures is transferred, in whole or in part, through the use of credit derivatives or guarantees that serve to hedge the credit risk of the portfolio (also known as synthetic securitization).

§ 1648.3 *Qualified banks.* UBs/KBs with expanded derivatives authority may invest in securities overlying any tranches of securitization structures. UBs/KBs without expanded derivatives authority may also invest but only in securities overlying tranches of securitization structures that are rated at least "A", or its equivalent, by a BSP-recognized credit rating agency.

§ 1648.4 *Capital treatment of investments in securities overlying securitization structures*

a. Credit risk

(1) *Risk weights*. Capital charge for investments in securitization structures held in the banking book shall be based on the latest rating given by any of the following BSP-recognized credit rating agencies:

(a) International rating agencies:

(i) Moody's;

(ii) Standard & Poor's;
(iii) Fitch IBCA; and
(iv) Other international rating agencies as may be approved by the Monetary Board
(b) Domestic rating agencies:
(i) PhilRatings; and
(ii) Other domestic rating agencies as may be approved by the Monetary Board

The assignment of risk weights corresponding to agency ratings shall be as follows:

Risk weight	Moody's	Standard & Poor's	Fitch IBCA	PhilRatings
20%	Aaa to Aa3	AAA to AA-	AAA to AA-	Aaa to Aa
50%	A1 to A3	A+ to A-	A+ to A-	A
100%	Baa1+ to Baa3	BBB+ to BBB-	BBB+ to BBB-	Baa
Deduction from total of Tier 1 and Tier 2 capital	Below Baa3	Below BBB-	Below BBB-	Below Baa
	Unrated			

(2) *Use of ratings*. Ratings of BSP recognized credit rating agencies shall be used as follows:

(a) Securities overlying securitization structures created within the Philippines may be rated by any BSP-recognized international or domestic credit rating agency, while securities overlying securitization structures created outside of the Philippines may only be rated by any of the international credit rating agencies that are recognized by the BSP; and

(b) In cases when overlying securities have split ratings which map into different risk weights, the higher risk weight should be used.

b. Market risk. Capital charge for securities overlying securitization structures held in the trading book shall be determined in accordance with *Appendix 46* and the use of agency ratings for such purpose shall be consistent with the above principles.

§ 1648.5 *Bangko Sentral approval not required.* No prior BSP approval is required to invest in securities overlying securitization structures. However, it shall be the responsibility of UBs/KBs to fully comply with appropriate risk management standards including, as a minimum, those prescribed under this Section. The regulatory requirements enumerated in *Appendix 66* shall be fully complied with by UBs/KBs investing in products allowed under this Section.

Sec. 2648 (Reserved)

Sec. 3648 (Reserved)

Secs. X649 - X650 (Reserved)

Sec. X651 Asset-Backed Securities. The following regulations shall govern the origination, issuance, sale, servicing and administration of asset-backed securities (ABS) by any bank including its subsidiaries and affiliates engaged in allied activities, which are domiciled in the Philippines.

§ X651.1 *Definition of terms*

a. *Assets* shall mean loans or receivables existing in the books of the originator prior to securitization. Such assets are generated in the ordinary course of business of the originator and may include mortgage loans, consumption loans, trade receivables, lease receivables, credit card receivables and other similar financial assets.

b. *Asset-backed securities* shall refer to the certificates issued by a Special Purpose Trust (SPT) representing undivided ownership interest in the asset pool.

c. *Asset pool* shall mean a group of identified, self-amortizing assets that is conveyed the SPT issuing the ABS and such other assets acquired as a consequence of the securitization.

d. *Clean-up call* shall refer to an option granted to the seller to purchase the remaining assets in the asset pool.

e. *Credit enhancement* shall refer to any legally enforceable scheme that is intended to enhance the marketability of the ABS and increase the probability that investors receive payment of amounts due them.

f. *Guarantor* shall refer to an entity that guarantees the repayment of principal and interest on loans or receivables included in the asset pool in the event of default by the borrower.

g. *Investible funds* shall refer to the proceeds of collection of loans or receivables included in the asset pool which are not yet due for distribution to investors.

h. *Issuer* shall refer to the SPT that issues the ABS.

i. *Originator* shall refer to a bank and/or its subsidiary or affiliate engaged in allied activities that grants or purchases loans or receivables and assembles them into a pool for securitization.

j. *Residual certificates* shall refer to certificates issued representing claims on the remaining value of the asset pool after all ABS holders are paid.

k. *Seller* shall refer to the entity which conveys to the SPT the assets that constitute the asset pool.

l. *Servicer* shall refer to the entity designated by the Issuer primarily to collect and record payment received on the Assets, to remit such collections to the Issuer and perform such other services as may be specifically required by the issuer excluding asset management or administration.

m. *Special Purpose Trust* shall refer to a trust administered by a trustee and created solely for the purpose of issuing and administering an ABS.

n. *Trustee* shall refer to the entity designated to administer the SPT.

o. *Underwriter* shall refer to the entity engaged in the act or process of distributing and selling of the ABS either on guaranteed or best effort basis.

§ X651.2 *Prior Bangko Sentral approval* Any bank including its subsidiaries and affiliates engaged in allied activities, may securitize its assets upon prior approval of the BSP.

§ X651.3 *Board approval requirement* The originator/seller shall have the securitization program approved by its board of directors. The originator/seller shall integrate such securitization program into its corporate strategic plan. The board of directors shall ensure that the securitization of assets is consistent with such program.

§ X651.4 *Minimum documents required* The application to securitize must be accompanied by the following documents as a minimum requirement:

a. Trust indenture evidencing the conveyance of the assets from the seller to the Issuer or SPT, the features of which shall include the following:

(1) Title or nature of the contract in noticeable print;

(2) The parties involved, indicating in noticeable print, their respective legal capacities, responsibilities and functions;

(3) Features and amount of ABS;

(4) Purposes and objectives;

(5) Description and amount of assets comprising the asset pool;

(6) Representations and warranties;

(7) Credit enhancements;

(8) Distribution of funds;

(9) Authorized investment of investible funds;

(10) Rights of the investor;

(11) Reports to investors; and

(12) Termination and final settlement.

The trust indenture shall include as annexes the servicing agreement between the trustee and the servicer and the underwriting agreement between the seller and the underwriter.

b. Prospectus. As a minimum requirement, it shall contain the following:

(1) Summary of the contents of the prospectus;

(2) Description of each class of certificate, including such matters as probable yields, payment dates and priority of payments;

(3) Description of the assets comprising the Asset Pool as well as the representations and warranties set forth by the originator and/or seller;

(4) Assumptions underlying the cash flow projections for each class of certificate;

(5) Description of any credit enhancements;

(6) Identity of the servicer; and

(7) Disclosure statements as required under Subsec. X651.6.

c. Specimen of application to purchase ABS. It shall include the terms and conditions of the purchase and the disclosures required under Subsec. X651.6.

d. Specimen of certificate. It shall indicate the features of the ABS and the disclosures required under Subsec. X651.6.

§ X651.5 ***Minimum features of asset-backed securities.*** The ABS shall be pre-numbered and printed on security paper. The ABS shall be signed and authenticated by the trustee. They are transferable by endorsement of the certificate. The transfer shall be recorded in the books of the trustee, indicating the names of the parties to the transaction, the date of the transfer and the number of the certificate transferred.

The minimum denomination of any ABS shall be P10,000.

§ X651.6 ***Disclosure requirements*** The following disclosures must be provided in a conspicuous manner in any document inviting investment, application to purchase ABS and the certificate itself:

a. The ABS do not represent deposits or liabilities of the originator, servicer or trustee and that they are not insured with PDIC;

b. The investor has an investment risk;

c. The trustee does not guarantee the capital value of the ABS or the collectibility of the asset pool; and

d. The right of an investor.

The investors shall be required to sign an acknowledgment indicating that they have read and understood the disclosures.

§ X651.7 ***Conveyance of assets***

a. The conveyance of the assets comprising the asset pool shall be done within the context of a true sale and, for this purpose, the seller may not retain in its books the ABS, except the residual certificate, if any.

b. The seller shall have no obligation to repurchase or substitute an asset or any part of the asset pool at any time, except in cases of a breach of representation or warranty, or under a revolving structure, to replace performing assets which have been paid out in part or full.

c. The seller shall be under no obligation to provide additional assets to the SPT to maintain a "coverage ratio" of collateral to outstanding ABS. A breach of this requirement will be considered a credit enhancement and should be charged against capital. However, this will not apply to an asset pool conveyed under a revolving structure such as the securitization of credit card receivables.

d. Securitized assets shall be considered the subject to a true sale between the seller and the SPT. Sold assets shall be taken off the books of the seller and shall be transferred to the books of the SPT.

For accounting purposes, the transfer shall only be considered a true sale if the following three (3) conditions have been satisfied:

(1) the transferred assets have been isolated and put beyond the reach of the seller and its creditor;

(2) the SPT has the right to pledge or exchange its interest in the assets; and

(3) the seller does not effectively maintain control over the transferred assets by any concurrent agreement.

e. All expenses incidental to underwriting, conveyance of the asset pool including expenses for credit enhancement may be paid by the originator/seller: *Provided*, That no further expenses shall be borne by the originator/seller after the asset pool has been conveyed to the SPT.

§ X651.8 *Representations and warranties*

a. *Standard representations and warranties* refer to an existing state of facts that the originator, seller or servicer can either control or verify with reasonable due diligence at the time the assets are sold. Any breach of representation or warranty may give rise to legal recourse.

b. The representations or warranties shall be clear and explicit and, in particular, shall not relate to the future creditworthiness of the assets in the asset pool or the performance of the SPT or the securities issued.

c. Any agreement to pay damages as a result of breach of warranties and representations shall hold only where:

(1) there is a well-documented negotiation of the agreement in good faith;

(2) the burden of proof for a breach of representation or warranty rests with the other party;

(3) damages are limited to the loss incurred as a result of the breach; and

(4) there is a written notice of claim specifying the basis for the claim.

The BSP shall be notified of any instance where a bank or its subsidiaries/affiliates has agreed to pay damages arising out of any breach of representation or warranty.

§ X651.9 *Third party review.* A due diligence review by an independent entity mutually agreed upon by the seller and the Issuer shall be done before the assets are sold.

§ X651.10 *Originator and seller*

a. The seller may itself be the originator, and may likewise be designated as the servicer.

b. The seller or originator shall deliver to the trustee all original documents or instruments with respect to each asset sold.

§ X651.11 *Trustee and issuer*

a. The trustee shall be the trust department of a bank licensed to do business in the Philippines.

b. The trustee shall have the right to manage or administer the asset pool. The trustee shall see to it that necessary measures are taken to protect the asset pool.

c. The trustee shall undertake a performance review of the asset pool at least quarterly and shall prepare a report to investors indicating, among others, collections, fees and other expenses as well as defaults, which report shall be made available to the investors at anytime after thirty (30) days from end of the reference quarter.

d. The trustee shall initiate all civil actions including foreclosure of mortgaged properties to effect collection of receivables in the asset pool. The servicer or any other party may be designated by the trustee to perform such function on a case-by-case basis.

e. The trustee may invest the Investible funds only in obligations issued and/or fully guaranteed by the government of the Republic of the Philippines or by the

BSP and such other high-grade readily marketable debt securities as the BSP may approve.

f. The trustee shall designate a replacement of the servicer if the latter fails to satisfactorily perform its duties and responsibilities according to the terms and conditions of the servicing agreement.

§ X651.12 *Servicer*

a. The servicer shall perform its duties according to the terms and conditions of the servicing agreement and such other written instructions as the trustee may issue on a case-by-case basis. Collections made by the servicer shall be remitted promptly to the trustee or as may be agreed upon by the parties in the servicing agreement, but in no case shall the remittance period be longer than one (1) month.

b. The servicer shall prepare periodic reports as may be required by the trustee.

c. The servicer shall report to the trustee within thirty (30) days, any borrower which fails to pay its debt at maturity date or any adverse development that may affect the collectibility of any loan account or receivable comprising the asset pool.

d. The servicer shall have no authority to waive penalties and charges except with a written authority from the trustee.

§ X651.13 *Underwriter*

a. A UB or IH shall have written policies and procedures on underwriting of ABS.

b. The underwriter shall perform its functions according to the terms and conditions of the underwriting agreement.

c. An underwriter may deal in ABS, except those administered by its trust department, the trust departments of its subsidiaries/affiliates, the trust department of its parent bank or the trust department of its parent bank's subsidiaries/affiliates.

d. A UB/IH may act as underwriter, on a firm basis, of ABS except those administered by its trust department, the trust departments of its subsidiaries/ affiliates, the trust department of its parent bank or the trust department of its parent bank's subsidiaries/affiliates.

e. The underwriter may not extend credit for the purpose of purchasing the ABS which such UB/IH underwrites or that which is underwritten by its subsidiaries/ affiliates, its parent bank or its parent bank's subsidiaries/affiliates.

§ X651.14 *Guarantor*

a. Only an entity the regular business of which includes the issuance of guarantees or similar undertaking may act as guarantor.

b. The guarantor must have the financial capacity to perform its responsibilities in accordance with the terms and conditions of the guarantee agreement. It shall submit to the trustee at least once in every six (6) months such financial reports as the trustee may require.

c. The originator or seller may not issue a counter-guarantee in favor of the guarantor.

§ X651.15 *Credit enhancement*. Credit enhancement may be provided in any of the following manner:

a. Standby letter of credit issued by a UB/KB other than the originator/seller or its subsidiary/affiliate, its parent bank or the parent bank's subsidiary/affiliate, and trustee or its subsidiary/affiliate;

b. Surety bond issued by any insurance company other than the originator's/seller's subsidiary or affiliate, the subsidiary or affiliate of the originator's/ seller's parent bank and the trustee or its subsidiary/affiliate;

c. Guarantee issued by any entity other than the originator/seller or its subsidiary/ affiliate, its parent bank or the parent bank's subsidiary/affiliate, and trustee or its subsidiary/affiliate;

d. Overcollateralization provided by the originator/seller wherein the assets conveyed to the SPT exceed the amount of securities to be issued.

Losses arising from overcollateralization shall be recognized by the originator/seller upfront. Such losses shall be treated as capital charges.

e. Spread account wherein the income from the underlying pool of receivables is made available to cover any shortfall in the repayment of ABS. The spread account shall be handled by the trustee which shall account for it separately. If not needed, this "spread" generally reverts to the holder of the residual certificate.

f. Subordinated securities that are lower ranking, or junior to other obligations and are paid after claims to holders of senior securities are satisfied.

g. Other credit enhancements as may be approved by the Monetary Board.

To be consistent with the concept of true sale, subordinated securities shall be sold to third party investors other than originator's/seller's parent company or its subsidiary/affiliate and the trustee or its subsidiary/affiliate or, if held by the seller, capital charges should be booked upfront. Otherwise, the subordinated securities shall be treated as deposit substitute subject to legal reserves.

§ X651.16 *Clean-up call.* A *clean-up call* may be exercised by the seller once the outstanding principal balance of the receivable component of the asset pool falls to ten percent (10%) or less of the original principal balance of the asset pool. Where the asset pool includes foreclosed and other assets, such assets shall be included in the clean-up call and the consideration thereof shall be at current market value. Such a *clean-up call* shall not be considered recourse or in violation of Subsec. X651.7 on conveyance of assets.

§ X651.17 *Prohibited activities*

a. The seller may not, under any circumstance, designate its trust department, the trust department of its subsidiaries/ affiliates, the trust department of its parent bank or the trust department of its parent bank's subsidiaries/affiliates as trustee.

b. Any director, officer or employee of the originator, seller or servicer may not serve as a member of the board of directors or trust committee of the trustee or vice versa for the duration of the securitization.

c. The trust indenture shall not contain any stipulation whereby the seller, its subsidiaries/affiliates, its parent bank or the parent bank's subsidiaries/affiliates shall commit to extend any credit facility to the issuer and/or trustee.

d. The ABS shall not be eligible as collateral for a loan extended by a bank which originated/sold the underlying assets of such ABS.

e. The trust department of a bank that has discretion in the management of any trust or investment management account may not purchase for said trust/investment management account ABS administered by the trust department of the same bank, the trust department of such trustee's subsidiaries/affiliates, the trust department of such trustee's parent bank and the trust department of the parent bank's subsidiaries/affiliates.

f. The trustee may not designate its subsidiary/affiliate, its parent or the parent's subsidiaries/affiliates as servicer or vice versa.

§ X651.18 *Amendment of trust indenture.* Any amendment to the trust indenture shall require the prior approval of the BSP.

§ X651.19 *Trustee or servicer in securitization.* Without prior approval of the BSP, a bank or any entity supervised by the BSP may act as trustee or servicer in a securitization scheme originated by an entity not supervised by the BSP: *Provided*, That the assets which are the subject of such securitization are existing in the books of the entity prior to securitization: *Provided, further*, That such entity acting as trustee or servicer is not a subsidiary/affiliate of the originator/seller, its parent bank or the parent bank's subsidiaries/affiliates or vice versa: *Provided, finally,* That such entity acting as trustee may not designate its subsidiaries/affiliates, its parent or the parent's subsidiaries/affiliates as servicer or vice versa.

§ X651.20 *Report to Bangko Sentral* The trustee bank shall submit a report of every securitization scheme in formats to be prescribed by the BSP. The report shall be submitted to the appropriate department of the SES, within fifteen (15) banking days after end of every reference quarter. Such report shall be considered a *Category A* report for purposes of implementing fines in the submission of required reports pursuant to existing regulations.

Secs. X652 - X698 (Reserved)

Sec. X699 General Provision on Sanctions. Any violation of the provisions of this Part shall be subject to Sections 36 and 37 of R.A. No. 7653.

The guidelines for the imposition of monetary penalty for violations/offenses with sanctions falling under Section 37 of R. A. No. 7653 on banks, their directors and/or officers are shown in *Appendix 67*.

PART SEVEN

ELECTRONIC BANKING SERVICES AND OPERATIONS

Section X701 ***(2008 - X621)*** **Electronic Banking Services.** The following are the guidelines concerning electronic banking activities.

§ X701.1 ***(2008 - X621.1) Application***
Banks wishing to provide and/or enhance existing electronic banking services shall submit to the BSP an application describing the services to be offered/enhanced and how it fits the bank's overall strategy. This shall be accompanied by a certification signed by its president or any officer of equivalent rank and function to the effect that the bank has complied with the following minimum pre-conditions:

a. An adequate risk management process is in place to assess, control, monitor and respond to potential risks arising from the proposed electronic banking activities;

b. A manual on corporate security policy and procedures exists that shall address all security issues affecting its electronic banking system, particularly the following:

(1) *Authentication* - establishes the identity of both the sender and the receiver; uses trusted third parties that verify identities in cyberspace;

(2) *Non-repudiation* - ensures that transactions can not be repudiated or presents undeniable proof of participation by both the sender and the receiver in a transaction;

(3) *Authorization* - establishes and enforces the access rights of entities (both persons and/or devices) to specified computing resources and application functions; also locks out unauthorized entities from physical and logical access to the secured systems;

(4) *Integrity* - assures that data have not been altered; and

(5) *Confidentiality* - assures that no one except the sender and the receiver of the data can actually understand the data.

c. The system had been tested prior to its implementation and that the test results are satisfactory. As a minimum standard, appropriate systems testing and user acceptance testing should have been conducted; and

d. A business continuity planning process and manuals have been adopted which should include a section on electronic banking channels and systems.

§ X701.2 ***(2008 - X621.2) Pre-screening of applicants***

a. The BSP, thru the Technical Working Group on Electronic Banking, shall pre-screen the overall financial condition as well as the applicant-bank's compliance with BSP rules and regulations based on the latest available Bank Performance Rating (BPR) and Report of Examination (ROE) including CAMELS Rating.

b. The Working Group shall ensure that the applicant bank's overall financial condition can adequately support its electronic banking activities and that it shall have complied with certain comprehensive prudential requirements such as, but not limited to, the following:

(1) Minimum capital requirement and net worth to risk assets ratio;

(2) Satisfactory solvency, liquidity and profitability positions;

(3) CAMELS composite rating of at least 3, (this number, however can be flexible depending on other circumstances prevailing), and with at least a moderate

risk assessment system (RAS) based on the latest regular examination.

(4) There are no uncorrected major findings/exceptions noted in the latest BSP examination.

§ X701.3 ***(2008 - X621.3) Approval in principle***

a. Based on the recommendation of the Technical Working Group on Electronic Banking, the Deputy Governor, SES, shall approve in principle the application so that banks may immediately launch and/or enhance their existing electronic banking services.

b. Banks shall be informed of the conditional approval of the DG, SES and they shall in turn notify the BSP on the actual date of its launching/enhancement.

§ X701.4 ***(2008 - X621.4) Documentary requirements***

a. Within thirty (30) calendar days from such launching/enhancement, banks shall submit to the BSP thru the SDC for evaluation, the following documentary requirements:

(1) A discussion on the banking services to be offered/enhanced, the business objectives for such services and the corresponding procedures, both automated and manual, offered through the electronic banking channels;

(2) A description or diagram of the configuration of the bank's electronic banking system and its capabilities showing:

(i) how the electronic banking system is linked to other host systems or the network infrastructure in the bank;

(ii) how transaction and data flow through the network;

(iii) what types of telecommunications channels and remote access capabilities (e.g., direct modem dial-in, internet access, or both) exist; and

(iv) what security controls/measures are installed;

(3) A list of software and hardware components indicating the purpose of the software and hardware in the electronic banking infrastructure;

(4) A description of the security policies and procedures manual containing:

(i) description of the bank's security organization;

(ii) definition of responsibilities for designing, implementing, and monitoring information security measures; and

(iii) established procedures for evaluating policy compliance, enforcing disciplinary measures and reporting security violations;

(5) A brief description of the contingency and disaster recovery plans for electronic banking facilities and event scenario/problem management plan/ program to resolve or address problems, such as complaints, errors and intrusions and the availability of back-up facilities;

(6) Copy of contract with the communications carrier, arrangements for any liability arising from breaches in the security of the system or from unauthorized/fraudulent transactions;

(7) Copy of the maintenance agreements with the software/hardware provider/s; and

(8) Latest report on the periodic review of the system, if applicable.

b. If after the evaluation of the submitted documents, the Working Group has still some unresolved issues and gray areas, the bank may be required to make a presentation of its electronic banking transactions to BSP.

§ X701.5 ***(2008 - X621.5) Conditions for Monetary Board approval.*** Upon completion of evaluation, the appropriate recommendation shall be made to the Monetary Board. The following shall be the standard conditions for approval:

a. Existence at all times of appropriate top-level risk management oversight;

b. Operation of electronic banking system outsourced to a third party service provider taking into consideration the existence of adequate security controls and the observance of confidentiality [as required in R.A. No. 1405 (Bank Secrecy Law)] of customer information;

c. Adoption of measures to properly educate customers on safeguarding of user ID, PIN and/or password, use of bank's products/services, actual fees/bank charges thereon and problem/error resolution procedures;

d. Clear communication with its customers in connection with the terms and condition which would highlight how any losses from security breaches, systems failure or human error will be settled between the bank and its customers;

e. Customer's acknowledgement in writing that they have understood the terms and conditions and the corresponding risks that entail in availing electronic banking service;

f. The bank's oversight process shall ensure that business expansion shall not put undue strains on its systems and risk management capability;

g. The establishment of procedures for the regular review of the bank's security arrangements to ensure that such arrangements remain appropriate having regard to the continuing developments in security technology;

h. Strict adherence to BSP regulations on fund transfers in cases where clients use the electronic banking services to transfer funds;

i. The electronic banking service shall not be used for money laundering or other illegal activities that will undermine the confidence of the public; and

j. The BSP shall be notified in writing thirty (30) days in advance of any enhancements that may be made to the online electronic banking service.

§ X701.6 ***(2008 - X621.6) Requirements for banks with pending applications.*** The same procedure and requirements stated in the foregoing shall apply to all banks with pending applications with the BSP, except on the submission of the documents enumerated in Subsec. X701.4, i.e., banks which have already submitted all the required information/documents need not comply with this requirement.

§ X701.7 ***(2008 - X621.7) Exemption*** Electronic banking services that are purely informational in nature are exempted from these regulations: *Provided*, however, That should such services be upgraded to transactional service, then prior BSP approval shall be required.

§ X701.8 ***(2008 - X621.8) Transitory provision.*** Banks with existing electronic banking services but do not qualify as a result of the pre-screening process mentioned in Item "*b*", Subsec. X701.1, shall be given three (3) months from 21 December 2000, within which to show proof of improved overall financial condition and/or substantial compliance with BSP's prudential requirements, otherwise, their electronic banking activities will be temporarily suspended until such time that the same have been complied with.

§§ X701.9 - X701.11 (*Reserved*)

§ X701.12 ***(2008 - X621.12) Sanctions*** For failure to seek BSP approval before launching/enhancing/implementing electronic banking services, and/or submit within the prescribed deadline the required information/documents, the following monetary penalties and/or suspension of electronic banking activities or both, shall be imposed on erring banks and/or its officers:

	Monetary penalties	Amount
a.	*For responsible officer/s and/or director/s* - for failure to seek prior BSP approval and/or for non-submission delayed submission of required information/documents	a one time penalty of P200,000
b.	*On the bank* - for failure to seek prior BSP approval and/or for non-submission/ delayed submission of required information/ documents	P30,000 per day starting from the day the offense was committed up to the time the same was corrected.

§ X701.13 ***(2008 - X621.13) Outsourcing of internet and mobile banking services.*** Outsourcing of internet and mobile banking services shall be governed by the provisions of Subsec. X162.2.
(M-2008-030 dated 12 September 2008)

Secs. X702 – X704 (Reserved)

Sec. X705 ***(2008 - X624 and App. 70)*** **Consumer Protection for Electronic Banking.** These guidelines shall govern the implementation of e-banking activities of a bank for purposes of compliance with the requirements to safeguard customer information; prevention of money laundering and terrorist financing; reduction of fraud and theft of sensitive customer information; and promotion of legal enforceability of banks' electronic agreements and transactions.
(Circular No. 542 dated 01 September 2006, as amended by CL-2007-048 dated 24 September 2007)

§ X705.1 ***(2008 - App. 70) E-Banking oversight function***

(a) Bank's board of directors (BOD) and a senior management committee are responsible fo developing the bank's e-banking business strategy and establishing an effective management oversight over e-banking services.

The BOD is expected to take an explicit, informed and documented strategic decision as to whether and how the bank is to provide e-banking services to their customers. Effective management oversight encompasses the review and approval of the key aspects of the bank's security control program and process, such as the development and maintenance of security control policies and infrastructure that properly safeguard e-banking systems and data from both internal and external threats. It also includes a comprehensive process for managing risks associated with increased complexity of and increasing reliance on outsourcing relationships and third-party dependencies to perform critical e-banking functions.

It is also incumbent upon the BOD and banks' senior management to take steps to ensure that their banks have updated and modified where necessary, their existing risk management policies and processes to cover their current or planned e-banking services. The integration of e-banking applications with legacy systems implies an integrated risk management approach for all banking activities.

(b) Bank's compliance officer should ensure that proper controls are incorporated into the system so that all relevant compliance issues are fully addressed.

Management and system designers should consult with the compliance officer during the development and implementation stages of e-banking products and services. This level of involvement will help decrease bank's compliance risk and may prevent the need to delay deployment or redesign programs that do not meet regulatory requirements.
(Circular No. 542 dated 01 September 2006, as amended by CL-2007-048 dated 24 September 2007)

§ X705.2 ***(2008 - App. 70) E-Banking risk management and internal control***

(a) Information Security Program

Banks should establish and maintain comprehensive information security program and ensure that it is properly implemented and strictly enforced. They should also encourage the development of a security culture within the organization. The information security program should include, at a minimum, the following:

(1) Identification and assessment of risks associated with e-banking products and services;

(2) Identification of risk mitigation actions, including appropriate authentication technology and internal controls;

(3) Information disclosure and customer privacy policy; and

(4) Evaluation of consumer awareness efforts.

Banks should adjust or update, as appropriate, their information security program in light of any relevant changes in technology, the sensitivity of its customer information and internal or external threats to information such as increasing incidence of identity theft[1].

(b) Information security measures

Banks should ensure that their information security measures and internal control related to e-banking are installed, regularly updated, monitored and is appropriate with the risks associated with their products and services.

Appendices 70a and 70b provide for the minimum security measures that banks should employ in their ATM facilities and internet/mobile banking activities, respectively, to protect depositors and consumers from fraud, robbery and other e-banking crimes.

Banks should also take into account other relevant industry security standards and sound practices as appropriate, and keep up with the most current information security issues (e.g., security weaknesses of the wireless environment), by sourcing relevant information from well-known security resources and organizations.

(c) Authentication

To authenticate the identity of e-banking customers, banks should employ techniques appropriate to the risks associated with their products and services. The implementation of appropriate authentication methodologies should start with a risk assessment process. The risk should be evaluated based on the type of customer; the customer transactional capabilities (e.g., bill payment, fund transfer, inquiry); the sensitivity of customer information and transaction being communicated to both the bank and the customer; the ease of using the communication method; and the volume of transactions.

Because the standards for implementing a commercially reasonable system may change over time as technology and other procedures develop, banks and technology service providers should continuously review, evaluate and identify authentication technology and ensure appropriate changes are implemented for each transaction type and level of access based on the current and changing risk factors. Account fraud and identity theft are frequently the result of single-factor (e.g., ID/password) authentication exploitation. Where risk assessments

[1] There are several schemes perpetrated by these identity thieves, e.g., credit card fraud, account takeover fraud, new account fraud and check fraud.
Credit card fraud is where a fraudster causes the credit card of another person to be charged for a purchase. *Account takeover fraud* occurs when a fraudster obtains an individual's personal information, and changes the official mailing address with that individual's FI. Once accomplished, the fraudster has established a window of opportunity in which transactions are conducted without the victim's knowledge. *New account fraud* involves the criminal using a false identity, made-up or stolen; to open a new account, typically to obtain a credit card or loan. *Check fraud* may either be done through (i) alterations to the check, (ii) forgeries of the maker's signature on either the face of the check or the payee's endorsement at the back of the check, or (iii) counterfeit checks created by a dishonest third party

indicate that the use of single-factor authentication is inadequate, banks should implement multi-factor authentication (e.g., ATM card and PIN), layered security, or other controls reasonably calculated to mitigate those risks.

Banks' authentication process should be consistent with and support the bank's overall security and risk management programs. An effective authentication process should have customer acceptance, reliable performance, scalability to accommodate growth, and interoperability with existing systems and future plans as well as appropriate policies, procedures, and controls.

(d) Account origination and customer verification

With the growth in e-banking and e-commerce, banks should use reliable methods of originating new customer accounts. Potentially significant risks may arise when a bank accepts new customers through the internet or other electronic channels. Thus, in an e-banking environment, banks need to ensure that in originating new accounts, the KYC ("know your customer") requirement which involves a "face-to-face" process is strictly adhered to.

(e) Monitoring and reporting of e-banking transactions

Monitoring systems can determine if unauthorized access to computer systems and customer accounts has occurred. A sound monitoring system should include audit features that can assist in the detection of fraud, money laundering, compromised passwords, or other unauthorized activities.

The activation and maintenance of audit logs can help banks to identify unauthorized activities, detect intrusions, reconstruct events, and promote employee and user accountability. This control process also facilitates banks in the submission of suspicious activities reports as required by the AMLC and other regulatory bodies.

Adequate reporting mechanisms are needed to promptly inform security administrators when users are no longer authorized to access a particular system and to permit the timely removal or suspension of user account access.

Whenever critical systems or processes are outsourced to third parties, management should ensure that the appropriate logging and monitoring procedures are in place and that suspected unauthorized activities are communicated to the bank in a timely manner.

An independent party (e.g., internal or external auditor) should also review activity reports documenting the security administrators' actions to provide the necessary checks and balances for managing system security.

(Circular No. 542 dated 01 September 2006, as amended by CL-2007-048 dated 24 September 2007)

§ X705.3 ***(2008 - App. 70) Compliance with consumer awareness program***

Consumer awareness is a key defense against fraud and identity theft and security breach. *Appendix 70c* provides for the minimum Consumer Awareness Program that banks should convey to their customers.

To be effective, banks should implement and continuously evaluate their consumer awareness program. Methods to evaluate a program's effectiveness include tracking the number of customers who report fraudulent attempts to obtain their authentication credentials (e.g., ID/ password), the number of clicks on information security links on websites, the number of inquiries.

(Circular No. 542 dated 01 September 2006, as amended by CL-2007-048 dated 24 September 2007)

§ X705.4 ***(2008 - App. 70) Minimum disclosure requirements***

(a) Banks are required to provide their customers with a level of comfort regarding information disclosures or transparencies, protection of customer data and business availability that they can expect when using traditional banking services.

To minimize operational, legal and reputational risks associated with e-banking activities, banks should make adequate disclosure of information and take appropriate measures to ensure adherence to customer privacy and protection requirements. *Appendix 70d* provides for the minimum disclosure requirement of the banks.

Likewise, to meet customers' expectations, banks should have effective capacity, business continuity and contingency planning. They should have the ability to deliver e-banking services to all end-users and be able to maintain such availability in all circumstances (e.g., 24/7 availability). Effective incident response mechanisms and communication strategies are also critical to minimize risks arising from unexpected events, including internal and external attacks.

(b) Banks should apply to e-banking financial transactions and disclosures the record retention provisions required in paper-based transactions.

A written policy or procedure needs to define vital records relating to e-banking financial transactions and disclosures and the corresponding retention period of these records.

(Circular No. 542 dated 01 September 2006, as amended by CL-2007-048 dated 24 September 2007)

§ X705.5 ***(2008 - App. 70) Complaint resolution***. Banks may receive customer complaint either through an electronic medium or otherwise, concerning an unauthorized transaction, loss, or theft in its e-banking account. Therefore, banks should ensure that controls are in place to review these notifications and that an investigation is initiated as required. Banks should also establish procedures to resolve disputes arising from the use of the e-banking products and services.

(Circular No. 542 dated 01 September 2006, as amended by CL-2007-048 dated 24 September 2007)

§ X705.6 ***(2008 - App. 70) Applicability*** This regulations is intended for all e-banking services and products offered by the banks to their customers. Although these are focused on the risks and risk management techniques associated with an electronic delivery channel to protect customers and the general public, it should be understood, however, that not all of the consumer protection issues that have arisen in connection with new technologies are specifically addressed in this Section. Additional issuances may be issued in the future to address other aspects of consumer protection as the financial service environment through e-banking evolves.

(Circular No. 542 dated 01 September 2006, as amended by CL-2007-048 dated 24 September 2007)

Secs. X706 - X798 (Reserved)

Sec. X799 ***(2008 - X199)*** **General Provision on Sanctions.** Except as otherwise provided, any violation of the provisions of this Part shall be subject to Sections 36 and 37 of R.A. No. 7653.

The guidelines for the imposition of monetary penalty for violations/offenses with sanctions falling under Section 37 of R. A. No. 7653 on banks, their directors and/or officers are shown in *Appendix 67*.

PART EIGHT

ANTI-MONEY LAUNDERING REGULATIONS

Sec. X801 ***(2008 - X691 and App. 52a)*** **Prevention of Money Laundering, Customer Identification Requirements and Record Keeping.** Banks, OBUs, QBs, trust entities, NSSLAs, pawnshops, and all other institutions, including their subsidiaries and affiliates supervised and/or regulated by the BSP, otherwise known as "covered institutions" shall comply with the provisions of R.A. No. 9160, otherwise known as the "Anti-Money Laundering Act of 2001" and its Implementing Rules and Regulations (IRRs) in *Appendix 52* and the following rules and regulations.

Banks, QBs, trust entities and all other institutions, and their subsidiaries and affiliates supervised or regulated by the BSP (covered institutions) shall strictly comply with the provisions of Section 9 of R.A. No. 9160, as amended, and the following rules and regulations on anti-money laundering.

(As amended by Circular Nos. 612 dated 13 June 2008, 564 dated 03 April 2007 and CL-2007-010 dated 28 February 2007)

§ X801.1 ***(2008 - App. 52a) Customer identification.*** Covered institutions shall establish and record the true identity of its clients based on official documents. They shall maintain a system of verifying the true identity of their clients and, in case of corporate clients, require a system of verifying their legal existence and organizational structure, as well as the authority and identification of all persons purporting to act on their behalf.

The guidelines on *Customer Due Diligence* for banks issued by the BASEL Committee on Banking Supervision which highlights the Know-Your-Customer (KYC) standards to be observed in the design of KYC programs are shown in *Appendix 52c*.

The guidelines on the Account Opening and Customer Identification issued by the BASEL Committee on Banking Supervision represent the starting point, which can be used by banks in the area of customer identification are shown in *Appendix 52e*.

When establishing business relations or conducting transactions (particularly opening of deposit accounts, accepting deposit substitutes, entering into trust and other fiduciary transactions, renting of safety deposit boxes, performing remittances and other large cash transactions) banks should take reasonable measures to establish and record the true identity of their clients. Said client identification may be based on official or other reliable documents and records.

a. In cases of corporate and other legal entities, the following measures should be taken, when necessary:

(1) Verification of the legal existence and structure of the client from the appropriate agency or from the client itself or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors, principal officers and provisions regulating the power behind the entity.

(2) Verification of the authority and identification of the person purporting to act on behalf of the client.

b. In case of doubt as to whether their purported clients or customers are acting for themselves or for another, reasonable measures should be taken to obtain the true identity of the persons on whose behalf an account is opened or a transaction conducted.

c. The provisions of existing laws to the contrary notwithstanding, anonymous accounts, accounts under fictitious names, and all other similar accounts shall be absolutely prohibited. In case where numbered accounts is allowed (i.e., peso and foreign currency non-checking numbered accounts), bank should ensure that the client is identified in an official or other identifying documents.

The BSP may conduct annual testing solely limited to the determination of the existence and the identity of the owners of such accounts.

Banks shall phase out within a period of one (1) year from 02 April 2001 or upon their maturity, whichever is earlier, anonymous accounts or accounts under fictitious names as well as numbered accounts being kept or managed by them, which are not expressly allowed under existing law.

d. The identity of existing clients or beneficial owners of deposits and other funds held or being managed by the bank should be renewed/updated at least every other year.

e. All records of all transactions of covered institutions shall be maintained and safely stored for five (5) years from the dates of transactions. With respect to closed accounts, the records on customer identification, account files and business correspondence, shall be preserved and safely stored for at least five (5) years from the dates when they were closed.

Such records must be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal behaviour.

f. Special attention should be given to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent or visible lawful purpose. The background and purpose of such transactions should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.

g. Banks should not, or should at least avoid, transacting business with criminals. Reasonable measures should be adopted to prevent the use of their facilities for laundering of proceeds of crime and other illegal activities.

h. Banks are enjoined to require their clients FDXs/MCs and RAs to submit a copy of their certificate of registration issued by the BSP. This requirement shall be considered as part of KYC compliance procedures.

The certificates can be confirmed or verified with the appropriate department of the BSP. The registration of FXDs/MCs and the RAs with the BSP is provided for under Sec. 4511N of the MORNBFIs.

(As amended by CL-2007-010 dated 28 February 2007)

§ X801.2 *(2008 - App. 52a) Issuance of cashier's, manager's or certified checks.* Banks may issue cashier's, manager's or certified checks or other similar instruments in blank or payable to cash, bearer or numbered account subject to the following conditions:

a. The amount of each check shall not exceed P10,000;

b. The buyer of the check is properly identified as required under this Subsection;

c. A register of said checks shall be maintained with the following minimum information:

(1) Date issued;

(2) Amount;

(3) Name of buyer;

(4) Date paid; and

(5) If the aggregate instruments purchased by the same person within any thirty (30) day period amounts to at least P50,000, the purpose of the buyer should be stated.

d. Banks which issue as well as those which accept as deposits, said cashier's, manager's or certified checks or other similar instruments issued in blank or payable to cash, bearer or numbered account shall take such measure(s) as may be necessary to ensure that said instruments are not being used/resorted to by the buyer or depositor in furtherance of a money laundering activity;

e. The deposit of said instruments shall be subject to the same requirements scrutiny applicable to cash deposits; and

f. Transactions involving said instruments should be accordingly reported to the BSP if there is reasonable ground to suspect that said transactions are being used to launder funds of illegitimate origin.
(As amended by CL-2007-010 dated 28 February 2007)

§ X801.3 ***(2008 - App. 52a) Programs against money laundering.*** Programs against money laundering should be developed. These programs, should include, as a minimum:

a. The development of internal policies, procedures and controls, including the designation of compliance officers at management level, and adequate screening procedures to ensure high standards when hiring employees;

b. An ongoing employee training program; and

c. An audit function to test the system.
(As amended by CL-2007-010 dated 28 February 2007)

§ X801.4 ***(2008 - App. 52a) Submission of plans of action***. Banks shall submit a plan of action on how to comply with the requirements of Items *"1"*, *"3"* and *"5"*, on customers identification, programs against money laundering and requires reporting, respectively, within thirty (30) days from 31 July 2000 or from opening of the bank.
(As amended by CL-2007-010 dated 28 February 2007)

§ X801.5 ***(2008 - App. 52a) Required reporting of certain transactions.*** If there is reasonable ground to believe that the funds are proceeds of an unlawful activity as defined under R.A. No. 9160, as amended, and/or its IRRs, the transactions involving such funds or attempts to transact the same, should be reported to the Anti-Money Laundering Council (AMLC) in accordance with Rules 5.2 and 5.3 of the AMLA IRRs.

a. *Report on covered and suspicious transactions.*[1] Banks shall report covered transactions and suspicious transactions, as defined in Rules 5.2 and 5.3 of the AMLA IRRs, to the AMLC using the forms prescribed by the AMLC. Reportable transactions shall include the following:

(1) Outward remittances without visible lawful purpose;

(2) Inward remittances without visible lawful purpose or without underlying trade transactions;

(3) Unusual purchases of foreign exchange without visible lawful purpose;

(4) Unusual sales of foreign exchange whose sources are not satisfactorily established;

(5) Complex, unusually large transactions, and all unusual patterns of transactions, which have no apparent or visible lawful purpose;

(6) Funds being managed or held as deposit substitutes if there is reasonable ground to believe that the same are proceeds of criminal and other illegal activities;

(7) Suspicious Transaction Indicators or "red flags" as a guide in the submission to the AMLC of reports of suspicious transactions relating to potential or actual financing of terrorism:

(a) Wire transfers between accounts, without visible economic or business purpose, especially if the wire transfers are effected through countries which are identified or connected with terrorist activities;

(b) Sources and/or beneficiaries of wire transfers are citizens of countries which are identified or connected with terrorist activities;

(c) Repetitive deposits or withdrawals that cannot be explained or do not make sense;

[1] Amended by AMLC Resolution No. 292 dated 20 November 2003 (App. 52a) and AMLC Resolution No. 10 dated 31 January 2007 (App. 52b).

(d) Value of the transaction is over and above what the client is capable of earning;

(e) Client is conducting a transaction that is out of the ordinary for his known business interest;

(f) Deposits being made by individuals who have no known connection or relation with the account holder;

(g) An individual receiving remittances, but has no family members working in the country from which the remittance is made;

(h) Client was reported and/or mentioned in the news to be involved in terrorist activities;

(i) Client is under investigation by law enforcement agencies for possible involvement in terrorist activities;

(j) Transactions of individuals, companies or NGOs that are affiliated or related to people suspected of being connected to a terrorist group or a group that advocates violent overthrow of a government;

(k) Transactions of individuals, companies or NGOs that are suspected as being used to pay or receive funds from revolutionary taxes;

(l) The NGO does not appear to have expenses normally related to relief or humanitarian effort;

(m) The absence of contributions from donors located within the country of origin of the NGO;

(n) A mismatch between the pattern and size of financial transactions on the one hand and the stated purpose and activity of the NGO on the other;

(o) Incongruities between apparent sources and amount of funds raised or moved by the NGO;

(p) Any other transaction that is similar, identical or analogous to any of the foregoing; and

(8) All other suspicious transactions/ activities which can be reported without violating any law.

The report on suspicious transactions shall provide the following minimum information:

(a) Name or names of the parties involved;

(b) A brief description of the transaction or transactions;

(c) Date(s) the transaction(s) occurred;

(d) Amount(s) involved in every transaction; and

(e) Such other relevant information which can be of help to the authorities should there be an investigation.

b. *Exemption from Bank Secrecy Law*. When reporting covered transactions to the AMLC, covered institutions and their officers, employees, representatives, agents, advisors, consultants or associates shall not be deemed to have violated R.A. No. 1405, as amended; R.A. No. 6426, as amended; R.A. No. 8791 and other similar laws, but are prohibited from communicating, directly or indirectly, in any manner or by any means, to any person the fact that a covered transaction report was made, the contents thereof, or any other information in relation thereto. In case of violation thereof, the concerned officer, employee, representative, agent, advisor, consultant or associate of the covered institution, shall be criminally liable. However, no administrative, criminal or civil proceedings, shall lie against any person for having made a covered transaction report in the regular performance of his duties and in good faith, whether or not such reporting results in any criminal prosecution under R.A. No. 9160, as amended, or any other Philippine law.

c. *Prohibition from disclosure of the covered transaction report*. When reporting covered transactions to the AMLC, covered institutions and their officers, employees, representatives, agents, advisors, consultants or associates are prohibited from communicating, directly or indirectly, in any manner or by

any means, to any person, entity, the media, the fact that a covered transaction report was made, the contents thereof, or any other information in relation thereto. Neither may such reporting be published or aired in any manner or form by the mass media, electronic mail, or other similar devices. In case of violation thereof, the concerned officer, employee, representative, agent, advisor, consultant or associate of the covered institution, or media shall be held criminally liable.
(As amended by CL-2007-010 dated 28 February 2007)

§ X801.6 ***(2008 - App. 52a) Certification of compliance with anti-money laundering regulations.*** Banks shall submit annually to the BSP thru the appropriate supervising and examining department a certification (*Appendix 53*) signed by bank president or officer of equivalent rank and by their compliance officer to the effect that they have monitored compliance with existing anti-money laundering regulations.

The certification shall be submitted in accordance with *Appendix* 6 and shall be considered a *Category A-2* report.
(As amended by CL-2007-010 dated 28 February 2007)

§ X801.7 ***(2008 - App. 52a) Acceptance of second-endorsed checks.*** Banks shall adopt stricter policy guidelines in the acceptance of second-endorsed checks to ensure that they are not being used as instruments for money laundering or other illegal activities.

For this purpose, banks shall limit the acceptance of second-endorsed checks from properly identified clients and only after establishing that the nature of the business of said client justifies, or at least, makes practical the deposit of second-endorsed checks. In case of isolated transactions involving deposits of second-endorsed checks by clients who are not engaged in trade or business, the identity of the first endorser should be established and the record of the identification shall also be kept for five (5) years. It is also understood that banks shall at all times follow the Know-Your-Customer (KYC) rules whenever they handle or transact second-endorsed checks.
(As amended by CL-2007-010 dated 28 February 2007)

Secs. X802 - X803 (Reserved)

Sec. X804 ***(2008 - X691.1)*** **Minimum Guidelines for Fund Transfers and Correspondent Banking Account Opening and Customer Identification** Banks shall adopt the minimum prescribed guidelines that contain the salient and relevant policies related to electronic fund transfers in Subsecs. X804.1 to X804.7 and correspondent banking transactions in Sec. X805.

The prescribed minimum guidelines should be incorporated as part of the standard operating procedures manual and wider anti-money laundering program which must be adhered to at all times. Enhancements may be introduced to these minimum guidelines to suit the particular institution's risk profile but taking into consideration the minimum requirements prescribed under existing anti-money laundering rules and regulations of the BSP, particularly in the area of *"Know Your Customer/Customer Due Diligence"*.

§ X804.1 ***(2008 - App. 52b) Nature of fund transfers.*** Fund transfers are remittances of funds from one (1) bank to another, either locally or internationally, in local or foreign currencies. It is used for moving the proceeds of loans, reimbursing letters of credit, payment of collections, foreign exchange transactions, etc. This may also include the movement of money between customers or between accounts of the same customer, or from a customer to a third party who is not a customer of the bank. Transfers can be effected by teletransmission, draft, manager's check, or certified check depending on the request of the applicant. The term also includes Automated Clearing House transfers, transfers made at automated teller machines (ATMs) and point-of-sale terminals.

§ X804.2 *(2008 - App. 52b) Responsibility and oversight*

a. The FIs should be governed by a Manually Initiated Fund Transfers (MIFT) Policies and Procedures for fund transfer requests that are manually initiated (via fax, telephone, messenger, electronic mail, file transfers, and other similar manual origination means) externally from clients or internally from within the banking group/entities.

b. The policies and procedures should specify personnel that will be responsible for ensuring compliance with the guidelines on fund transfer transactions.

c. The policies and procedures shall also provide for independent review by appropriate personnel to monitor and ensure continued compliance with the institution's policies, procedures and guidelines on fund transfers.

d. The FI shall allow electronic wire transfer (internet transfer) only upon its prior approval.

§ X804.3 *(2008 - App. 52b) Risk-based due diligence*

a. The bank should maintain a policies and procedures manual for fund transfers that is reasonably designed to prevent the FI from being used to facilitate money laundering and the financing of terrorist activities. At a minimum, the manual must incorporate policies, procedures and internal controls to:

- Verify customer information (KYC);
- Verify transactions that show indicators of suspicious transactions, particularly those instance stated under Rule 3.b.1 of the Revised Implementing Rules and Regulations (R.A. No. 9160, as amended by R.A. No. 9194);
- File reports (including covered transaction/suspicious transactions reports);
- Respond to regulators/law enforcement requests;
- Provide education and/or training of personnel; and
- Provide security procedures.

b. The bank should not accept fund transfer instructions from and/or pay-out fund transfers to non-customers, unless in cases where the initiating party is an authenticated primary customer of a sending group or unit of the bank.

c. If the fund sender/remitter is not a bank or coming from non-FATF member or non-compliant countries on AML, the receiving bank must do the due diligence on the beneficiary of the fund.

d. Whenever possible, manually initiated fund transfer instructions should not be the primary delivery method. Every effort should be made to provide the client with an electronic banking solution

§ X804.4 *(2008 - App. 52b) Validation*

a. For written and faxed transaction initiations. The term validation applies to various methods used by both sending and receiving parties to verify the identity of the sender of a message. Some validation methods also verify elements in the message including but not limited to amount, value date and currency. Validation must be performed by all bank units. Some specific validation methods are:

Test key: An algorithmic computation method using a fixed set of factors known only to the sender and receiver, used to verify the sender and, in some cases, other elements of the message.

Authentication: A cryptographic process used to verify the sender and, in some cases, the full text of a message.

Signature verification: A matching of signature or other representation from a source document request to a document pre-signed by a bank customer and held on file by the bank, or other documents held by the customer (e.g. bank approved acceptable identification), used to verify the sender.

Telephone callback: A procedure used to verify the authenticity of a message received by telephone. The bank places a return phone call to the customer using a pre-determined telephone number on file within the bank.

- **Validation procedures**

i. Prior to the bank accepting from a customer a manually initiated funds transfer request, the customer must execute and sign an agreement which preferably is part of the account opening documentation, wherein are outlined the manual instruction procedures with related security procedures including customer agreement to accept responsibility for fraudulent or erroneous instructions provided the bank has complied with the stated security procedures.

ii. It is mandatory that written MIFT instructions are signature verified. In addition, one (1) of the following primary security procedures must be applied: a recorded callback to the customer to confirm the transaction instructions, or testword arrangement/verification. The callback or testword requirement may be substituted by any of the following validity checks: use of a controlled PIN or other pre-established code; sequential numbering control of messages; pre-established verifiable forms; same as prior transmissions; standing/pre-defined instructions; or value for value transactions.

iii. It is mandatory that faxed MIFT instructions are signature verified and the fax machine be located in a secured environment with limited and controlled staff access which permits visual monitoring. If monitoring is not possible, the equipment must be secured or programmed to receive messages into a password protected memory.

Faxed MIFT transactions below a certain threshold (approved by the President/Country Manager (for branches of foreign banks) or Business Risk Manager) may be processed with the mandatory procedure described above and an enhanced security procedure such as (a) a recorded callback to the customer to confirm the transaction instructions and/or (b) testword arrangement/verification, and/or (c) utilization of secured forms that incorporate verifiable security procedures such as watermarks or codes, and/or (d) transmission encryption.

iv. Telephone callback numbers and contacts must be securely controlled. The confirmation callback is to be recorded and made to the signatory/(ies) of the customer's individual account(s). For commercial and company accounts the callback will be made to the signatory/(ies) of the account or, if so authorized, another person designated by the customer in the MIFT agreement. The party called is to be documented on the instructions. The callback must be made by someone other than (a) the person receiving the original instructions and (b) effecting the signature verification.

b. Over-the-counter initiated transactions. Over-the-counter initiated funds transfers by the customers themselves require positive identification of the customer and verification of his/her signature. For transactions over a threshold set by the President/Country Manager (for branches of foreign banks) or Business Risk Manager these transactions shall also require a recorded telephone callback confirmation or another appropriate additional security procedure.

§ X804.5 ***(2008 - App. 52b) Exception processing.*** On rare occasions, exceptions processing may be necessary. When an established control standard temporarily cannot be met, a senior officer preferably Vice President or above, designated in writing by the President/Country Manager (for branches of foreign banks) may approve an exception processing standard because of unique business circumstances. The reason for creating the exception must be clearly documented including the identification of the applied compensating controls.

§ X804.6 ***(2008 - App. 52b) Control and administration policies for incoming fund/ wire transfers.*** This section deals with teletransmission payment orders received from Head office, branches and banks requesting payment or credit to be made to a specified beneficiary.

a. Cash payments to beneficiaries should only be made against proper receipt and identification.

b. Payment orders with incomplete or insufficient details should be referred immediately to the remitter bank for clarification. If no response is received within a reasonable time, the matter should be referred to the Compliance or Operations Officer or his/her designated officer for appropriate action as to whether to further investigate or return funds.

§ X804.7 ***(2008 - App. 52b) Integration with anti-money laundering program*** These guidelines shall form part of the institution's wider anti-money laundering program.

Sec. X805 ***(2008 - App. 52c)*** **Banking Account Opening and Customer Identification.** The following Subsections are the minimum guidelines for correspondent banking account opening and customer identification.

§ X805.1 ***(2008 - App. 52c) Nature of correspondent banking activities*** Correspondent banking refers to activities of a bank having direct connection or friendly service relations with another bank.

§ X805.2 ***(2008 - App. 52c) Responsibility and oversight.*** FIs should, in relation to cross-border correspondent banking and other similar relationships, in addition to performing normal due diligence measures:

a. Gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to money laundering or terrorist financing investigation or regulatory action.

b. Assess the respondent institution's anti-money laundering and terrorist financing controls.

c. Obtain approval from senior management before establishing new correspondent relationships.

d. Document the respective responsibilities of each institution.

e. With respect to "payable-through accounts", be satisfied that the respondent bank has verified the identity of and performed on-going due diligence on the customers having direct access accounts of the correspondent and that it is able to provide relevant customer identification data upon request to the correspondent bank.

§ X805.3 ***(2008 - App. 52c) Risk–based due diligence***

a. Correspondent Banking Clients (CBC) presenting greater risk should be subjected to a higher level of due diligence.

b. The FI should consider the type of risk indicators in initiating the correspondent banking relationship, and on a continuing basis, to ascertain what reasonable due diligence or enhanced due diligence it will undertake.

c. The risk indicators to be considered are as follows:

(1) The Correspondent Banking Client's (CBC) domicile:

(a) Jurisdiction where the CBC is based and/or where its ultimate parent is headquartered. Certain jurisdictions are internationally recognized as having inadequate anti-money laundering standards, insufficient regulatory supervision or presenting greater risk for crime, corruption or terrorist financing. On the other hand, other jurisdictions such as members of the Financial Action Task force (FATF) have more robust regulatory environments representing lowers risks.

(b) Institutions should review pronouncements from regulatory agencies and international bodies, such as the FATF, to evaluate the degree of risk presented by the jurisdiction in which the CBC is based and/or in which its ultimate parent is headquartered.

(2) The Correspondent Banking Client's Ownership and Management Structures:

(a) location of owners;

(b) their corporate legal form;

(c) transparency or ownership structure;

(d) location and experience of management; and

(e) involvement of politically exposed persons (PEPs) in the management or ownership.

(3) The Correspondent Banking Client's Business and Customer Base:

(a) type of businesses the CBC engages in;

(b) type of markets the CBC serves;

(c) involvement in certain business segments internationally recognized as creating particular vulnerability to money laundering, corruption or terrorist financing; and

(d) substantial part of business income derived from higher risk clients (i.e., clients of a CBC that may be involved in activities or are connected to jurisdictions that are identified by credible sources as activities or countries being especially susceptible to money laundering).

d. The institution may give the appropriate weight to each risk factor as it deems necessary.

§ X805.4 *(2008 - App. 52c) Due diligence standards*

a. All CBC should be subjected to appropriate due diligence that will seek to assure that an institution is comfortable conducting business with a particular client given the client's risk profile.

b. The institution may rely on publicly available information obtained either from the CBC or reliable third parties (e.g., regulators, exchanges) to satisfy its due diligence requirements.

c. Countries may permit FIs to rely on intermediaries or other third parties to perform the Customer Due Diligence (CDD) process or to introduce business, provided that the criteria set out below are met. Where such reliance is permitted, the ultimate responsibility for customer identification and verification remains with the FI relying on the third party.

The criteria that should be met are as follows:

(1) An FI relying upon a third party should immediately obtain the necessary information concerning the elements of the CDD process. FIs should take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to the CDD requirements will be made available from the third party upon request without delay.

(2) The FI should satisfy itself that the third party is regulated and supervised for, and has measures in place to comply with CDD requirements.

d. The institution should consider the following elements -

(1) CBC domicile and organization

(a) jurisdiction where the CBC's ultimate parent is incorporated and/or headquartered;

(b) particular operating unit wishing to maintain relationship; and

(c) corporate legal form of CBC.

(2) CBC ownership

(a) publicly held

(3) Shares traded on an exchange in a jurisdiction with an adequately recognized regulatory scheme; and

(4) Identity of any significant controlling interests.

(a) or privately owned

(5) CBC executive management

(a) structure and experience; and

(b) existence of PEP.

(6) CBC's Business

(a) types of financial products and services; and

(b) geographic markets reached.

(7) Products and Services Offered

(a) business purpose for the relationship with the CBC; and

(b) products and services offered to the CBC.

(8) Regulatory status and history

(a) primary regulatory body supervising CBC; and

(b) based on publicly available materials, any criminal or adverse regulatory action in the recent past.

(9) CBC anti-money laundering controls

(a) nature and extent of application.

(10) No business arrangements with shell banks

(a) the institution should confirm that CBC will not use the institution's products and services to engage in business with shell banks.

(11) CBC visit

(a) The institution should visit CBC premises prior to or within a reasonable period of time; and

(b) The institution confirms that CBC is not a shell bank.

§ X805.5 ***(2008 - App. 52c) Enhanced due diligence.*** The enhanced due diligence process will involve further consideration of the following elements designed to assure the institution has secured a greater level of understanding:

a. Ownership and management

(1) Significant controlling interests, owner's sources of wealth and background, reputation in the market place, and recent material ownership changes.

(2) Detailed data on the experience of each member of executive management and recent material changes in the executive management structure.

b. Politically Exposed Person (PEP) involvement.

FIs should, in relation to PEP, in addition to performing normal due diligence measures:

(1) Have appropriate risk management systems to determine whether the customer is a PEP.

(2) Obtain senior management approval for establishing business relationships with such customers.

(3) Take reasonable measures to establish the source of wealth and source of funds.

(4) Conduct enhanced on-going monitoring of the business relationship.

c. CBC anti-money laundering controls

(1) Quality of anti-money laundering and client identification controls

(2) Recognition by CBC senior management of the importance of controls

d. Downstream correspondent clearing

(1) Downstream correspondent clearer is a CBC who receives correspondent banking services from an institution and itself provides corresponding banking services to other FIs in the same currency as the account it maintains with the institution.

(2) If CBC is also downstream corresponding clearer, the institution should (1) take steps to understand the types of FIs to whom the CBC offers the downstream banking services, and (2) consider the degree to which the CBC examines the anti-money laundering controls of the FIs to whom it offers those services.

§ X805.6 *(2008 - App. 52c) Shell banks*

a. A *shell bank* is a bank that (a) does not conduct business at a fixed address in a jurisdiction in which the shell bank is authorized to engage in banking activities; (b) does not employ one or more individuals on a full time business at this fixed address; (c) does not maintain operating records at this address, and (d) is not subject to inspection by the banking authority that licensed it to conduct banking activities.

b. FIs should refuse to enter into, or continue, a correspondent banking relationship with shell banks. FIs should also guard against establishing relations with respondent foreign FIs that permit their accounts to be used by shell banks.

§ X805.7 *(2008 - App. 52c) Branches, subsidiaries and affiliates*

a. In situations involving branches, subsidiaries or affiliates, the institution should consider the parent of the CBC in determining the extent of required due diligence.

b. If CBC is an affiliate not substantively and effectively controlled by the parent, the institution should review both the parent and the CBC.

§ X805.8 *(2008 - App. 52c) Updating client files*. The institution's policies and procedures should require that the CBC information is reviewed and updated on a periodic basis or when a material change in the risk profile of the CBC occurs.

§ X805.9 *(2008 - App. 52c) Monitoring and reporting of suspicious activities*. The institution's policies and procedures on the monitoring and reporting of suspicious activities should include correspondent banking activity.

§ X805.10 *(2008 - App. 52c) Integration with anti-money laundering program.* These guidelines shall form part of the institution's wider anti-money laundering program.

Secs. X806 - X881 (Reserved)

Sec. 1881 *(2008 - 1691.4)* Electronic Monitoring Systems for Money Laundering. UBs and KBs are required to adopt an electronic money laundering transaction monitoring system which at the minimum shall detect and raise to the bank's attention, transactions and/or accounts that qualify either as "covered transactions" or "suspicious transactions" as defined under Rules 3.b and 3.b.1 of *Appendix 52,* respectively, of R.A. No. 9160 otherwise known as the Anti-Money Laundering Act of 2001, as amended.

The system must have at least the following functionalities:

a. Covered and suspicious transaction monitoring - performs statistical analysis and profiling;

b. Watch list monitoring - checks transfer parties (originator, beneficiary and narrative fields) and the existing customer database for any listed undesirable individual or corporation;

c. Investigation - checks for given names throughout the history of payment stored in the system;

d. Can generate both the covered transaction reporting (CTR) and the suspicious transaction reporting (STR);

e. Must provide complete audit trail;

f. Capable of aggregating information and statistics for reporting purposes; and

g. Has the capability to support the investigation of alerts surfaced by the system.

UBs and KBs are given up to 14 October 2007 to put in place the electronic money laundering transaction monitoring system.

UBs and KBs with existing electronic system of flagging and monitoring transactions already in place shall ensure that their existing system is fully compliant with and has similar functionalities as those required above by 14 October 2007.

(As amended by Circular No. 527 dated 28 April 2006)

Sec. 2881 (Reserved)

Sec. 3881 (Reserved)

Sec. X882 *(2008 - X691.9)* Sanctions and penalties

a. Whenever a covered institution violates the provisions of Section 9 of R.A. No. 9160 or of this Section, the officer(s) or other persons responsible for such violation shall be punished by a fine of not less than P50,000 nor more than P200,000 or by imprisonment of not less than two (2) years nor more than ten (10) years, or both, at the discretion of the court pursuant to Section 36 of R.A. No. 7653, otherwise known as "The New Central Bank Act".

b. Without prejudice to the criminal sanctions prescribed above against the culpable persons, the Monetary Board may, at its discretion, impose upon any covered institution, its directors and/or officers for any violation of Section 9 of R.A. No. 9160, the administrative sanctions provided under Section 37 of R.A. No. 7653.

Secs. X883 - X894 (Reserved)

Sec. X895 *(2008 - X695)* Valid Identification Cards for Financial Transactions. The following guidelines govern the acceptance of valid ID cards for all types of financial transactions by banks, including financial transactions involving overseas Filipino workers (OFWs), in order to promote access of Filipinos to services offered by formal FIs, particularly those residing in the remote areas, as well as to encourage and facilitate remittances of OFWs through the banking system:

a. Clients who engage in a financial transaction with covered institutions for the first time shall be required to present the original and submit a clear copy of at least one (1) valid photo-bearing ID document issued by an official authority.

For this purpose, the term *official authority* shall refer to any of the following:

(1) Government of the Republic of the Philippines;

(2) Its political subdivisions and instrumentalities;

(3) GOCCs; and

(4) Private entities or institutions registered with or supervised or regulated either by the BSP or SEC or IC.

Valid IDs include the following:

(a) Passport
(b) Driver's license
(c) PRC ID
(d) NBI clearance
(e) Police clearance
(f) Postal ID
(g) Voter's ID
(h) Barangay certification
(i) GSIS e-Card
(j) SSS card
(k) Senior Citizen card
(l) OWWA ID
(m) OFW ID
(n) Seaman's book

(o) Alien Certification of Registration/ Immigrant Certificate of Registration

(p) Government office and GOCC ID (e.g., AFP, HDMF IDs)

(q) Certification from the NCWDP

(r) DSWD certification

(s) IBP ID; and

(t) Company IDs issued by private entities or institutions registered with or supervised or regulated either by the BSP, SEC or IC.

b. Students who are beneficiaries of remittances/fund transfers and who are not yet of voting age, may be allowed to present the original and submit a clear copy of one (1) valid photo-bearing school ID duly signed by the principal or head of the school.

c. Banks shall require their clients to submit a clear copy of one (1) valid ID on a one-time basis only, or at the commencement of a business relationship. They shall require their clients to submit an updated photo and other relevant information whenever the need for it arises.

The foregoing shall be in addition to the customer identification requirements under Rule 9.1.c of the Revised IRRs of R.A. No. 9160, as amended *(Appendix 52)*.

For purposes of this Section, financial transactions may include remittances, among others, as falling under the definition of transaction. Under the Anti-Money Laundering Act of 2001, as amended, a *financial transaction* is any act establishing any right or obligation or giving rise to any contractual or legal relationship between the parties thereto. It also includes any movement of funds by any means with a covered institution.

(Circular No. 564 dated 03 April 2007, as amended by Circular No. 608 dated 20 May 2008)

Secs. X896 - X898 (Reserved)

Sec. X899 *(2008 - X199)* General Provision on Sanctions. Except as otherwise provided, any violation of the provisions of this Part shall be subject to Sections 36 and 37 of R.A. No. 7653.

The guidelines for the imposition of monetary penalty for violations/offenses with sanctions falling under Section 37 of R. A. No. 7653 on banks, their directors and/or officers are shown in *Appendix 67*.

PART NINE

OTHER BANKING REGULATIONS

A. BANKING FEES/CHARGES

Section X901 *(2008 - X608)* Assessment Fees on Banks. Banks shall contribute to the BSP an annual fee to help defray the cost of maintaining the appropriate department of the SES in accordance with the following guidelines.

§ X901.1 *(2008 - X608.1) Annual fees on banks.* For purposes of computing the annual fees chargeable against banks, the term *"Total Assessable Assets"* shall be the amount referred to as the total assets under Section 28 of R.A. No. 7653 (end-of-month total assets per balance sheet, after deducting cash on hand and amounts due from banks, including the BSP and banks abroad), plus trust department accounts.

Average Assessable Assets (AAAs) shall be the summation of the end-of-month total assessable assets divided by the number of months in operation during the particular assessment period.

The rates of annual fees for banks for the assessable years 2000, 2001 and 2002 shall be as follows:

a.	UBs/KBs	- 1/28 of 1%
b.	TBs	- 1/28 of 1%
c.	RBs/Coop Banks	- 1/40 of 1%

multiplied by their AAAs for 2000, 2001 and 2002: *Provided,* That the annual fees chargeable to RBs/Coop Banks shall be the lower of the amount computed based on the above rate or the cost of maintaining the appropriate department of the SES: *Provided, further,* That beginning the fiscal year 1999, the annual banking fees of RBs/ Coop Banks shall be computed based on average total assets based on the bank's balance sheets as of month-end for the months of March, June, September and December and dividing by four (4) the sum of the end-of-month balances. RBs and Coop Banks shall compute and pay the supervisory fees on or before 30 January of each year starting 2003 and every year thereafter. The amount of the fee as computed by the banks shall be subject to BSP review and verification, and appropriate adjustment, as the case may be. Non-payment of the supervisory fee within the prescribed period shall subject the concerned bank to the sanctions prescribed under Sections 34, 35, 36 and 37 of R.A. No. 7653.

Annual fees to be collected from banks shall be debited from their respective deposits with the BSP by the BSP Comptrollership Department upon receipt of the notice of the assessment from the appropriate department of the SES.

Where the deposit account is insufficient to cover the assessment fee, the BSP Comptrollership Department shall bill the bank for the full amount of the annual fee or for the balance thereof not covered by its deposit account, as the case may be.

Within thirty (30) calendar days from receipt of the bill, the bank shall make the corresponding remittance to the BSP Accounting Department. Failure to pay the bill within the prescribed period shall subject the institution to administrative sanctions.

Sec. X902 *(2008 - X609)* Collection of Fines and Other Charges from Banks. The following regulations shall govern the payment of fines and other charges by banks.

§ X902.1 ***(2008 - X609.1) Guidelines on the imposition of monetary penalties*** The following are the guidelines on the imposition of monetary penalties on banks, their directors and/or officers.

a. *Definition of terms.* For purposes of the imposition of monetary penalties, the following definitions are adopted:

(1) *Continuing offenses/violations* are acts, omissions or transactions entered into, in violation of laws, BSP rules and regulations, Monetary Board directives, and orders of the Governor which persist from the time the particular acts were committed or omitted or the transactions were entered into until the same were corrected/rectified by subsequent acts or transactions. They shall be penalized on a per calendar day basis from the time the acts were committed/omitted or the transactions were effected up to the time they were corrected/rectified.

(2) *Transactional offenses/violations* are acts, omissions or transactions entered into in violation of laws, BSP rules and regulations, Monetary Board directives, and orders of the Governor which cannot be corrected/rectified by subsequent acts or transactions. They shall be meted with one-time monetary penalty on a per transaction basis.

(3) *Continuing penalty* refers to the monetary penalty imposed on continuing offenses/violations on a per calendar day basis reckoned from the time the offense/violation occurred or was committed until the same was corrected/rectified.

(4) *Transactional penalty* refers to a one-time penalty imposed on a transactional offense/violation.

b. *Basis for the computation of the period or duration of penalty.* The computation of the period or duration of all penalties shall be based on calendar days. For this purpose the terms *"per banking day", "per business day", "per day" and/or "a day"* as used in this Manual, and other BSP rules and regulations shall mean *"per calendar day"* and/or *"calendar day"* as the case may be.

c. *Additional charge for late payment of monetary penalty.* Late payment of monetary penalty shall be subject to an additional charge of six percent (6%) per annum to be computed from the time said penalty becomes due and payable up to the time of actual payment. The penalty shall become due and payable fifteen (15) calendar days from receipt of the Statement of Account from the BSP. For banks which maintain DDA with the BSP, penalties which remain unpaid after the lapse of the fifteen-day period shall be automatically debited against their corresponding DDA on the following banking day without additional charge. If the balance of the concerned bank's DDA is insufficient to cover the amount of the penalty, said penalty shall already be subject to an additional charge of six percent (6%) per annum to be reckoned from the banking day immediately following the end of said fifteen (15)-day period up to the day of actual payment.

d. *Appeal or request for reconsideration.* A one (1)-time appeal or request for reconsideration on the monetary penalty approved by the Governor/Monetary Board to be imposed on the bank, its directors and/or officers shall be allowed: *Provided,* That the same is filed with the appropriate department of the SES within fifteen (15) calendar days from receipt of the Statement of Account/billing letter. The appropriate department of the SES shall evaluate the appeal or request for reconsideration of the bank/individual and make recommendations thereon within thirty (30) calendar days from receipt thereof. The appeal or request for reconsideration on the monetary penalty approved by the Governor/Monetary Board shall be elevated to the Monetary Board for resolution/decision. The running of the penalty period in case of continuing penalty and/or the period for computing additional charge shall be interrupted from the time the appeal or request for reconsideration was received by the appropriate department of the SES up to the time that the notice of the Monetary Board decision was received by the bank/ individual concerned.

(As amended by Circular No. 585 dated 15 October 2007)

§ X902.2 ***(2008 - X609.2) Payment of fines by banks.*** Banks shall pay the fines within fifteen (15) calendar days from receipt of the statement of account from the BSP.

For banks which maintain demand deposit account with the BSP, fines which are unpaid after the lapse of the fifteen (15)-day period shall be automatically debited against the corresponding demand deposit account of the bank concerned: *Provided*, That if the balance of the bank's account is insufficient to cover the fines due, such fines shall be paid not later than the following banking day. For the purpose of this Subsection, *banking day* means a day on which the BSP head office and the head office of the bank are open for business.

For uniform implementation of the above regulations, the procedural guidelines embodied in *Appendix 29* shall be observed.

(As amended by Circular No. 585 dated 15 October 2007)

§ X902.3 ***(2008 - X609.3) Cost of checks and documentary stamps.*** Banks are given fifteen (15) days from receipt of invoice to settle their accounts with the BSP Security Printing Plant for transactions representing the cost of printed checks and documentary stamps. Accounts not settled within fifteen (15) days will be debited against the bank's corresponding demand deposit account with the BSP. A debit advice showing invoices paid shall be sent to the head office of the bank concerned.

(As amended by Circular No. 585 dated 15 October 2007)

§ X902.4 ***(2008 - X609.4) Check/ demand draft payments to the Bangko Sentral of thrift, cooperative and rural banks.*** TBs, Coop Banks and RBs are required to make all check and demand draft payments for CB:IBRD, LC/STD, legal reserve, supervisory fees, fines or penalties, redemption of preferred shares and cash dividends for government held preferred shares, and collections or repayments of notes used as collateral for loans payable either to the Cash Department, Bangko Sentral ng Pilipinas, Mabini St., Malate, Manila or directly to BSP Regional Cash Units. Such payments shall be accompanied by appropriate payment form as shown in *Appendix 35*. Payments not accompanied by the required payment forms shall be presumed to be additions to reserves and shall be credited to the demand deposit account of the paying bank.

Check payments shall be value dated when the check is cleared.

However, all assessments for annual supervisory fees, fines and penalties of TBs shall be debited from the respective demand deposit accounts with BSP.

(As amended by Circular No. 585 dated 15 October 2007)

B. BANK AS COLLECTION/ REMITTANCE AGENTS

Sec. X903 ***(2008 - X604)*** **Collection of Customs Duties/Taxes/Levies and Other Revenues.** The following regulations shall govern the collection and reporting of customs duties, taxes, levies and other revenues through the banking system.

§ X903.1 ***(2008 - X604.1) Coverage*** All presently accredited agent banks with demand deposit accounts with the BSP and government banks are authorized to collect (a) customs duties, taxes and other levies, (b) import processing fees, and (c) export/premium duties: *Provided, however*, That the collection of taxes from GOCCs shall be made only through banking offices of government banks.

§ X903.2 *(2008 - X604.2) Collection and reporting of internal revenue taxes* Banks which are duly accredited by the BIR to accept payment of internal revenue taxes shall be governed by the relevant BIR Revenue Regulations.

Deposits of the BIR shall be limited to those arising from tax collection.

The Authorized Agent Banks (AABs) shall transfer the deposit collection to the account of the Treasurer of the Philippines with the BSP on the sixth day from the day of deposit of the BIR collections.

§ X903.3 *(2008 - X604.3) Collection and reporting of customs duties and import processing fees.* Participating banks are authorized to accept payment of customs duties, taxes and other levies, and import processing fees under the following procedures:

a. The collecting bank shall acknowledge receipt of payments of customs duties, taxes and other levies, and import processing fees by issuing Official Receipts (ORs) in forms to be requisitioned by the Head Office from the General Services Division, Bureau of Customs, Manila;

b. The collecting bank shall book all such collections and credit the same to the special account *"Due to BSP - Bureau of Customs"*;

c. The branch shall report by telephone, telex or other means to its Head Office, at the end of each day, total collections for the day and the inclusive serial numbers of ORs issued, to be used as basis for the preparation by the Head Office of the *Consolidated Report of Daily Collections of Customs Duties, Taxes and Other Levies (RC 82-005);*

d. The Head Office and its branches shall accomplish the *Abstract of Daily Collections of Customs Duties, Taxes and Other Levies (RC 82-006)* and submit the same, duly supported with copies of Orders of Payment (OPs), ORs, Release Certificates (RCs) and commercial invoices on the same day to the offices indicated in the form; and

e. The Head Office of the participating banks shall consolidate all reports of collections with those of its branches and submit the original of the *Consolidated Report on Daily Collections of Customs Duties, Taxes and Other Levies (RC 82-005)* to the Comptrollership Department, BSP, Manila on the 10th calendar day following the date of collection. Simultaneously, the remaining copies shall be distributed to the offices indicated in the form.

Deposits of the BOC shall be limited to those arising from customs collection.

The AABs shall transfer the deposit collection to the account of the Treasurer of the Philippines with the BSP on the eleventh day from the day of deposit of the BOC collections.

§ X903.4 *(2008 - X604.4) Collection and reporting of export/premium duties* Participating banks are authorized to accept payment of export premium duties under the following procedures:

a. The collecting bank shall deduct from the export proceeds the estimated amount of export/premium duties due from the export shipment upon negotiation of the shipping documents but shall collect the exact and correct amount of such duties upon presentation of the OP issued by the Export Coordinating Division, Bureau of Customs (For Port of Manila) or the Collector of Customs concerned;

b. The collecting bank shall issue the corresponding ORs in forms to be requisitioned by the Head Office from the General Services Division, Bureau of Customs, Manila;

c. The collecting bank shall book all such collections and credit the same to the special account *"Due to BSP-Export/ Premium Duty";*

d. The branch/extension office/agency shall:

(1) Report by telephone, telex or other means to its Head Office, at the end of each day, total collections for the day and the inclusive serial numbers of ORs issued, to be used as basis for the preparation by the Head Office of the *Consolidated Report on Daily Collections of Export/Premium Duty (RC 82-007)*; and

(2) Accomplish the *Abstract of Daily Collections of Export/Premium Duty (RC 82-008)* and submit the same, duly supported with copies of OPs and ORs, within ten (10) calendar days from date of collection to the offices indicated in the form.

e. The Head Office of the collecting bank shall:

(1) Consolidate its report of collection with those of its branches/extension offices/ agencies and submit to the Bureau of Customs the *Consolidated Report of Daily Collections of Export/Premium Duty (RC 82-009)* on the day following the date of collection; and

(2) Consolidate the *Abstract of Daily Collections of Export/Premium Duty (RC 82-010)* with those received from branches/extension offices/agencies. The original of the *Consolidated Abstract of Collection of Export/Premium Duty (RC 82-011)* shall be submitted to the Comptrollership Department, BSP, Manila, on the 10th calendar day following the date of collection.

Simultaneously, the remaining copies, with the supporting OPs and ORs, shall be submitted to the Bureau of Customs.

§ X903.5 *(2008 - X604.5) Remittances thru debit/credit advices.* The Comptrollership Department, BSP, Manila, shall debit the demand deposit accounts of the banks concerned for the total daily collection, which is due for remittance on the 10th calendar day from the date of collection (based on either forms RC 82-005, RC 82-007 or RC 82-011). Said Department shall also credit on the same day the account of the Treasurer of the Philippines for all such remittances of tax collections, duties, fees and other levies.

Copies of debit/credit advices to AABs shall be furnished by the Comptrollership Department, BSP.

§ X903.6 *(2008 - X604.6) Reconciliation of revenue collections.* The Bureau of Customs shall report to the appropriate department of the SES, BSP, Manila, any unreported collection or other discrepancies discovered for proper examination. The BSP shall take appropriate action, through the Comptrollership Department, either by debiting or crediting the DDA of the bank concerned, upon advice by the appropriate department of the SES on the results of the investigation.

§ X903.7 *(2008 - X604.7) Penalty for willful delay on the reporting of collections/ remittances.* In the event the Bureau of Customs shall discover, in the course of its verification, any willful delay in the reporting of collections and remittances by banks, said Bureau shall advise the Comptrollership Department of the BSP to debit the DDA of the bank concerned with the corresponding penalty therefor, in accordance with Subsec. X903.8.

§ X903.8 *(2008 - X604.8) Fines for delayed reports/remittances of collections* Any bank authorized to collect customs duties, taxes and other levies and export/ premium duty, which shall willfully delay the submission of reports and remittance of its collection to the BSP within the period prescribed thereon, shall pay fines in accordance with the following schedule:

	Per delay in submission of report	For delay in remittance of collection
a. Per day of default for the first 5 days of default	P 60 plus	1/30 of 1% on the amount of delayed remittance
b. Per day of default for the next 5 days of default	P 90 plus	1/15 of 1% on the amount of delayed remittance
c. Per day of default for the succeeding days of default	P 120 plus	1/10 of 1% on the amount of delayed remittance

Provided, That:

(1) Fines imposed above shall not be in excess of P30,000 a day;

(2) The default shall start to run on the day following the last day required for submission of the report or remittance, as the case may be. However, should the last day of filing fall on a non-banking day in the locality where the reporting bank is situated, the default shall start on the day following the next banking day; and

(3) The manner of payment or collection of fines enumerated under Subsec. X902.1 shall apply.

(As amended by Circular No. 585 dated 15 October 2007)

§ X903.9 ***(2008 - X604.9) Liquidity floor requirement on revenue collections*** Revenue collections of AABs shall be subject to the liquidity floor requirement under Subsec. X240.6.

§ X903.10 ***(2008 - X604.10) Collection of import duties at the time of opening of letters of credit.*** The following rules and regulations shall govern the collection of import duties at the time of opening of letters of credit covering imports and for other purposes:

a. *Collection of deposits for import duties.* All FIs shall, upon opening of the letters of credit covering imports, collect from the applicant/importer a deposit equivalent to the full amount of import duties due on the importation covered by such letters of credit. The deposit shall not be withdrawable and shall be utilized only by crediting the same to the import duties due on the importation.

b. *Amount of import duties.* The import duties due shall be determined and declared by the applicant for the letter of credit subject to the penalties prescribed under the Tariff and Customs Code.

c. *Other payment arrangements.* The requirement of a deposit shall likewise apply even if the importation is effected under other types of payment arrangements or on a deferred payment basis. The deposit should be made upon presentation of the import documents to the agent bank.

d. *Validation of official receipt.* Such deposits shall be validated by official receipts of the FIs concerned and shall be credited in the final computation of the import duties, taxes and other charges due on the importation, upon the filing of the corresponding import entry.

e. *Collection of deficiency and refund of excess deposits.* Any deficiency in the deposit made as against the actual import duties, taxes and other charges due on the importation shall be collected by the Bureau of Customs from the importer prior to the release or withdrawal of the shipment. Any excess deposit shall be refunded by the Bureau of Customs to the importer.

f. *Remittance of collection.* The BSP demand deposit account of the FIs concerned shall be debited for the deposits collected, in accordance with Subsec. X903.5

g. *Violation*. Violation of the provisions of this Section shall be penalized under the pertinent provisions of the Tariff and Customs Code and/or under Sections 36 and 37 of R.A. No. 7653.

Sec. X904 *(2008 - X605.1)* Collection and Paying Agents of the Social Security System. Banks duly accredited by the SSS are authorized to act as collecting and paying agents under which agency, employer-members of the SSS may pay their premium contributions to the SSS through the said banks and the funds thus collected shall be remitted to the SSS within thirty (30) days from receipt thereof.

Such banks are also authorized to receive amortization payments by SSS members, individuals and entities on commercial, industrial, housing, salary and educational loans granted by the SSS.

During the thirty (30)-day period that such premium contributions are in the custody of the banks, such funds shall not earn interest.

The banks shall not collect from the SSS any service charge for such agency.

The funds collected by banks shall be handled by the bank proper and not the trust department: *Provided, however,* That such deposits shall be subject to the reserve requirements and the liquidity floor requirements on government deposits.

Sec. X905 *(2008 - X605.3)* Collection Agents of PhilHealth. Banks are authorized to act as collecting agents of the Philippine Health Insurance Corporation (PhilHealth) under which agency:

a. PhilHealth members may pay their premium contributions to PhilHealth through the said banks and the funds thus collected shall be remitted to PhilHealth in accordance with PhilHealth's agreed remittance schedule which in no case shall exceed thirty (30) days from receipt thereof;

b. During the period that such premium contributions are in the custody of banks, such funds shall not earn interest; and

c. The banks shall not collect from PhilHealth any service charge for such agency.

The funds collected by the banks shall be handled by the operating departments (cash departments) of the banks concerned and not their trust operations: *Provided, however*, That such funds shall be subject to the reserve requirement on deposits and to the liquidity floor on government deposits.

Sec. X906 *(2008 - X660)* Disclosure of Remittance Charges and Other Relevant Information. It is the policy of the BSP to promote the efficient delivery of competitively-priced remittance services by banks and other remittance service providers by promoting competition and the use of innovative payment systems, strengthening the financial infrastructure, enhancing access to formal remittance channels in the source and destination countries, deepening the financial literacy of consumers, and improving transparency in remittance transactions, consistent with sound banking practices.

Towards this end, banks providing overseas remittance services shall disclose to the remittance sender and to the recipient/beneficiary, the following minimum items of information regarding remittance transactions, as defined herein:

a. *Transfer/remittance fee* - charge for processing/sending the remittance from the country of origin to the country of destination and/or charge for receiving the remittance at the country of destination;

b. *Exchange rate* - rate of conversion from foreign currency to local currency, e.g., peso-dollar rate;

c. *Exchange rate differential/spread* - foreign exchange mark-up or the difference between the prevailing BSP reference/guiding rate and the exchange/conversion rate;

d. *Other currency conversion charges* - commissions or service fees, if any;

e. *Other related charges* - e.g., surcharges, postage, text message or telegram;

f. *Amount/currency paid out in the recipient country* - exact amount of money the recipient should receive in local currency or foreign currency; and

g. *Delivery time to recipients/beneficiaries* - delivery period of remittance to beneficiary stated in number of days, hours or minutes.

Banks shall likewise post said information in their respective websites and display them prominently in conspicuous places within their premises and/or remittance/service centers.
(Circular No. 534 dated 26 June 2006)

Secs. X907 - X930 (Reserved)

C. CREDIT RATING AGENCIES

Sec. X931 *(2008 - X654)* Recognition and Derecognition of Domestic Credit Rating Agencies for Bank Supervisory Purposes The following regulations shall govern the recognition and derecognition of domestic credit rating agencies (CRAs) for bank supervisory purposes.

§ X931.1 *(2008 - X654.1) Statement of policy.* The introduction in the financial market of new and innovative products create increasing demand for and reliance on CRAs by the industry players and regulators as well. As a matter of policy, the BSP wants to ensure that the reliance on credit ratings is not misplaced. The following rules and regulations that shall govern the recognition/derecognition of domestic CRAs for bank supervisory purposes.

§ X931.2 *(2008 - X654.2) Minimum eligibility criteria.* Only ratings issued by CRAs recognized by the BSP shall be considered for BSP bank supervisory purposes. The BSP, through the Monetary Board, may officially recognize a credit rating agency upon satisfaction of the following requirements:

a. *Organizational structure*

(1) A domestic CRA must be a duly registered company under the Securities and Exchange Commission (SEC); and

(2) A domestic CRA must have at least five (5) years track record in the issuance of reliable and credible ratings. In the case of new entrants, a probationary status may be granted: *Provided,* That the CRA employs professional analytical staff with experience in the credit rating business.

b. *Resources*

(1) Human Resources

(a) The size and quality of the CRA's professional analytical staff must have the capability to thoroughly and competently evaluate the assessed/rated entity's creditworthiness;

(b) The size of the CRA's professional analytical staff must be sufficient to allow substantial on-going contact with senior management and operational levels of assessed/rated entities as a routine component of the surveillance process;

(c) The CRA shall establish a Rating Committee composed of adequately qualified and knowledgeable individuals in the rating business, majority of whom must have at least five (5) years experience in credit rating business;

(d) The directors of the CRA must possess a high degree of competency equipped with the appropriate education and relevant experience in the rating business;

(e) The directors, officers, members of the rating committee and professional analytical staff of the CRA have not at any time been convicted of any offense involving moral turpitude or violation of the Securities Regulation Code; and

(f) The directors, officers, members of the rating committee and professional analytical staff of the CRA are not currently involved as a defendant in any litigation connected with violations of the Securities Regulation Code nor included in the BSP watchlist.

(2) Financial resources

(a) The CRA must have the financial capability to invest in the necessary technological infrastructure to ensure speedy acquisition and processing of data/ information and timely release of reliable and credible ratings; and

(b) The CRA must have financial independence that will allow it to operate free from economic and political pressures.

c. *Objectivity*

(1) The CRA must use a rigorous and systematic assessment methodology that has been established for at least one (1) year; however, a three (3)-year period is preferable;

(2) The assessment methodology of the CRA must be based both on qualitative and quantitative approaches; and

(3) The CRA must use an assessment methodology that is subject to on-going review and is responsive to changes in the operations of assessed/rated entities.

d. *Independence*

(1) The CRA must be free from control of and undue influence by the entities it assesses/rates;

(2) The assessment process must be free from ownership pressures to allow management to exercise independent professional judgement;

(3) Persons directly involved in the assessment process of the CRA are free from conflicts of interest with assessed/ rated entities; and

(4) The CRA does not assess/rate an associate entity.

e. *Transparency*

(1) A general statement of the assessment methodology used by the CRA should be publicly available;

(2) The CRA shall disseminate to the public thru a well-circularized publication, all assigned ratings disclosing whether the rating issued is solicited or unsolicited;

(3) The rationale of ratings issued and risk factors considered in the assessment should be made available to the public;

(4) The ratings issued by the CRA should be available both to domestic and foreign institutions with legitimate interest; and

(5) Publication of changes in ratings together with the basis for the change should be done on a timely basis.

f. *Disclosure requirements*

(1) Qualitative disclosures

(a) Definition of ratings along with corresponding symbols;

(b) Definition of what constitutes a default, time horizon within which a default is considered and measure of loss given a default; and

(c) Material changes within the CRA (i.e., changes in management or organizational structure, rating personnel, modifications of rating practices, financial deterioration) that may affect its ability to provide reliable and credible ratings.

(2) Quantitative disclosures

(a) Actual default rates experienced in each rating category; and

(b) Rating transitions of assessed/ rated entities over time (i.e., likelihood of an AAA credit rating transiting to AA etc. over time).

g. *Credibility*

(1) The CRA must have a general reputation of high standards of integrity and fairness in dealing with its clients and conducts its business in an ethical manner;

(2) The CRA is generally accepted by predominant users in the market

(i.e., issuers, investors, bankers, financial institutions, securities traders); and

(3) The CRA must carry out its rating activities with due diligence to ensure ratings are fair and appropriate.

For purposes of this Section, a subsidiary refers to a corporation, more than fifty percent (50%) of the voting stock of which is owned or controlled directly or indirectly by the CRA while an affiliate refers to a corporation, not more than fifty percent (50%) but not less than ten percent (10%) of the voting stock of which is owned or controlled directly or indirectly by the CRA.

"Control" exists when the parent owns directly or indirectly through subsidiaries more than one-half of the voting power of an enterprise unless, in exceptional circumstance, it can be clearly demonstrated that such ownership does not constitute control. Control may also exist even when ownership is one-half or less of the voting power of an enterprise when there is:

(a) power over more than one-half of the voting rights by virtue of an agreement with other stockholders;

(b) power to govern the financial and operating policies of the enterprise under a statute or an agreement;

(c) power to appoint or remove the majority of the members of the board of directors or equivalent governing body;

(d) power to cast the majority votes at meetings of the board of directors or equivalent governing body; or

(e) any other arrangement similar to any of the above.

h. *Internal compliance procedures*

(1) The CRA must have the necessary internal procedures to prevent misuse or unauthorized disclosure of confidential/non-public information; and

(2) The CRA must have rules and regulations that prevent insider trading and other conflict of interest situations.

§ X931.3 *(2008 - X654.3) Pre-qualification requirements*

The application of a domestic CRA for BSP recognition shall be submitted to the appropriate department of the SES of the BSP together with the following information/documents:

a. *An undertaking*

(1) That the CRA shall comply with regulations, directives and instructions which the BSP or other regulatory agency/body may issue from time to time; and

(2) That the CRA shall notify the BSP in writing of any material changes within the organization (i.e., changes in management or organizational structure, rating personnel, modifications of its rating practices, financial deterioration) that may affect its ability to provide reliable and credible ratings.

b. *Other documents/information:*

(1) Brief history of the CRA, major rating activities handled including information on the name of the client, type of instruments rated, size and year of issue;

(2) Audited financial statements for the past three (3) years and such other information as the Monetary Board may consider necessary for selection purposes;

(3) For new entrants, employment of professional analytical staff with experience in the credit rating business;

(4) List of major stockholders/partners (owning at least ten percent (10%) of the voting stocks of the CRA directly or along with relatives within the 1st degree of consanguinity or affinity);

(5) List of directors, officers, members of the rating committee and professional analytical staff of the CRA; including their qualifications, experience related to rating activities, directorship and shareholdings in the CRA and in other companies, if any;

(6) List of subsidiaries and affiliates including their line of business and the nature of interest of the CRA in these companies;

(7) Details of the denial of a previous request for recognition, if any (i.e., application date, date of denial, reason for denial etc.); and

(8) Details of all settled and pending litigations connected with the securities market against the CRA, its directors, officers, stockholders, members of the rating committee and professional analytical staff, if any.

§ X931.4 ***(2008 - X654.4) Inclusion in Bangko Sentral list.*** The BSP will regularly circularize to all banks and NBFIs an updated list of recognized CRAs. The BSP, however, shall not be liable for any damage or loss that may arise from its recognition of CRAs to be engaged by users.

§ X931.5 ***(2008 - X654.5) Derecognition of credit rating agencies***

a. *Grounds for derecognition.* Credit rating agencies may be derecognized from the list of BSP recognized CRAs under the following circumstances:

(1) Failure to maintain compliance with the requirements under Subsec. X931.2 or any willful misrepresentation in the information/documents required under Subsec. X931.3;

(2) Involvement in illegal activities such as ratings blackmail; creation of a false market or insider trading; divulging any confidential information about a client without prior consent to a third party without legitimate interest; indulging in unfair competition (i.e., luring clients of another rating agency by assuring higher ratings etc.); and

(3) Any violations of applicable laws, rules and regulations.

b. *Procedure for derecognition.* A CRA shall only be derecognized upon prior notice and after being given the opportunity to defend itself.

§ X931.6 ***(2008 - X654.6) Recognition of PhilRatings as domestic credit rating agency for bank supervisory purposes*** Credit ratings assigned by Philippine Rating Services Corporation (PhilRatings) may be used, among others, for determining appropriate risk weights in ascertaining compliance with existing rules and regulations on risk-based capital requirements.

Sec. X932 ***(2008 - X659)*** **Internationally Accepted Credit Rating Agencies** Internationally accepted CRAs are recognized for bank supervisory purposes to undertake local and national ratings: *Provided,* That said CRAs shall have at least a representative office in the Philippines. Accordingly, credit ratings assigned by said CRAs may be used, among others, as basis for determining appropriate risk weights in ascertaining compliance with existing rules and regulations on risk-based capital requirements.

Sec. X933 ***(2008 - X659.6)*** **Recognition of Fitch Singapore Pte., Ltd. as International Credit Rating Agency For Bank Supervisory Purposes.** The national or domestic credit ratings of Fitch Singapore Pte. Ltd., a BSP-recognized international credit rating agency with representative office in the Philippines, is hereby recognized by the BSP for bank supervisory purposes. Accordingly, national or domestic credit ratings assigned by Fitch Singapore Pte. Ltd. may be used, among others, as basis for determining appropriate risk weights in ascertaining compliance with existing rules and regulations on risk-based capital requirements.

Secs. X934 - X946 (Reserved)

Sec. X947 ***(2008 - X632)*** **Prohibition on the Sale of Foreign-Based Mutual Funds by Banks.** Criminal and administrative sanctions prescribed under Sections 36 and 37, respectively, of R.A. No. 7653 (The New Central Bank Act) shall be imposed on banks marketing/selling foreign-based mutual funds using any or all of their branches as outlets and/or selling such financial products without prior BSP approval.

Sec. 1948 ***(2008 - 1650)*** **Offering in the Philippines of Products by Parent Bank and Branches Abroad of the Parent Bank** Philippine branches and subsidiaries of foreign banks shall:

a. Inform/notify the BSP if their parent bank and/or branches abroad of their parent bank offer or market products in the Philippines, either through electronic means (website) or through its local desks (within bank premises); and

b. In cases when there are products being offered, to submit to the appropriate department of the SES within ten (10) banking days from receipt of Circular Letter dated 12 April 2005, the list of products offered/marketed, the corresponding manuals containing the policies and procedures, the flow chart of transaction and the risk management system for each particular product.

Sec. 2948 (Reserved)

Sec. 3948 (Reserved)

Sec. X949 (Reserved)

D. PHILIPPINE & FOREIGN CURRENCY NOTES & COINS

Sec. X950 ***(2008 - X610)*** **Philippine and Foreign Currency Notes and Coins.** The following rules and regulations shall govern the treatment and disposition of counterfeit Philippine and foreign currency notes and coins, the reproduction and/or use of facsimiles of legal tender Philippine currency notes and coins, the replacement and redemption of legal tender Philippine currency notes and coins considered mutilated or unfit for circulation, and the treatment and disposition of Philippine currency notes and coins called in for replacement.

§ X950.1 ***(2008 - X610.1) Definition of terms.*** For purposes of this Section, the following terms are defined.

a. *Legal Tender Philippine Currency* - Notes and coins issued and circulating under the provisions of R.A No. 265 and/ or R.A. No. 7653, which when offered for the payment of public or private debt must be accepted.

b. *Counterfeit Note* - An imitation of a legal and genuine note intended to deceive or to be taken for that which is original, legal and genuine.

c. *Counterfeit Coin* - An imitation or forged design of a genuine legal and authorized coin intended to deceive or pass for the genuine coin, regardless of its intrinsic value.

d. *Unauthorized Reproduction of Legal Tender Philippine Note* - A reproduction of a facsimile or any illustration or object bearing the likeness or similitude of legal tender Philippine currency note or any part thereof, without prior authority from the Governor of BSP or his duly authorized representative.

e. *Unauthorized Reproduction of Legal Tender Philippine Coin* - A reproduction of a facsimile or any object in metal form bearing the likeness or similitude of legal tender Philippine currency coin or any part thereof, without prior authority from the Governor of BSP or his duly authorized representative.

§ X950.2 ***(2008 - X610.2) Treatment and disposition of counterfeit Philippine and foreign currency notes and coins.*** Any person or entity, public or private, who receives or takes hold of a note or coin which is counterfeit or whose genuineness is questionable, whether Philippine or foreign currency, shall issue a temporary receipt to its owner/holder and must indicate therein his name, address and community tax certificate number or the passport number, in case of a foreigner, the date of receipt, the denomination, serial number of the note or the coin series as the case may be. The owner/holder shall be required to countersign the receipt and in case of refusal, the reasons thereof shall be stated in the receipt.

Any person or entity, public or private, who receives, takes hold or has in his possession a note or a coin which is counterfeit or whose genuineness is questionable, whether Philippine or foreign currency, shall forward the same within five (5) working days from date of receipt/ possession thereof, together with a copy of the temporary receipt required herein for examination to:

The Cash Department
Bangko Sentral ng Pilipinas
A. Mabini St., Manila

In cases where personal delivery to the Cash Department, BSP, Manila, is not feasible, delivery of the afore-stated notes or coins may be made through any of the following agencies:

(1) The BSP Regional Offices/Units; or
(2) Any banking institution.

Any law enforcement agency which conducted any seizure of notes and coins, whether Philippine or foreign, which are counterfeits or suspected to be counterfeit currency, shall within five (5) working days from date of seizure, advise in writing the Cash Department, BSP, Manila of said seizure enclosing therewith a copy of the receipt and inventory taken on the seized items. All seized notes or coins which are not or no longer needed as evidence in any investigation/legal proceedings shall be immediately turned over to the Cash Department, BSP, for proper disposition.

The Cash Department, BSP, after examining all notes and coins submitted to it for examination and/or determination as to its genuineness, shall:

(a) Issue a corresponding certification for the currency examined, if needed;

(b) Stamp the word "COUNTERFEIT" on both the face and the back of each note found to be counterfeit; and

(c) Return to the owner/holder, and/or sender the Philippine or foreign currency notes or coins found to be genuine in accordance with existing accounting and auditing regulations.

All notes and coins, whether Philippine or foreign, determined by the BSP to be counterfeit currency, shall not be returned to the owner/holder, but shall be retained and later disposed of in accordance with such guidelines as may be adopted by the BSP, except those which will be used as evidence in an investigation or legal proceedings, in which case, the same shall be retained and preserved by the BSP for evidentiary purposes.

The BSP shall extend assistance as may be requested of it in the investigation, apprehension and/or prosecution of person/s responsible for counterfeiting of notes and coins, both Philippine or foreign.

§ X950.3 ***(2008 - X610.3) Reproduction and/or use of facsimiles of legal tender Philippine currency notes.*** No person or entity, public or private, shall design, engrave, print, make or execute in any other manner, or utter, issue, distribute, circulate or use any handbill, advertisement, placard, circular, card, or any other object whatsoever bearing the facsimile, likeness or similitude of any legal tender Philippine currency note, or any part thereof, whether in black and white or any color or combination of colors, without prior authority therefor having been secured from the Governor, BSP or his duly authorized representative.

The reproduction and/or use of facsimiles or any illustration bearing the likeness or similitude of legal tender Philippine currency notes may be authorized by the Governor, BSP or his duly authorized representative, for printed illustrations in articles, books, journals, newspapers, or other similar materials and strictly for numismatic, educational, historical, newsworthy or other purposes which will maintain, promote or enhance the integrity and dignity of said note: *Provided, however*, That any such facsimile or illustration shall be of a size less than three-fifths (3/5) or more than one and one-half (1-1/2) times in size of the currency note being illustrated and that there will be no deviation from the purpose for which the notes will be used.

§ X950.4 *(2008 - X610.4) Reproduction and/or use of facsimiles of legal tender Philippine currency coins.* No person or entity, public or private, shall design, engrave, make or execute in any other manner, or use, issue, or distribute any object whatsoever bearing the likeness or similitude as to design, color or the inscription thereon of any legal tender Philippine currency coin or any part thereof, in metal form, irrespective of size and metallic composition, without prior authority from the Governor, BSP or his duly authorized representative.

The reproduction and/or use of facsimiles or of any object bearing the likeness or similitude of legal tender Philippine currency coins referred to in the foregoing section may be authorized by the Governor, BSP or his duly authorized representative, strictly for numismatic, educational, historical and other purposes which will maintain, promote or enhance the integrity and dignity of said coins.

§ X950.5 *(2008 - X610.5) Clean note policy.* When making cash deposits with the Cash Department or any of the Regional Offices/Units of the BSP, banks and their branches shall observe the following guidelines and procedures.

a. Banks shall classify their cash deposits into: (1) clean or fit notes and (2) dirty or unfit notes, in accordance with the *Currency Guide for Bank Tellers, Money Counters and Cash Custodians* prepared by Cash Department, BSP. The notes thus classified shall be further sorted by series and by denomination.

b. Banks shall provide securely sealed bags or containers separately for the clean or fit notes and for the dirty or unfit notes accompanied by a deposit slip for each type/category. The deposit slip for unfit currency notes shall be clearly labelled as *unfit*.

c. To facilitate handling of deposits, bank deposits shall be packed in sealed bags or containers in standard quantity of twenty (20) full bundle per denomination (each bundle containing 1,000 notes in ten (10) equal straps, each strap containing 100 notes).

d. Provincial branches of banks may make direct deposits of currency notes duly identified and sorted, with the nearest BSP Regional Office/Unit. In areas where there are no BSP Regional Office/Unit, provincial branches of banks shall arrange with their respective head offices the shipment of their unfit or dirty notes for deposit with the BSP Cash Department in Manila. Cost of shipment and other related expenses to be incurred shall be solely for the account of the bank concerned.

For purposes of this Subsection, the Cash Department and the regional offices/ units of BSP may refuse acceptance of cash deposits that do not conform with these guidelines and procedures.

§ X950.6 *(2008 - X610.6) Replacement and redemption of mutilated or unfit legal tender Philippine currency notes and coins.* The replacement and redemption of legal tender Philippine currency notes and coins considered mutilated or unfit for circulation shall be governed by the following rules.

a. *Unfit currency note*. A currency note shall be considered unfit for circulation when:

(1) It contains heavy creases which break the fiber of the paper and indicate that disintegration has begun: *Provided, however*, that mere creasing or wrinkling which has not broken nor weakened the note does not render the note unfit for circulation; or

(2) It is badly soiled/contaminated and/or with writings even if it has proper life or sizing; or

(3) It presents a limp or raglike appearance.

b. *Mutilated currency note*. A currency note shall be considered mutilated when:

(1) Torn parts of banknote are joined together with adhesive tape in a manner which tries to preserve as nearly as possible the original design and size of the note; or

(2) The original size of the note has been reduced/lost through wear and tear or has been otherwise torn, damaged, defaced or perforated through action of insects, chemicals or other causes; or

(3) It is scorched or burned to such an extent that although recognizable as such, it has become frail and brittle as to render further handling thereof impossible without disintegration or breaking; or

(4) It is split edgewise; or

(5) It has lost all the signatures inscribed thereon.

c. *Unfit currency coin***.** A currency coin shall be considered unfit for circulation when:

(1) It is bent or twisted out of shape or defaced, but its genuineness and/or denomination can still be readily and clearly determined/identified; or

(2) It has been considerably reduced in weight by natural abrasion/wear and tear.

d. *Mutilated currency coin*. A currency coin shall be considered mutilated when:

(1) It shows signs of filing, clipping or perforation; or

(2) It shows signs of having been burned or has been so defaced, that its genuineness and/or denomination cannot be readily and clearly identified.

e**.** Currency notes and coins considered unfit for circulation shall not be re-circulated, but may be presented for exchange to or deposited with any bank.

f. Currency notes and coins considered mutilated shall not be recirculated nor deposited/exchanged, but may be presented or forwarded for determination of their redemption exchange value to:

(1) The Cash Department
Bangko Sentral ng Pilipinas
A. Mabini St., Manila; or

(2) The nearest BSP Regional Office/ Unit.

g. The BSP shall replace or redeem notes and coins considered unfit for circulation or mutilated except when such notes and coins fall under any of the following classifications:

(1) Notes and coins the identification of which is impossible;

(2) Coins which show signs of filing, clipping or perforations; or

(3) Notes which have lost more than two-fifths (2/5) of their surface or all of the signatures inscribed thereon.

Notes and coins falling under any of the classifications mentioned under Item "g" above shall be withdrawn from circulation and demonetized without compensation to the owner/bearer.

§ X950.7 ***(2008 - X610.7) Treatment of Philippine currency notes and coins called in for replacement.*** Any person or entity, public or private, who receives, takes, holds or has in his possession Philippine currency notes and coins called in for replacement shall forward the same during the redemption period to:

a. Any authorized agent banks of the BSP when the notes are still considered legal tender, within one (1) year from the date of call; or

b. The BSP Cash Department or BSP Regional Offices/Cash Units, within the redemption period as may be determined by the Monetary Board.

The BSP Cash Department or the BSP Regional Cash Units shall exchange the notes/coins called in for replacement if presented to the BSP within the redemption period as determined by the Monetary Board and subsequently dispose the same in accordance with BSP procedures for disposal.

§ X950.8 ***(2008 - X610.8) Sanctions.*** Any violation of the provisions of Subsecs. X950.3 and X950.4, shall subject the offender to imprisonment of not less than five (5) years, but not more than ten (10) years. In case the Revised Penal Code provides for a greater penalty, then that penalty shall be imposed.

Secs. X951 - X998 (Reserved)

Sec. X999 ***(2008 - X199)*** **General Provision on Sanctions.** Except as otherwise provided, any violation of the provisions of this Part shall be subject to Sections 36 and 37 of R.A. No. 7653.

The guidelines for the imposition of monetary penalty for violations/offenses with sanctions falling under Section 37 of R. A. No. 7653 on banks, their directors and/or officers are shown in *Appendix 67*.