



MANUAL OF REGULATIONS

FOR NON-BANK FINANCIAL
INSTITUTIONS

Volume 2

FOREWORD

The *2011 Manual of Regulations for Non-Bank Financial Institutions* (MORNBFI) is an updated compilation of regulations and policies issued by the Bangko Sentral ng Pilipinas (BSP) for financial institutions under its supervision. Available in hard and soft copies, it is a convenient reference and guide for said financial institutions in the conduct of their operations.

The updated MORNBFI incorporates regulatory policies issued to align banking practices on risk management, good corporate governance, 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 easy access to this information, the updated MORNBFI seeks to facilitate compliance with the supervisory and regulatory requirements of BSP that will contribute to the enhancement of its partnership with financial institutions under its supervision, and ultimately to the strengthening of the Philippine Banking System and the economy.

AMANDO M. TETANGCO, JR.
Governor

PREFACE

(2011 Edition)

The 2011 Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) 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 to (i) 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. 0152, Series of 2011 dated 01 February 2011, is composed of: Mr. Alberto A. Reyes, Director, Examination Department II (ED) II, Chairman; Atty. Magdalena D. Imperio, Deputy Director, Office of the General Counsel and Legal Services (OGCLS), Vice Chairman; Ms. Ma. Belinda G. Caraan, Deputy Director/Head, Financial Consumer Affairs Group (FCAG); Ms. Ma. Corazon T. Alva, Deputy Director, Examination Department (ED) I; Atty. Lord Eileen S. Tagle, Legal Officer III, OGCLS; Atty. Florabelle S. Madrid, Manager, CPCD I; Ms. Celedina P. Garbosa, Manager, CPCD I; Atty. Asma A. Panda, Legal Officer IV, OGCLS; Ms. Concepcion A. Garcia, Bank Officer IV, ED III; Atty. Ma. Corazon B. Bilgera-Cordero, Bank Officer II, Anti-Money Laundering Specialists Group (AMLSG), members; and Mr. Nestor A. Espenilla, Jr., Deputy Governor, Supervision and Examination Sector, Adviser.

The Committee Secretariat is headed by Ms. Ma. Cecilia U. Contreras, Supervision and Examination Specialist I, ED II.

The Bangko Sentral ng Pilipinas

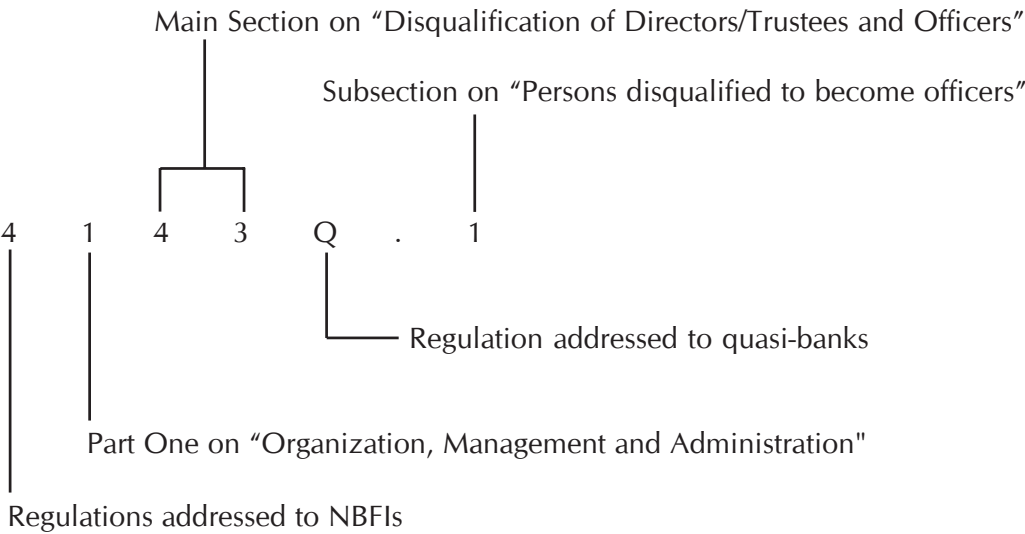
INSTRUCTIONS TO USERS
(2011 Edition)

The Manual of Regulations for Non-Bank Financial Institutions (the “Manual”) contains the rules and regulations which govern non-bank financial institutions (NBFIs) subject to the supervision of the Bangko Sentral ng Pilipinas (BSP) under existing laws, i.e. : Quasi-banks (Q Regulations), NSSLAs (S Regulations), Pawnshops (P Regulations), and other NBFIs, trust entities, subsidiaries and affiliates of banks and quasi-banks (N Regulations).

The Manual is divided into four (4) books Q, S, P or N. Each book is divided into parts. Each part is divided into sections containing four (4) digits and the letter Q, S, P or N, as applicable, i.e., 4143Q. The first digit “4” means that the regulation is applicable to NBFIs; the second digit “1” refers to the Part number, and the third and fourth digits “4” and “3” refer to the section number.

Sections may contain subsections represented by number/s after the decimal point, i.e., 4143Q.1.

To illustrate, Subsection 4143Q.1 indicates:



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

MANUAL OF REGULATIONS FOR NON-BANK FINANCIAL INSTITUTIONS

S REGULATIONS

(Regulations Governing Non-Stock Savings and Loan Associations)

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PART ONE

ORGANIZATION, MANAGEMENT AND ADMINISTRATION

A. SCOPE OF AUTHORITY

Section 4101S Scope of Authority of Non-Stock Savings and Loan Associations

An NSSLA shall include any non-stock, non-profit corporation engaged in the business of accumulating the savings of its members and using such accumulations for loans to members to service the needs of households by providing long-term financing for home building and development and for personal finance. An NSSLA may also engage in a death benefit program meant exclusively for the benefit of its members.

An NSSLA shall accept deposits from and grant loans to its members only and shall not transact business with the general public.

§ 4101S.1 Membership

a. NSSLAs shall issue a certificate of membership to every qualified member and shall maintain a registry of their members.

b. An NSSLA shall confine its membership to a well-defined group of persons.

A *well-defined group* shall consist of any of the following:

- (1) Employees, officers, and trustees of one company, including member-retirees;
- (2) Government employees belonging to the same office, branch, or department, including member-retirees; and
- (3) Immediate members of the families up to the second degree of consanguinity or affinity of those falling under Items “(1)” and “(2)” above.

NSSLAs whose articles of incorporation and by-laws were approved and registered prior to the effectivity of R. A. No. 8367 and

which limit and/or allow membership coverage broader or narrower than the foregoing definition, shall be allowed to continue as such.

The Monetary Board may, as circumstances warrant, require NSSLAs mentioned in the immediately preceding paragraph to amend their by-laws to comply with the concept of a *well-defined group*.

c. In no case shall the total amount of entrance fees exceed one percent (1%) of the amount to be contributed or otherwise paid-in by the particular member: *Provided*, That for new members, the fee shall be based on the amount of contributions computed in accordance with the revaluation of the assets of the NSSLA.

§ 4101S.2 Organizational requirements¹

a. *Articles of Incorporation; by-laws*
The articles of incorporation and by-laws of a proposed NSSLA, or any amendment thereto, shall not be registered with the SEC unless accompanied by a certificate of approval from the Monetary Board.

b. *Application for approval.* The articles of incorporation and by-laws of a proposed NSSLA, both accomplished in the prescribed forms, shall be submitted to the Monetary Board through the appropriate department of the SES together with a covering application for the approval thereof, signed by a majority of the board of trustees and verified by one of them. The application shall include:

- (1) The proposed articles of incorporation and by-laws together with the names and addresses of the incorporators, trustees and officers, with a statement of their character, experience, and general fitness to engage in the non-stock savings and loan business;

¹ See SEC Circular No. 3 dated 16 February 2006.

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(2) An itemized statement of the estimated receipts and expenditures of the proposed NSSLA for the first year;

(3) Filing fee of P1,000; and

(4) Such other information as the Monetary Board may require.

c. *Grounds for disapproval of application.* The Monetary Board may deny the application to organize an NSSLA on the basis of a finding that:

(1) The NSSLA is being organized for any purpose other than to engage in the business of a legitimate NSSLA;

(2) The NSSLA’s financial program is unsound;

(3) The proposed members are adequately served by one (1) or more existing NSSLAs; and

(4) There exist other reasons which the Monetary Board may consider as sufficient ground for such disapproval.

d. *Certificate of authority to operate; revocation or suspension thereof.* NSSLAs, prior to transacting business, shall procure a certificate of authority to transact business from the Monetary Board. After due notice and hearing, the Monetary Board may revoke or suspend, for such period as it determines, the certificate of authority of any NSSLA, the solvency of which is imperiled by losses or irregularities, or of any NSSLA which willfully violates any provision of R. A. No. 8367, these rules or any pertinent law or regulation.

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

Secs. 4102S - 4105S (Reserved)

B. CAPITALIZATION

Sec. 4106S **Capital.** NSSLAs established after 14 August 2001, shall have a minimum capital contribution of at least P1.0 million. The minimum capital contribution requirement shall also apply to all pending applications to establish NSSLAs received prior to 14 August 2001.

Members who have contributed P1,000 or more to the capital of an NSSLA may increase their capital contribution. Partial withdrawal from the amount paid by a member as capital contribution, during his membership, may be allowed unless the by laws of the NSSLA provide otherwise, and subject to such rules and regulations as the Monetary Board may prescribe in the matter of such withdrawal of capital contribution. However, in no case, shall such partial withdrawal diminish the member’s capital contribution to less than P1,000.

Members of NSSLAs may participate in the profits of the NSSLA on the basis of their respective capital contributions on the date distribution of net income is approved by its board of trustees.

(As amended by Circular No. 573 dated 22 June 2007)

§ 4106S.1 **Revaluation surplus.** In cases of both retiring and new members, a revaluation surplus shall be added to their contributions by imputing their respective proportionate shares in the withdrawable share reserve and the reserve for furniture, fixtures, and furnishings.

Secs. 4107S - 4110S (Reserved)

C. (RESERVED)

Secs. 4111S - 4115S (Reserved)

D. NET WORTH-TO-RISK ASSETS RATIO

Sec. 4116S **Capital-to-Risk Assets.** The combined capital accounts of each NSSLA shall not be less than an amount equal to ten percent (10%) of its risk assets which is defined as its total assets minus the following assets:

a. Cash on hand;

b. Evidences of indebtedness of the Republic of the Philippines and of the BSP and any other evidences of indebtedness/

obligations, the servicing and repayment of which are fully guaranteed by the Republic of the Philippines;

c. Loans to the extent covered by hold-out on, or assignment of, deposits maintained in the lending NSSLA and held in the Philippines;

d. Office premises, depreciated;

e. Furniture, fixtures and equipment, depreciated;

f. Real estate mortgage loans insured by the Home Guarantee Corporation to the extent of the amount of the insurance; and

g. Other non-risk items as the Monetary Board may, from time to time, authorize to be deducted from total assets.

The Monetary Board shall prescribe the manner of determining the total assets of such NSSLA for the purpose of this Section, but contingent accounts shall not be included among total assets.

Whenever the capital accounts of an NSSLA are deficient with respect to the preceding paragraph, the Monetary Board, after considering the report of the appropriate department of the SES on the state of solvency of the NSSLA concerned, shall limit or prohibit the distribution of net income and shall require that part or all of net income be used to increase the capital accounts of the NSSLA until the minimum requirement has been met. The Monetary Board may, after considering the aforesaid report of the appropriate department of the SES, and if the amount of the deficiency justifies it, restrict or prohibit the making of new investments of any sort by the NSSLA with the exception of the purchases of evidence of indebtedness included under Item “b” of this Section until the minimum required capital ratio has been restored.

(As amended by Circular No. 573 dated 22 June 2007)

Sec. 4117S Withdrawable Share Reserve
NSSLAs shall create a withdrawable share reserve which shall consist of two percent

(2%) of the total capital contributions of the members.

An amount corresponding to the withdrawable share reserve shall be set up by the NSSLA, such amount invested in bonds or evidences of indebtedness of the Republic of the Philippines or of its subdivisions, agencies or instrumentalities, the servicing and repayment of which are fully guaranteed by the Republic of the Philippines, and evidences of indebtedness of the BSP.

For a uniform interpretation of the provisions of this Section, the following shall serve as guidelines:

a. The withdrawable share reserve shall be set up from the undivided profits of the NSSLA and shall be funded in the form of cash deposited as a separate account and/or an investment allowed under this Section;

b. Should there be an increase in the capital contribution, the reserve shall be correspondingly adjusted at the end of each month from undivided profits, if any; and

c. The reserve shall be adjusted first before the NSSLA shall declare and distribute to its members any portion of its net income at any time of the year.

(As amended by Circular No. 573 dated 22 June 2007)

Sec. 4118S Surplus Reserve for Ledger Discrepancies. Whenever an NSSLA has a discrepancy between its general ledger accounts and their respective subsidiary ledgers, the board of trustees of the NSSLA shall set up from the undivided profits of the NSSLA, if any, a surplus reserve, in an amount equivalent to the amount of the discrepancy, and this reserve shall not be available for distribution to members or for any other purpose unless and until the discrepancy is accounted for. The board of trustees shall also direct the employee responsible for the discrepancy to account for said discrepancy: *Provided*, That the failure of the employee to do so shall

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constitute as ground for his dismissal if the discrepancy is of serious or recurring nature.
(As amended by Circular Nos. 661 dated 01 September 2009 and 573 dated 22 June 2007)

Sec. 4119S Reserve for Office Premises, Furniture, Fixtures and Equipment. NSSLAs shall set aside five percent (5%) of their yearly net income until it amount to at least five percent (5%) of the total assets as a reserve for a building fund to cover the cost of construction or acquisition of office premises, and of the purchase of office furniture, fixtures and equipment.

An NSSLA which, as determined by its board of trustees, has adequate office premises, furniture, fixtures and equipment necessary for the conduct of its business need not set up the reserve: *Provided*, That this fact should be certified by its board of trustees in a resolution to be submitted to the appropriate department of the SES for verification and approval: *Provided*, however, That in case reserves had been set up, the NSSLA so exempted may revert the reserves to free surplus.
(As amended by Circular No. 573 dated 22 June 2007)

Sec. 4120S (Reserved)

E. (RESERVED)

Secs. 4121S - 4125S (Reserved)

F. NET INCOME DISTRIBUTION

Sec. 4126S Limitations on Distribution of Net Income

- a. *Basis for participation in profits* Member-depositors of an NSSLA may participate in the profits of the NSSLA on the basis of their capital contributions on the date distribution of net income to members is approved by its board of trustees/directors.
- b. *Level of withdrawable share reserve.* No NSSLA shall distribute any of its net income to its members if the

withdrawable share reserve required under Sec. 4117S is less than, or if by such distribution would be reduced below, the amount specified in said Section. The reserve shall be adjusted first before the NSSLA shall distribute its net income at any time of the year.

c. *Capital-to-risk assets ratio.* NSSLAs shall not distribute any of its net income to their members if their capital-to-risk assets ratio is below the level required under Sec. 4116S.

d. *Discrepancies between general ledger and subsidiary ledger accounts.* The surplus reserves set up as required under Sec. 4118S shall not be reverted to free surplus for distribution to members unless and until the discrepancy between the general ledger accounts and their respective subsidiary ledgers for which the surplus reserve has been set up ceases to exist.

e. *Other unbooked capital adjustments required by BSP, whether or not allowed to be set up on a staggered basis.* The unbooked valuation reserves and other unbooked capital adjustments required by the BSP, whether or not allowed to be set up on a staggered basis, shall be deducted from the amount of net income available for distribution to members.

f. *Interest and other income earned but not yet collected/received, net of reserve for uncollected interest on loans* Accrued interest and other income not yet received but already recorded by an NSSLA, net of allowance for uncollected interest on loans, shall be deducted from the amount of net income available for distribution to members.

(As amended by Circular No. 573 dated 22 June 2007)

§ 4126S.1 Reporting and verification
 Declaration of income for distribution to members shall be reported by an NSSLA concerned to the appropriate department of the SES in the prescribed form (Revised BSP Form No. 7-26-25H) within ten (10) business days after date of declaration.

Pending verification of above-mentioned report by the appropriate department of the SES, the NSSLA concerned shall not make any announcement or communication on the intended distribution of net income nor shall any actual distribution be made thereon.

In any case, the declaration may be announced and the income distributed, if after twenty (20) business days from the date of the report required herein shall have been received by the BSP, no advice against such distribution has been received by the NSSLA concerned.

(As amended by Circular Nos. 661 dated 01 September 2009 and 573 dated 22 June 2007)

§ 4126S.2 Recording of net income for distribution. The liability for members’ share in the net income distribution shall be taken up in the books upon receipt of BSP approval thereof, or if no such approval is received, after twenty (20) business days from the date the required Report on Distributable Net Income was received by the appropriate department of the SES whichever comes earlier. A memorandum entry may be made to trustees and for full disclosure purposes, the amount of income for distribution may be disclosed in the financial statements by means of a footnote which should include a statement to the effect that the distribution is subject to review by the BSP.

(As amended by Circular No. 573 dated 22 June 2007)

Secs. 4127S - 4140S (Reserved)

G. TRUSTEES, OFFICERS, EMPLOYEES AND AGENTS

Sec. 4141S Definition; Qualifications; Responsibilities and Duties of Trustees
For purposes of this Section, the following shall be the definition, qualifications, responsibilities and duties of trustees.

§ 4141S.1 Definition of trustees
Trustees shall include: (a) those who are named as such in the articles of incorporation;

(b) those duly elected in subsequent meetings of the NSSLA’s members; and (c) those elected to fill vacancies in the board of trustees.

§ 4141S.2 Qualifications of trustees
No person shall be eligible as trustee of an NSSLA unless he is a member of good standing of such NSSLA.

In addition, such person shall have the qualifications and none of the disqualifications as provided in pertinent laws and BSP rules.

A trustee shall have the following minimum qualifications:

- a. He shall be at least twenty-five (25) years of age at the time of his election/appointment;
- b. He shall be at least a college graduate or have at least five (5) years experience in business, or shall have undergone any BSP training in NSSLA or banking operations: *Provided, however,* That undergraduates eligible to be elected as trustees in the NSSLA’s by-laws may be allowed as may be approved by the Monetary Board;
- c. He must have attended a special seminar on corporate governance for board of trustees conducted or accredited by the BSP; and
- d. He must be fit and proper for the position of a trustee of the NSSLA. In determining whether a person is fit and proper for the position of a trustee, the following matters must be considered: integrity/probity, competence, education, diligence, and experience/training.

The foregoing qualifications for trustees shall be in addition to those already required or prescribed by R.A. No. 8367, as amended, and other existing applicable laws and regulations.

§ 4141S.3 Powers and authority of the board of trustees. The corporate powers of an NSSLA shall be exercised, its business conducted, and all its property shall be

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controlled and held by its board of trustees. The powers of the board of trustees as conferred by law are original and cannot be revoked by the members. The trustees hold their office charged with the duty to act for the NSSLA in accordance with their best judgment.

§ 4141S.4 General responsibility of the board of trustees. The position of an NSSLA trustee is a position of trust. A trustee assumes certain responsibilities to different constituencies or stakeholders (e.g., the NSSLA itself, its member-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 trustees is primarily responsible for the corporate governance of the NSSLA. To ensure good governance of the NSSLA, the board of trustees should establish strategic objectives, policies and procedures that will guide and direct the activities of the NSSLA 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 trustees is, however, responsible for monitoring and overseeing management action.

§ 4141S.5 Duties and responsibilities of the board of trustees. To ensure prudent and efficient administration of NSSLAs, the following guidelines shall govern the responsibilities and duties of the board of trustees of NSSLAs:

a. *Specific duties and responsibilities of the board of trustees*

(1) *To select and appoint officers who are qualified to administer the NSSLA affairs effectively and soundly and to establish adequate selection process for all personnel.*

It is the primary responsibility of the board of trustees to appoint competent management team at all times. The board of trustees 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 of trustees’ choice should share its general operating philosophy and vision for the institution. The board of trustees 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 of trustees 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 its members, it observes a high standard of integrity. The board of trustees should prescribe corporate values, codes of conduct and other standards of appropriate behavior for itself, the senior management and other employees. Among other matters, 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 shall provide policies that will prevent the use of the facilities of the NSSLA in furtherance of criminal and other illegal activities.

(4) *To prescribe a clear assignment of responsibilities and decision-making authorities, incorporating a hierarchy of*

required approvals from individuals to the board of trustees. The board of trustees shall 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 NSSLA to any financial undertaking or exposure to risk at any time. The board of trustees shall have a schedule of matters and authorities reserved to it for decision, such as major capital expenditures, equity investments and divestments.

(5) *To effectively supervise the NSSLA's affairs.* The board of trustees shall 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 shall also provide a mechanism for effective check and control by the board of trustees over the chief executive officer and key managers and by the latter over the line officers of the NSSLA.

(6) *To monitor, assess and control the performance of management.* The board of trustees 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.

(7) *To adopt and maintain adequate risk management policy.* The board of trustees 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 of trustees may constitute a committee for this purpose.

(8) *To constitute the Audit Committee.* The Audit Committee shall be composed of trustees, preferably with accounting and finance experience. Said audit committee provides oversight of the institution's internal and external auditors. 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. It shall monitor and evaluate the adequacy and effectiveness of the internal control system.

(9) *To meet regularly.* To properly discharge its function, the board of trustees shall meet regularly. Independent views in board meetings shall be given full consideration and all such meetings shall be duly minuted.

(10) *To keep the individual members of the board and the members informed.* It is the duty of the board of trustees to present to all its members and to the stakeholders a balanced and understandable assessment of the NSSLA'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.

(11) *To ensure that the NSSLA has beneficial influence on the economy.* The board of trustees has a continuing responsibility to provide those services and facilities which will be supportive of the national economy.

(12) *To assess at least annually its performance and effectiveness as a body, as well as its various committees, the chief executive officer and the NSSLA itself.* The composition of the board of trustees shall also be reviewed regularly with the end in

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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.

(13) *To keep their authority within the powers of the institution as prescribed in the articles of incorporation, 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 and regulations, the board of trustees shall appoint a compliance officer who shall be responsible for coordinating, monitoring and facilitating compliance with existing laws 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.

b. *Specific duties and responsibilities of a trustee*

(1) *To conduct fair business transactions with the NSSLA and to ensure that personal interest does not bias board decisions.* Trustees 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 trustee 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 NSSLA, its members, regardless of the amount of their capital contributions, and creditors, if any.* A trustee must always act in good faith, with the care which an ordinarily prudent man would exercise under similar circumstances. While a trustee should always strive to promote the interest

of all members, he shall 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.* Trustees shall 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 shall neither accept his nomination nor run for election as member of the board of trustees.

(4) *To act judiciously.* Before deciding on any matter brought before the board of trustees, every trustee should thoroughly evaluate the issues, ask questions and seek clarifications when necessary.

(5) *To exercise independent judgment.* A trustee 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 NSSLA, 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 trustee also keeps himself informed of the industry developments and business trends in order to safeguard the institution's competitiveness.

(7) *To observe confidentiality.* Trustees must observe the confidentiality of non-public information acquired by reason of their position as trustees. They may not disclose said information to any other person without the authority of the board.

Sec. 4142S Definition and Qualifications of Officers. Officers shall include the President, Vice-President, General Manager, Corporate Secretary, Treasurer and others mentioned as officers of the NSSLA, or whose duties as such are defined in the by-laws.

The minimum qualifications for trustees prescribed in Sec. 4141S are also applicable to officers.

§ 4142S.1 Definition of officers
Officers shall include the president, executive vice president, senior vice president, vice president, general manager, secretary, treasurer, and others mentioned as officers of the NSSLA, or those whose duties as such are defined in the by-laws, or are generally known to be the officers of the NSSLA (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 NSSLA. A person holding the position of chairman, vice-chairman or any other position of the board who also performs functions of management such as those ordinarily performed by regular officers shall also be considered an officer.

§ 4142S.2 Qualifications of officers
An officer shall have the following minimum qualifications:

- a. He shall be at least twenty-one (21) years of age;
- b. He shall be at least a college graduate or have at least five (5) years experience in NSSLA or banking operations or related activities or in a field related to

his position and responsibilities, or have undergone training in NSSLA or banking operations acceptable to the appropriate department of the SES;

c. He must be fit and proper for the position of an officer of the NSSLA. In determining whether a person is fit and proper for the position of an officer, 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 already required or prescribed by R.A. No. 8367, as amended, and other existing applicable laws and regulations.

Sec. 4143S Disqualification of Trustees and Officers. The following regulations shall govern the disqualification of NSSLAs' trustees and officers.

§ 4143S.1 Persons disqualified to become trustees. Without prejudice to specific provisions of law prescribing disqualifications for trustees, the following are disqualified from becoming trustees:

a. *Permanently disqualified.* Trustees/officers/employees permanently disqualified by the Monetary Board from holding a director/trustee 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;

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(3) Persons who have been convicted by final judgment of the court for violation of banking/quasi-banking/NSSLA laws, rules and regulations;

(4) Persons who have been judicially declared insolvent, spendthrift or incapacitated to contract;

(5) Trustees, officers or employees of closed banks/QBs/trust entities who were found to be culpable for such institution's closure as determined by the Monetary Board;

(6) Trustees and officers of banks, QBs and trust entities 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) Trustees and officers of banks, QBs and trust entities or any person found by the Monetary Board to be unfit for the position of trustees 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.* Trustees/officers/employees disqualified by the Monetary Board from holding a trustee 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) Trustees 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 trustees during their incumbency, and trustees 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 trustees 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 trustees 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 an NSSLA where he/she is a trustee or officer, or at least two (2) obligations with other banks/FIs, under different credit lines or loan contracts, are past due pursuant to existing regulations;

(b) Obligations shall include all borrowings from a bank/QB/trust entity/NSSLA/other FIs obtained by:

(i) A trustee 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 trustee or officer;

(iii) Any person whose borrowings or loan proceeds were credited to the account of, or used for the benefit of a trustee or officer;

(iv) A partnership of which a trustee 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 (Code of Conduct and Ethical Standards for Public Officials and Employees), 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) Trustees and officers of closed banks QBs/trust entities/NSSLAs and other FIs under BSP supervision/regulation pending their clearance by the Monetary Board;

(6) Trustees 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 trustees’ election/re-election;

(7) Trustees who failed to attend the special seminar on corporate governance for board of trustees required by BSP. This disqualification applies until the trustee 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, 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 trustee/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) Trustees and officers of banks, QBs and trust entities 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) Trustees and officers of banks, QBs and trust entities or any person found by the Monetary Board to be unfit for the position of trustees 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 is pending appeal before the appellate court, unless execution or enforcement thereof is restrained by the court; and

(13) Trustees and officers of banks, QBs

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and trust entities 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)

§ 4143S.2 Persons disqualified to become officers

a. The disqualifications for trustees mentioned in Subsec. 4143S.1 shall likewise apply to officers, except those stated in Items “b(2)” and “b(7)”.

b. The spouses or relatives within the second degree of consanguinity or affinity are prohibited from holding officership positions across the following functional categories within an NSSLA:

1. Decision making and senior management function, e.g., chairman, president, chief executive officer (CEO), chief operating officer (COO), general manager, and chief financial officer (CFO) other than the treasurer or controller;
2. Treasury function, e.g., Treasurer and Vice President – Treasury;
3. Recordkeeping and financial reporting functions, e.g., controller and chief accountant;
4. Safekeeping of assets, e.g., chief cashier;
5. Risk management function, e.g., chief risk officer;
6. Compliance function, e.g., compliance officer; and
7. Internal audit function, e.g., internal auditor.

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 extension office of an NSSLA or their respective equivalent positions is disqualified from holding or being appointed to any of said positions in the same branch or extension office.

c. Except as may otherwise be allowed under C.A. No. 108, otherwise known as “The Anti-Dummy Law,” as amended, foreigners cannot be officers or employees of NSSLAs; and

d. Any appointive or elective public official, whether full time or part time, except in cases where such service is incident to financial assistance provided by the government or GOCCs or in cases allowed under existing law.

(As amended by Circular No. 699 dated 17 November 2010)

§ 4143S.3 Disqualification procedures

a. The board of trustees and management of every NSSLAs shall be responsible for determining the existence of the ground for disqualification of the NSSLA’s trustee/officer or employee and for reporting the same to the BSP. While the concerned NSSLA 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 trustee/officer/employee from being elected appointed as trustee/officer in any FI under the supervision of the BSP. Grounds for disqualification made known to the NSSLA 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. 4143S.1 and 4143S.2, the trustee

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 trustee/officer concerned, the appropriate department of the SES shall proceed to evaluate the case. The trustee/officer concerned shall be afforded the opportunity to defend/clear himself/herself.

d. If no reply has been received from the trustee/officer concerned upon the

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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 trustee 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 trustees/officers of closed QBs, trust entities, NSSLAs or other FIs under BSP supervision, the concerned department of the SES shall make appropriate recommendation to the Monetary Board clearing said trustees/officers when there is no pending case/complaint or evidence against them. When there is evidence that a trustees/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 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. Trustees/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 trustee/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 trustee 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 trustee/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 trustee/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 paragraphs “a”, “b”, “c” and “d” above.

i. Upon approval by the Monetary Board, the concerned trustee/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 trustee/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 trustees 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

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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 trustee/officer involved.

k. Persons who are elected or appointed as trustee 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. 4143S.1 and 4143S.2, shall be afforded the procedural due process prescribed above.

l. Whenever a trustee/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 trustee 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 trustee/officer and his/her delisting from the masterlist of watchlisted persons.

(As amended by Circular No. 584 dated 28 September 2007)

§ 4143S.4 Effect of non-possession of qualifications or possession of disqualifications. Trustees/officers elected or appointed without possessing the qualifications in Subsecs. 4141S.2/4142S.2 or possessing any of the disqualifications as enumerated in Subsecs.4143S.1/4143S.2, shall vacate their respective positions immediately.

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§ 4143S.6 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 trustee or officer of an NSSLA, the SES shall maintain a watchlist of

disqualified NSSLA trustees/ officers under the following procedures:

a. *Watchlist categories.* Watchlisting shall be categorized as follows:

(1) Disqualification File “A” (Permanent)
- Trustees/officers/employees permanently disqualified by the Monetary Board from holding a trustee/officer position in any institution under the supervision/ regulation of BSP.

(2) Disqualification File “B” (Temporary)
- Trustees/officers/employees temporarily disqualified by the Monetary Board from holding a trustee/officer position in any institution under the supervision/ regulation of BSP.

b. *Inclusion of trustees/officers/ employees in the watchlist.* Upon recommendation by the appropriate department of the SES, the inclusion of trustees/officers/employees in watchlist disqualification files “A” and “B” on the basis of decisions, actions or reports of the courts, banks, QBs, other NSSLAs and FIs under BSP supervision, BSP, NBI or any other administrative agencies shall first be approved by the Monetary Board.

c. *Notification of trustees/officers/ employees.* Upon approval by the Monetary Board, the concerned trustee/officer/ employee shall be informed through registered mail, with registry return receipt card at his/her last known address of his/ her inclusion in the masterlist of watchlisted persons disqualified to be a trustee/officer in any FI under the supervision of the BSP.

d. *Confidentiality.* Watchlisting shall be for internal use only and may not be accessed or queried upon by outside parties including banks, QBs, trust entities, NSSLAs or other FIs under BSP supervision except with the authority of the person concerned and with the approval of the Deputy Governor, SES, or the Governor, or the Monetary Board.

The 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 the SES is in *Appendix Q-45*.

NSSLAs can gain access to information in the said watchlist for the sole purpose of screening their applicants for hiring and/or confirming their elected trustees and appointed officers. NSSLAs must obtain the said authorization on an individual basis.

e. *Delisting*. All delistings shall be approved by the Monetary Board upon recommendation of the appropriate department of the 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 laws becomes final and executory, in which case the trustee/officer/employee is relisted to Watchlist – Disqualification File “A” (Permanent);

(c) Upon favorable decision or clearance by the appropriate body, i.e., court, NBI, bank, QB, trust entity or such other agency/body where the concerned individual had derogatory record. Trustees/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, trust entity, NSSLA or other FI under BSP supervision.

(As amended by CL-2007-001 dated 04 January 2007 and CL-2006-046 dated 21 December 2006)

Sec. 4144S Compensation of Trustees, Officers and Employees. No trustee, officer or employee of an NSSLA shall receive from such NSSLA and no NSSLA shall pay to any trustee, officer, or employee of such NSSLA, any commission, emolument, gratuity or reward based on the volume or number of loans made, or based on the interest or fees collected thereon. Nothing in this Section, however, prohibits or limits any of the following:

a. Receipt or payment of salaries of trustees, officers and employees;

b. Receipt or payment of commissions to agents whether or not based on the volume or number of loans or on the interest and fees collected thereon; or

c. Receipt or payment of bonuses of trustees, officers or employees if such bonuses are based on the profits and not on the volume or number of loans made or on the interest or fees collected thereon.

To protect the funds of depositors and creditors, the Monetary Board may regulate/restrict the payment by the NSSLA of compensation, allowances, fees, bonuses, and fringe benefits to its trustees and officers in exceptional cases and when the circumstances warrant, such as, but not limited to the following:

a. When the NSSLA is found by the Monetary Board to be conducting business in an unsafe or unsound manner;

b. When the NSSLA 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; and

(2) It has suffered continuous losses from operations for the past three (3) years.

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 trustees and officers:

(a) Except for the financial assistance to meet expenses for the medical, maternity,

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education and other emergency needs of the trustees or officers or their immediate family, other forms of financial assistance may be suspended.

(b) When the total compensation package including salaries, allowances, fees and bonuses of trustees and officers are significantly excessive as compared with industry averages, the Monetary Board may order their reduction to reasonable levels.

§ 4144S.1 Compensation increases.All increases in compensation, in any form, of all trustees and trustee-officers in excess of ten percent (10%) thereof per annum shall require the approval of the BSP.

§ 4144S.2 Liability for loans contrary to law. No NSSLA shall make or purchase any loan or investment not authorized or permitted under R.A. No. 8367, and any trustee, officer or employee, who on behalf of any such NSSLA, knowingly makes or purchases any such loan or investment or who knowingly consents thereto shall be personally liable to the NSSLA for the full amount of any such loan or investment.

Sec. 4145S Bonding of Officers and Employees. All officers and employees of an NSSLA who, in the regular discharge of their duties have access to money or negotiable securities shall, before entering upon such duties, furnish to the employing NSSLA a good and sufficient bond and providing for indemnity to the NSSLA against the loss of money or securities, by reason of their dishonesty. The bond of the cashier, assistant cashier, treasurer, and other employees having money accountability shall not be less than their average daily accountability. The bond must be issued by a reputable bonding company duly licensed by the Insurance Commission and approved by the BSP. Capital contribution or a cash bond deposited with the NSSLA or with a bank, may also be allowed.

Sec. 4146S Agents and Representatives

No person shall act as an agent or sales representative of an NSSLA or operate an agency without obtaining a license from the Monetary Board. No license is required for a collector of an NSSLA but no person shall hold himself out or act as collector unless he is authorized as a collector in writing by such NSSLA.

Sec. 4147S (Reserved)

Sec. 4148S Full-Time Manager for NSSLAs

NSSLAs with total assets of at least P5.0 million shall maintain a full-time manager to take charge of the operations of the NSSLA. The manager shall possess all the qualifications and shall not have any disqualification under Subsecs. 4142S.2 and 4143S.2, respectively.

Secs. 4149S - 4150S (Reserved)

H. BRANCHES AND OTHER OFFICES

Sec. 4151S Establishment of Branches/ Extension Offices. Prior BSP authority shall be obtained before operating a branch or other offices.

§ 4151S.1Application.The application shall be prescribed by the appropriate department of the SES and accompanied by the following minimum requirements:

- a. Sketch of the location of the proposed office which shall be within the compound of the mother firm’s branch office;
- b. Itemized statement of estimated receipts and expenses of the NSSLA in connection with such branch or extension office;
- c. Description or enumeration of service facilities that will cater to the deposit and credit needs of members of the NSSLA;
- d. Financial statements for the year immediately preceding the date of application;

e. Certification as to the actual number of members that will be serviced by the branch/extension office; and

f. Undertaking that the branch/extension office will service only members of the NSSLA.

§ 4151S.2 *Conditions precluding acceptance/processing of application.* The application shall not be accepted/processed in any of the following cases:

a. The NSSLA's operation during the year immediately preceding the date of filing of application was unprofitable;

b. Total capital accounts of the NSSLA are less than P100 million as of the date of filing of the application;

c. Total number of members to be served in the proposed branch/extension office is less than 500; or

d. Non-compliance by the NSSLA with any of the pertinent provisions of banking laws, rules, regulations and policies of the BSP.

§ 4151S.3 *Internal control system.* The NSSLA shall submit to the appropriate department of the SES a system of internal safeguards and control measures to be adopted for compliance by the staff of the proposed branch/extension office.

§ 4151S.4 *Permit to operate.* Actual operation shall commence only after a permit to operate has been issued by the BSP.

Secs. 4152S - 4155S (Reserved)

I. BUSINESS DAYS AND HOURS

Sec. 4156S *Business Days and Hours* NSSLAs may, with the prior approval of the appropriate department of the SES, adopt such business days and hours as may be convenient for them. NSSLAs shall be open for business during business hours and days

except when extraordinary instances caused by unforeseen, unavoidable event directly affect the NSSLA's ability to open for business. NSSLAs shall post conspicuously at all times in their place of business their schedule of regular business hours and days.

Secs. 4157S - 4160S (Reserved)

J. REPORTS

Sec. 4161S *Records.* NSSLAs shall have a true and accurate account, record or statement of their daily transactions. The making of any false entry or the willful omission of entries relevant to any transaction is a ground for the Monetary Board for the imposition of administrative sanctions under Section 37 of R.A. No. 7653, without prejudice to the criminal liability of the director or officer responsible therefore under Sections 35 and 36 of R.A. No. 7653 and/or the applicable provisions of the Revised Penal Code. Records shall be up to-date and shall contain sufficient detail so that an audit trail is established.

§ 4161S.1 *Uniform System of Accounts.* NSSLAs are required to pattern their charts of accounts and recording systems after the Uniform System of Accounts prescribed for NSSLAs including reportorial and publication requirements. The voucher system of accounting or the ticket system, or such other accounting system acceptable to the BSP as well as the prescribed chart of accounts shall be adopted for use by NSSLAs.

§ 4161S.2 *Philippine Financial Reporting Standards/Philippine Accounting Standards*

Statement of policy. It is the policy of the Bangko Sentral to promote fairness, transparency and accuracy in financial reporting. It is in this light that the BSP aims

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to adopt all PFRS and PAS issued by the ASC to the greatest extent possible.

NSSLAs shall adopt the PFRS and PAS which are in accordance with GAAP 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 all NSSLAs/FIs.

For purposes hereof, the PFRS/PAS shall refer to issuances of the ASC and approved by the PRC.

Accounting treatment for prudential reporting. For prudential reporting, FIs 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. FIs 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. NSSLAs 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 *Appendix S-2* 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)

Sec. 4162S Reports. NSSLAs shall submit to the appropriate department of the SES the reports in prescribed form listed in *Appendix S-2*.

§ 4162S.1 Categories and signatories of reports. For purposes of designating the signatories of reports, certain weekly, monthly, quarterly, semi-annual, and annual statements/reports required to be submitted to the BSP are hereby grouped into Category A-1, A-2, A-3 and Category B, as enumerated in *Appendix S-3*.

Category A-1 reports shall be signed by the NSSLAs' chief executive officer (who may be the president or chairman of the board, or designated in the by-laws), or in his absence, by the executive vice president or the officer duly authorized under a resolution approved by the board of

trustees and by the chief finance officer (i.e., controller or chief accountant, who shall likewise be duly authorized by the NSSLA's board of trustees in a format prescribed in *Appendix S-3a*.

Category A-2 reports of the head office of the NSSLA shall be signed by the NSSLA's president or senior vice-president/equivalent position. Offices/units (such as branch) reports in this category shall be signed by their respective managers/officers-in-charge. Likewise, the signing authority in this category shall be contained in a resolution approved by the board of trustees in the format prescribed in *Appendix S-3b*.

Category A-3 and B reports are those required to be submitted to the BSP and are not included in Categories A-1 and A-2. They shall be signed by officers or their alternates, who shall be duly designated by the board of trustees. A copy of the board resolution with format as prescribed in *Appendix S-3c*, covering the initial designation and subsequent changes in signatories and alternates, shall be submitted to the appropriate department of the SES within three (3) days from the date of resolution.

If a report is submitted to the BSP under the signature of an officer who is not listed or included in any of the resolutions mentioned above, the appropriate department of the SES shall refuse to acknowledge the report as valid or consider the report as not having been submitted at all. If such a report is not resubmitted by the NSSLA under the signature of a duly authorized signing officer, administrative sanctions/penalties shall be imposed on the erring NSSLA for the late reporting or failure to submit the required report, as the case may be.

§ 4162S.2 Manner of filing. The submission of the reports shall be effected by filing them personally with the appropriate department of the SES or with

the BSP Regional Offices or by sending them registered mail or special delivery, unless otherwise specified in the circular or memorandum of the Monetary Board or the BSP.

§ 4162S.3 Sanctions and procedures for filing and payment of fines. Failure to submit the above reports on or before the specified dates shall subject the person responsible or entity concerned to the penalties provided by law.

For willful delay in the submission of reports, the following rules shall apply:

a. *Definition of Terms.* The following definitions shall apply:

(1) *Report* shall refer to all written reports/statements required of an NSSLA to be submitted to the BSP periodically or within a specified period.

(2) *Willful delay in the submission of reports* shall refer to the failure of any NSSLA to submit on time the report defined in Item "(1)" above. Failure to submit a report on time due to fortuitous events, such as fire and other natural calamities and public disorders, 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 NSSLA including the reproduction of the records as well as the taking possession of the books and records and keeping them under BSP custody after giving proper receipts therefore. It shall also include the interview of the directors and personnel of any NSSLA.

(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 honor a letter of authority to examine presented by any officer/examiner/employee of the BSP.

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b. *Fines for willful delay in submission of reports.* NSSLAs incurring willful delay in the submission of required reports shall pay a fine in accordance with the following schedule:

(1) For Categories A-1, A-2 and A-3 reports	
Per day of default	
until the report is filed	P180
(2) For Category B reports	
Per day of default	
until the report is filed	60

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 NSSLA is situated, delay or default shall start to run on the day following the next working day. The due date/deadline for submission of reports to BSP as prescribed under Sec. 4162S governing the frequency and deadlines indicated in *Appendix S-2* shall be automatically moved to the next business day whenever a half-day suspension of business operations in government offices is declared due to an emergency such as typhoon, floods, etc.

For the purpose of establishing delay or default, the date of acknowledgment by the appropriate department of the SES or the BSP Regional Offices/Units appearing on the copies of such reports filed or submitted or the date of mailing postmarked on the envelope/the date of registry or special delivery receipt, as the case may be, shall be considered as the date of filing.

Delayed schedules/attachments and amendments shall be considered late reporting subject to above penalties.

c. *Sanctions for willful refusal to permit examination/making of false statement*

(1) Any NSSLA which shall willfully refuse to permit examination shall pay a fine of P3,000 daily from the day of refusal and for as long as such refusal lasts.

The provisions of Section 34 of R. A. No. 7653 shall apply to any agent, manager, or other officer-in-charge of any NSSLA who willfully refuses any lawful examination into the affairs of such NSSLA.

The willful making of a false statement or misleading statement on a material fact to department of the BSP charged with the regulation of NSSLAs or to his examiner shall be punished in accordance with Section 36 of R. A. No. 7653.

(2) *Procedures in imposing the fine*

(a) The BSP officer/examiner/employee shall report the refusal of the NSSLA to permit examination to the head of the appropriate department of BSP, who shall forthwith make a written demand upon the NSSLA concerned for such examination. If the NSSLA continues to refuse said examination without any satisfactory explanation therefor, the BSP officer/examiner/employee concerned shall submit a report to that effect to the appropriate department head.

(b) The fine shall be imposed starting on the day following the receipt by the appropriate department of the written report submitted by the BSP officer/examiner/employee concerned regarding the continued refusal of the NSSLA to permit the desired examination.

d. *Manner of payment or collection of fines.* The regulations embodied in Sec. 4601S shall be observed in the collection of the fines from NSSLAs.

e. *Appeal to the Monetary Board.* NSSLAs may appeal to the Monetary Board a ruling of the appropriate department imposing a fine.

f. *Other penalties.* The foregoing penalties shall not preclude the application of, or shall be without prejudice to, other administrative sanctions as well as to the filing of criminal case as provided for in the other provisions of the law, as may be warranted by the nature of the offense.

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

Sec. 4163S (Reserved)

Sec. 4164S 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.

§ 4164S.1 Status. 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.

§ 4164S.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.

§ 4164S.3 Qualification standards of the internal auditor. The internal auditor of a UB or a KB must be a 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 cooperative banks, RBs, NSSLAs, local cooperative banks,

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subsidiaries and affiliates engaged in allied activities, and other FIs under BSP supervision.

A qualified internal auditor of a TB or national cooperative bank shall likewise be qualified to audit QBs, trust entities, RBs, NSSLAs, local cooperative banks, subsidiaries and affiliates engaged in allied activities, and other financial institutions under BSP supervision.

§ 4164S.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. 4165S - 4170S (Reserved)

K. INTERNAL CONTROL

Sec. 4171S External Auditor. NSSLAs except those with total resources of P10.0 million or less, shall engage the services of an independent Certified Public Accountant to audit their books of accounts at least once a year, or as often as necessary.

Sec. 4172S Financial Audit. NSSLAs 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 NSSLA. Report of such audit shall be submitted to the board of directors

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 NSSLA. 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 NSSLA to the board of directors; 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 NSSLA 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 NSSLA to submit to the board of directors, 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 NSSLA 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 GAAP. The term 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 LOC shall be accompanied by the certification of the external auditor of the date of its submission to the board of directors.

NSSLAs under BSP supervision which are under the concurrent jurisdiction of the 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 financial institutions, privatization, or public listing warrant, the financial audit of the concerned institution by an acceptable external auditor may also be allowed.

NSSLAs under the concurrent jurisdiction of the BSP and COA shall, however, submit a copy of the 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 the NSSLA 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 the comments and observations and the names of the directors present and absent, among other things.

NSSLAs as well as external auditors shall strictly observe the requirements in

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the submission of the financial audit report and reports required to be submitted under *Appendix Q-33*.

The audited annual financial statements required to be submitted shall in all respect be PFRS/PAS compliant: *Provided*, That NSSLAs 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.

The reports and certifications of institutions concerned, schedules and attachments required under this Subsection shall be considered *Category B* reports, delayed submission of which shall be subject to the penalties under Subsec. 4162S.3

(As amended by Circular Nos. 554 dated 22 December 2006 and 540 dated 09 August 2006)

§ 4172S.1 Audited Financial Statements of NSSLAs. The following rules shall govern the utilization and submission of AFS of NSSLAs.

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 NSSLAs with subsidiaries shall be presented side by side on a solo basis (parent) and on a consolidated basis (parent and subsidiaries).

(Circular No. 540 dated 09 August 2006)

§ 4172S.2 Posting of audited financial statements. NSSLAs shall post in conspicuous places in their head offices, all their branches and other offices, as well as in their respective websites, their latest financial audit report.

(Circular No. 540 dated 09 August 2006)

Secs. 4173S - 4179S (Reserved)

Sec. 4180S Selection, Appointment, Reporting Requirements and Delisting of External Auditors and/or Auditing Firm; Sanction. Pursuant to Section 58, R.A. No. 8791, and the existing provisions of the executed MOA dated 12 August 2009, binding the BSP, SEC, PRC - BOA and the IC for a simplified and synchronized accreditation requirements for external auditor and/or auditing firm, following are the revised rules and regulations that shall govern the selection and delisting by the BSP of covered institutions which under special laws are subject to BSP supervision.

Statement of policy. It is the policy of the BSP to ensure effective audit and supervision of banks, QBs, trust entities and/or NSSLAs including their subsidiaries and affiliates engaged in allied activities and other FIs which under special laws are subject to BSP supervision, and to ensure the reliance by BSP and the public on the opinion of external auditors and auditing firms by prescribing the rules and regulations that shall govern the selection, appointment, reporting requirements and delisting for external auditors and auditing firms of said institutions, subject to the binding provisions of and implementing regulations pursuant to the aforesaid MOA.

a. *Rules and regulations.* The revised rules and regulations that shall govern the selection and delisting by the BSP of covered institutions which under special laws are subject to BSP supervision are shown in *Appendix S-8*.

Sanctions. The applicable sanctions/penalties prescribed under Sections 36 and 37 of R.A. 7653 to the extent applicable shall be imposed on the covered institutions, its audit committee and the directors approving the hiring of external auditor/auditing firm who/which

are not in the BSP list of selected auditors for covered institutions or for hiring, and/or retaining the services of the external auditor/auditing firm in violation of any of the provisions of this Section and for non-compliance with the Monetary Board directive under Item “K” in *Appendix S-8*. Erring external auditors/ auditing firm may also be reported by the BSP to the PRC for appropriate disciplinary action.
(As amended by Circular Nos. 660 dated 25 August 2009 and 529 dated 11 May 2006)

L. MISCELLANEOUS PROVISIONS

Sec. 4181S Publication Requirements
NSSLAs shall, within 120 calendar days after the close of the calendar year or their fiscal year, as the case may be, furnish the Monetary Board and post in any of the NSSLAs’ bulletin boards or in any other conspicuous place a copy of their financial statements showing, in such form and detail as the Monetary Board shall require, the amount and character of the assets and liabilities of the NSSLAs at the end of the preceding fiscal year. The Monetary Board may, in addition to the foregoing, require the disclosure of such other information as it shall deem necessary for the protection of the members of the NSSLA.
The consolidated statements of condition of an NSSLA and its subsidiaries and associates shall conform with the guidelines of PAS 27 “Consolidated and Separate Financial Statements”, except that for purposes of 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”. For purposes of separate financial statements, investments in financial/non-financial allied/non-allied subsidiaries/associates, including insurance subsidiaries/associates, shall be accounted for using the equity method.
(As amended by Circular No. 494 dated 20 September 2005)

Sec. 4182S Business Name¹. NSSLAs organized or operating under R.A. No. 8367 and licensed by the BSP shall include in their names the words “*Savings and Loan Association*”. Such NSSLAs shall display in a conspicuous place at their business offices a sign including, among other things, the following words: “*Authorized by the Bangko Sentral ng Pilipinas*”.
(As amended by CL Nos. 2008-053 dated 21 August 2008 and 2008-007 dated 05 February 2008)

Sec. 4183S Prohibitions
a. No person, association, partnership or corporation shall do business as an NSSLA, or shall use the terms “*Savings and Loan Association*” or any other title or name tending to give the public impression that it is engaged in the operations and activities of an NSSLA unless so authorized under R.A. No. 8367 and these regulations.
b. The use by an NSSLA of any other name or title or combination of names and titles or any other deviation from the requirements of this Section shall not be authorized except upon prior approval of the Monetary Board.
c. NSSLAs shall not issue, publish or cause or permit to be issued or published, any advertisement that it is doing or permitted to do business which is prohibited by law to an NSSLA.
d. No NSSLA shall advertise or represent itself to its members or to the public as a bank, or as a trust company.

¹ See SEC Circular Nos. 5 dated 17 July 2008 and 14 dated 24 October 2000

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Secs. 4184S - 4189S (Reserved)

Sec. 4190S Duties and Responsibilities of NSSLAs and their Directors/Officers in All Cases of Outsourcing of NSSLA Functions. The rules on outsourcing of banking functions as shown in *Appendix Q-37* shall be adopted in so far as they are applicable to NSSLAs.
(As amended by Circular Nos. 642 dated 30 January 2009, 610 dated 26 May 2008, 596 dated 11 January 2008, 548 dated 25 September 2006 and 543 dated 08 September 2006)

Sec. 4191S (Reserved)

Sec. 4192S Prompt Corrective Action Framework. The framework for the enforcement of PCA on banks which is in *Appendix Q-40* shall govern the PCA taken on NSSLAs to the extent applicable, or by analogy.
(Circular No. 523 dated 31 March 2006, as amended by Circular No. 664 dated 15 September 2009)

Sec. 4193S Supervision by Risks. The guidelines on supervision by risk in *Appendix Q-42* which provide guidance on how QBs should identify, measure, monitor and control risks shall govern the supervision by risks of NSSLAs to the extent applicable.
 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

an NSSLA’s internal risk management processes are integrated and comprehensive. All NSSLAs should follow the guidance in risk management efforts.
(Circular No. 510 dated 03 February 2006)

Sec. 4194S Market Risk Management
 The guidelines on market risk management for QBs as shown in *Appendix Q-43* shall govern the market risk management of NSSLAs to the extent applicable.
 The guidelines 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 is applied to this risk. NSSLAs 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 NSSLAs.
(Circular No. 544 dated 15 September 2006)

Sec. 4195S Liquidity Risk Management
 The guidelines on liquidity risk management for QBs as shown in

Appendix Q-44 shall govern the liquidity risk management of NSSLAs to the extent applicable.

The guidelines 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. NSSLAs 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.

These guidelines are intended for general application; specific application will depend on the size and sophistication of a particular NSSLA and the nature and complexity of its activities.

(Circular No. 545 dated 15 September 2006)

Secs. 4196S - 4198S (Reserved)

Sec. 4199S General Provision on Sanctions. Unless otherwise provided, any violation of the provisions of this Part shall be subject to the sanctions provided in Sections 34, 35, 36 and 37 of R.A. No. 7653, whenever applicable.

PART TWO

DEPOSIT AND BORROWING OPERATIONS

A. DEMAND DEPOSITS

Section 4201S Checking Accounts. No NSSLAs shall have or carry upon its books for any person any demand, commercial or checking account, or any credit to be withdrawn upon the presentation of any negotiable check or draft.

Secs. 4202S - 4205S (Reserved)

B. SAVINGS DEPOSITS

Sec. 4206S Definition. *Savings deposits* are deposits evidenced by a passbook consisting of funds deposited to the credit of one (1) or more individuals with respect to which the depositor may withdraw anytime, unless prior notice in writing of an intended withdrawal is required by the NSSLAs.

Sec. 4207S Minimum Deposit. Savings deposits with NSSLAs may be opened with a minimum deposit of ₱100.

Sec. 4208S Withdrawals. Withdrawal from a savings deposit shall be made through the presentation to the NSSLAs of a duly accomplished withdrawal slip together with the depositor’s passbook.

NSSLAs shall reserve the right to require the depositor to give prior written notice of withdrawal of not more than thirty (30) days.

NSSLAs may limit the number of withdrawals that a depositor may make: *Provided,* That the number of the withdrawals allowed shall not be less than three (3) times a month. A service charge to be determined by the board of trustees of the NSSLAs and approved by the BSP,

may be charged by the NSSLAs for every withdrawal made in excess of the maximum number allowed in any one (1) month.

Sec. 4209S Dormant Savings Deposits NSSLAs may charge a fee, the amount of which shall be approved by the BSP for the maintenance of dormant savings deposits. Savings deposit shall be classified as dormant if no deposit or withdrawal has been made for the last two (2) years.

Secs. 4210S – 4215S (Reserved)

C. (RESERVED)

Secs. 4216S - 4220S (Reserved)

D. TIME DEPOSITS

Sec. 4221S (Reserved)

Sec. 4222S Minimum Term and Size of Time Deposits

a. *Term* - No time deposit shall be accepted for a term of less than thirty (30) days.

b. *Minimum Size* - NSSLAs shall not require a minimum amount of time deposit greater than ₱1,000.

Sec. 4223S Withdrawals of Time Deposits. The withdrawal of a time deposit can be made only by presentation of the certificate of time deposit on the day of or after its maturity.

Secs. 4224S - 4230S (Reserved)

E. - F. (RESERVED)

Secs. 4231S - 4240S (Reserved)

G. INTEREST ON DEPOSITS

Sec. 4241S Interest on Savings Deposits
 Savings deposits of NSSLAs shall not be subject to any interest rate ceiling.

Sec. 4242S Interest on Time Deposits
 Interest on time deposits shall not be subject to any interest rate ceiling.

§ 4242S.1 *Time of payment.* Interest on time deposits may be paid at maturity or upon withdrawal or in advance: *Provided, however,* That interest paid in advance shall not exceed the interest for one (1) year.

§ 4242S.2 *Treatment of matured time deposits.* A time deposit not withdrawn or renewed on its due date shall be treated as a savings deposit and shall earn an interest from maturity to the date of actual withdrawal or renewal at a rate applicable to savings deposits.

Secs.4243S - 4250S (Reserved)

H. (RESERVED)

 Secs. 4251S – 4260S (Reserved)

I. SUNDRY PROVISIONS ON DEPOSIT OPERATIONS

Sec. 4261S Opening and Operation of Deposit Accounts. The following are basic provisions on the opening and operation of deposit accounts of NSSLAs.

§ 4261S.1 *Who may open deposit accounts.* Only members who have contributed P1,000 or more to the capital of the NSSLA may open deposit accounts with NSSLAs. A natural person, although lacking capacity to contract, may nevertheless open a savings or time

deposit account for himself, provided he has sufficient discretion. However, he cannot withdraw therefrom, except through, or with the assistance of a guardian authorized to act for him. Parents may deposit for their minor children, and guardians for their wards.
 Notwithstanding the provisions of the preceding paragraph, the cashier, bookkeeper and their assistants, and other employees of an NSSLA whose duties entail the handling of cash or checks are prohibited from opening savings deposit accounts with the head office or branch of the NSSLA in which they are assigned as such.

§ 4261S.2 *Identification of member-depositors.* NSSLAs shall be responsible for the proper identification of their member-depositors.

§ 4261S.3 *Number of deposit accounts*
 A member-depositor may open and have more than one (1) savings deposit in his own name in the same capacity, and he may open and have various deposits in different capacities such as guardian, agent, or trustee for others.

§ 4261S.4 *Signature card.* A signature card bearing at least three (3) specimen signatures of each member-depositor shall be required upon opening of a deposit account.

§ 4261S.5 *Passbook and certificate of time deposit.* A savings deposit passbook, signed by the receiving teller and an authorized officer, shall be issued to a member-depositor showing, among other things, his name and address, account number, date, amount of deposit, interest credits and balance. NSSLAs shall pre-number their savings deposit passbooks. In the case of a time deposit, a certificate of time deposit signed by two (2) authorized officers, shall be issued to the member-

<p>depositor containing, among other things, his name, amount of deposit, date when the deposit was made, its due date and interest rate.</p> <p>§ 4261S.6 Deposits in checks and other cash items. Checks and other cash items may be accepted for deposit by NSSLAs: <i>Provided</i>, That withdrawals from such deposits shall not be made until the check or other cash item is collected.</p> <p>Secs. 4262S - 4280S (Reserved)</p> <p>J. (RESERVED)</p> <p>Secs. 4281S - 4285S (Reserved)</p> <p>K. OTHER BORROWINGS</p> <p>Sec. 4286S Borrowings. An NSSLA may borrow money or incur such obligation up to not more than twenty percent (20%) of the total assets of the NSSLA, from any</p>	<p>public lending institution, and from private banking institutions, and such private lending institutions as may be approved by the Monetary Board: <i>Provided</i>, That the proceeds of such loan shall be used exclusively to meet the normal credit requirements of its members. The Monetary Board may, in meritorious cases, raise the ceiling on the borrowing capacity of an NSSLA to not more than thirty percent (30%) of its total assets. NSSLAs organized by employees of an entity or a corporation may borrow funds from said entity or corporation, but not vice-versa.</p> <p>Secs. 4287S - 4298S (Reserved)</p> <p>Sec. 4299S General Provision on Sanctions. Unless otherwise provided, any violation of the provisions of this Part shall be subject to the sanctions provided in Sections 34, 35, 36 and 37 of R.A. No. 7653, whenever applicable.</p>
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PART THREE

LOANS AND INVESTMENTS

A. LOANS IN GENERAL

Section 4301S Authority; Loan Limits; Maturity of Loans. The board of trustees of NSSLAs shall prescribe their own rules and regulations governing credit operations of the NSSLAs within the framework of the terms and conditions embodied in this Section.

a. *Loan limit to a single borrower.* An NSSLA may grant loans not exceeding the amount deposited and/or contributed by the member-borrower plus his twelve (12) months salary or retirement pension from his employment, or up to seventy percent (70%) of the fair market value of any property acceptable as collateral on first mortgage that he may put up by way of security: *Provided,* That direct indebtedness to an NSSLA of any member-borrower for money borrowed with the exception of money borrowed against obligations of the BSP or of the Philippine Government, or borrowed with the full guarantee of the Philippine Government in the payment of principal and interest, shall not exceed fifteen percent (15%) of the unimpaired capital and surplus of the NSSLA.

For purposes of this Section, regular income of persons who are self-employed shall be their average monthly income during the twelve (12)-month period immediately preceding the date of loan application.

b. *Limitations on lending authority.* NSSLAs shall not commit to make any loan for amounts in excess of the total of the following amounts:

(1) Amount of cash available for loan purposes;

(2) Amount of cash which can be readily realized upon the sale or

redemption of permissible investments made by NSSLAs; and

(3) Amount of credit available for loan purposes from government or private FIs.

c. *Maximum loan maturity.* No loan granted by NSSLAs shall have a maturity date of more than five (5) years except loans on the security of unencumbered real estate for the purpose of home building and home development which may be granted with maturities not exceeding twenty-five (25) years and medium or long-term loans to finance agricultural projects.

Sec. 4302S Basic Requirements in Granting Loans

a. *Application.* A member-borrower applying for a loan must submit an application stating the purpose of the loan and such other information as may be required by the NSSLA. The loan application and other required documents shall form part of credit information file of the member-borrower in the NSSLA.

b. *Credit investigation.* No loan shall be approved unless prior investigation has been made to determine the credit standing of the applicant and/or the fair market value of the property offered as security and the report thereon shall be made part of the loan application: *Provided, however,* That this requirement may be waived by an NSSLA in the case of permanent employee or wage earner who is borrowing an amount not exceeding his deposit plus his twelve (12) months regular salary or retirement pension.

c. *Credit information file/collateral file.* An NSSLA shall maintain as far as practicable, a credit information file which must contain, among other things, the member-borrower's application and financial record. Other information relative to the

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member-borrower, where applicable, shall also be maintained which must contain among other things, the collateral and other documents pertinent to the loan.

d. *Loan approvals.* Loans shall be approved by the NSSLA’s board of trustees or if approved by a body or officer/s duly authorized by the board, such loan must be confirmed by the board of trustees.

e. *Loan agreements.* For each loan granted by an NSSLA, a promissory note must be executed by the member-borrower in favor of the NSSLA expressing such particulars as the amount of the loan, date granted, due date, interest rate and other similar information.

f. *Inscription of lien.* In case of mortgage loans, no release against an approved loan shall be made before the inscription of the mortgage.

Sec. 4303S Loan Proceeds. NSSLAs shall in no case require member-borrowers to deposit a portion of the loan proceeds, whether in the form of savings or time deposits. Where, subsequent to the release of the loan proceeds, member-borrowers open deposit accounts or make additional deposits to their existing accounts, no part of such new deposits shall be covered by a stipulation prohibiting or limiting withdrawal while new portion of their loans are outstanding: *Provided, however,* That this prohibition shall not apply in cases of loans secured by a hold-out on deposits to the extent of the unencumbered amount of the deposit existing at the time of the filing of the above-mentioned loan application.

Sec. 4304S Loan Repayment. The treasurer, cashier or paymaster of the firm employing a member-borrower shall be required, pursuant to R.A. No. 8367, to make deductions from the salary, wage, income or retirement pension of the member-borrower in accordance with the terms of his loan, and all other deductions authorized by the member-borrower, to

remit such deductions to the NSSLA concerned and to collect such reasonable fee for his services as may be authorized by rules promulgated by the Monetary Board.

Sec. 4305S Interest and Other Charges. The following rules shall govern the rates of interest and other charges on loans granted by NSSLAs.

§§ 4305S.1 - 4305S.2 (*Reserved*)

§ 4305S.3 *Interest in the absence of contract.* In the absence of express contract, the rate of interest for the loan or forbearance of any money, goods or credit and the rate allowed in judgment shall be twelve percent (12%) per annum.

§ 4305S.4 *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 stipulations are 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.

§ 4305S.5 *Interest accrual on past due loans.* NSSLAs shall not accrue interest income on loans which are already past due or on loan installments which are in arrears, regardless of whether the loans are secured or unsecured. Interest on past due loans or loans installments in arrears shall be taken up as income only when actual payments thereon are received.

Interest income on past due loan arising from discount amortization (and not from the contractual interest of the account) shall be accrued as provided in PAS 39.

(As amended by Circular No. 494 dated 20 September 2005)

Sec. 4306S Past Due Accounts. Past due accounts of an NSSLA shall, as a general rule, refer to all accounts which are not paid at maturity.

§ 4306S.1 Accounts considered past due. The following shall be considered as past due:

a. A loan or receivable payable on demand not paid upon written demand as required herein or within one (1) year from date of grant or renewal, whichever comes earlier.

NSSLAs shall, in case of non-payment of a demand loan, make a written demand within six (6) months following the grant of such loan. The demand shall indicate a period of payment which shall not be later than six (6) months from date of said demand.

b. The total outstanding balance of a loan or receivable payable in installments, in accordance with the following schedules:

<u>Mode of Payment</u>	<u>Installments in Arrears</u>
Monthly	6 or more
Quarterly	2 or more
Semestral	1 or more
Annual	1 or more

Provided, however, That when the total amount of arrearages reaches twenty percent (20%) of the total outstanding balance of the loan, the entire total outstanding balance of the loan shall be considered as past due, irrespective of the number of installments in arrears: *Provided, further,* That the 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;

c. Any due and unpaid loan installment or portion hereof, from the time the obligor defaults for the purpose of obligations as defined in Sec. 4143S(d); and

d. All items in litigation as defined in the Manual of Accounts for NSSLAs.

§ 4306S.2 Extension/renewal of loans Extension of the period of payment of loans may be allowed under the following circumstances:

a. For production loans, the extension shall not exceed one-half (1/2) of the original period: *Provided,* That thirty percent (30%) of the loan shall have been paid. A second extension shall not exceed one-half (1/2) of the period of the first extension; and

b. For consumer loans, the extension shall not exceed one-half (1/2) of the original period: *Provided,* That thirty percent (30%) of the loan shall have been paid.

Loans payable in periodic installments may be renewed for the full amount of loans: *Provided,* That at least thirty percent (30%) of the loan shall have been paid.

§ 4306S.3 Write-off of loans as bad debts. To maximize the protection of members of NSSLAs against misfeasance and malfeasance of the trustees and officers thereof, the Monetary Board adopted the following regulations on writing-off of loans by NSSLAs.

a. The term *loan* shall include all types of credit accommodations granted to, and advances made by the NSSLA for the account of the borrowers/debtors, including the interest thereon recorded in the books.

b. Writing-off of loans by an NSSLA shall be made not more than twice a year by its board of trustees; and

c. Notice/application for write-off of loans shall be submitted, in the prescribed form to the appropriate department of the SES at least thirty (30) days prior to the intended date of write-off: *Provided,* That no such loans with an aggregate outstanding amount of ₱15,000 or more, as certified in

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said notice/application, shall be written-off without the prior approval of:

- (1) The Monetary Board, in case of loans to trustees and officers of the NSSLA, direct or indirect; or
- (2) The head of the appropriate department of the SES, subject to confirmation by the Monetary Board, in case of loans other than those mentioned in Item “(1)” above.

§ 4306S.4 Updating of information provided to credit information bureaus
NSSLAs 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) business days from the end of the month when such full payment was received. For this purpose, it shall be the responsibility of the reporting NSSLAs to ensure that their disclosure of any information about their borrowers/clients is with the consent of borrowers concerned.

(Circular No. 589 dated 18 December 2007)

Sec. 4307S “Truth in Lending Act” Disclosure Requirements. NSSLAs 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.

- a. *Transactions covered*
 - (1) Any loan, mortgage, deed of trust, advance and discount;
 - (2) 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;

- (3) Any option, demand, lien, pledge, or other claim against, or for delivery of, property or money;
- (4) Any purchase, or other acquisition of, or any credit upon the security of any obligation or claim arising out of any of the foregoing; and
- (5) Any transaction or series of transactions having a similar purpose or effect.

b. *Transactions not covered*
Considering that the specific purpose of the law is the full disclosure of the true cost of credit, the following categories of credit transactions are outside the scope of the above 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.

§ 4307S.1 Definition of terms
a. *Creditor* (who shall furnish the information) means any person engaged in a finance charge.
The term *creditor* shall include, but shall not be limited to, banks and banking institutions, insurance and bonding companies, savings and loan associations, credit unions, financing companies, installment houses, real estate dealers, lending investors, pawnshops, and any other person or entity engaged in the business of extending credit who requires as an incident to the extension of credit, the payment of a finance charge.

b. *Person* means any individual, corporation, partnership, NSSLA, 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.

- c. *Cash price or delivered price* (in case of trade transactions) is the amount of money which would constitute full payment upon delivery of the property (except money) or service purchased at the creditor'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).
- d. *Down payment* represents the amount paid by the debtor at the time of the transaction in partial payment for the property or service purchased.
- e. *Trade-in* represents the value of an asset, agreed upon by the creditor and debtor, given at the time of the transaction in partial payment for the property or service purchased.
- f. *Non-finance charges* correspond to the amounts advanced by the creditor 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.
- g. *Amount to be financed* consists of the cash price plus non-finance charges less the amount of the down payment and value of the trade-in.
- h. *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 (i) the aggregate consideration (down payment plus installments) on the part of

the debtor, and (ii) the sum of the cash price and non-finance charges.

i. *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 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, *R* in percent is computed by the following method:

$$R = 2 \times \frac{\text{finance charge}}{\text{amount to be financed}} \times \frac{\text{No. of payments in a year}}{\text{x total number of payments plus one}} \times 100$$

In cases 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, as if the credit matures in one (1) year. For example, the number of payments in a year would be twelve (12) for this purpose in cases where six (6) monthly installment payments are called for in the credit transaction¹.

In cases where credit terms provide for premium or penalty charges depending on, say, the timelines of the debtor's payments, the annual rate to be disclosed in writing shall be the rate for regular payments, i.e., the premium and penalty need not be taken into account in the determination of the annual

¹ This can be determined by dividing twelve (12), the number of months in a year, by the number or fraction of months between installment payments.

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rate. Such premium or penalty charges shall, however, be indicated in the credit contract.

§ 4307S.2 Information to be disclosed
NSSLAs shall furnish to each person to whom credit is extended, prior to the consummation of the transaction, a clear statement in writing setting forth the following information to be disclosed.

- a. The cash price or delivered price of the property or service to be acquired;
- b. The amounts, if any, to be credited as down payment 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 the seven (7) items of information mentioned in this Subsection are not disclosed in the contract covering the credit transaction, said items to the extent applicable, shall be disclosed in another document in the form (*Appendix S-4*) 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.

§ 4307S.3 Inspection of contracts covering credit transactions. NSSLAs shall keep in their office or place of business copies of contracts covering all credit transactions entered into by them which involve the extension of credit to another and the payment of finance charges therefor. Such copies shall be available for inspection or examination by the appropriate department of the SES.

§ 4307S.4 Posters. An abstract of R.A. No. 3765 (*Appendix S-5*) shall be reproduced in a format which is sixty (60) cm. wide and seventy-five (75) cm. long, and posted on a conspicuous place in the NSSLAs’ place(s) of business.

§ 4307S.5 Penal provisions
a. NSSLAs which in connection with any credit transaction fail to disclose to any person any information in violation of this Section or any regulation issued hereafter shall be liable to such person in the amount of P100 or in an amount equal to twice the finance charge required by such NSSLAs in connection with such transactions, whichever is the greater, except that such liability shall not exceed P2,000 on any credit transaction. Action to recover such penalty may be brought by such person within one (1) year from the date of the occurrence of the violation, in any court of competent jurisdiction. In any action under this Subsection in which any person is entitled to a recovery, the NSSLAs shall be liable for reasonable attorney’s fees and court costs as determined by the court.

b. Except as specified in Item “a” above, nothing contained in this rule shall affect the validity or enforceability of any contract or transaction.

c. Any person who willfully violates any provision of this Section or regulation issued hereafter shall be fined by not less

than P1,000 nor more than P5,000 or imprisonment for not less than six (6) months, nor more than one (1) year or both.

d. No punishment or penalty provided by this Section shall apply to the Philippine Government or any agency or any political subdivision thereof.

Secs. 4308S – 4309S (Reserved)

Sec. 4310S Minimum Required Disclosure
NSSLAs shall provide a table of the applicable fees, penalties and interest rates on loan transactions, including the period covered by and the manner of and reason for the imposition of such penalties, fees and interests; fees and applicable conversion reference rates for third currency transactions, in plain sight and language, on materials for marketing loans, such as brochures, flyers, primers and advertising materials, on loan application forms, and on billing statements: *Provided*, That these disclosures are in addition to the full disclosure of the fees, charges and interest rates in the terms and conditions of the loan agreement found elsewhere on the application form and billing statement: *Provided further*, That such table of fees, penalties and interest rates shall be printed in plain language and in bold black letters against a light or white background, and using the minimum Arial 12 theme font and size, or its equivalent in readability, and on the first page, if the applicable document has more than one (1) page.

Transitory provision: NSSLAs covered in 4312N.12 - shall be given a period of 120 days from 6 January 2011 to fully implement the required disclosure requirements.
(Circular No. 702 dated 15 December 2010)

Sec. 4311S Unfair Collection Practices
NSSLAs, collection agencies, counsels and other agents may resort to all reasonable and

legally permissible means to collect amounts due them under the loan agreement: *Provided*, That in the exercise of their rights and performance of 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 Section:

- 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 borrowers who allegedly refuse to pay debts, except as allowed under Subsec. 4312S;
- 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 borrower; 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 borrower has given express permission or said times are the only reasonable or convenient opportunities for contact.

NSSLAs shall inform their borrower in writing of the endorsement of the collection of their account to a collection agency/ agent, or the endorsement of their account from one collection agency/agent to another, at least seven (7) days prior to the actual endorsement. The notification shall include

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the full name of the collection agency and its contact details: *Provided*, That the required notification in writing shall be included in the terms and conditions of the loan agreement. NSSLAs shall adopt policies and procedures to ensure that personnel handling the collection of accounts, whether these are in-house collectors, or third-party collection agents, shall disclose his/her full name/true identity to the borrower.

(Circular No. 702 dated 15 December 2010)

Sec. 4312S Confidentiality of Information
 NSSLAs shall keep strictly confidential the data on the borrower or consumer, except under the following circumstances:

- a. disclosure of information is with the consent of the borrower or consumer;
- b. release, submission or exchange of customer information with other financial institutions, credit information bureaus, lenders, 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 NSSLA to enforce its rights against the borrower;
- e. disclosure to third party service providers solely for the purpose of assisting or rendering services to the NSSLA in the administration of its lending business; and
- f. disclosure to third parties such as insurance companies, solely for the purpose of insuring the NSSLA from borrower default or other credit loss, and the borrower from fraud or unauthorized charges.

(Circular No. 702 dated 15 December 2010)

Sec. 4313S Sanctions. Violations of the provisions of Secs. 4310S to 4312S shall be subject to any or all of the following

- sanctions depending upon their severity:
- a. *First offense.* Reprimand for the directors/officers responsible for the violation;
 - b. *Second offense.* Disqualification of the NSSLA concerned from the credit facilities of the BSP except as may be allowed under Section 84 of R. A. No. 7653;
 - c. *Subsequent offense/s:*
 - i. Prohibition on the NSSLA concerned from the extension of additional credit accommodation against personal security; and
 - ii. Penalties and sanctions provided under Sections 36 and 37 of R. A. No. 7653.

(Circular No. 702 dated 15 December 2010)

Secs. 4314S – 4320S (Reserved)

B. SECURED LOANS

Sec. 4321S Kinds of Security. Loans by an NSSLA may be secured by any or all of the following:

- a. Mortgages on registered real estate;
- b. Chattel mortgages on harvested or stored crops of non-perishable character;
- c. Chattel mortgages on livestock, tools, equipment or machinery, supplies or materials, merchandise and other personal properties;
- d. Assignment of quedans which gives the right of disposal of readily marketable products;
- e. Time and/or savings deposits and/ or capital contribution;
- f. Pledge of bonds, stock and other securities of the GOCC and other bonds, stocks or securities which are non-speculative in nature;
- g. Land transfer certificates issued by the government to tenant farmers, under the agrarian reform program to the extent of sixty percent (60%) of the value of the farm holdings: *Provided*, That a certification shall

be first secured from the office of the Registry of Deeds to the effect that the Land Transfer Certificate being presented is valid; and

h. Other securities as may be approved by the Monetary Board.

Secs. 4322S - 4335S (Reserved)

C. - D. (RESERVED)

Secs. 4336S - 4355S (Reserved)

E. LOANS/CREDIT
ACCOMMODATIONS TO TRUSTEES,
OFFICERS, STOCKHOLDERS AND
THEIR RELATED INTERESTS

Sec. 4356S General Policy. The transactions of all trustees or officers with the NSSLA shall not be under terms more favorable than those transacted with other members.

Sec. 4357S Direct/Indirect Borrowings; Ceilings. No NSSLA shall directly or indirectly make any loan to any trustee or officer of such NSSLA, either for himself or as agent or as partner of another, except with the written approval of the majority of the trustees of the NSSLA, excluding the trustee concerned: *Provided*, That the aggregate loans to such trustees and officers shall not exceed twenty percent (20%) of the total capital contributions of the NSSLA.

Sec. 4358S Records; Reports. In all cases of accommodations granted to trustees and officers under Sec. 4357S, the written approval of the majority of the trustees of the NSSLA, excluding the trustee concerned, shall be entered upon the records of the NSSLA and a copy of such entry shall be transmitted forthwith to the appropriate department of the SES within twenty (20) business days from the date of approval.

Secs. 4359S - 4369S (Reserved)

Sec. 4370S Sanctions. The office of any trustee or officer of an NSSLA who violates the provisions of these rules on accommodations granted to trustee and officers shall immediately become vacant and said trustees or officer shall be punished by imprisonment of not more than one (1) year nor more than ten (10) years and by a fine of not less than P5,000 nor more than P50,000 pursuant to Section 15 of R.A. No. 8367.

F. - I. (RESERVED)

Secs. 4371S - 4390S (Reserved)

J. OTHER OPERATIONS

Sec. 4391S Fund Investments. An NSSLA may invest its funds in any or all of the following:

a. In bonds and securities in an aggregate amount not exceeding ten percent (10%) of its total assets; any investment in excess of ten percent (10%) shall require the prior approval of the BSP: *Provided*, That NSSLAs may invest available funds in excess of ten percent (10%) of total assets in sound non-speculative enterprise, particularly in readily marketable and high grade commercial papers, bonds and securities issued by the Government of the Philippines or any of its political subsidiaries, instrumentalities or corporations including GOCCs, subject to the following conditions:

- (1) The credit needs of the members shall be served/satisfied first;
- (2) The investment in any one (1) corporation (excluding the Government of the Philippines, any of its political subdivisions, instrumentalities, or corporations including GOCCs), shall not

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exceed twenty-five percent (25%) of the NSSLAs combined capital accounts; and
 (3) The additional investment may be up to another ten percent (10%) of the NSSLAs total assets;
 b. In real property, in an aggregate amount not exceeding at any one time five percent (5%) of the total assets of such NSSLAs; and
 c. In furniture, fixtures, furnishings and equipment, and leasehold improvements for its offices, in amount not exceeding at any one time ten percent (10%), of its total capital contribution.

§§ 4391S.1 - 4391S.2 (Reserved)

§ 4391S.3 Investments in debt and marketable equity securities. The classification, accounting procedures, valuation, sales and transfers of investments in debt securities and marketable equity securities shall be in accordance with the guidelines in *Appendices Q-20* and *Q-20-a*.
Penalties and sanctions. The following penalties and sanctions shall be imposed on FIs and concerned officers found to violate the provisions of these regulations:
 a. Fines of P2,000/banking day to be

imposed on NSSLAs for each violation, reckoned from the date the violation was committed up to the date it was corrected; and
 b. Sanctions to be imposed on concerned officers:
 (1) First offense – reprimand the officers responsible for the violation; and
 (2) Subsequent offenses–suspension- of ninety (90) days without pay for officers responsible for the violation.

(Circular No. 476 dated 16 February 2005 as amended by Circular Nos. 628 dated 31 October 2008 and 626 dated 23 October 2008)

§§ 4391S.4 - 4391S.10 (Reserved)

Secs. 4392S - 4395S (Reserved)

K. MISCELLANEOUS PROVISIONS

Secs. 4396S - 4398S (Reserved)

Sec. 4399S General Provision on Sanctions. Unless otherwise provided, any violation of the provisions of this Part shall be subject to the sanctions provided in Sections 34, 35, 36 and 37 of R.A. No. 7653, whenever applicable.

PART FOUR

Sections 4401S - 4499S (Reserved)

PART FIVE

Sections 4501S - 4599S (Reserved)

PART SIX

MISCELLANEOUS

A. OTHER OPERATIONS

Section 4601S Fines and Other Charges. The following regulations shall govern imposition of monetary penalties on NSSLAs, their trustees and/or officers and payment of such penalties or fines and other charges by NSSLAs.

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

§ 4601S.1 Guidelines on the imposition of monetary penalties; payment of penalties or fines. The following are the guidelines on the imposition of monetary penalties on NSSLAs, their trustees and/or officers and the payment of such penalties or fines and other charges:

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

(1)-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 (1)-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 reckoned from the business day immediately following the day said penalty becomes due and payable 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 NSSLA, 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

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the NSSLA/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 additonal 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 NSSLA/individual concerned.

e. *Due date; payment of penalty or fines.* The penalty approved by the Governor/MB to be imposed on the NSSLA, its directors and/or officers shall become due and payable fifteen (15) calendar days from receipt of the Statement of Account from the BSP. For NSSLAs 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 business day without additional charge. If the balance of the concerned NSSLA’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 business day immediately following the end of said fifteen (15)-day period up to the day of actual payment.

Failure to settle the full amount of the fines within the period or on the day prescribed herein shall, in addition to the additonal penalty as provided in item “c” above, make an NSSLA, its trustees and officers liable to the sanctions imposed under Sec. 4199S.

(As amended by Circular Nos. 662 dated 09 September 2009 and 585 dated 15 October 2007)

Secs. 4602S - 4630S (Reserved)

Sec. 4631S Revocation/Suspension of Non-Stock Savings and Loan Association License. In reference to Section 22 of R.A. No. 8367 or the “Revised Non-Stock Savings and Loan Association Act of 1997”, the Monetary Board, upon due notice and hearing, has the authority to either revoke or suspend the license of any NSSLA for such period as it deems necessary, based on any of the following grounds:

- a. *Suspension of license:*
 - (1) Repeated violations [uncorrected similar examination findings for the last two (2) examinations, regular or special] of any of the provisions of R.A. No. 8367, and/or any rules or regulations promulgated to implement said law, or BSP directives and/or instructions; and
 - (2) Paid-up capital is impaired by continuing losses for the last two (2) fiscal years.

Lifting of the suspension of license shall be approved by the Monetary Board upon recommendation of the appropriate BSP supervising department.

- b. *Revocation of license:*
 - (1) When the solvency of the NSSLA is imperiled by losses and irregularities;
 - (2) When the NSSLA willfully violates any provision of R.A. No. 8367, any rule or regulation promulgated to implement said law and BSP directives and/or instructions;
 - (3) When the NSSLA is conducting business in an unsafe and unsound manner;
 - (4) When it is unable to pay its liabilities as they become due in the ordinary course of business;
 - (5) When it has insufficient realizable assets, as determined by the BSP, to meet its liabilities;
 - (6) When it cannot continue in business without involving probable losses to its members or creditors; and
 - (7) When it has willfully violated a cease and desist order of the Monetary Board involving acts or transactions which amount to fraud or a dissipation of assets of the institution.

As to the effects of the revocation/suspension of license of the NSSLA, the NSSLA is prohibited from engaging in the business of accumulating the savings of its members and using such accumulations for loans to its members, subject to applicable sanctions and penalties provided by law in case of violation thereof. After the cessation of its operations due to revocation of its license, the NSSLA should proceed with its dissolution, in accordance with the provisions under the Corporation Code. The dissolution of a corporation involves the termination of its corporate existence, at least, as far as the right to go on doing ordinary business is concerned, and the winding up of its affairs, the payments of its debts and distribution of its assets among the members or stakeholders or other persons involved. The board of trustees of the corporation also has the option of adopting a plan for the distribution of its assets, as stated under Section 95 of the Corporation Code.

After the revocation/suspension of its license, the Monetary Board may direct the board of trustees of the NSSLA to proceed with the voluntary dissolution of the corporation. In the event that the board of trustees refuses to effectuate such dissolution, the Monetary Board may refer the matter to the Solicitor General for the filing of a *quo warranto* case against the corporation in accordance with the provisions of the Corporation Code.

Secs. 4632S - 4640S (Reserved)

Sec. 4641S Electronic Services. The guidelines concerning electronic activities, as may be applicable, are found in Sec. 4701Q and its Subsections.

(Circular No. 649 dated 09 March 2009)

Sec. 4642S Issuance and Operations of Electronic Money. The following guidelines shall govern the issuance of electronic

money (e-money) and the operations of electronic money issuers (EMIs).

(Circular No. 649 dated 09 March 2009)

§ 4642S.1 Declaration of policy. It is the policy of the BSP to foster the development of efficient and convenient retail payment and fund transfer mechanism in the Philippines. The availability and acceptance of e-money as a retail payment medium will be promoted by providing the necessary safeguards and controls to mitigate the risks associated in an e-money business.

(Circular No. 649 dated 09 March 2009)

§ 4642S.2 Definitions

E-money shall mean monetary value as represented by a claim on its issuer, that is -

- a. electronically stored in an instrument or device;
- b. issued against receipt of funds of an amount not lesser in value than the monetary value issued;
- c. accepted as a means of payment by persons or entities other than the issuer;
- d. withdrawable in cash or cash equivalent; and
- e. issued in accordance with this Section.

Electronic money issuer shall be classified as follows:

- a. Banks (hereinafter called EMI-Bank);
- b. NBFIs supervised by the BSP (hereinafter called EMI-NBFI); and
- c. Non-bank institutions registered with the BSP as a money transfer agent under Sec. 4511N of the MORNBFIs (hereinafter called EMI-Others).

For purposes of this Section:

- a. *Electronic instruments or devices* shall mean cash cards, e-wallets accessible via mobile phones or other access device, stored value cards, and other similar products.

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b. E-money issued by NSSLAs shall not be considered as deposits.
(Circular No. 649 dated 09 March 2009)

§ 4642S.3 Prior Bangko Sentral approval
NSSLAs planning to be an EMI-NBFI shall comply with the requirements of Sec. 4641S and with Sec. 4190Q, when applicable.
(Circular No. 649 dated 09 March 2009)

§ 4642S.4 Common provisions. The following provisions are applicable to all EMIs:

- a. E-money instrument issued shall be subject to aggregate monthly load limit of P100,000 unless a higher amount has been approved by the BSP. In case an EMI issues several e-money instruments to a person (e-money holder), the total amount loaded in all the e-money instruments shall be consolidated in determining compliance with the aggregate monthly load limit;
- b. EMIs shall put in place a system to maintain accurate and complete record of e-money instruments issued, the identity of e-money holders, and the individual and consolidated balances thereof. The system must have the capability to monitor the movement of e-money transactions and link e-money instruments issued to common e-money holders. The susceptibility of a system to intentional or unintentional misreporting of transaction and balances shall be sufficient ground for imposition by the BSP of sanctions, as may be applicable.
- c. E-money may only be redeemed at face value. It shall not earn interest nor rewards and other similar incentives convertible to cash, nor be purchased at a discount. E-money is not considered a deposit, hence, it is not insured with the PDIC.
- d. EMIs shall not ensure that e-money instruments clearly identify the issuer who is ultimately responsible to the e-money holders. This shall be communicated to the client who shall acknowledge the same in writing.

- e. It is the responsibility of EMIs to ensure that their distributors/e-money agents comply with all applicable requirements of the Anti-Money Laundering laws, rules and regulations.
- f. EMIs shall provide an acceptable redress mechanism to address the complaints of its customers.
- g. EMIs shall disclose in writing and its customers shall signify agreement to the information embodied in Item “c” above upon their participation in the e-money system. In addition, it shall provide clear guidance in English and Filipino on consumers’ right of redemption, including conditions and fees for redemption, if any. Information on available redress procedures for complaints together with the address and contact information of the issuer shall also be provided.
- h. Prior to the issuance of e-money, EMIs should ensure that the following minimum systems and controls are in place:
 - (1) Sound and prudent management, administrative and accounting procedures and adequate internal control mechanisms;
 - (2) Properly-designed computer systems which are thoroughly tested prior to implementation;
 - (3) Appropriate security policies and measures intended to safeguard the integrity, authenticity and confidentiality of data and operating processes;
 - (4) Adequate business continuity and disaster recovery plan; and
 - (5) Effective audit function to provide periodic review of the security control environment and critical systems.
- i. EMIs shall provide the SDC quarterly statements containing, among others, information on investments, volume of transactions, total outstanding e-money balances, and liquid assets in such forms as may be prescribed later on.
- j. EMIs shall notify the BSP in writing of any change or enhancement in the e-money facility thirty (30) days prior to implementation. If said change or

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enhancement requires prior BSP approval, the same shall be evaluated accordingly. Any change or enhancement that shall expand the scope or change the nature of the e-money instrument shall be subject to prior approval of the Deputy Governor, SES. These changes or enhancements may include the following:

- (1) Additional capabilities of the e-money instrument/s, like access to new channels (e.g. inclusion of internet channel in addition to merchant Point of Sale terminals);
- (2) Change in technology service providers and other major partners in the e-money business (excluding partner merchants), if any; and
- (3) Other changes or enhancements.

(Circular No. 649 dated 09 March 2009)

§ 4642S.5 Quasi-bank license requirement. EMI-NBFIs and EMI-Others that engage in lending activities must secure a quasi-banking license from the BSP.
(Circular No. 649 dated 09 March 2009)

§ 4642S.6 Sanctions. Monetary penalties and other sanctions for the following violations committed by EMI-NBFIs shall be imposed:

Nature of Violation/ Exception	Sanction/Penalties
1. Issuing e-money without prior BSP approval	Applicable penalties under Sections 36 & 37 of R.A. No. 7653; Watchlisting of owners/partners/principal officers
2. Violation of any of the provisions of R.A. No. 9160 (Anti-Money Laundering Law of 2001 as amended by R.A. No. 9194) and its implementing rules and regulations	Applicable penalties prescribed under the Act

Nature of Violation/ Exception	Sanction/Penalties
3. Violation/s of this Section	Penalties and sanctions under the abovementioned laws and other applicable laws, rules and regulations

In addition, the susceptibility of a system to intentional or unintentional misreporting of transactions and balances shall be sufficient ground for appropriate BSP action or imposition of sanctions, whenever applicable.

(Circular No. 649 dated 09 March 2009)

§ 4642S.7 Transitory provisions
EMI-NBFIs granted authority to issue e-money prior to 26 March 2009 may continue to exercise such authority: *Provided*, That it shall submit to the BSP, within one (1) month from 26 March 2009 a certification signed by the President or Officer with equivalent rank and function that it is in compliance with all the applicable requirements of this Section. Otherwise, they are required to submit within the same period the measures they will undertake, with the corresponding timelines, to conform to the provisions that they have not complied with, subject to BSP approval.

(Circular No. 649 dated 09 March 2009)

§§ 4642S.8 - 4642S.10 (Reserved)

§ 4642S.11 Outsourcing of services by Electronic Money Issuers (EMIs) to Electronic Money Network Service Providers (EMNSP). The guidelines on outsourcing of services by Electronic Money Issuers (EMIs) to Electronic Money Network Service Providers (EMNSP) are shown in Appendix Q-55.

Sanctions. Violations committed by EMIs pertaining to outsourcing activities to

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EMNSP shall be subject to monetary penalties as graduated under *Appendix Q-39* and/or other non-monetary sanctions under Section 37 of RA No. 7653.

Transitory provisions. EMIs that were granted an authority to outsource their e-money activities to an EMNSP may continue to exercise such authority provided that they have to conform to the provisions of *Appendix Q-55* within a six-month period from 20 January 2011.

(Circular 704 dated 22 December 2010)

Secs. 4643S - 4650S (Reserved)

B. SUNDRY PROVISIONS

Sec. 4651S Notice of Dissolution

NSSLAs contemplating to dissolve shall give written notice thereof to the Monetary Board through the appropriate department of the SES at least thirty (30) days before taking steps to effect dissolution.

Sec. 4652S Confidential Information

No trustee, officer or employee of NSSLAs or of the BSP shall disclose any information relating to member-borrowers and their applications or to the operations of the NSSLAs unless permitted by the Monetary Board of the BSP: *Provided, however,* That in the case of NSSLAs under examination, the head of the appropriate department of the SES may furnish findings of examination to the office or firm where such NSSLAs do business.

All deposits of whatever nature with NSSLAs are considered absolutely confidential in nature, and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of competent court in cases of bribery or dereliction of duty of public

officials or in cases where the money deposited or invested is the subject matter of litigation.

No official or employee of NSSLAs shall disclose to any person any information concerning said deposits, except in cases mentioned in the preceding paragraph. Any official or employee of NSSLAs who violates this Section shall be punished under R.A. No. 1405, as amended.

Sec. 4653S Examination by the Bangko Sentral.

The head of the appropriate department of the SES, personally or by deputy, shall make at least once a year and at such other times as he or the Monetary Board may deem necessary and expedient, an examination, inspection or investigation of the books and records, business affairs, administration and financial condition of NSSLAs.

Sec. 4654S Applicability of Other Rules

Other rules and regulations applicable to the examination of thrift banks, insofar as they are applicable and not inconsistent with these rules shall apply to NSSLAs.

Sec. 4655S Annual Fees.

For purposes of computing the annual fees chargeable against NSSLAs, 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-quarter total assets per balance sheet, after deducting cash on hand and amounts due from banks, including the BSP and banks abroad).

Average Assessable Assets (AAAs) shall be the summation of end-of-quarter total assessable assets divided by the number of quarters in operation during the particular assessment period.

The prescribed rate of annual fees for NSSLAs, assessable only when actual examination is conducted for the year, shall

be one-fortieth of one percent (1/40 of 1%) of AAAs for 2002 or P100,000 whichever is lower, payable within thirty (30) days from receipt of the bill. Failure to pay the bill within the prescribed period shall subject the NSSLAs to administrative sanctions.

Sec. 4656S Basic Law Governing Non-Stock Savings and Loan Associations. R.A. No. 8367, as amended, known as the "Revised Non-Stock Savings and Loan Association Act of 1997", regulates the organization and operation of NSSLAs.

Sec. 4657S Non-Stock Savings and Loan Associations Premises and Other Fixed Assets. The following rules shall govern the premises and other fixed assets of NSSLAs.

§ 4657S.1 Accounting for non-stock savings and loans associations premises; other fixed assets. NSSLAs premises, furniture, fixture and equipment shall be accounted for using the cost model under PAS 16 "Property, Plant and Equipment".
(Circular No. 494 dated 20 September 2005)

§ 4657S.2 (Reserved)

§ 4657S.3 Reclassification of real and other properties acquired as non-stock savings and loans association premises
ROPA reclassified either as Real Property-Land or Real Property-Building 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 Real Property-Land/Building.

NSSLAs, prior to the reclassification of their ROPA accounts to Real Property-Land/ Building, shall first secure prior BSP approval before effecting the reclassification and shall submit, in case of future use, justification and plans for expansion/use.

§§ 4657S.4 - 4657S.8 (Reserved)

§ 4657S.9 Batas Pambansa Blg. 344 - An Act to Enhance the Mobility of Disabled Persons by Requiring Certain Buildings, Institutions, Establishments and Public Utilities to Install Facilities and Other Devices. In order to promote the realization of the rights of disabled persons to participate fully in the social life and the development of the societies in which they live and the enjoyment of the opportunities available to other citizens, no license or permit for the construction, repair or renovation of public and private buildings for public use, educational institutions, airports, sports and recreation centers and complexes, shopping centers or establishments, public parking places, workplaces, public utilities, shall be granted or issued unless the owner or operator thereof shall install and incorporate in such building, establishment or public utility, such architectural facilities or structural features as shall reasonably enhance the mobility of disabled persons such as sidewalks, ramps, railings, and the like. If feasible, all such existing buildings, institutions, establishments, or public utilities may be renovated or altered to enable the disabled persons to have access to them.

Secs. 4658S - 4659S (Reserved)

Sec. 4660S 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 practices.

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Towards this end, NBFIs under BSP supervision, including FXDs/MCs and RAs, 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* - commisions 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.

Non-bank remittance service providers 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. 4661S - 4690S (Reserved)

Sec. 4691S Anti-Money Laundering Regulations. Covered institutions, including their subsidiaries and affiliates, shall comply with the provisions of Part 8 of Q Regulations, R.A. No. 9160 (Anti-Money Laundering Act

of 2001), as amended, and its IRR.
(As amended by Circular Nos. 706 dated 05 January 2011, 661 dated 01 September 2009 and 612 dated 13 June 2008)

§§ 4691S.1 - 4691S.8 (Reserved)

§ 4691S.9 Sanctions and penalties

- a. Whenever a covered institution violates the provisions of Section 9 of R.A. No. 9160, as amended, 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 thousand nor more than P200 thousand 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, as amended, the administrative sanctions provided under Section 37 of R.A. No. 7653.

Secs. 4692S - 4694S (Reserved)

Sec. 4695S Valid Identification Cards for Financial Transactions. The provisions of Part 8 of the Q Regulations on Valid identification documents shall apply.
(Circular No. 564 dated 03 April 2007, as amended by Circular Nos. 706 dated 05 January 2011, 657 dated 16 June 2009 and 608 dated 20 May 2008)

Secs. 4696S - 4698S (Reserved)

Sec. 4699S General Provision on Sanctions Unless otherwise provided, any violation of the provisions of this Part shall be subject to the sanctions provided in Sections 34, 35, 36 and 37 of R. A. No. 7653, whenever applicable.

**SAFEGUARDS IN BONDING OF NSSLA ACCOUNTABLE
OFFICERS AND EMPLOYEES
(Appendix to Sec. 4145S)**

1. *The Teller.* He should not be allowed to accumulate more than a specific maximum amount to be determined by the association but in no case to exceed P10,000 in cash at any given time while in the performance of his duties. The procedures in this regard are as follows:

a. *Cash.* All cash in excess of the maximum amount determined by the association shall be turned over to the cashier. When deposits received by a teller will increase his cash in excess of the maximum limit, the teller shall immediately make a cash turn-over of, at least, the excess. Thus, although his transactions during the day may total more than the maximum limit, the amount of money directly in his custody at any given time will never exceed the limit.

b. *Checks and Other Cash Items (COCIs).* All COCIs received by a teller should be stamped as “non-negotiable.” The stamping should be made diagonally on the face of the check. Thus, all checks that are received by the tellers lose their further negotiability. There should, however, be an agreement with the association’s depository banks whereby they will accept for deposit only to the account of the association the COCI previously stamped by the tellers as “non-negotiable.” Therefore, only the association and nobody else can further negotiate these checks, and only the association’s

depository bank will accept them and solely for deposit to its account. Thus, even in the remote possibility that someone presents a COCI stolen from the association to one of its depository banks, it will not be accepted for encashment.

2. *The COCIs Clerk.* In view of the fact that all COCIs received by the tellers are stamped “non-negotiable” as detailed above, the COCIs clerk who records and processes these checks carries no accountabilities whatsoever. From the moment that a check is received up to the moment that it is deposited to the account of the association with one of its depository banks, that check is just a piece of paper to be processed and recorded. It will only reassume its negotiability upon its receipt by the association’s depository bank. In cases, however, where checks are received by mail, the COCIs clerk shall be charged with the duty of stamping the checks as “non-negotiable.”

3. As an added precautionary measure, the manager/accountant/loan officer should check from time to time whether all COCIs received are stamped “non-negotiable.” In the event that a COCI is not so stamped and it results in financial loss on the part of the association, the employee charged with the duty to stamp and who failed to do so, shall be held personally responsible, together with the manager/accountant/loan officer, for the loss.

LIST OF REPORTS REQUIRED FROM NON-STOCK SAVINGS AND LOAN ASSOCIATIONS
(Appendix to Sec. 4162S)

Category	Form No.	MOR Ref.	Report Title	Frequency	Submission Deadline	Submission Procedure
A-2	BSP 7-26-02H	4162S (As amended by M-029 dated 09.24.07)	Consolidated Statement of Condition	Quarterly	on or before the end of the immediate following month	Original to SDC
A-2	Unnumbered	4691S (Rev. May 2002, as amended by Cir. No. 612 dated 06.03.08)	Report on Suspicious Transactions	As transaction occurs	10th business day from date of transaction/ knowledge	Original and duplicate - Anti-Money Laundering Council (AMLC)
A-2	Unnumbered	4691S	Report on Covered Transactions	-do-	-do-	-do-
A-3	BSP 7-26-03H	4162S (As amended by M-029 dated 09.24.07)	Consolidated Statement of Income and Expenses	Quarterly	on or before the end of the immediate following month	Original to SDC
A-3	BSP 7-26-18.1H	4358S	Copy of entry in NSSLA records of written approval of majority of directors on credit accommodation to directors and officers with accompanying Certification on Loans Granted to Directors/Officers	As approved	20th business day from date of approval	Original - ISD I

Category	Form No.	MOR Ref.	Report Title	Frequency	Submission Deadline	Submission Procedure
A-3	Unnumbered	4162S (CL-050 dated 10.04.07 and CL-059 dated 11.28.07)	Report on Borrowings of BSP Personnel	Quarterly	15th banking days after end of reference quarter	Original to SDC
B		4172S	Audited/Unaudited Financial Statements required in Sec. 4181S accompanied by annual report ¹ (to members, if any)	Annually	120th/60th day after end of fiscal year as required in Sec. 4181S	Original - ISD I
		4162S SES II Form 15 (NP08-TB) As amended by M-024 dated 07.31.08	Biographical Data of Directors/Officers - If submitted in diskette form - Notarized first page of each of the directors'/officers' bio-data saved in diskette and control prooflist - If sent by electronic mail - Notarized first page of Biographical Data or Notarized list of names of Directors/Officers whose Biographical Data were submitted thru electronic mail to be faxed to SDC (CL dated 01.09.01)	Annually ² and as changes occur	January 31st and 15th business day from the date of the meeting of the board of directors in which the directors/officers are elected or appointed	Electronic mail or diskette form to SDC or if hard copy original to appropriate department of the SES, duplicate to SDC
B	BSP 7-26-20H	4162S	Report on Crimes/Losses	As crime/incident occurs	See Annex S-2-a for guidelines on reporting crimes and losses	-do-
B	-	4306S.3	Notice/Application for Write-Off of Loans	As write-off occurs	30th day prior to the intended date of write-off	-do-

¹ Required of NSSLAs with total resources of P 10 million or more
² Not required where no change occurs

Category	Form No.	MOR Ref.	Report Title	Frequency	Submission Deadline	Submission Procedure
B	-	4162S	Board Resolution on NSSLA's signatories to reports submitted to Bangko Sentral	As authorized	3rd day from date of resolution	Electronic mail or diskette form to SDC or if hard copy original to appropriate department of the SES, duplicate to SDC
B			General Information Sheet	Annually	30th day from date of annual stockholders' meeting	Drop Box - SEC Central Receiving Section Original - SEC Duplicate - BSP
B	Form I Schedule 1	M-031 dated 09.11.09 and Cir. No. 649 dated 03.09.09	Report on Electronic Money Transactions Quarterly Statement of E-Money Transactions - Volume and Amount of E-Money Transactions Quarterly Statement of Lliquidity Cover Schedules 1 - E-Money Balances	Quarterly	15 banking days after end of refernce quarter	e-mail - sdcothers-emony@bsp.gov.ph Hardcopy- SDC

REPORTING GUIDELINES ON CRIMES/LOSSES

1. NSSLAs shall report on the following matters through the appropriate supervising and examining department:

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 property of the NSSLA when the amount involved in each crime is P20,000 or more.

Crimes involving NSSLA personnel, regardless of whether or not such crimes involve the loss/destruction of property of the NSSLA, even if the amount involved is less than those above specified, shall likewise be reported to the BSP.

b. Incidents involving material loss, destruction or damage to the institution’s property/facilities, other than arising from

a crime, when the amount involved per incident is P20,000 or more.

2. The following guidelines shall be observed in the preparation and submission of the report.

a. The report shall be prepared in two (2) copies and shall be submitted within five (5) business days from knowledge of the crime or incident, the original to the appropriate supervising department and the duplicate to the BSP Security Coordinator, thru the Director, Security Investigation and Transport Department.

b. Where a thorough investigation and evaluation of facts is necessary to complete the report, an initial report submitted within the five (5)-business day deadline may be accepted: *Provided*, That a complete report is submitted not later than fifteen (15) business days from termination of investigation.

**GUIDELINES ON PRESCRIBED REPORTS SIGNATORIES
AND SIGNATORY AUTHORIZATION
(Appendix to Subsec. 4162S.1)**

Category A-1 reports shall be signed by the 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 by officers holding equivalent positions. The designated signatories in this category, including their specimen signatures, shall be contained in a resolution approved by the board of directors in the format prescribed in Annex S-3-a.

Category A-2 reports of head offices shall be signed by the president, executive vice-presidents, vice-presidents or officers holding equivalent positions. Such reports of other offices/units (such as branches) shall be signed by their respective

managers/officers in-charge. Likewise, the signing authority in this category shall be contained in a resolution approved by the board of directors in the format prescribed in Annex S-3-b.

Categories A-3 and B reports shall be signed by officers or their alternates, who shall be duly designated by the board of directors. A copy of the board resolution, with format as prescribed in Annex S-3-c.

Copies of the board resolutions on the report signatory designations shall be submitted to the appropriate supervising and examining department of the BSP within three (3) business days from the date of resolution.

FORMAT OF RESOLUTION FOR SIGNATORIES OF CATEGORY A-1 REPORTS

Resolution No. _____

Whereas, it is required under Subsec. 4162S.1 that Category A-1 reports be signed by the 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 by officers holding equivalent positions.

Whereas, it is also required that aforesaid officers of the institution be authorized under a resolution duly approved by the institution's Board of Directors;

Whereas, we, the members of the Board of Directors of _____ (Name of Institution) _____, are conscious that, in designating the officials who would sign said Category A-1 reports, we are actually empowering and authorizing said officers to represent and act for or in behalf of the Board of Directors in particular and _____ (Name of Institution) _____ in general;

Whereas, this Board has full faith and confidence in the institution's Chief Executive Officer, Executive Vice-President, Comptroller and Chief Accountant, as the case may be, and, therefore, assumes responsibility for all the acts which may be performed by aforesaid officers under their delegated authority;

Now, therefore, we, the members of the Board of Directors, resolve, as it is hereby resolved that:

1. Mr. _____ President _____
Specimen Signature
- or
2. Mr. _____ Executive Vice-President _____
Specimen Signature
- and
3. Mr. _____ Comptroller _____
Specimen Signature
- or
4. Mr. _____ Chief Accountant _____
Specimen Signature

are hereby authorized to sign Category A-1 reports of _____ (Name of Institution) _____.

Done in the City of _____ Philippines, this ____ day of _____, 20____.

CHAIRMAN OF THE BOARD

_____ DIRECTOR	_____ DIRECTOR
_____ DIRECTOR	_____ DIRECTOR
_____ DIRECTOR	_____ DIRECTOR

ATTESTED BY:

CORPORATE SECRETARY

FORMAT OF RESOLUTION FOR SIGNATORIES OF CATEGORY A-2 REPORTS

Resolution No. _____

Whereas, it is required under Subsec. 4162S.1 that Category A-2 reports of head offices be signed by the President, Executive Vice-Presidents, Vice-Presidents or officers holding equivalent positions, and that such reports of other offices be signed by the respective managers/officers-in-charge;

Whereas, it is also required that aforesaid officers of the institution be authorized under a resolution duly approved by the institution's Board of Directors;

Whereas, we, the members of the Board of Directors of _____ (Name of Institution) _____, are conscious that, in designating the officials who would sign said Category A-2 reports, we are actually empowering and authorizing said officers to represent and act for or in behalf of the Board of Directors in particular and _____ (Name of Institution) _____ in general;

Whereas, this Board has full faith and confidence in the institution's President (and/or the Executive Vice-President, etc., as the case may be) and, therefore, assumes responsibility for all the acts which may be performed by aforesaid officers under their delegated authority;

Now, therefore, we, the members of the Board of Directors, resolve, as it is hereby resolved that:

<i>Name of Officer</i>	<i>Specimen Signature</i>	<i>Position Title</i>	<i>Report No.</i>
_____	_____	_____	_____

are hereby authorized to sign the Category A-2 reports of _____ (Name of Institution) _____.

Done in the City of _____ Philippines, this _____ day of _____, 20 _____.

CHAIRMAN OF THE BOARD

DIRECTOR

DIRECTOR

DIRECTOR

DIRECTOR

DIRECTOR

DIRECTOR

ATTESTED BY:

CORPORATE SECRETARY

FORMAT OF RESOLUTION FOR SIGNATORIES OF CATEGORIES
A-3 AND B REPORTS

Resolution No. _____

Whereas, it is required under Subsec. 4162S.1 that Categories A-3 and B reports be signed by officers or their alternates;

Whereas, it is also required that aforesaid officers of the institution be authorized under a resolution duly approved by the institution's Board of Directors;

Whereas, we the members of the Board of Directors of _____ (Name of Institution) _____, are conscious that, in designating the officials who would sign said Categories A-3 and B reports, we are actually empowering and authorizing said officers to represent and act for or in behalf of the Board of Directors in particular and _____ (Name of Institution) _____ in general;

Whereas, this Board has full faith and confidence in the institution's authorized signatories and, therefore, assumes responsibility for all the acts which may be performed by aforesaid officers under their delegated authority;

Now, therefore, we, the members of the Board of Directors, resolve, as it is hereby resolved that:

Name of Authorized Signatory/Alternate	Specimen Signature	Position Title	Report
1. Authorized (Alternate)			
2. Authorized (Alternate)			
etc.			

are hereby authorized to sign the Category A-2 reports of _____ (Name of Institution) _____.

Done in the City of _____ Philippines, this _____ day of _____, 20____.

CHAIRMAN OF THE BOARD

DIRECTOR

DIRECTOR

DIRECTOR

DIRECTOR

DIRECTOR

DIRECTOR

ATTESTED BY:

CORPORATE SECRETARY

FORMAT-DISCLOSURE STATEMENT OF LOAN/CREDIT TRANSACTION
(Appendix to Subsec. 4307S.2)

(Business Name of Creditor)

DISCLOSURE STATEMENT OF LOAN/CREDIT TRANSACTION (SINGLE PAYMENT
OR INSTALLMENT PLAN)
(As required under R.A. 3765, Truth in Lending Act)

Name of Borrower _____

Address _____

1. Cash/Purchase Price _____ or Net Proceeds of Loan ₱ _____
(Item Purchased)
2. LESS: Downpayment and/or Trade-in Value (Not applicable for loan
transaction) _____
3. Unpaid Balance of Cash/Purchase Price or Net Proceeds of Loan _____
4. Non-Finance Charges [Advanced by Seller/Creditor]:

a. Insurance Premium ₱ _____

b. Taxes _____

c. Registration Fees _____

d. Documentary/Science Stamps _____

e. Notarial Fees _____

f. Others: _____

Total Non-Finance Charges _____
5. Amount to be Financed (Items 3 + 4) ₱ _____

6. Finance Charges¹

a. Interest _____ % p.a.
from _____ to _____ P _____

☐ Simple
☐ Compound

☐ Monthly
☐ Quarterly
☐ Semi-Annual
☐ Annual

b. Discounts
c. Service/Handling Charges
d. Collection Charges
e. Credit Investigation Fees
f. Appraisal Fees
g. Attorney’s/Legal Fees
h. Other charges incidental to the
extension of credit (specify):

Total Non-Finance Charges P _____

7. Percentage of Finance Charges to Total Amount Financed
(Computed in accordance with Subsec. 4307S.1) _____ %

8. Effective Interest Rate
(Method of computation attached) _____ %

9. Payment
a. Single Payment due _____ P _____
(Date)
b. Total Installment Payments
(Payable in _____ weeks/months @ P _____) P _____

¹ Time price differential should be disclosed as a finance charge. If an itemization cannot be made, a lump-sum figure may be reported under Other charges incidental to the extension of credit in Item 6h.

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10. Additional charges in case certain stipulations in the contract are not met by the debtor:

<u>Nature</u>	<u>Rate</u>	<u>Amount</u>

CERTIFIED CORRECT:

(Signature of Creditor/
Authorized Representative
Over Printed Name)

Position

I ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT PRIOR TO THE CONSUMMATION OF THE CREDIT TRANSACTION AND THAT I UNDERSTAND AND FULLY AGREE TO THE TERMS AND CONDITIONS THEREOF.

(Signature of Buyer/Borrower
Over Printed Name)

DATE _____

NOTICE TO BUYER/BORROWER: YOU ARE ENTITLED TO A COPY OF THIS PAPER WHICH YOU SHALL SIGN.

ABSTRACT OF “TRUTH IN LENDING ACT” (Republic Act No. 3765)
(Appendix to Subsec. 4307S.4)

Section 1. This Act shall be known as the “Truth in Lending Act.”

Sec. 2. Declaration of Policy. It is hereby declared to be the policy of the State to protect its citizens from a lack of awareness of the true cost of credit to the user by assuring a full disclosure of such cost with a view of preventing the uninformed use of credit to the detriment of the national economy.

xxx xxx xxx

Sec. 3. As used in this Act, the term -

xxx xxx xxx

(3) “Finance charge” includes interest, fees, service charges, discounts, and such other charges incident to the extension of credit as the Board may by regulation prescribe.

xxx xxx xxx

Sec. 4. Any creditor shall furnish to each person to whom credit is extended, prior to the consummation of the transaction a clear statement in writing setting forth, to the extent applicable and in accordance with rules and regulations prescribed by the Board, the following information:

- (1) the cash price or delivered price of the property or service to be acquired;
- (2) the amounts, if any, to be credited as down payment and/or trade-in;
- (3) the difference between the amounts set forth under clauses (1) and (2);
- (4) 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;
- (5) the total amount to be financed;
- (6) the finance charge expressed in terms of pesos and centavos; and

(7) 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.

xxx xxx xxx

Sec. 6. (a) Any creditor who in connection with any credit transaction fails to disclose to any person any information in violation of this Act or any regulation issued thereunder shall be liable to such person in the amount of ₱100 or in an amount equal to twice the finance charge required by such creditor in connection with such transaction, whichever is the greater, except that such liability shall not exceed ₱2,000 on any credit transaction.

xxx xxx xxx

(c) Any person who willfully violates any provision of this Act or any regulation issued thereunder shall be fined by not less than ₱1,000 nor more than ₱5,000 or imprisonment for not less than 6 months nor more than one year or both.

xxx xxx xxx

(d) Any final judgment hereafter rendered in any criminal proceeding under this Act to the effect that a defendant has willfully violated this Act shall be prima facie evidence against such defendant in an action or proceeding brought by any other party against such defendant under this Act as to all matters respecting which said judgment would be an estoppel as between the parties thereto.

Sec. 7. This Act shall become effective upon approval.

Approved, 22 June 1963.

ANTI-MONEY LAUNDERING REGULATIONS
(Appendix to Section 4691S)

(Deleted pursuant to Circular No. 706 dated 05 January 2011)

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Annex S-6-a

CERTIFICATION OF COMPLIANCE
WITH ANTI-MONEY LAUNDERING REGULATIONS

(Deleted pursuant Circular No. 706 dated 05 January 2011)

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Annex S-6-b

AMLC Resolution No. 292

**RULES ON SUBMISSION OF COVERED TRANSACTION REPORTS AND
SUSPICIOUS TRANSACTION REPORTS BY COVERED INSTITUTIONS¹**
(Annex to Appendix S-6)

(Deleted pursuant to Circular No. 706 dated 05 January 2011)

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**REVISED IMPLEMENTING RULES AND REGULATIONS
R.A. NO. 9160, AS AMENDED BY R.A. NO. 9194
(Appendix to Sec. 4691S)**

(Deleted pursuant to Circular No. 706 dated 05 January 2011)

**GUIDELINES TO GOVERN THE SELECTION, APPOINTMENT, REPORTING
REQUIREMENTS AND DELISTING OF EXTERNAL AUDITORS AND/OR
AUDITING FIRM OF COVERED ENTITIES**
(Appendix to Secs. 4180S and 4190S)

Pursuant to Section 58 of the Republic Act No. 8791, otherwise known as "The General Banking Law of 2000", and the existing provisions of the executed Memorandum of Agreement (hereinafter referred to as the MOA) dated 12 August 2009, binding the Bangko Sentral ng Pilipinas (BSP), Securities and Exchange Commission (SEC), Professional Regulation Commission (IC) - Board of Accountancy (BOA) and the Insurance Commission (IC) for a simplified and synchronized accreditation requirements for external auditor and/or auditing firm, the Monetary Board, in its Resolution No. 950 dated 02 July 2009, approved the following revised rules and regulations that shall govern the selection and delisting by the BSP of covered institution which under special laws are subject to BSP supervision.

A. STATEMENT OF POLICY

It is the policy of the BSP to ensure effective audit and supervision of banks, QBs, trust entities and/or NSSLAs including their subsidiaries and affiliates engaged in allied activities and other FIs which under special laws are subject to BSP supervision, and to ensure reliance by BSP and the public on the opinion of external auditors and auditing firms by prescribing the rules and regulations that shall govern the selection, appointment, reporting requirements and delisting for external auditors and auditing firms of said institutions, subject to the binding provisions and implementing regulations of the aforesaid MOA.

B. COVERED ENTITIES

The proposed amendment shall apply to the following supervised institution, as categorized below, and their external auditors:

1. *Category A*
 - a. UBs/KBs;
 - b. Foreign banks and branches or subsidiaries of foreign banks, regardless of unimpaired capital; and
 - c. Banks, trust department of qualified banks and other trust entities with additional derivatives authority, pursuant to Sec. X611 regardless of classification, category and capital position.
2. *Category B*
 - a. TBs;
 - b. QBs;
 - c. Trust department of qualified banks and other trust entities;
 - d. National Coop Banks; and
 - e. NBFIs with quasi-banking functions.
3. *Category C*
 - a. RBs;
 - b. NSSLAs;
 - c. Local Coop Banks; and
 - d. Pawnshops.

The above categories include their subsidiaries and affiliates engaged in allied activities and other FIs which are subject to BSP risk-based and consolidated supervision: *Provided*, That an external auditor who has been selected by the BSP to audit covered entities under *Category A* is automatically qualified to audit entities under *Category B* and *C* and if selected by the BSP to audit covered entities under *Category B* is automatically qualified to audit entities under *Category C*.

C. DEFINITION OF TERMS

The following terms shall be defined as follows:

1. *Audit* – an examination of the financial statements of any issuer by an external auditor in compliance with the rules of the BSP or the SEC in accordance with then applicable generally accepted auditing and accounting principles and standards, for the purpose of expressing an opinion on such statements.

2. *Non-audit services* – any professional services provided to the covered institution by an external auditor, other than those provided to a covered institution in connection with an audit or a review of the financial statements of said covered institution.

3. *Professional Standards* - includes: (a) accounting principles that are (1) established by the standard setting body; and (2) relevant to audit reports for particular issuers, or dealt with in the quality control system of a particular registered public accounting firm; and (b) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards that the BSP or SEC determines (1) relate to the preparation or issuance of audit reports for issuers; and (2) are established or adopted by the BSP or promulgated as SEC rules.

4. *Fraud* – an intentional act by one (1) or more individuals among management, employees, or third parties that results in a misrepresentation of financial statements, which will reduce the consolidated total assets of the company by five percent (5%). It may involve:

- a. Manipulation, falsification or alteration of records or documents;
- b. Misappropriation of assets;
- c. Suppression or omission of the effects of transactions from records or documents;

d. Recording of transactions without substance;

e. Intentional misapplication of accounting policies; or

f. Omission of material information.

5. *Error* - an intentional mistake in financial statements, which will reduce the consolidated total assets of the company by five percent (5%). It may involve:

a. Mathematical or clerical mistakes in the underlying records and accounting data;

b. Oversight or misinterpretation of facts; or

c. Unintentional misapplication of accounting policies.

6. *Gross negligence* - wanton or reckless disregard of the duty of due care in complying with generally accepted auditing standards.

7. *Material fact/information* - any fact/information that could result in a change in the market price or value of any of the issuer’s securities, or would potentially affect the investment decision of an investor.

8. *Subsidiary* - 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 a bank, QB, trust entity or NSSLA.

9. *Affiliate* - a corporation, not more than fifty percent (50%) but not less than ten percent (10%) of the outstanding voting stock of which is directly or indirectly owned, controlled or held with power to vote by a bank, QB, trust entity or NSSLA and a juridical person that is under common control with the bank, QB, trust entity or NSSLA.

10. *Control* - exists when the parent owns directly or indirectly 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; or
- d. Power to cast the majority votes at meetings of the board of directors or equivalent governing body.

11. *External auditor* - means a single practitioner or a signing partner in an auditing firm.

12. *Auditing firm* – includes a proprietorship, partnership limited liability company, limited liability partnership, corporation (if any), or other legal entity, including any associated person of any of these entities, that is engaged in the practice of public accounting or preparing or issuing audit reports.

13. *Associate* – any director, officer, manager or any person occupying a similar status or performing similar functions in the audit firm including employees performing supervisory role in the auditing process.

14. *Partner* - all partners including those not performing audit engagements.

15. *Lead partner* – also referred to as engagement partner/partner-in-charge/managing partner who is responsible for signing the audit report on the consolidated financial statements of the audit client, and where relevant, the individual audit report of any entity whose financial statements form part of the consolidated financial statements.

16. *Concurring partner* - the partner who is responsible for reviewing the audit report.

17. *Auditor-in-charge* – refers to the team leader of the audit engagement.

D. GENERAL CONSIDERATION AND LIMITATIONS OF THE SELECTION PROCEDURES

1. Subject to mutual recognition provision of the MOA and as implemented in this regulation, only external auditors and auditing firms included in the list of BSP selected external auditors and auditing firms shall be engaged by all the covered institutions detailed in Item "B". The external auditor and/or auditing firm to be hired shall also be in-charge of the audit of the entity's subsidiaries and affiliates engaged in allied activities: *Provided*, That the external auditor and/or auditing firm shall be changed or the lead and concurring partner shall be rotated every five (5) years or earlier: *Provided further*, That the rotation of the lead and concurring partner shall have an interval of at least two (2) years.

2. Category A covered entities which have engaged their respective external auditors and/or auditing firm for a consecutive period of five (5) years or more as of 18 September 2009 shall have a one (1)-year period from said date within which to either change their external auditors and/or auditing firm or to rotate the lead and/or concurring partner.

3. The selection of the external auditors and/or auditing firm does not exonerate the covered institution or said auditors from their responsibilities. Financial statements filed with the BSP are still primarily the responsibility of the management of the reporting institution and accordingly, the fairness of the representations made therein is an implicit and integral part of the institution's responsibility. The independent certified public accountant's responsibility for the financial statements required to be filed with the BSP is confined to the expression of his opinion, or lack thereof, on such statements which he has audited/examined.

4. The BSP shall not be liable for any damage or loss that may arise from its

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selection of the external auditors and/or auditing firm to be engaged by banks for regular audit or non-audit services.

5. Pursuant to paragraph (5) of the MOA, SEC, BSP and IC shall mutually recognize the accreditation granted by any of them for external auditors and firms of Group C or D companies under SEC, Category B and C under BSP, and insurance brokers under IC. Once accredited/selected by any one (1) of them, the above-mentioned special requirements shall no longer be prescribed by the other regulators.

For corporations which are required to submit financial statements to different regulators and are not covered by the mutual recognition policy of this MOA, the following guidance shall be observed:

a. The external auditors of UBs which are listed in the Exchange, should be selected/accredited by both the BSP and SEC, respectively; and

b. For insurance companies and banks that are not listed in the Exchange, their external auditors must each be selected/accredited by BSP or IC, respectively. For purposes of submission to the SEC, the financial statements shall be at least audited by an external auditor registered/accredited with BOA.

This mutual recognition policy shall however be subject to the BSP restriction that for banks and its subsidiary and affiliate bank, QBs, trust entities, NSSLAs, their subsidiaries and affiliates engaged in allied activities and other FIs which under special laws are subject to BSP consolidated supervision, the individual and consolidated financial statements thereof shall be audited by only one (1) external auditor/auditing firm.

6. The selection of external auditors and/or auditing firm shall be valid for a period of three (3) years. The SES shall make an annual assessment of the performance of external auditors and/or auditing firm 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.

E. QUALIFICATION REQUIREMENT

The following qualification requirements are required to be met by the individual external auditor and the auditing firm at the time of application and on continuing basis, subject to BSP's provisions on the delisting and suspension of accreditation:

1. Individual external auditor

a. General requirements

(1) The individual applicant must be primarily accredited by the BOA. The individual external auditor or partner in-charge of the auditing firm must have at least five (5) years of audit experience.

(2) Auditor's independence.

In addition to the basic screening procedures of BOA on evaluating auditor's independence, the following are required for BSP purposes to be submitted in the form of notarized certification that:

(a) No external auditor may be engaged by any of the covered institutions under Item "B" hereof if he or any member of his immediate family had or has committed to acquire any direct or indirect financial interest in the concerned covered institution, or if his independence is considered impaired under the circumstances specified in the Code of Professional Ethics for CPAs. In case of a partnership, this limitation shall apply to the partners, associates and the auditor-in-charge of the engagement and members of their immediate family;

(b) The external auditor does not have/ shall not have outstanding loans or any credit accommodations or arranged for the extension of credit or to renew an extension of credit (except credit card obligations which are normally available to other credit card holders and fully secured auto loans

and housing loans which are not past due) with the covered institutions under Item "B" at the time of signing the engagement and during the engagement. In the case of partnership, this prohibition shall apply to the partners and the auditor-in-charge of the engagement; and

(c) It shall be unlawful for an external auditor to provide any audit service to a covered institution if the covered institution's CEO, CFO, Chief Accounting Officer (CAO), or comptroller was previously employed by the external auditor and participated in any capacity in the audit of the covered institution during the one-year preceding the date of the initiation of the audit;

(3) Individual applications as external auditor of entities under *Category A* above must have established adequate quality assurance procedures, such consultation policies and stringent quality control, to ensure full compliance with the accounting and regulatory requirements.

b. Specific requirements

(1) At the time of application, regardless of the covered institution, the external auditor shall have at least five (5) years experience in external audits;

(2) The audit experience above refers to experience required as an associate, partner, lead partner, concurring partner or auditor-in-charge; and

(3) At the time of application, the applicant must have the following track record:

(a) For *Category A*, he/she must have at least five (5) corporate clients with total assets of at least P50.0 million each.

(b) For *Category B*, he/she must have had at least three (3) corporate clients with total assets of at least P25.0 million each.

(c) For *Category C*, he/she must have had at least three (3) corporate clients with total assets of at least P5.0 million each;

2. Auditing firms

a. The auditing firm must be primarily accredited by the BOA and the name of the firm's applicant partner's should appear in the attachment to the certificate of accreditation issued by BOA. Additional partners of the firm shall be furnished by BOA to the concerned regulatory agencies (e.g. BSP, SEC and IC) as addendum to the firm's accreditation by BOA.

b. Applicant firms to act as the external auditor of entities under *Category A* in Item "B" must have established adequate quality assurance procedures, such consultation policies and stringent quality control, to ensure full compliance with the accounting and regulatory requirements.

c. At the time of application, the applicant firm must have at least one (1) signing practitioner or partner who is already selected/accredited, or who is already qualified and is applying for selection by BSP.

d. A registered accounting/auditing firm may engage in any non-auditing service for an audit client only if such service is approved in advance by the client's audit committee. Exemptions from the prohibitions may be granted by the Monetary Board on a case-by-case basis to the extent that such exemption is necessary or appropriate in the public interest. Such exemptions are subject to review by the BSP.

e. At the time of application, the applicant firm must have the following track record:

(1) For *Category A*, the applicant firm must have had at least twenty (20) corporate clients with total assets of at least P50.0 million each;

(2) For *Category B*, the applicant firm must have had at least five (5) corporate clients with total assets of at least P20.0 million each;

(3) For *Category C*, the applicant firm must have had at least five (5) corporate

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clients with total assets of at least P5.0 million each.

F. APPLICATION FOR AND/OR RENEWAL OF THE SELECTION OF INDIVIDUAL EXTERNAL AUDITOR

1. The initial application for BSP selection shall be signed by the external auditor and shall be submitted to the appropriate department of the SES together with the following documents/information:
 - a. Copy of effective and valid BOA Certificate of Accreditation with the attached list of qualified partner/s of the firm;
 - b. A notarized undertaking of the external auditor that he is in compliance with the qualification requirements under Item "E" and that the external auditor shall keep an audit or review working papers for at least seven (7) years in sufficient detail to support the conclusion in the audit report and making them available to the BSP's authorized representative/s when required to do so;
 - c. Copy of Audit Work Program which shall include assessment of the audited institution's compliance with BSP rules and regulations, such as, but not limited to the following:
 - (1) capital adequacy ratio, as currently prescribed by the BSP;
 - (2) AMLA framework;
 - (3) risk management system, particularly liquidity and market risks; and
 - (4) loans and other risk assets review and classification, as currently prescribed by the BSP rules and regulations.
 - d. If the applicant will have clients falling under *Category A*, copy of the Quality Assurance Manual which, aside from the basic elements as required under the BOA basic quality assurance policies and procedures, specialized quality assurance procedures should be provided consisting of, among other, review asset quality, adequacy of risk-based capital, risk

management systems and corporate governance framework of the covered entities.

- e. Copy of the latest AFS of the applicant's two (2) largest clients in terms of total assets.
2. Subject to BSP's provision on early deletion from the list of selected external auditor, the selection may be renewed within two (2) months before the expiration of the three (3)-year effectivity of the selection upon submission of the written application for renewal to the appropriate department of the SES together with the following documents/information:
 - (a) copy of updated BOA Certificate of Accreditation with the attached list of qualified partner/s of the firm;
 - (b) notarized certification of the external auditor that he still possess all qualification required under Item "F.1.b" of this Appendix;
 - (c) list of corporate clients audited during the three (3)-year period of being selected as external auditor by BSP. Such list shall likewise indicate the findings noted by the BSP and other regulatory agencies on said AFS including the action thereon by the external auditor; and
 - (d) written proof that the auditor has attended or participated in trainings for at least thirty (30) hours in addition to the BOA's prescribed training hours. Such training shall be in subjects like international financial reporting standards, international standards of auditing, corporate governance, taxation, code of ethics, regulatory requirements of SEC, IC and BSP or other government agencies, and other topics relevant to his practice, conducted by any professional organization or association duly recognized/accredited by the BSP, SEC or by the BOA/PRC through a CPE Council which they may set up.

The application for initial or renewal accreditation of an external auditor shall be accomplished by a fee of P2,000.00.

G. APPLICATION FOR AND/OR RENEWAL OF THE SELECTION OF AUDITING FIRMS

1. The initial application shall be signed by the managing partner of the auditing firm and shall be submitted to the appropriate department of the SES together with the following documents/information:

- a. copy of effective and valid BOA Certificate of Accreditation with attachment listing the names of qualified partners;
- b. notarized certification that the firm is in compliance with the general qualification requirements under Item "E.2" and that the firm shall keep an audit or review working papers for at least seven (7) years insufficient detail to support the conclusions in the audit report and making them available to the BSP's authorized representative/s when required to do so;
- c. copy of audit work program which shall include assessment of the audited institution's compliance with BSP rules and regulations, such as, but not limited to the following:
 - (1) capital adequacy ratio, as currently prescribed by the BSP;
 - (2) AMLA framework;
 - (3) risk management system, particularly liquidity and market risks; and
 - (4) loans and other risk assets review and classification, as currently prescribed by the BSP rules and regulations.

d. If the applicant firm will have clients falling under *Category A*, copy Quality Assurance Manual where, aside from the basic elements as required under the BOA basic quality assurance policies and procedures, specialized quality assurance procedures should be provided relative to, among others review asset quality, adequacy of risk-based capital, risk management systems and corporate governance framework of covered entities;

e. Copy of the latest AFS of the applicant's two (2) largest clients in terms of total assets; and

f. Copy of firm's AFS for the immediately preceding two (2) years.

2. Subject to BSP's provision on early deletion from the list of selected auditing firm, the selection may be renewed within two (2) months before the expiration of the three (3)-year effectivity of the selection upon submission of the written application for renewal to the appropriate department of the SES together with the following documents/information:

- a. a copy of updated BOA Certificate of Registration with the attached list of qualified partner/s of the firm;
- b. amendments on Quality Assurance Manual, inclusive of written explanation on such revision, if any; and
- c. notarized certification that the firm is in compliance with the general qualification requirements under Item "G.1.b" hereof;

The application for initial or renewal accreditation of an auditing firm shall be accompanied by a fee of P5,000.00.

H. REPORTORIAL REQUIREMENTS

1. To enable the BSP to take timely and appropriate remedial action, the external auditor and/or auditing firm must report to the BSP within thirty (30) calendar days after discovery, the following cases:

- a. Any material finding involving fraud or dishonesty (including cases that were resolved during the period of audit);
- b. Any potential losses the aggregate of which amounts to at least one percent (1%) of the capital;
- c. Any finding to the effect that the consolidated assets of the company, on a going concern basis, are no longer adequate to cover the total claims of creditors; and

d. Material internal control weaknesses which may lead to financial reporting problems.

2. The external auditor/auditing firm shall report directly to the BSP within fifteen (15) calendar days from the occurrence of the following:

a. Termination or resignation as external auditor and stating the reason therefor;

b. Discovery of a material breach of laws or BSP rules and regulations such as, but not limited to:

- (1) CAR; and
- (2) Loans and other risk assets review and classification.

c. Findings on matters of corporate governance that may require urgent action by the BSP.

3. In case there are no matters to report (e.g. fraud, dishonesty, breach of laws, etc.) the external auditor/auditing firm shall submit directly to BSP within fifteen (15) calendar days after the closing of the audit engagement a notarized certification that there is none to report.

The management of the covered institutions, including its subsidiaries and affiliates, shall be informed of the adverse findings and the report of the external auditor/auditing firm to the BSP shall include pertinent explanation and/or corrective action.

The management of the covered institutions, including its subsidiaries and affiliates, shall be given the opportunity to be present in the discussions between the BSP and the external auditor/auditing firm regarding the audit findings, except in circumstances where the external auditor believes that the entity’s management is involved in fraudulent conduct.

It is, however, understood that the accountability of an external auditor/auditing firm is based on matters within the normal coverage of an audit conducted in

accordance with generally accepted auditing standards and identified non-audit services.

I. DELISTING AND SUSPENSION OF SELECTED EXTERNAL AUDITOR/AUDITING FIRM

1. An external auditor’s duly selected pursuant to this regulation shall be suspended or delisted, in a manner provided under this regulation, under any of the following grounds:

a. Failure to submit the report under Item "H" of this Appendix or the required reports under Subsec. X190.1;

b. Continuous conduct of audit despite loss of independence as provided under Item "E.1" or contrary to the requirements under the Code of Professional Ethics;

c. Any willful misrepresentation in the following information/documents;

- (1) application and renewal for accreditation;
- (2) report required under Item "H"; and
- (3) Notarized certification of the external auditor and/or auditing firm.

d. The BOA found that, after due notice and hearing, the external auditor committed an act discreditable to the profession as specified in the Code of Professional Ethics for CPAs. In this case, the BOA shall inform the BSP of the results thereof;

e. Declaration of conviction by a competent court of a crime involving moral turpitude, fraud (as defined in the Revised Penal Code), or declaration of liability for violation of the banking laws, rules and regulation, the Corporation Code of the Philippines, the Securities Regulation Code (SRC); and the rules and regulations of concerned regulatory authorities;

f. Refusal for no valid reason, upon lawful order of the BSP, to submit the requested documents in connection with an ongoing investigation. The external auditor

should however been made aware of such investigation;

g. Gross negligence in the conduct of audits which would result, among others, in non-compliance with generally accepted auditing standards in the Philippines or issuance of an unqualified opinion which is not supported with full compliance by the auditee with generally accepted accounting principles in the Philippines (GAAP). Such negligence shall be determined by the BSP after proper investigation during which the external auditor shall be given due notice and hearing;

h. Conduct of any of the non-audit services enumerated under Item "E.1" for his statutory audit clients, if he has not undertaken the safeguards to reduce the threat to his independence; and

i. Failure to comply with the Philippine Auditing Standards and Philippine Auditing Practice Statements.

2. An auditing firms; accreditation shall be suspended or delisted, after due notice and hearing, for the following grounds:

a. Failure to submit the report under Item "H" or the required reports under Sec. X190.1.

b. Continuous conduct of audit despite loss of independence of the firm as provided under this regulation and under the Code of Professional Ethics;

c. Any willful misrepresentation in the following information/ documents;

(1) Application and renewal for accreditation;

(2) Report required under Item "H"; and

(3) Notarized certification of the managing partner of the firm.

d. Dissolution of the auditing firm/ partnership, as evidenced by an Affidavit of Dissolution submitted to the BOA, or upon findings by the BSP that the firm/

partnership is dissolved. The accreditation of such firm/partnership shall however be reinstated by the BSP upon showing that the said dissolution was solely for the purpose of admitting new partner/s have complied with the requirements of this regulation and thereafter shall be reorganized and re-registered;

e. There is a showing that the accreditation of the following number or percentage of external auditors, whichever is lesser, have been suspended or delisted for whatever reason, by the BSP:

(1) at least ten (10) signing partners and currently employed selected/accredited external auditors, taken together; or

(2) such number of external auditors constituting fifty percent (50%) or more of the total number of the firm's signing partners and currently selected/accredited auditors, taken together.

f. The firm or any one (1) of its auditors has been involved in a major accounting/auditing scam or scandal. The suspension or delisting of the said firm shall depend on the gravity of the offense or the impact of said scam or scandal on the investing public or the securities market, as may be determined by the BSP;

g. The firm has failed reasonably to supervise an associated person and employed auditor, relating to the following:

(1) auditing or quality control standards, or otherwise, with a view to preventing violations of this regulations;

(2) provisions under SRC relating to preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto;

(3) the rules of the BSP under this Appendix; or

(4) professional standards.

h. Refusal for no valid reason, upon order of the BSP, to submit requested documents in connection with an ongoing

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investigation. The firm should however be made aware of such investigation.

3. Pursuant to paragraph 8 of the aforesaid MOA, the SEC, BSP and IC shall inform BOA of any violation by an accredited/selected external auditor which may affect his/her accreditation status as a public practitioner. The imposition of sanction by BOA on an erring practitioner shall be without prejudice to the appropriate penalty that the SEC, IC or BSP may assess or impose on such external auditor pursuant to their respective rules and regulations. In case of revocation of accreditation of a public practitioner by BOA, the accreditation by SEC, BSP and IC shall likewise be automatically revoked/derecognized.

The SEC, BSP and IC shall inform each other of any violation committed by an external auditor who is accredited/selected by any one (1) or all of them. Each agency shall undertake to respond on any referral or endorsement by another agency within ten (10) working days from receipt thereof.

4. Procedure and Effects of Delisting/Suspension.

a. An external auditor/auditing firm shall only be delisted upon prior notice to him/it and after giving him/it the opportunity to be heard and defend himself/itself by presenting witnesses/evidence in his favor. Delisted external auditor and/or auditing firm may re-apply for BSP selection after the period prescribed by the Monetary Board.

b. BSP shall keep a record of its proceeding/investigation. Said proceedings/investigation shall not be public, unless otherwise ordered by the Monetary Board for good cause shown, with the consent of the parties to such proceedings.

c. A determination of the Monetary Board to impose a suspension or delisting

under this section shall be supported by a clear statement setting forth the following:

(1) Each act or practice in which the selected/accredited external auditor or auditing firm, or associated entry, if applicable, has engaged or omitted to engage, or that forms a basis for all or part of such suspension/delisting;

(2) The specific provision/s of this regulation, the related SEC rules or professional standards which the Monetary Board determined as has been violated; and

(3) The imposed suspension or delisting, including a justification for either sanction and the period and other requirements specially required within which the delisted auditing firm or external auditor may apply for re-accreditation.

d. The suspension/delisting, including the sanctions/penalties provided in Sec. X189 shall only apply to:

(1) Intentional or knowing conduct, including reckless conduct, that results in violation or applicable statutory, regulatory or professional standards; or

(2) Repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory or professional standards.

e. No associate person or employed auditor of a selected/accredited auditing firm shall be deemed to have failed reasonably to supervise any other person for purpose of Item "1.2.g" above, if:

(1) There have been established in and for that firm procedures, and a system for applying such procedures, that comply with applicable rules of BSP and that would reasonably be expected to prevent and detect any such violation by such associated person; and

(2) Such person or auditor has reasonably discharged the duties and obligations incumbent upon that person by reason of such procedures and system, and

had no reasonable cause to believe that such procedures and system were not being complied with.

f. The BSP shall discipline any selected external auditor that is suspended or delisted from being associated with any selected auditing firm, or for any selected auditing firm that knew, or in the exercise or reasonable care should have known, of the suspension or delisting of any selected external auditor, to permit such association, without the consent of the Monetary Board.

g. The BSP shall discipline any covered institution that knew or in the exercise of reasonable care should have known, of the suspension or delisting of its external auditor or auditing firm, without the consent of the Monetary Board.

h. The BSP shall establish for appropriate cases an expedited procedure for consideration and determination of the question of the duration of stay of any such disciplinary action pending review of any disciplinary action of the BSP under this Section.

J. SPECIFIC REVIEW

When warranted by supervisory concern, the Monetary Board may, at the expense of the covered institution require the external auditor and/or auditing firm to undertake a specific review of a particular aspect of the operations of these institutions. The report shall be submitted to the BSP and the audited institution simultaneously, within thirty (30) calendar days after the conclusion of said review.

K. AUDIT BY THE BOARD OF DIRECTORS

Pursuant to Section 58 of RA. No. 8791, otherwise known as “The General Banking Law of 2000” the Monetary Board may also direct the board of directors of a covered institution or the individual members thereof, to conduct, either personally or by a committee created by the board, an annual balance sheet audit of the covered institution to review the internal audit and the internal control system of the concerned entity and to submit a report of such audit to the Monetary Board within thirty (30) calendar days after the conclusion thereof.

L. AUDIT ENGAGEMENT

Covered institutions shall submit the audit engagement contract between them, their subsidiaries and affiliates and the external auditor/auditing firm to the appropriate department of the SES within fifteen (15) calendar days from signing thereof. Said contract shall include the following provisions:

1. That the covered institution shall be responsible for keeping the auditor fully informed of existing and subsequent changes to prudential regulatory and statutory requirements of the BSP and that both parties shall comply with said requirements;

2. That disclosure of information by the external auditor/auditing firm to the BSP as required under Items “H” and “J” hereof, shall be allowed; and

3. That both parties shall comply with all the requirements under this Appendix.

(As amended by Circular No. 660 dated 25 August 2009)

MANUAL OF REGULATIONS FOR NON-BANK FINANCIAL INSTITUTIONS

P REGULATIONS
(Regulations Governing Pawnshops)

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PART ONE

ORGANIZATION, MANAGEMENT AND ADMINISTRATION

A. SCOPE OF AUTHORITY

Section 4101P Basic Law Governing Pawnshops. P.D. No. 114, known as the Pawnshop Regulation Act, regulates the establishment and operation of pawnshops.
(Circular No. 656 dated 02 June 2009)

§ 4101P.1 Scope of authority of pawnshops. A duly organized and licensed pawnshop has, in general, the power to engage in the business of lending money on the security of personal property within the framework and limitations of P.D. No. 114 and the following regulations, subject to the regulatory and supervisory powers of the BSP.
(Circular No. 656 dated 02 June 2009)

§ 4101P.2 Form of organization. A pawnshop may be established as a single proprietorship, a partnership or corporation. Only Filipino citizens may establish and own a pawnshop organized as a single proprietorship. A pawnshop established as a single proprietorship by a non-Filipino owner prior to 29 January 1973 may continue as such during the lifetime of the registered owner. If a pawnshop is organized as a partnership, at least seventy percent (70%) of its capital shall be owned by Filipino citizens. Pawnshops established as partnerships prior to 29 January 1973, with non-Filipino partners whose aggregate holdings amount to more than thirty percent (30%) of the capital may retain the percentage of their aggregate holdings as of 29 January 1973, and said percentage shall not be increased, but may be reduced, and once reduced shall not be increased thereafter beyond thirty

percent (30%) of the capital stock of such pawnshop. In the case of a pawnshop organized as a corporation, at least seventy percent (70%) of the voting stock therein shall be owned by citizens of the Philippines, or if there be no capital stock, at least seventy percent (70%) of the members entitled to vote shall be citizens of the Philippines. Pawnshops registered as a corporation with foreign equity participation in excess of thirty percent (30%) of the voting stock, or members entitled to vote, of the pawnshop may retain the percentage of foreign equity as of 29 January 1973, and said percentage shall not be increased, but may be reduced and once reduced, shall not be increased thereafter beyond thirty percent (30%) of the voting stock, or number of members entitled to vote, of such pawnshop. The percentage of foreign-owned voting stock in a pawnshop corporation shall be determined by the citizenship of its individual stockholders. If the voting stock in a pawnshop corporation is held by another corporation, the percentage of foreign ownership in that pawnshop, shall be computed on the basis of the foreign citizenship of the individuals owning voting stocks in, or members entitled to vote of, the stockholder corporation.
(Circular No. 656 dated 02 June 2009)

§ 4101P.3 Organizational requirements Any person or entity desiring to establish a pawnshop shall register with the Department of Trade and Industry (DTI), in the case of a single proprietorship; or with the Securities and Exchange Commission (SEC), in the case of a partnership/corporation.

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Pawnshops with foreign equity participation shall also register with the Board of Investments.

After registering with the DTI or with the SEC, the single proprietorship or the partnership/corporation, as the case may be, shall secure a business license from the city or municipality where the pawnshop is to be established and operated, in accordance with the requirements of the pertinent ordinance in that city or municipality.

(Circular No. 656 dated 02 June 2009)

§ 4101P.4 Requirement to register with the Bangko Sentral. Pursuant to Section 6 of P.D. No. 114, which requires pawnbrokers to register with the BSP before commencing actual business operations, every pawnshop shall submit to the BSP an Information Sheet on the entity (using BSP-prescribed form) duly accomplished by the proprietor/managing partner/president under oath that shall be the basis for the issuance by the BSP of an Acknowledgement of Registration (AOR). The Information Sheet shall be accompanied by the following documents:

- a. A Certificate of Registration (COR) of business name from the DTI, in case of a sole proprietorship;
- b. Articles of Partnership/Incorporation and by-laws duly registered with the SEC, in the case of a partnership or a corporation which Articles shall indicate that the primary purpose of the partnership/corporation is to engage in the business of a pawnshop or a pawnbroker;
- c. City/municipal license/business license/mayor’s permit for the current period;
- d. Personal data sheet (using BSP-prescribed form for pawnshops) with passport size picture duly accomplished by the proprietor or partners or directors, president and manager or officer-in-charge of the head office; and
- e. Such other documents that may be required by the BSP that are enumerated in a list attached to the Information Sheet.

No application for registration shall be accepted from a person or entity other than the proprietor, partner, or incorporator of a pawnshop unless the person or entity applying on behalf of the proprietor, partner or incorporator submits a duly executed and notarized special power of attorney authorizing the person or entity to act on behalf of the proprietor, partner, or incorporator. In the case of a corporate applicant, a certified true copy of the board resolution authorizing the person or entity shall likewise be submitted.

A pawnshop shall commence actual operations within six (6) months from the date of issuance of the AOR. Failure to commence actual operations within the aforementioned six (6) months period shall render the BSP AOR as automatically cancelled.

The pawnshop shall notify the BSP in writing of the start of operations within five (5) business days from the actual start of operations.

Any pawnshop that is found operating that does not have a current business permit issued by the city or municipality where it is located and an AOR issued by the BSP is considered operating illegally. Such pawnshop shall be reported to the Office of the Mayor of the concerned city or municipality, for appropriate action, without prejudice to whatever legal action the BSP may pursue under Section 18 of P.D. No. 114 and other applicable laws against the pawnshop, its proprietor, partners, incorporators, stockholders, directors, president and officers.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4101P.5 Pawnshop regulations briefing and Anti-Money Laundering Act seminar. As a prerequisite for the issuance by the BSP of the AOR, the proprietor, partner, director, president as well as manager or officer-in-charge of the head

office and branch shall have attended the: (a) briefing on pawnshop regulations conducted by the BSP or any accredited service provider; and (b) seminar on the Anti-Money Laundering Act as prescribed in Subsec.4691P.1.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4101P.6 Processing and annual fees

Every pawnshop head office shall pay a one-time processing fee of P1,000.00 for the initial registration, and P500.00 annual fee upon approval of application for registration. Thereafter, the annual fee shall be paid not later than 31 March of every year.

Transitory provision. The annual fee shall commence for the year 2010. It shall be collected from all pawnshop's head offices and branches registered as of 31 December 2009. The deadline for payment of the annual fee for 2010 is 31 March 2011.

Pawnshop head offices and branches that have paid the registration fee/renewal of registration fee of P3,000.00, pursuant to BSP Circular No. 656, shall be considered to have paid the annual fee for six (6) years starting 2010.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4101P.7 Renewal of the Bangko Sentral registration of pawnshop head office and branches.

(Deleted by Circular No. 711 dated 01 January 2011)

§ 4101P.8 Documentary requirements to renew the Bangko Sentral registration

(Deleted by Circular No. 711 dated 28 January 2011)

Sec. 4102P Definition of Terms

a. *Pawnshop* shall refer to a person or entity engaged in the business of lending money on personal property that is

physically delivered to the pawnshop premises as loan collateral. The term shall be synonymous, and may be used interchangeably, with *pawnbroker* or *pawnbrokerage*.

b. *Pawner* shall refer to the borrower from a pawnshop.

c. *Pawnee* shall refer to the pawnshop or pawnbroker.

d. *Pawn* is the personal property delivered by the pawner to the pawnee as security for a loan.

e. *Pawn ticket* is the pawnbroker's receipt for a pawn and shall not be considered as an official receipt for amounts collected.

f. *Property* shall include only such personal property which can be physically delivered to the control and possession of the pawnee.

g. *Voting stock* is that portion of the authorized capital which is subscribed and entitled to vote.

h. *Vital records* shall consist of the Loans Extended/Paid Registers, General Ledger/Journal, that may in electronic form, covering the current and at least the preceding five (5) years of operation, unused accountable forms and permanent records, e.g., articles of incorporation/co-partnership, by-laws, stock certificates, etc.

i. *Bulky pawns* shall refer to household appliances, office machines and the like, which occupy considerable amount of space, i.e., measuring at least 1.5 x 1.5 x 0.5 feet.

j. *Premises* shall refer to the area where the pawnshop conducts its business and maintains office. It includes office or storage spaces maintained and/or used by the pawnshop which are adjacent to the pawnshop's location.

(Circular No. 656 dated 02 June 2009)

Secs. 4103P - 4105P (Reserved)

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B. CAPITALIZATION

Sec. 4106P Capital of Pawnshops. Every pawnshops shall have a minimum paid-in capital of P100,000.

A pawnshop’s paid-in capital may be in the form of:

- a. Cash;
- b. Tangible properties, including real estate and improvements thereon; and
- c. A combination of cash and tangible properties.

Tangible properties shall be limited to those that are necessary for the conduct of the pawnshop business. They may be valued at fair value which is the amount for which an asset could be exchanged between knowledgeable, willing parties in an arm’s length transaction. The fair value of land and buildings is usually determined from market-based evidence by appraisal that is normally undertaken by professionally qualified appraisers.

The value of the tangible properties contributed as capital shall not exceed twenty-five percent (25%) of said paid-in capital and surplus/acumulated surplus: For pawnshops existing as at 29 January 1973 whose value of properties exceeds the prescribed ratio, such percentage may be retained or reduced but shall not be increased thereafter. Should the ratio, on the other hand, fall below the prescribed level, it may be increased but not beyond twenty-five percent (25%).

(Circular No. 656 dated 02 June 2009)

§ 4106P.1 Sanctions

(Deleted by Circular No. 711 dated 28 January 2011)

Sec. 4107P Prudential Capital Ratio. The minimum capital ratio of a pawnshop, expressed as a percentage of total capital to pledge loans, shall not be less than fifty percent (50%): *Provided*, That total pledge loans shall not exceed P3.0 million. If and when the pledge loans exceed P3.0 million,

additional capital of 30% of pledge loans in excess of P3.0 million shall be required.

For this purpose, the term total capital shall be defined as total assets minus:

- (a) total liabilities;
- (b) deferred tax assets;
- (c) unbooked valuation reserves; and
- (d) other capital adjustments as may be required by the BSP.

Any appraisal surplus or appreciation credit as a result of appreciation or an increase in book value of the assets of the pawnshop shall be excluded.

(Circular No. 656 dated 02 June 2009)

§ 4107P.1 Capital build-up program. Any pawnshop that fails to comply with the prudential capital requirement shall submit within thirty (30) days from date of notice from the BSP, a Letter of Undertaking to implement a capital build-up program for a period not to exceed one (1) year from date of undertaking.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

Secs. 4108P - 4110P (Reserved)

C. - F. (RESERVED)

Secs. 4111P - 4140P (Reserved)

G. PROPRIETOR/PARTNERS/DIRECTORS, OFFICERS AND EMPLOYEES

Sec. 4141P Safeguarding of Pawnshop Assets. In order to safeguard pawnshop’s assets (pawned items) and mitigate the risk of loss arising from malfeasance or fraudulent practices of their employees, pawnshops shall adopt any of the following measures:

- a. Bonding of accountable officers/employees with reputable insurance/surety companies accredited by the Insurance Commissioner; or
- b. Equivalent self-insurance mechanism acceptable to BSP.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4141P.1 Sanctions

(Deleted by Circular No. 711 dated 28 January 2011)

Sec. 4142P Definitions, Qualifications, and Duties and Responsibilities of Proprietor/Partners/Directors/Officers. For purposes of this Section the following shall be the definitions and qualifications, duties and responsibilities of proprietor/partners/directors/officers.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4142P.1 Definitions

a. *Proprietor* is the person named in the Certificate of Registration issued by the DTI and in the city/municipal license and mayor's permit as the owner of the business.

b. *Partners* are the persons named in the articles of partnership.

c. *Incorporators* are those mentioned as such in the articles of incorporation as originally forming and composing the corporation and who are signatories thereof.

d. *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 pawnshop's stockholders; and

(3) those elected to fill vacancies in the board of directors.

The number of members of the board of directors, pursuant to Section 10 of Batas Pambansa No. 68, shall be at least five (5), and a maximum of fifteen (15) directors.

e. *Officers* - are those persons whose duties as such are defined in the by-laws (for corporations) or those who are generally known to be the officers of the pawnshop either thru announcement, representation, publication or any kind of communication made by the pawnshop. The term officer shall include, but not limited to the following: the proprietor, managing partner, president, and manager or officer-in-charge of head office or branch.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4142P.2 General qualifications of a proprietor, partner, director, president, and manager or officer-in-charge of head office or branch. Any person can be a proprietor, partner, director, president, manager or officer-in-charge of a pawnshop's head office or branch, provided he/she:

a. Must have undergone a briefing on pawnshop regulations conducted by the BSP or any accredited service provider;

b. Must have undergone a briefing on the Anti-Money Laundering Law (AMLA) as prescribed by Subsec. 4691P.1;

c. Must not be included in the BSP Watchlist; and

d. Must not possess any derogatory information from the National Bureau of Investigation (NBI). The NBI clearance shall be submitted pursuant to Subsecs. 4101P.4 and 4151P.4.

The NBI clearance shall also be required for any newly elected/appointed director, president, manager or officer-in-charge and newly accepted partner or director of an existing pawnshop.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4142P.3 Corporate governance. A corporate pawnshop with total resources of at least P50.0 million shall comply with the SEC requirements on corporate governance, and as proof of compliance, the said corporate pawnshop shall submit to the BSP a notarized certification to that effect.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

Sec. 4143P Disqualification of Directors and Officers. The following regulations shall govern the disqualification of pawnshop directors and officers.

(Circular No. 656 dated 02 June 2009)

§ 4143P.1 Persons disqualified from becoming directors. Without prejudice to specific provisions of law prescribing

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disqualifications for directors/trustees, the following are disqualified from becoming directors of pawnshops:

a. *Permanently disqualified*

Directors/trustees/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 the 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/QBs/trust entities who were found to be culpable for such institution's closure as determined by the Monetary Board;

(6) Directors and officers of banks, QBs, trust entities found by the Monetary Board as administratively liable for violation of banking or other relevant 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, QBs, trust entities 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 or other relevant 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/trustee 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 supervising and examining department when required pursuant to a provision of law or of a circular, memorandum or 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, or any twelve (12)-month period during said incumbency. 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 the institution where he/she is a director or officer, or at least two (2) obligations with other FIs, under different credit lines or loan contracts, are past due pursuant to Secs. X306, 4308Q, 4306S and 4305P;

(b) *Obligations* shall include all borrowings from any FI obtained by:

(i) A director/trustee or officer for his own account or as representative or agent of others or where he/she acts as guarantor, endorser or surety for loans from such FIs;

(ii) The spouse or child under the parental authority of the director/trustee or officer;

(iii) Any person whose borrowings or

loan proceeds were credited to the account of, or used for the benefit of a director/trustee or officer;

(iv) A partnership of which a director/trustee 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 (Code of Conduct and Ethical Standards for Public Officials and Employees), 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/trustees and officers of closed institutions under the supervisory and regulatory powers of the BSP pending their clearance by the Monetary Board;

(6) Directors/ trustees 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 or the appropriate department of the SES of such directors'/trustees' election/reelection;

(7) Persons dismissed/terminated from employment in the institutions under the supervision of the BSP. This disqualification shall be in effect until they have been cleared themselves of involvement in the alleged

irregularity or upon clearance, on their request, from the Monetary Board after showing good and justifiable reasons;

(8) Those under preventive suspension; and

(9) Persons with derogatory records as certified by, or on the official files of, the judiciary, NBI, 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;

(10) Directors and officers of banks, QBs and trust entities found by the Monetary Board as administratively liable for violation of banking or other relevant 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;

(11) Directors and officers of banks, QBs, and trust entities 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 or other relevant 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; or

(12) Directors and officers of banks, QBs, trust entities found by the Monetary Board as administratively liable for violation of banking or other relevant laws, rules and regulations where a penalty of suspension from office or fine is imposed, regardless whether the finding

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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.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4143P.2 Persons disqualified from becoming officers

a. The disqualifications for directors mentioned in Subsec. 4143P.1 shall likewise apply to officers, except those stated in Items “b(2)”.

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 pawnshop 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 pawnshop is disqualified from holding or being appointed to any of said positions in the same branch or office.

(Circular No. 656 dated 02 June 2009)

§ 4143P.3 Disqualification procedures

a. The board of directors/trustees and management of every pawnshop shall be responsible for determining the existence of the ground for disqualification of the pawnshop’s directors/trustees/officer or employee and for reporting the same to the BSP. While the concerned pawnshop 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 pawnshop

director/trustee/officer/employee from being elected/appointed as director/ trustee/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 of the BSP within 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. 4143P.1 and 4143P.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/trustee/officer concerned, the appropriate department of the SES shall proceed to evaluate the case. The director/trustee/officer concerned shall be afforded to defend/clear himself/herself.

d. If no reply has been received from the director/trustee/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 grounds for disqualification is delinquency in the payment of obligation, the concerned director/trustee or officer shall be given a period of thirty (30) calendar days within which to settle said obligation or, restore it to 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/trustees/officers of closed banks, the concerned department of the SES shall make appropriate recommendation to the Monetary Board clearing said directors/trustees/officers when there is no pending case/complaint or evidence against them. When there is evidence that a director/trustee/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 master list of temporarily disqualified persons until the final resolution of his/her case. Directors/trustee/officer with pending cases/complaints shall also be included in said master list of temporarily disqualified persons upon approval by the Monetary Board until the final resolution of their cases. If the director/trustee/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/trustee/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 disqualified persons and his/her inclusion in the master list 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 of the ultimate facts which resulted in the dismissal to be able to determine if the disqualification of the director/trustee/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/trustee/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 directors/trustees/officers 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/trustee/officer in any FI under the supervision of BSP and/or of his/her inclusion in the master list of watchlisted persons so disqualified.

j. The board of directors/trustees 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/trustee/officer involved.

k. Persons who are elected or appointed as director/trustee 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. 4143P.1 and 4143P.2 shall be afforded the procedural due process prescribed above.

l. Whenever a director/trustee/officer is cleared in the process mentioned under

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Item “c” above or, when the ground for disqualification ceases to exist, he/she would be eligible to become director/trustees 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/trustee/officer and his/her delisting from the masterlist or watchlisted persons.

(Circular No. 656 dated 02 June 2009)

§ 4143P.4 Effect of possession of disqualifications. Directors/trustees/officers elected or appointed possessing any of the disqualifications as enumerated herein, shall vacate their respective positions immediately.

(Circular No. 656 dated 02 June 2009)

§ 4143P.5 (Reserved)

§ 4143P.6 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 directors/trustees or officer of an institution under the supervisory and regulatory powers of the BSP, the SES shall maintain a watchlist of disqualified directors/trustees/officers under the following procedures:

a. *Watchlist categories.* Watchlisting shall be categorized as follows:

(1) Disqualification File “A” (Permanent) - Directors/trustees/officers/employees permanently disqualified by the Monetary Board from holding a director/trustee/officer position.

(2) Disqualification File “B” (Temporary) - Directors/trustees/officers/employees temporarily disqualified by the Monetary Board from holding a director/trustee/officer position.

b. *Inclusion of directors/trustees/officers/employees in the watchlist.* Upon

recommendation by the appropriate department of the SES, the inclusion of directors/trustees/officers/employees in watchlist disqualification files “A” and “B” on the basis of decisions, actions or reports of the courts, institutions under the supervisory and regulatory powers of the BSP, NBI or other administrative agencies shall first be approved by the Monetary Board.

c. *Notification of directors/trustees/officers/employees.* Upon approval by the Monetary Board, the concerned director/trustee/officer/employee shall be informed through registered mail, with registry return receipt card, at his last known address of his inclusion in the masterlist of watchlisted persons disqualified to be a director/trustee/officer in any institution under the supervisory and regulatory powers of the BSP.

d. *Confidentiality.* Watchlisting shall be for internal use only and may not be accessed or queried upon by outside parties including such institutions under the supervisory and regulatory powers of the BSP, except with the authority of the person concerned and with the approval of the Deputy Governor, SES, the Governor, or the Monetary Board.

The 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 the SES is in *Appendix Q-45*.

Pawnshops 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/trustees and appointed officers. Pawnshops must obtain the said authorization on an individual basis.

e. *Delisting.* All delistings shall be approved by the Monetary Board upon

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recommendation of the appropriate department of the 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 laws becomes final and executory, in which case the director/trustee/officer/employee is relisted to Watchlist - Disqualification File “A” (Permanent); or

(c) Upon favorable decision or clearance by the appropriate body, i.e., court, NBI, institutions under the supervisory and regulatory powers of the BSP, or such other agency/body where the concerned individual had derogatory record.

Directors/trustees/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 institution under the supervisory and regulatory powers of the BSP.
(Circular No. 656 dated 02 June 2009)

§ 4143P.7 Applicability of Section 4143P to the proprietor and managing partner of a pawnshop (in the case of a sole proprietorship/partnership). The foregoing disqualification and watchlisting provisions of this Section shall apply, where practicable, to the managing proprietor or managing partner of a pawnshop that is a sole proprietorship or partnership, in which case, the BSP shall initiate the disqualification proceedings against the managing proprietor/managing partner. For purposes of this subsection, a managing proprietor or managing partner shall refer to a person directly involved in the operation of a pawnshop business.

In case the disqualification shall cause the dissolution of the proprietorship or partnership, the AOR and AO, if any, shall be cancelled and the pawnshop shall be removed from the BSP List of Registered Pawnshops as prescribed in Subsec. 4183P.2.

(Circular No. 656 dated 02 June 2009)

Secs. 4144P - 4150P (Reserved)

H. BRANCH OFFICES

Sec. 4151P Establishment of Branch Offices

In line with Section 6 of P.D. No. 114 which requires pawnshops to register with the BSP before commencing actual business operations, no pawnshop shall open, maintain or operate a branch office without first applying for and obtaining from the BSP, through the appropriate department of the SES, an Authority to Operate (AO) such branch which shall be processed in accordance with the following guidelines. A new pawnshop applying for an AOR that has complied with the minimum paid-in capital of P100,000.00 may open one (1) branch if it so desires, subject to compliance with the applicable branching requirements.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4151P.1 Definition of branch office

As used in these rules, the term “branch office” refers to any place of business outside the head or main office of a pawnshop where pawnshop operations and transactions are conducted under the control and supervision of the head or main office.

(Circular No. 656 dated 02 June 2009)

§ 4151P.2 Operations and functions

The operations and transactions of a branch office shall likewise be subject to the provisions of P.D. No. 114 governing operations and transactions of a head or main office, as well as by other pertinent laws, BSP rules and regulations.

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The primary purpose of branching is to provide additional source of credit to small borrowers not served by the banks and other Fls.

(Circular No. 656 dated 02 June 2009)

§ 4151P.3 Basis for establishment
Branch offices shall be allowed on the basis of the head office’s ability to conduct operations in accordance with P.D. No. 114 and BSP rules and regulations. The BSP department concerned shall not process an application for branching of a pawnshop if any of the following conditions:

- a. has an approved but unopened branch;
- b. has unpaid annual fee or penalty assessed by the BSP;
- c. has not complied with the required prudential capital ratio as prescribed in Sec. 4107P; or
- d. has not submitted any of the periodic reports listed in Appendix P-2.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4151P.4 Documentary requirements. A pawnshop that intends to open a branch office shall submit to the BSP an application (using a BSP-prescribed form) duly accomplished and signed by the proprietor/managing partner/president under oath that shall be the basis for the issuance by the BSP an Authority to Operate (AO). The following documents shall be submitted together with every application for a branch office:

- a. Duly notarized certification from the head office as to its compliance with the minimum amount of capital under Secs. 4106P and 4107P;
- b. Certified true copy of the board resolution authorizing the establishment of the branch (in case of corporation);
- c. City/municipal license/business license/mayor’s permit from the city or

municipality where the pawnshop branch is to be established;

d. Personal data sheet (using BSP-prescribed form for pawnshops) with passport size picture duly accomplished by the proposed branch manager or officer-in-charge; and

e. Such other documents that may be required by the BSP for the evaluation of the branch application as enumerated in a list attached to the application form.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4151P.5 Processing and annual fees. Every branch of a pawnshop shall pay a one-time processing fee of P1,000.00 and P500.00 annual fee upon approval of application for registration. Thereafter, the annual fee shall be paid not later the 31 March of every year.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4151P.6 Date of opening for business. The pawnshop branch shall commence actual operations within six (6) months from the date of issuance of the AO. Failure to commence actual operations within the aforementioned six (6) months period shall render the BSP AO as automatically cancelled.

The pawnshop head office shall notify the BSP in writing of the start of operations of the branch within five (5) business days from the actual start of the operations of the branch.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4151P.7 Pawnshop branches without business permit and authority to operate considered operating illegally
Any pawnshop branch that is found operating that does not have a current business permit issued by the city or municipality where it is located and an AO issued by the BSP is

considered operating illegally. Such pawnshop shall be reported to the Office of the Mayor of the concerned city or municipality, for appropriate action, without prejudice to whatever legal action the BSP may pursue under Section 18 of P.D. No. 114 and other applicable laws against the pawnshop, its proprietor, partners, stockholders, directors and president or officer of equivalent rank.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

Secs. 4152P - 4155P (Reserved)

I. BUSINESS DAYS AND HOURS

Sec. 4156P Business Days and Hours Pawnshops, including their branches, shall transact business at a minimum of five (5) days a week, for a minimum of six (6) hours a day, both to be selected by them. They may, at their discretion, remain open beyond the aforesaid requirement as they deem it necessary.

The business hours and business days shall be printed on the face of the pawn ticket and shall be posted together with the original BSP AOR/AO conspicuously at all times within the premises of the pawnshop, preferably at the window or door that is clearly visible to the pawning public.

Pawnshops shall only transact business in the pawnshops’ registered place of business or premises of the head office and branches, if any. Transacting business outside the pawnshops’ registered place of business or premises shall be a ground for cancellation of pawnshop’s AOR or AO, as the case may be.

During business days and hours, the pawnshop head office and every branch shall have at least one (1) personnel, (manager or officer-in-charge, if any) that has attended the briefing on pawnshop regulations and AMLA seminar mentioned in Subsec. 4101P.5.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

Secs. 4157P - 4160P (Reserved)

J. RECORDS AND REPORTS

Sec. 4161P Records. The accounting period of pawnshops shall be on the calendar year basis.

The accounting records of pawnshops shall consist of records of original entry and books of final entry.

The records of original entry shall consist of pawn tickets, official receipts, vouchers and other supporting documents. The books of final entry shall consist of the general ledger, subsidiary ledgers and registers of loans extended and loans paid.

Pawnshops may use any form of loans extended and loans paid registers as long as they contain spaces and columns for information enumerated in Section 11 of P.D. No. 144.

A pawnshop that uses a computerized system may record its loan transactions in individual loan extended vouchers which shall contain the same information necessary to comply with Section 11 of P.D. No. 114 in lieu of the loan extended and loans paid registers. Such pawnshops shall periodically compile or bind the loan extended vouchers and shall be made available for BSP examination upon request.

The Description of Loan Registers of Pawnshops provided in *Appendix P-1* shall be followed.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4161P.1 Uniform system of accounts. Pawnshops shall strictly adopt/ implement the Uniform System of Accounts prescribed for pawnshops in the recording of daily transactions including reportorial requirements.

The Uniform Chart of Accounts for Pawnshops is provided in *Appendix P-1*.

(Circular No. 656 dated 02 June 2009)

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§ 4161P.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 Philippine Financial Reporting Standards (PFRS) and Philippine Accounting Standards (PAS) issued by the Accounting Standards Council (ASC) to the greatest extent possible.

Pawnshops shall adopt the PFRS and PAS which are in accordance with generally acceptable 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 minimum limits are prescribed by the PFRS/PAS, the option or limit prescribed by BSP regulations shall be adopted by all banks/FIs.

For purposes hereof, the PFRS/PAS shall refer to issuances of the ASC and approved by the PRC.

Accounting treatment for prudential reporting. For prudential reporting, FIs 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 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. FIs shall be required to meet the BSP recommended valuation reserves.

Notwithstanding the exceptions in Items “a”, “b” and “c”, the audited annual financial statements required to be submitted to the BSP in accordance with *Appendix P-2* 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.

(Circular No. 656 dated 02 June 2009)

§ 4161P.3 Accounting for pawnshops premises; other fixed assets. Pawnshop premises, furniture, fixture and equipment shall be accounted for using the cost model under PAS 16 “Property, Plant and Equipment”.

(Circular No. 656 dated 02 June 2009)

§ 4161P.4 Retention of records Pawnshop records, ledgers, books and documents (including those in electronic media):

(a) shall not be destroyed or disposed of for at least five (5) years;

(b) shall have backup hard and/or soft copy to allow reconstruction of records in case of loss or destruction due to fire and other fortuitous events; and

(c) shall be made available for BSP examination upon request.

A pawnshop that does not have records, ledgers, registers, books or documents or that refuses to permit access to its records, ledgers, registers, books or documents to an authorized BSP officer/examiner may be considered as refusal to permit an examination.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

Sec. 4162P Reports. Pawnshops shall submit to the appropriate department of the SES the reports listed in *Appendix P-2* in the forms as may be prescribed by the DG, SES.

Any change in, or amendment to, the articles of incorporation/co-partnership, by-laws or material documents required to be submitted to the BSP shall be reported by submitting copies of the amended articles of incorporation, by-laws or material document to the appropriate department of the SES within fifteen (15) days following such change.

(Circular No. 656 dated 02 June 2009)

§ 4162P.1 Categories of and signatories to reports. Reports required to be submitted to the BSP are classified into *Categories A-1, A-2, A-3 and B* reports as indicated in the list of reports required to be submitted to the BSP in *Appendix P-2*.

Appendix P-3 prescribes the signatories for each report category and the requirements on signatory authorization. Reports submitted in computer media shall be subject to the same requirements.

A report submitted to the BSP under the signature of an officer who is not authorized in accordance with the requirements in this Subsection shall be considered as not having submitted.

(Circular No. 656 dated 02 June 2009)

§ 4162P.2 Manner of filing. The submission of the reports shall be effected by filing them personally with the appropriate department of the SES or with the BSP Regional Offices/Units, or by sending them by registered mail or special delivery through private couriers, unless otherwise specified in the circular or memorandum of the BSP.

(Circular No. 656 dated 02 June 2009)

§ 4162P.3 Definition relevant to reports to BSP

Definition of terms. For purposes of these rules, the following definitions shall apply:

a. *Report* shall refer to any report or statement required of a pawnshop to be submitted to the BSP periodically or within a specified period.

b. *Faulty report* shall refer to an inaccurate/improperly accomplished report.

c. *Willful delay or default in the submission of reports* shall refer to the failure of a pawnshop to submit a report on time. 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 pawnshop as defined in the Labor Code or a national emergency affecting operations of pawnshops, shall not be considered as willful delay.

d. *False statement* shall refer to any untruthful data or information or falsehoods made in a report to the BSP or its authorized agents, with intent to deceive or mislead. Any false statement which tends to favor the pawnshop submitting the report shall be *prima facie* evidence of intent to deceive or mislead.

e. *Repeated violation* shall mean the commission of the same offense for at least two (2) times.

f. *Persistent violation* shall mean the commission of the same offense for at least three (3) times.

g. *Offense* shall refer to submission of faulty report, willful delay in submission of reports, or making of false statements in reports.

h. *Continuing offenses/violations* are acts, omissions or transactions entered into, in violations of laws, BSP rules and regulations, MB 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.

i. *Transactional offenses/violations* are acts, omissions or transactions entered into in violation of laws, BSP rules and regulations, Monetary Board directives, and

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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.

j. *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.

k. *Transactional penalty* refers to a one-time penalty imposed on transactional offense/violation.

(As amended by Circular Nos. 711 dated 28 January 2011, 662 dated 09 September 2009 and 656 dated 02 June 2009)

Sec. 4163P Report on Crimes/Losses
 Pawnshops shall submit a report on crimes and losses in accordance with *Appendix P-2* together with the following:

- a. Notarized list of lost pawned articles, indicating the pawn ticket number, name of the pawner, date loan granted, brief description of pawn, and amount of loan;
- b. Police report on the investigation of the fire/robbery incident;
- c. Proof of notification in writing to all concerned pawners about the incident; and
- d. Plan of settlement of pawners’ claim for lost pawned items, if any.

Should a crime or loss result in a deficiency in the minimum capital and/or prudential capital required under Secs. 4106P and 4107P, the pawnshop shall submit a capital build up program in accordance with Subsec. 4107P.1.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

Sec. 4164P Audited Financial Statements/Annual Report of Pawnshops. Pawnshops shall submit a copy of the AFS, as duly received by the BIR, to the BSP not later than 30 June following the reference calendar year. This requirement will apply only to pawnshops whose total asset is at

least P50.0 million as of reference year.
 (Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4164P.1 Financial audit
 (Deleted by Circular No. 711 dated 28 January 2011)

§ 4164P.2 Disclosure of external auditor’s adverse findings to the Bangko Sentral
 (Deleted by Circular No. 711 dated 28 January 2011)

§ 4164P.3 Sanction
 (Deleted by Circular No. 711 dated 28 January 2011)

§ 4164P.4 Selection, appointment, reporting requirements and delisting of external auditors and/or auditing firm; sanction. Pursuant to Section 58, R.A. No. 8791, and the existing provisions of the executed MOA dated 12 August 2009, binding the BSP, SEC, PRC – BoA and the IC for a simplified and synchronized accreditation requirements for external auditor and/or auditing firm, following are the revised rules and regulations that shall govern the selection and delisting by the BSP of covered institutions which under special laws are subject to BSP supervision.

Statement of policy. It is the policy of the BSP to ensure effective audit and supervision of banks, QBs, trust entities and/or NSSLAs including their subsidiaries and affiliates engaged in allied activities and other FIs which under special laws are subject to BSP supervision, and to ensure the reliance by BSP and the public on the opinion of external auditors and auditing firms by prescribing the rules and regulations that shall govern the selection, appointment, reporting requirements and delisting for external auditors and auditing firms of said institutions, subject to the binding provisions of and implementing regulations pursuant to the aforesaid MOA.

a. *Rules and regulations.* The revised rules and regulations that shall govern the selection and delisting by the BSP of covered

institutions which under special laws are subject to BSP supervision are shown in *Appendix S-8*.

Sanctions. The applicable sanctions/penalties prescribed under Sections 36 and 37 of R.A. 7653 to the extent applicable shall be imposed on the covered institutions, its audit committee and the directors approving the hiring of external auditors/auditing firm who/which are not in the BSP list of selected auditors for covered institutions or for hiring, and/or retaining the services of the external auditor/auditing firm in violation of any of the provisions of this Section and for non-compliance with the Monetary Board directive under Item “K” in *Appendix P-9*. Erring external auditors/auditing firm may also be reported by the BSP to the PRC for appropriate disciplinary action.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 660 dated 25 September 2009)

Sec. 4165P General Information Sheet
(Deleted by Circular No. 711 dated 28 January 2011)

Secs. 4166P - 4170P (Reserved)

K. INTERNAL CONTROL

Sec. 4171P Internal Control System. The following provisions are the minimum internal control standards for pawnshops to help promote effective control system.or safe but within the pawnshop premises.
(Circular No. 656 dated 02 June 2009)

§ 4171P.1 Proper accounting records

a. All pawnshops shall maintain proper and adequate accounting records which include reconciliation of due to/from head office/branches, if the pawnshop has several offices.

b. Records should be kept up-to-date and shall contain sufficient detail so that an audit trail is established.
(Circular No. 656 dated 02 June 2009)

§ 4171P.2 Number control

The following are the forms, instruments and accounts that shall be number-controlled:

- (1) Pawn tickets;
- (2) Official receipts; and
- (3) Expense vouchers.

(Circular No. 656 dated 02 June 2009)

§ 4171P.3 Safekeeping of records and insurance of premises.

Vital records for the current year must be kept inside the safe or vault when not in use. Vital records are pawn ticket duplicates, loan paid and loan extended registers or loan paid and extended vouchers. Other pawnshop records/documents may be placed in filing cabinets/shelves outside the vault or safe but within the pawnshop premises.

For this purpose, a pawnshop’s vault, i.e., its walls, ceiling and floor 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 materials.

Safes should be sufficiently heavy or be securely anchored to the floor of the premises.

Vital records kept in electronic media including back-up copies thereof shall be kept in safes or vaults designed to protect them from damage due to fire or other fortuitous events.

The pawnshop premises and furniture, fixtures and equipment of pawnshops must be insured against fire
(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4171P.4 Miscellaneous. Every pawnshop shall adopt minimum internal control measures to safeguard the assets of the pawnshop. Such measures may include but is not limited to, dual control, check and balance and internal audit. No employee shall be permitted to process a transaction affecting his own account.
(Circular No. 656 dated 02 June 2009)

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Sec. 4172P Separation of Pawnshop Business from Other Businesses. A pawnshop that is at the same time engaged in another business not directly related to the business of a pawnshop, shall keep such business distinct and separate from the pawnshop operation.

Allowable corollary business activities of pawnshops shall include acting as foreign exchange dealer/money changer and/or as remittance agent, acting as bills payment agent for utility companies and other entities and such other activities as may be allowed by the BSP.

A pawnshop must secure the necessary business permit from the city or municipality for the corollary business. A pawnshop that will engage in the business of a foreign exchange dealer/money changer or act as a remittance agent shall register with the BSP before engaging in such business pursuant to Sec. 4511N.

The pawnshop should be able to show in its financial statements the appropriate accounts as well as the income or loss pertaining to the corollary business.

(Circular No. 656 dated 02 June 2009)

Secs. 4173P - 4180P (Reserved)

L. MISCELLANEOUS PROVISIONS

Sec. 4181P Registered/Business Name The registered name of a pawnshop shall refer to the name appearing in the Certificate of Registration (COR) of business name from the DTI, in the case of a sole proprietorship, or in the Articles of Partnership/Incorporation and By-Laws duly registered with the SEC, in the case of a partnership or corporation. In case, the registered name shall include the word “pawnshop” to reflect the nature of business it is engaged in.

Conversely, no person or entity shall advertise, use signage or hold itself out as being engaged in the business of a pawnshop or use in its business name the words

“pawnshop”, “pawnbrokerage”, or words of similar import, or transact in any manner the business of a pawnshop without having first complied with the provisions of P.D. No. 114 and these regulations.

A pawnshop that shall use/uses a name that is different from its registered name with DTI or SEC shall cause to have such name to also appear parenthetically under its registered name in the certificate of registration with DTI or articles of partnership/incorporation and by-laws with SEC, as well as in the business permit issued by the city or municipality.

(Circular No. 656 dated 02 June 2009)

§ 4181P.1 Change of registered/business name. A pawnshop shall not change its registered/business name without submitting the following documents to the appropriate department of the SES:

- a. Certificate of Registration from DTI or SEC, as the case may be, indicating the new business/registered name;
- b. Mayor’s/municipal license/permit; and
- c. Original BSP Acknowledgement of Registration of Head Office (AOR) and/or Authority to Operate (AO) issued under the old name.

A new BSP AOR and/or AO shall be issued indicating the new registered/business name of the pawnshop.

(Circular No. 656 dated 02 June 2009)

§ 4181P.2 Use of registered business name in signage, pawn tickets and other forms. The following regulations shall be observed with respect to the use of the business/registered name in the signage, pawn ticket and other forms of a pawnshop:

- a. As a general rule, the registered name appearing in the Certificate of Registration from the DTI or SEC, as the case may be, shall be used consistently in the pawnshop’s signage and in all documents including pawn tickets, official

receipts, stationery and other similar documents of the pawnshop.

b. A pawnshop that uses or will use a name that is different from its registered name as mentioned in Sec. 4181P above or that uses or will use a name already registered and being used by another pawnshop shall indicate parenthetically under such name, the registered name of the pawnshop with the DTI or SEC, as the case may be, with the words “*owned and operated by*” before the registered name in the pawnshop’s pawn tickets, official receipts, stationery and other similar documents.

c. A pawnshop that is a subsidiary or affiliate of another pawnshop shall likewise indicate such relationship in the pawn tickets, official receipts, stationery and other similar documents.

A subsidiary is a corporation more than fifty percent (50%) of the voting stock of which is owned by another corporation; while an affiliate is a corporation less than fifty (50%) of the voting stock of which is owned by another corporation.

d. The exact address of the pawnshop shall be indicated consistently in all pawnshop documents (e.g., pawn tickets, official receipts, stationery and other similar documents) and in the business permit issued by the city or municipality.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4181P.3 Sanctions

(Deleted by Circular No. 711 dated 28 January 2011)

Sec. 4182P Transfer/Relocation of Business
The following shall govern the transfer/relocation of pawnshops.

No pawnshop shall transfer or relocate its place of business within three (3) months following the maturity of any loan or pledge, or before any pawn shall have been sold or disposed of as provided under existing regulations. A notice of transfer shall be

submitted to the appropriate department of the SES within ten (10) days before the effectivity of such transfer.

A pawnshop may transfer its place of business from one location to another within the territorial limits of the city or municipality upon compliance with the following requirements:

a. Notice of transfer shall be published in English and in Filipino or in the local dialect in two (2) daily newspapers of general circulation in the city or municipality where the pawnshop is closing business, and posted in English and Filipino or in the local dialect for one (1) month after date of publication in a conspicuous place in the premises to be vacated and to be transferred to;

b. The notice shall be published for at least three (3) consecutive days, the last day of which shall be five (5) days before the actual transfer; and

c. Notice shall contain the following information:

- (1) Date of transfer;
- (2) Address of the premises to be vacated; and
- (3) Address of the premises to which pawnshop intends to transfer.

In remote areas where newspapers are not available, the publication requirement shall be complied with by posting notices at the city hall or municipal building of the city or municipality where the pawnshop has its place of business.

(Circular No. 656 dated 02 June 2009)

§ 4182P.1 Documentary requirements for transfer within the same city/municipality. The following documents shall be filed with the appropriate department of the SES in connection with transfer of location within the same city or municipality:

a. A certification signed by the proprietor/managing partner/president

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informing the appropriate department of the SES of the intended transfer and that the requirements prescribed under Sec. 4182P have been complied with;

- b. Copy of notice of transfer duly acknowledged by the DTI and by the licensing authority of the locality where the pawnshop is operating;
- c. Sample copy of the pawn ticket bearing the new address;
- d. Sketch of pawnshop’s new location;
- e. Original BSP AOR and/or AO issued to the pawnshop, or an affidavit in case of loss;
- f. Board resolution authorizing the transfer of the pawnshop (in case of corporations)

(Circular No. 656 dated 02 June 2009)

§ 4182P.2 Documentary requirements for transfer outside the city/municipality
A pawnshop that intends to transfer/relocate its business outside the city or municipality where it is located shall comply with the following:

- (1) requirements on closure of business under Sec. 4183P; and
- (2) requirements for the establishment and registration of a new pawnshop or branch under Subsecs. 4101P.4 and 4151P.4, respectively, where applicable.

(Circular No. 656 dated 02 June 2009)

Sec. 4183P Closure of Pawnshops. The following rules shall govern the closure of pawnshops:

(Circular No. 656 dated 02 June 2009)

§ 4183P.1 Voluntary closure
Voluntary closure of a pawnshop may be effected only after three (3) months following the maturity of any loan or pledge, or before any pawn shall have been sold or disposed of and after it has complied with the following requirements:

(1) Submission of the following documentary requirement within thirty calendar (30) days after the provision of Subsec. 4183P.1:

- a. Notarized statement stating that:
 - (i) The pawnshop’s books of accounts, reports, records and documents shall be preserved for at least five (5) years from date of last entry;
 - (ii) All unused accountable forms have been destroyed to prevent their unauthorized use;
 - (iii) Proprietor/partners/president of the pawnshop shall be held liable for present or future claims arising from its pawnbroking transactions; and
 - (iv) All outstanding pawns have been redeemed/sold at public auction, or otherwise disposed of, in accordance with law.
- b. Copy of the pawnshop’s application for retirement of business approved by the licensing authority of the city or municipality where the pawnshop operated.
- c. Original BSP AOR and/or AO issued to the pawnshop.

(2) Remittance of penalties or BSP assessments on the pawnshop, if any, such as for non-submission/delayed submission of required reports.

(Circular No. 656 dated 02 June 2009)

§ 4183P.2 Delisting of pawnshops/ involuntary closure

(Deleted by Circular No. 711 dated 28 January 2011)

§ 4183P.3 Other grounds for delisting
(Deleted by Circular No. 711 dated 28 January 2011)

Sec. 4184P Transfer of Ownership. No pawnshop proprietor/partners/stockholders shall transfer ownership over the pawnshop business without securing prior BSP approval.

(Circular No. 656 dated 02 June 2009)

§ 4184P.1 Requirements for transfer of ownership.

The owner(s) shall file the following documents ten (10) days before transferring the ownership of the pawnshop:

(1) Notarized statement by owner/managing partner/president or its equivalent rank stating that:

a. The pawnshop’s books of accounts, records and documents shall be preserved for five (5) years from date of last entries before the transfer of ownership;

b. All unused accountable forms such as official receipts and pawn tickets have been destroyed to prevent their unauthorized use.

c. The owner/managing partner/president shall be held accountable for present and future claims arising from transactions of the pawnshop under the former owner (new owner may assume this liability, in which case, he/she shall submit a notarized statement to that effect).

d. All outstanding pawns have been redeemed or sold at public auction, or otherwise disposed of in accordance with law; or the owners of outstanding pawns have been notified by registered mail on the transfer of ownership of the pawnshop.

(2) Copy of pawnshop’s notice of retirement of business acknowledged by the licensing authority where the pawnshop operated.

(3) Original BSP AOR and/or AO issued to the pawnshop, or an affidavit in case of loss.

(4) Payment of Bangko Sentral assessment on the pawnshop, if any, such as for non-submission or delayed submission of required reports.

If the vendee shall continue the operation of the pawnshop, he shall comply with the provisions of Subsecs. 4101P.3 and 4142P.2. The vendee shall also submit a copy of the duly executed contract affecting the transfer of ownership.

(Circular No. 656 dated 02 June 2009)

§ 4184P.2 Processing and annual fees

A pawnshop that is the subject of change of ownership shall be subject to the BSP processing and annual fees under Subsec. 4101P.6.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

Sec. 4185P Processing Fee for Replacement of Acknowledgement of Registration of Head Office/Authority to Operate.

A non-refundable processing fee of P300.00 shall be collected from each pawnshop that will request for a replacement AOR or AO due to:

- (a) loss of AOR/AO;
- (b) change of business/registered name under Subsec. 4181P.1; and
- (c) transfer of location or address under Subsec. 4182P.

(Circular No. 656 dated 02 June 2009)

Secs. 4186P - 4189P (Reserved)

Sec. 4190P Duties and Responsibilities of Pawnshops and their Directors/Officers in Cases of Outsourcing of Pawnshop Functions.

The rules on outsourcing of banking functions as shown in *Appendix Q-37* shall be adopted in so far as they are applicable to pawnshops.

(Circular No. 656 dated 02 June 2009)

Sec. 4191P (Reserved)

Sec. 4192P Prompt Corrective Action Framework.

The framework for the enforcement of prompt corrective action (PCA) on banks which is in *Appendix Q-40*, shall govern the PCA taken on pawnshops to the extent applicable, or by analogy.

(Circular No. 664 dated 15 September 2009)

Secs. 4193P - 4198P (Reserved)

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Sec. 4199P General Provision on Sanctions

Unless otherwise provided, violations of any provision hereof may subject a pawnshop, its proprietor, directors, trustees, partners, president, managers or officer-in-charge, where applicable, to sanctions which may include the following:

- a. Warning/reprimand;
- b. Suspension of AOR/AO;
- c. Suspension of branching privilege;
- d. Disqualification of proprietor, partner, director, president, manager or officer-in-charge;
- e. Monetary penalty not to exceed P1,000.00 per violation, per office, per day; and
- f. Revocation of AOR/AO.

The imposition of the above sanctions is without prejudice to whatever legal action the BSP may pursue under Sec. 18 of P.D. 114 (Pawnshop Regulation Act), and other

applicable laws against the pawnshop, its proprietor, partners, incorporators, stockholders, directors, president and officers.

A pawnshop whose AOR/AO is suspended or revoked shall be reported to the office of the mayor of the concerned city or municipality, for appropriate action. It is understood that in case the AOR of a head office is revoked, the AO of all branches of said pawnshop are likewise revoked.

Any pawnshop that is found operating as a foreign exchange dealer/money changer and or remittance agent that does not have a COR issued by the BSP for such activity is considered operating such activities illegally and shall be reported to the office of the mayor in accordance with the rules above.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

PART TWO
BORROWING OPERATIONS

A. - J. (RESERVED)

Sections 4201P - 4284P (Reserved)

K. OTHER BORROWINGS

Sec. 4285P Securities and Exchange Commission Registration of Borrowing
Borrowing by any pawnshop through the issuance of any instrument shall be subject to the registration provisions of Section 8 of the Securities Regulation Code (SRC) and the applicable implementing rules and regulations of the Securities and Exchange Commission (SEC). While borrowing from nineteen (19) individuals or less is exempt from the registration requirement under Section 10 of the SRC, Rule 10-1 of the SEC implementing rules and regulations still requires SEC to be

notified of the issuance of the debt instrument.
(Circular No. 656 dated 02 June 2009)

Sec. 4286P Borrowings Constituting Quasi-Banking Functions. Borrowing from twenty (20) or more lenders for the purpose of relending or purchase of receivables or other obligations constitutes quasi-banking. A pawnshop cannot engage in quasi-banking unless it meets the pre-qualification requirements under the MORNBFI-QBs and obtains authority or a separate license to engage in quasi-banking from the BSP.
(Circular No. 656 dated 02 June 2009)

Secs. 4287P - 4298P (Reserved)

Sec. 4299P General Provision on Sanctions
(Deleted by Circular No. 711 dated 28 January 2011)

PART THREE

LOANS AND INVESTMENTS

A. LOANS IN GENERAL

Section 4301P Grant of Loans. The following regulations shall be observed in the grant of loans by pawnshops.
(Circular No. 656 dated 02 June 2009)

§ 4301P.1 General guidelines. A pawnshop shall extend a loan only if such is secured by personal property that could be physically delivered to the control and possession of the pawnshop.
Before accepting articles as pawn, the pawnshop must ascertain whether the pawner is the true owner of the article offered as pawn. In the conduct of business, a pawnshop shall be guided by the standard of diligence that is expected of “a good father of a family”, ensuring always that there is no ground to suspect that the article/s offered as pawn was an object of robbery or theft.
(Circular No. 656 dated 02 June 2009)

§ 4301P.2 Prohibitions. Pawnshop owners/managers/officers/directors employees shall not:

- a. Use pawned articles for themselves or allowing employees to use said articles for any purpose without the express consent or authority of the pawner unless continued use is necessary to preserve the pawn;
- b. Grant loans to minors or incompetent persons; or
- c. Re-pledge/re-pawn the pawned article.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4301P.3 Know your pawner
Pawnshops who transact with any pawner for the first time shall require the pawner to

present the original and submit a clear copy of at least one (1) valid photo bearing identification document (ID) issued by an official authority.
The valid ID should indicate the address where the pawner resides, otherwise, pawner shall be required to present, together with the valid ID, a barangay certification or a copy of a billing statement that indicates the address where the pawner resides. Further, the provisions of Part 8 of the Q Regulations on valid identification documents shall apply.
Pawnshops shall post excerpts of the above requirements conspicuously in its principal place of business and branches. The poster (shown as *Appendix 7*) shall not be smaller than 8.5 x 11 inches.
Every pawnshop shall maintain records containing all the information required under this Subsection and Section 11 of P.D. No. 114 for each of their clients.
(Circular No. 656 dated 02 June 2009, as amended by Circular Nos. 711 dated 28 January 2011, 706 dated 05 January 2011 and 657 dated 16 June 2009)

§ 4301P.4 Sanctions
(Deleted by Circular No. 711 dated 28 January 2011)

Sec. 4302P Loan Limit. Pawnshops may grant such amount of loans as may be agreed upon between the parties. The amount of loan shall in no case be less than thirty percent (30%) of the appraised value of the security offered, unless the pawner manifests in writing that he is applying for a lesser amount. Pawnshops shall not under-appraise the security offered for the loan to circumvent the restriction prescribed by this Section.
(Circular No. 656 dated 02 June 2009)

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§ 4302P.1 *Sanctions*
(Deleted by Circular No. 711 dated 28 January 2011)

Sec. 4303P Interest and Surcharges. The rate of interest including surcharges on any loan or forbearance of money extended by a pawnshop shall not be subject to any ceiling. However, pursuant to a decision of the Supreme Court (case of Medel, et al vs Court of Appeals, GR No. 131622 dated 27 November 1998) the interest rate shall not be iniquitous, unconscionable, or contrary to morals, if not against the law as may be determined by the Court.
 No pawnshop shall collect interest on loans in advance for a period longer than the original term agreed upon as indicated in the pawn ticket.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4303P.1 Rate of interest in the absence of stipulation. The rate of interest for a loan or forbearance of money in the absence of an expressed contract as to such rate of interest, shall be twelve percent (12%) per annum.

(Circular No. 656 dated 02 June 2009)

§ 4303P.2 Other charges. In addition to interest, pawnshops may impose a maximum service charge of five pesos (P5.00), but in no case to exceed one percent (1%) of the principal loan. No other charges, such as but not limited to insurance premium for the safekeeping and conservation of the pawned item, shall be collected.

(Circular No. 656 dated 02 June 2009)

§ 4303P.3 Posting of interest rate and other charges. Pawnshops shall post conspicuously in its principal place of business and branches the interest rate in percent, specifying therein if such interest rate is yearly, monthly or daily, as well as the other charges, if any, to be charged by

the pawnshop. The poster shall not be smaller than 8.5 x 11 inches.

(Circular No. 656 dated 02 June 2009)

§ 4303P.4 *Sanctions*
(Deleted by Circular No. 711 dated 28 January 2011)

Sec. 4304P (Reserved)

Sec. 4305P Past Due Accounts; Renewal
 A loan may be renewed for such amount and period as may be agreed upon between the pawnshop and the pawner, subject to the same conditions provided in this Part for new loans.

No loan shall be renewed or its maturity date extended unless a new pawn ticket as defined in Sec. 4102P shall be issued indicating the new term of the loan agreed upon by the pawnshop and the pawner.

(Circular No. 656 dated 02 June 2009)

§ 4305P.1 Right of pawner to redeem pawn within ninety (90) days from maturity
 A pawner who fails to pay or renew his loan with a pawnshop on the date it falls due shall have ninety (90) days from the date of maturity of the loan within which to redeem the pawn by paying the principal amount of the loan plus the amount of interest that shall have accrued thereon. The amount of interest due and payable after the maturity date of the loan shall be computed upon redemption based on the sum of the principal loan and interest earned as of the date of maturity. The procedures to be followed in case the pawner fails to redeem his pawn are prescribed in Sec. 4324P.

If the maturity date of the loan or expiry date of redemption period falls on the pawnshop’s non-business day, a regular holiday or a special non-working holiday in the locality, then the maturity date of the loan or expiry date of redemption period shall be on the next business day.

If the pawnshop is closed on the maturity date of the loan or expiry of the

redemption period, with or without prior notice to the pawner, then the maturity date of the loan or expiry of redemption period shall be on the next business day and the pawnshop shall not charge additional interest or surcharge to the pawner.

If the pawnshop is closed due to a robbery, then the maturity date of the pledge or expiry of redemption period shall be on the next business day when the pawnshop opens for business and the pawnshop shall not charge additional interest or surcharge to the pawners.

(Circular No. 656 dated 02 June 2009)

§ 4305P.2 Sanctions

(Deleted by Circular No. 711 dated 28 January 2011)

Sec. 4306P Interest Accrual on Past Due Loans. Interest income on past due loans arising from discount amortization (and not from the contractual interest of the account) shall be accrued as provided in PAS 39.

(Circular No. 656 dated 02 June 2009)

Secs. 4307P - 4320P (Reserved)

B. LOAN COLLATERAL/SECURITY

Sec. 4321P Acceptable Security and Safekeeping of Pawns. Only personal property that is capable of being physically delivered to the control and possession of the pawnshop shall be accepted as security for loans. Certain specified chattels, such as guns, knives, or similar weapons, whose reception in pawn is expressly prohibited by other laws, decrees, or regulations, shall not be accepted by pawnshops as security for loans.

Except for bulky pawns, pawns shall be placed in a tamper-proof sealed plastic envelop or bag which must be kept inside the safe or concrete vault. Bulky pawns

may be placed outside the safe or vault but within the pawnshop premises. All pawns, except those which are kept inside the vault or safe, must be insured against fire.

Pawnshop owners shall be liable for any pawned item lost or destroyed arising out of their negligence, fault, delay in delivery or willful violation of the loan agreement.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

Sec. 4322P Redemption of Pawns. A pawnshop shall not release any pawn without first requiring the pawner to present and surrender the corresponding pawn ticket. If the pawn ticket was lost and could not be presented or surrendered, the pawnshop shall require the owner-pawner to execute and submit an affidavit of loss and shall ascertain the identity of the pawner, to ensure that the pawned item is released only to the owner-pawner.

The pawnshop shall return the pawn in the same condition when they were first pawned by pawner, upon full settlement of the loan.

(Circular No. 656 dated 02 June 2009)

§ 4322P.1 Sanctions

(Deleted by Circular No. 711 dated 28 January 2011)

Sec. 4323P Pawn Ticket¹. Pawnshops shall at the time of the loan, deliver to each pawner a pawn ticket which shall contain the following:

- a. The business/registered name, address, telephone number, tax identification number, business days and hours, of the pawnshop. The business name indicated in the pawn ticket shall be in accordance with the provision of Subsec. 4181P.2;
- b. Name of pawner;
- c. Pawner’s residential address;

¹ A pawnshop may use pawn tickets bearing a rubber-stamp of its registered and trade name on the pawn ticket until 30 June 2011. Starting 01 July 2011, all pawnshops shall only use pre-printed pawn tickets in accordance with these rules.

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- d. Pawner’s contact number;
- e. Date the loan was granted;
- f. Amount of the principal loan and net proceeds;
- g. Interest rate in percent, indicating if daily, monthly or annually;
- h. Interest in absolute amount;
- i. Service charge in amount;
- j. Penalty interest in percent, if any;
- k. Appraised value of pawn;
- l. Period of maturity;
- m. Description of the pawn;
- n. Expiry date of the redemption period;
- o. Signature of the pawnshop’s authorized representative;
- p. Signature or thumbmark of the pawner; and
- q. ID presented.

No other document or instrument shall be used/issued by a pawnshop for any loan granted by it to a pawner/borrower.
(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4323P.1 Stipulations in pawn ticket
The contents of the standard pawn ticket, prescribed for pawnshops pursuant to the requirements of P.D. No. 114, and the “Standard Terms and Conditions” thereof, are in *Appendices P-4* (front) and *P-4a* (back).

Additional stipulations/information enumerated under Appendix P-4b, which pawnshops may wish to incorporate in their pawn tickets, may be included without prior approval from the BSP.

The font size for the stipulations at the back of the pawn ticket shall not be smaller than “Arial Narrow 8”. Additional stipulations which may be included at the back of the pawn ticket shall also be printed in the prescribed font size.

Pawn ticket shall not be smaller than 8 inches x 5 inches. The size of the pawn

ticket may have to be larger to accommodate additional stipulations that should also be printed not smaller than “Arial Narrow 8”.

Pawn tickets shall at least be in duplicate. The first copy shall contain the word “Original” which shall be given to the pawner when the loan is granted and surrendered upon redemption of pawn, while the second copy shall be marked “Duplicate” which shall remain on file with the pawnshop.

Pawn tickets shall be serially numbered. Pawnshops may choose the color or quality of the paper used as pawn ticket.
(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4323P.2 Sanctions
(Deleted by Circular No. 711 dated 28 January 2011)

Sec. 4324P Notices to the Pawner and to the Public

a. On or before the expiration of the ninety (90)-day grace period a pawnshop shall notify a pawner in writing that the pawn shall be sold or otherwise disposed of in the event the pawner fails to redeem the pawn within the ninety (90)-day grace period, specifying in the same notification the date, hour and place where the sale shall take place.

The notice shall be sent through the mode of notification agreed upon by the pawner and the pawnshop as indicated at the back of the pawn ticket at the time the loan was granted which may be through text/SMS message, electronic mail, fax or by mail to the residential address. If sent through text/SMS, the pawnshop shall obtain a report from the appropriate Telecommunications Company (TELCO) indicating that a text/SMS message was sent to the mobile phone number given by the pawner. The report of the TELCO shall be made available to BSP upon request.

In case no specific mode of notification is agreed upon and indicated at the back of the pawn ticket, the mode of notification shall be by ordinary mail. Pawnshops shall exert reasonable effort to notify the pawner and put on record if it is unable to do so. Pawnshops shall maintain proof of the notice to pawner.

b. If upon the expiration of the ninety (90)-day grace period, the pawner fails to redeem his pawn, the pawnshop may sell or dispose of the pawn only after it has published a notice of public auction of unredeemed articles held as security for loans in at least two (2) newspapers circulated in the city or municipality where the pawnshop has its place of business, six (6) days prior to the date set for the public auction.

The notice shall be in English, and in either Filipino or the local dialect and shall contain the following:

- a. Name and address of the owner of the pawnshop; and
- b. Date, hour and place of the auction sale.

In remote areas where newspapers are neither published nor circulated, the publication requirement shall be complied with by posting notices at the city hall or municipal building of the city or municipality and in two (2) other conspicuous public places where the pawnshop has its place of business.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4324P.1 **Poster.** Pawnshops shall post conspicuously at the principal place of business and branches an abstract (*Appendix P-8*) which shall be not be smaller than 8.5 x 11 inches.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

§ 4324P.2 **Sanctions**

(Deleted by Circular No. 711 dated 28 January 2011)

Sec. 4325P **Public Auction of Pawns.** No pawnshop shall sell or otherwise dispose of any article or thing received as security for a loan except by public auction at any of the following places:

- a. Pawnshop’s place of business; or
- b. Any public place within the territorial limits of the municipality or city where the pawnshop conducts its business.

The auction shall be conducted under the control and direction of a duly licensed auctioneer. In cities and municipalities where there is no duly licensed auctioneer, the public auction may be conducted by a notary public of the city or province where the pawnshop has its place of business.

The Auction Sheet/Book containing entries of auctioned pawned articles duly signed by the auctioneer or notary public under oath shall be maintained by the pawnshop.

(Circular No. 656 dated 02 June 2009)

§ 4325P.1 **Auction of pawned items covered by a single pawn ticket.** If one (1) pawn ticket covers two (2) or more pledged articles, and only one of the articles was sold during the auction, the pawnshop shall allocate the loan value for each article based on their appraised value.

(Circular No. 656 dated 02 June 2009)

Secs. 4326P - 4335P (Reserved)

C. - J. (RESERVED)

Secs. 4336P - 4395P (Reserved)

K. MISCELLANEOUS

Secs. 4396P - 4398P (Reserved)

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Sec. 4399P General Provisions on Sanctions. Unless otherwise provided, violations of any provision hereof may subject a pawnshop, its proprietor, directors, trustees, partners, president, managers or officers-in-charge, where applicable, to sanctions which may include the following:

- a. warning/reprimand;
- b. suspension of AOR/AO;
- c. suspension of branching privilege;
- d. disqualification of proprietor, partner, director, president, manager or officer-in-charge;
- e. monetary penalty not to exceed P1,000.00 per violation, per office, per day; and
- f. revocation of AOR/AO.

The imposition of the above sanctions is without prejudice to whatever legal action the BSP may pursue under Section 18 of P.D. No. 114 (Pawnshop Regulations Act), and other applicable

laws against the pawnshop, its proprietor, partners, incorporators, stockholders, directors, president and officers.

A pawnshop whose AOR/AO is suspended or revoked shall be reported to the Office of the Mayor of the concerned city or municipality, for appropriate action. It is understood that in case the AOR of a head office is revoked, the AO of all branches of said pawnshop are likewise revoked.

Any pawnshop that is found operating as a foreign exchange dealer/ money changer and/or remittance agent that does not have a COR issued by the BSP for such activity is considered operating such activities illegally and shall be reported to the Office of the Mayor in accordance with the rules above.

(Circular No. 656 dated 02 June 2009, as amended by Circular No. 711 dated 28 January 2011)

PART FOUR

Sections 4401P - 4499P (Reserved)

PART FIVE

Sections 4501P - 4599P (Reserved)

PART SIX
MISCELLANEOUS

A. (RESERVED)

Sections 4601P - 4640P (Reserved)

Sec. 4641P Electronic Services. The guidelines concerning electronic activities as may be applicable, are found in Sec. 4701Q and its Subsections.
(Circular No. 649 dated 09 March 2009)

Sec. 4642P Issuance and Operations of Electronic Money. The following guidelines shall govern the issuance of electronic money (e-money) and the operations of electronic money issuers (EMIs).
(Circular No. 649 dated 09 March 2009)

§ 4642P.1 Declaration of policy. It is the policy of the BSP to foster the development of efficient and convenient retail payment and fund transfer mechanisms in the Philippines. The availability and acceptance of e-money as a retail payment medium will be promoted by providing the necessary safeguards and controls to mitigate the risks associated in an e-money business.
(Circular No. 649 dated 09 March 2009)

§ 4642P.2 Definitions

E-money shall mean monetary value as represented by a claim on its issuer, that is:

- a. electronically stored in an instrument or device;
- b. issued against receipt of funds of an amount not lesser in value than the monetary value issued;
- c. accepted as a means of payment by persons or entities other than the issuer;
- d. withdrawable in cash or cash equivalent; and

- e. issued in accordance with this Section.

Electronic money issuer shall be classified as follows:

- a. Banks (hereinafter called EMI-Bank);
- b. NBFIs supervised by the BSP (hereinafter called EMI-NBFI); and
- c. Non-bank institutions registered with the BSP as a monetary transfer agent under Sec. 4511N of the MORNBFIs (hereinafter called EMI-Others).

For purposes of this Section:

- a. *Electronic instruments or devices* shall mean cash cards e-wallets accessible via mobile phones or other access device, stored value cards, and other similar products.
- b. E-money issued by QBs shall not be considered as deposits.

(Circular No. 649 dated 09 March 2009)

§ 4642P.3 Prior Bangko Sentral approval. Pawnshops planning to be an EMI-NBFI shall comply with the requirements of Sec. 4632P and Sec. 4190Q, when applicable.
(Circular No. 649 dated 09 March 2009)

§ 4642P.4 Common provisions. The following provisions are applicable to all EMIs:

- a. E-money instrument issued shall be subject to aggregate monthly load limit of P100,000 unless a higher amount has been approved by BSP. In case an EMI issues several e-money instruments to a person (e-money holder), the total amount loaded in all the e-money instruments shall be consolidated in determining compliance with the aggregate monthly load limit;
- b. EMIs shall put in place a system to maintain accurate and complete record of e-money instruments issued, the identity

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of e-money holders, and the individual and consolidated balances thereof. The system must have the capability to monitor the movement of e-money transactions and link e-money instruments issued to common e-money holders. The susceptibility of a system to intentional or unintentional misreporting of transactions and balances shall be sufficient ground for imposition by the BSP of sanctions, as may be applicable.

c. E-money may only be redeemed at face value. It shall not earn interest nor rewards and other similar incentives convertible to cash, nor be purchased at a discount. E-money is not considered a deposit hence it is not insured with the PDIC.

d. EMIs shall not ensure that e-money instruments clearly identify the issuer who is ultimately responsible to the e-money holders. This shall be communicated to the client who shall acknowledge the same in writing.

e. It is the responsibility of EMIs to ensure that their distributors/e-money agents comply with all applicable requirements of the Anti-Money Laundering laws, rules and regulations.

f. EMIs shall provide an acceptable redress mechanism to address the complaints of its customers.

g. EMIs shall disclose in writing and its customers shall signify agreement to the information embodied in Item “c” above upon their participation in the e-money system. In addition, it shall provide clear guidance in English and Filipino on consumers’ right of redemption, including conditions and fees for redemption, if any. Information on available redress procedures for complaints together with the address and contact information of the issuer shall also be provided.

h. Prior to the issuance of e-money, EMIs should ensure that the following minimum systems and controls are in place:

(1) Sound and prudent management, administrative and accounting procedures and adequate internal control mechanisms;

(2) Properly-designed computer systems which are thoroughly tested prior to implementation;

(3) Appropriate security policies and measures intended to safeguard the integrity, authenticity and confidentiality of data and operating processes;

(4) Adequate business continuity and disaster recovery plan; and

(5) Effective audit function to provide periodic review of the security control environment and critical systems.

i. EMIs shall provide the SDC quarterly statements containing, among others, information on investments, volume of transactions, total outstanding e-money balances, and liquid assets in such forms as may be prescribed later on.

j. EMIs shall notify BSP in writing of any change or enhancement in the e-money facility thirty (30) days prior to implementation. If said change or enhancement requires prior BSP approval, the same shall be evaluated accordingly. Any change or enhancement that shall expand the scope or change the nature of the e-money instrument shall be subject to prior approval of the Deputy Governor, SES. These changes or enhancements may include the following:

(1) Additional capabilities of the e-money instrument/s, like access to new channels (e.g. inclusion of internet channel in addition to merchant Point of Sale terminals);

(2) Change in technology service providers and other major partners in the e-money business (excluding partner merchants), if any; and

(3) Other changes or enhancements.

(Circular No. 649 dated 09 March 2009)

§ 4642P.5 Quasi-bank license requirement. EMI-NBFIs and EMI-Others that engage in lending activities must secure a quasi-banking license from the BSP.

(Circular No. 649 dated 09 March 2009)

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§ 4642P.6 **Sanctions.** Monetary penalties and other sanctions for the following violations committed by EMI-NBFIs shall be imposed:

Nature of Violation/ Exception	Sanction/Penalties
1. Issuing e-money without prior BSP approval	Applicable penalties under Sections 36 & 37 of R.A. No. 7653; Watchlisting of owners/partners/principal officers
2. Violation of any of the provisions of R.A. No. 9160 (Anti-Money Laundering Law of 2001 as amended by R.A.No. 9194) and its implementing rules and regulations	Applicable penalties prescribed under the Act
3. Violation/s of this Section	Penalties and sanctions under the abovementioned laws and other applicable laws, rules and regulations

In addition, the susceptibility of a system to intentional or unintentional misreporting of transactions and balances shall be sufficient ground for appropriate BSP action or imposition of sanctions, whenever applicable.

(Circular No. 649 dated 09 March 2009)

§ 4642P.7 **Transitory provisions.** An EMI-NBFI granted an authority to issue e-money prior to 26 March 2009 may continue to exercise such authority: *Provided*, That it shall submit to the BSP, within one (1) month from the 26 March 2009 a certification signed by the President or Officer with equivalent rank and function that it is in compliance with all the applicable requirements of this Section.

Otherwise, they are required to submit within the same period the measures they will undertake, with the corresponding timelines, to conform to the provisions that they have not complied with subject to BSP approval.

(Circular No. 649 dated 09 March 2009)

§§ 4642P.8 - 4642P.10 (Reserved)

§ 4642P.11 **Outsourcing of services by Electronic Money Issuers (EMIs) to Electronic Money Network Service Providers (EMNSP).** The guidelines on outsourcing of services by EMIs to EMNSP are shown in *Appendix Q-55*.

Sanctions. Violations committed by EMIs pertaining to outsourcing activities to EMNSP shall be subject to monetary penalties as graduated under *Appendix Q-39* and/or other non-monetary sanctions under Section 37 of RA No. 7653.

Transitory provisions. EMIs that were granted an authority to outsource their e-money activities to an EMNSP may continue to exercise such authority provided that they have to conform to the provisions of *Appendix Q-55* within a six-month period from 20 January 2011.

(Circular 704 dated 22 December 2010)

Secs. 4643P - 4650P (Reserved)

B. SUNDRY PROVISIONS

Sec. 4651P Supervisory Powers of the Bangko Sentral. The head of the appropriate department of the SES and his duly designated representatives are authorized to conduct an examination, inspection, or investigation of books, records, business affairs, administration, and financial condition of any pawnshop, whenever said official deems it necessary for the effective implementation of P.D. No. 114, and other

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pertinent rules and regulations. Said official and his duly designated representatives may administer oaths to any director, officer, or employee of the pawnshop.

If, upon such examination, inspection, or investigation, the official or his deputies shall establish that the pawnshop is violating or is not complying with the requirements of P.D. No. 114 and of the provisions of other pertinent rules and regulations, said official shall immediately inform the Monetary Board of his findings and recommendations, and the Monetary Board shall take appropriate action to stop such violation or non-compliance, and punish the pawnshop and/or the persons responsible.

Any business establishment which represents itself as a pawnshop and/or regularly grants loans against pawns/ collaterals physically delivered to the establishment or is suspected to be a pawnshop may be subject to the visitatorial authority of the BSP to determine whether the establishment is engaged in the business of a pawnshop or in pawnbrokering.

Any establishment that is found to be operating as a pawnshop illegally shall be reported to the office of the city or municipal mayor where the establishment is located, for appropriate action, without prejudice to whatever legal action that the BSP may take against the owners and operators of the establishment.

(Circular No. 656 dated 02 June 2009)

§ 4651P.1 Refusal to permit examination. 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 and

the act of refusing to present pawnshop’s vital records referred to in Sec. 4102P upon request by any officer/examiner/employee of the BSP.

(Circular No. 656 dated 02 June 2009)

§ 4651P.2 Sanctions

(Deleted by Circular No. 711 dated 28 January 2011)

Secs. 4652P - 4656P (Reserved)

Sec. 4657P Batas Pambansa Blg. 344 - An Act to Enhance the Mobility of Disabled Persons by Requiring Certain Buildings, Institutions, Establishments and Public Utilities to Install Facilities and Other Devices. In order to promote the realization of the rights of disabled persons to participate fully in the social life and the development of the societies in which they live and the enjoyment of the opportunities available to other citizens, no license or permit for the construction, repair or renovation of public and private buildings for public use, educational institutions, airports, sports and recreation centers and complexes, shopping centers or establishments, public parking places, workplaces, public utilities, shall be granted or issued unless the owner or operator thereof shall install and incorporate in such building, establishment or public utility, such architectural facilities or structural features as shall reasonably enhance the mobility of disabled persons such as sidewalks, ramps, railings and the like. If feasible, all such existing buildings, institutions, establishments, or public utilities may be renovated or altered to enable the disabled persons to have access to them.

(Circular No. 656 dated 02 June 2009)

Secs. 4658P - 4690P (Reserved)

Sec. 4691P Anti-Money Laundering Regulations. Banks, OBUs, QBs, trust entities, NSSLAs, pawnshops, FX dealers, money changers, remittance agents, electronic money issuers and other FIs which under special laws are subject to BSP supervision and/or regulation, including their subsidiaries and affiliates shall comply with the provisions of Part 8 of Q Regulations, R.A. No. 9160 (Anti-Money Laundering Act of 2001), as amended, and its IRR.

(Circular No. 656 dated 02 June 2009, as amended by Circular Nos. 706 dated 05 January 2011 and 661 dated 01 September 2009)

§ 4691P.1 Required seminar/training

Pawnshop personnel directly involved in pawnshop operations shall attend a seminar on the requirements of the anti-money laundering law, particularly on customer identification, record keeping and reporting of covered and suspicious transactions, to be conducted by the Anti-Money Laundering Council (AMLC) or by any of its recognized accredited service providers. The provisions of this subsection shall also apply to officer(s) of the branch(es).

The officer(s) in-charge and the personnel who have attended the required seminar may echo the said training to all employees within thirty (30) calendar days from such attendance or as new employees are hired.

In case of pawnshops belonging to the same group of related companies, the training/seminars may be cascaded to other pawnshops within the group, subject to the following conditions:

- (1) training officers shall have attended the AMLA lectures conducted by the AMLC;
- (2) lecture materials to be used by training officers should be approved by the AML Examination Group of the BSP; and
- (3) training officers shall submit to the BSP, the list, under oath, of pawnshop personnel who have attended the lectures.

(Circular No. 656 dated 02 June 2009)

§ 4691P.2 Anti-money laundering program. Every pawnshop is required to formulate a Money Laundering and Terrorist Financing Prevention Program as provided in Part 8 of Q Regulations.

(Circular No. 656 dated 02 June 2009, as amended by Circular Nos. 711 dated 28 January 2011 and 706 dated 05 January 2011)

§§ 4691P.3 - 4691P.8 (Reserved)

§ 4691P.9 Sanctions and penalties

(Deleted by Circular No. 711 dated 28 January 2011)

Secs. 4692P - 4698P (Reserved)

Sec. 4699P Administrative Sanctions

(Deleted by Circular No. 711 dated 28 January 2011)

CHART OF ACCOUNTS AND DESCRIPTION
OF LOAN REGISTER OF PAWNSHOPS
(Appendix to Sec. 4161P)

- A. *General Ledger*. The General Ledger is the controlling record of all subsidiary ledger accounts. The general ledger accounts shall be grouped as follows:
- (1) *Assets* - Asset accounts shall consist of the following:
- (a) Cash on hand and in banks;
 - (b) Pledge loans;
 - (c) Land;
 - (d) Building;
 - (e) Furniture and fixtures;
 - (f) Office equipment;
 - (g) Leasehold improvements;
 - (h) Investment in securities; and
 - (i) Other assets.
- Other assets* shall include all assets not included in any of the above classification, such as prepaid expenses, advances, accounts receivables.
- (2) *Liabilities* - Liabilities represent obligations of the pawnshop, such as:
- (a) Loans payable;
 - (b) Accounts payable; and
 - (c) Other liabilities.
- Other liabilities* are liabilities not included in the above classification, such as SSS premiums and medicare, tax withheld, accruals.
- (3) *Capital* - Capital at the end of the year is the excess of assets over liabilities, or the sum of paid-in capital, surplus or retained earnings accounts and net income for the year. The accounts under this group shall consist of the following:
- (a) Capital/capital stock;
 - (b) Drawings;
 - (c) Retained earnings; and
 - (d) Net income for the year.
- (4) *Income* - This account represents the "general ledger control" account for all income of the pawnshop. An "Income Subsidiary Ledger" shall be maintained and the total of this ledger shall equal the balance of "Income Control" account of the general ledger at all times.
- The "Income Subsidiary Ledger" shall contain the following accounts:
- (a) Interests - pledge loans;
 - (b) Service charges;
 - (c) Gain or loss at auction sale;
 - (d) Interests on securities; and
 - (e) Other income
- (5) *Expenses* - The expenses account shall include the following:
- (a) Salaries and allowances;
 - (b) Interest on borrowed money;
 - (c) Rental;
 - (d) Depreciation;
 - (e) Light and water;
 - (f) Taxes and licenses;
 - (g) SSS contribution;
 - (h) Costs of telephone, postage and/or telegram;
 - (i) Stationery and/or supplies; and
 - (j) Miscellaneous expenses.
- B. *Registers*. The following registers shall be maintained to trace loan transactions.
- (1) *Loans Extended Register* - Every pawnbroker shall keep a "Loans Extended Register" in which shall be entered in ink, at the time of each loan or pledge transaction, an accurate account and description in English, with corresponding translation in the local dialect, the following minimum data:
- (a) Date of transaction;
 - (b) Number of pawn ticket;

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- (c) Amount of money loaned or principal;
- (d) Rate of interest to be paid, in percent;
- (e) Service charge collected;
- (f) Description of pawn;
- (g) Appraised value of pawn;
- (h) Name of pawner;
- (i) Address of pawner;
- (j) Description of the pawner, including:
 - (i) Nationality;
 - (ii) Sex; and
 - (iii) General appearance; and
- (k) Signature or thumbmark of the pawner and the name of the pawner written by and signature of the witness to the thumbmarking.

(2) *Loans Paid Register* - A "Loans Paid Register" shall be maintained in which shall be entered in ink, the principal and interest

payments of loans. It shall contain the following minimum data:

- (a) Date of payment;
- (b) Number of pawn ticket;
- (c) Name of pawner;
- (d) Principal amount;
- (e) Amount of interest paid; and
- (f) Signature or thumbmark of the pawner and the name of the pawner written by and signature of the witness to the thumbmarking.

A pawnshop that uses a computerized system may record its loan transactions in individual loan extended vouchers which shall contain the same information enumerated above in lieu of the loan extended and loans paid registers. Such pawnshops shall periodically compile or bind the loan extended vouchers and shall be made available for BSP examination upon request.

(As amended by Circular No. 656 dated 02 June 2009)

LIST OF REPORTS REQUIRED FROM PAWNSHOPS (Appendix to Sec. 4162P)						
<u>Category</u>	<u>Form No.</u>	<u>MOR Ref.</u>	<u>Report Title</u>	<u>Frequency</u>	<u>Deadline of Submission</u>	<u>Other Instructions/Requirements</u>
B	BSP 7-26-01.1C	4165P	General Information Sheet (for corporation)	Annually	5 days from submission to SEC	To be submitted to SEC within 30 calendar days from the date of annual stockholders' meeting.
A-2	BSP 7-26-02C	4161P (As amended by CL-079 dated 12.17.09)	Statement of Condition (SOC)	-do-	January 31	To be submitted to Supervisory Data Center (SDC). For pawnshops with branches, the SOC shall be submitted on a consolidated basis (i.e., head office plus branches) together with a list of all its branches in the report. Branches are not required to submit individual reports.
A-3	BSP 7-26-03C	4161P (As amended by CL-079 dated 12.17.09)	Statement of Income and Expenses	-do-	-do-	do-
B	Unnumbered (no prescribed form)	4164P	Audited Financial Statement (AFS) for the previous year ended prepared by an external auditor together with actions taken on the financial audit report	-do-	June 30 of the following reference calendar year	To be submitted to appropriate supervising and examining department. For pawnshops with assets of P50 million and above, the AFS shall be prepared by independent external auditors that are in the list of accredited external auditors of the SEC, Office of the Insurance Commissioner or in the list of BSP-selected external auditors.

Category	Form No.	MOR Ref.	Report Title	Frequency	Deadline of Submission	Other Instructions/Requirements
B	Unnumbered	4163P	Report on Crimes/Losses	As crime or incident occurs	See Appendix P-2a for guidelines on reporting crimes and losses	
A-2	Unnumbered	4691P	Report on Suspicious Transactions	As transaction occurs	10th business day from date of transaction/ knowledge	To be submitted to the Anti-Money Laundering Council
A-2	Unnumbered	4691P	Report on Covered Transactions	-do-	-do-	-do-
A-3	Unnumbered	4162P (CL-059 dated 11.28.07 and CL-050 dated 10.04.07)	Report on Borrowings of BSP Personnel	Quarterly	15 banking days after end of reference quarter	Original-SDC
B	Forms I and II Schedule 1	M-031 dated 09.11.09 and Cir. No. 649 dated 03.09.09	Report on Electronic Money Transactions Quarterly Statement of E-Money Balances and Activity - Volume and Amount of E-Money Transactions Quarterly Statement of Liquidity Cover Schedules 1 - E- Money Balances	-do-	-do-	e-mail - sdcothers-emoney@bsp.gov.ph hard copy - SDC

REPORTING GUIDELINES ON CRIMES/LOSSES
(Annex to App. P-2)

1. Pawnshops shall report on the following matters through the appropriate department of the SES:

a. Crimes whether consummated, frustrated or attempted against pawned articles/property/facilities (such as robbery, theft, swindling or estafa, forgery and other deceits) and other crimes involving loss/destruction of pawn/property of the pawnshop: *Provided*, That if no pawned article is involved, the amount involved in each crime is P20,000 or more.

Crimes involving the pawnshop personnel, regardless of whether or not such crimes involve the loss/destruction of pawned articles/property of the pawnshop, even if the amount involved is less than those above specified, shall likewise be reported to the BSP.

b. Incidents involving material loss, destruction or damage to the institution's pawned articles/property/facilities, other

than arising from a crime: *Provided*, That if no pawned article is involved, the amount involved per incident is P20,000 or more.

2. The following guidelines shall be observed in the preparation and submission of the report.

a. The report shall be prepared in two (2) copies and shall be submitted within ten (10) business days from knowledge of the crime or incident, the original to the appropriate department of the SES and the duplicate to the BSP Security Coordinator, thru the Director, Security Investigation and Transport Department.

b. Where a thorough investigation and evaluation of facts is necessary to complete the report, an initial report submitted within the ten (10) business day deadline may be accepted: *Provided*, That a complete report is submitted not later than fifteen (15) business days from termination of investigation.

(As amended by Circular No. 656 dated 02 June 2009)
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**GUIDELINES ON PRESCRIBED REPORTS SIGNATORIES
AND SIGNATORY AUTHORIZATION**
(Appendix to Subsec. 4162P.1)

Category A-1 reports shall be signed by the 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 by officers holding equivalent positions. The designated signatories in this category, including their specimen signatures, shall be contained in a resolution approved by the board of directors in the format prescribed in *Annex P-3-a*.

Category A-2 reports of head offices shall be signed by the president, executive vice-presidents, vice-presidents or officers holding equivalent positions. Such reports of other offices/units (such as branches) shall be signed by their respective managers/officers in-charge. Likewise, the signing authority in this category shall be contained in a resolution approved by the board of directors in the format prescribed in *Annex P-3-b*.

Categories A-3 and B reports shall be signed by officers or their alternates, who

shall be duly designated in a resolution approved by the board of directors in the format as prescribed in *Annex P-3-c*.

Copies of the board resolutions on the report signatory designations shall be submitted to the appropriate department of the SES within three (3) days from the date of resolution.

In the case of pawnshops organized as single proprietorship or partnership, the reports shall be signed by the proprietor or managing partner, as the case may be, in place of chief executive officer or president. Other signatories shall be authorized by the proprietor/managing partner in a letter of authority to be submitted to the appropriate department of the SES indicating the names, positions and specimen signatures of the designated signatories as well as the reports they are to sign.

(As amended by Circular No. 656 dated 02 June 2009)

FORMAT OF RESOLUTION FOR SIGNATORIES OF CATEGORY A-1 REPORTS

Resolution No. _____

Done in the City of _____ Philippines, this _____ day of _____, 20____.

CHAIRMAN OF THE BOARD

DIRECTOR

DIRECTOR

DIRECTOR

DIRECTOR

DIRECTOR

DIRECTOR

ATTESTED BY:

CORPORATE SECRETARY

(As amended by Circular No. 656 dated 02 June 2009)

FORMAT OF RESOLUTION FOR SIGNATORIES OF CATEGORY A-2 REPORTS

Resolution No. _____

Whereas, it is required under Subsec. 4162P.1 of the revised Manual of Regulations for Non-Bank Financial Institutions - Pawnshops, that Category A-2 reports be signed by the president, executive vice-presidents, vice-presidents or officer holding equivalent position, and that such reports of other offices be signed by the respective manager/officers-in-charge;

Whereas, it is also required that aforesaid officers of the institution be authorized under a resolution duly approved by the institution's Board of Directors;

Whereas, we, the members of the Board of Directors of _____ (Name of Pawnshop) _____, are conscious that, in designating the officials who would sign said Category A-2 reports, we are actually empowering and authorizing said officers to represent and act for or in behalf of the Board of Directors in particular and _____ (Name of Pawnshop) _____ in general;

Whereas, this Board has full faith and confidence in the Institution's President (and/or the Executive Vice-President, etc., as the case may be) and, therefore, assumes responsibility for all the acts which may be performed by aforesaid officers under their delegated authority;

Now, therefore, we, the members of the Board of Directors, resolve, as it is hereby resolved that:

Name of Officer	Specimen Signature	Position Title	Report No.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

are hereby authorized to sign the Category A-2 reports of _____ (Name of Pawnshop) _____.

Done in the City of _____ Philippines, this _____ day of _____, 20____.

CHAIRMAN OF THE BOARD

DIRECTOR

DIRECTOR

DIRECTOR

DIRECTOR

DIRECTOR

DIRECTOR

ATTESTED BY:

CORPORATE SECRETARY

(As amended by Circular No. 656 dated 02 June 2009)

FORMAT OF RESOLUTION FOR SIGNATORIES OF CATEGORIES
A-3 AND B REPORTS

Resolution No. _____

Whereas, it is required under Subsec. 4162P.1 of the revised BSP Manual of Regulations for Non-Bank Financial Institutions (Pawnshops), that Categories A-3 and B reports be signed by officers or their alternates;

Whereas, it is also required that aforesaid officers of the institution be authorized under a resolution duly approved by the institution's Board of Directors;

Whereas, we the members of the Board of Directors of _____ (Name of Pawnshop) _____, are conscious that, in designating the officials who would sign said Categories A-3 and B reports, we are actually empowering and authorizing said officers to represent and act for or in behalf of the Board of Directors in particular and _____ (Name of Pawnshop) _____ in general;

Whereas, this Board has full faith and confidence in the Institution's Chief Executive Officer, Executive Vice-President, Comptroller, and Chief Accountant , as the case may be, and , therefore, assumes responsibility for all the acts which may be performed by aforesaid officers under their delegated authority;

Now, therefore, we, the members of the Board of Directors, resolve, as it is hereby resolved that:

<u>Name of Authorized Signatory/Alternate</u>	<u>Specimen Signature</u>	<u>Position Title</u>	<u>Report No.</u>
1. Authorized (Alternate)			
2. Authorized (Alternate)			

are hereby authorized to sign the Category A-3 and B reports of _____ (Name of Pawnshop) _____.

Done in the City of _____, Philippines, this _____ day of _____, 20____.

CHAIRMAN OF THE BOARD

_____ DIRECTOR	_____ DIRECTOR
_____ DIRECTOR	_____ DIRECTOR
_____ DIRECTOR	_____ DIRECTOR

ATTESTED BY:

CORPORATE SECRETARY

(As amended by Circular No. 656 dated 02 June 2009)

STANDARD PAWN TICKET
(Appendix to Subsec. 4323P.1)

BUSINESS/REGISTERED NAME
Address
Taxpayer Identification Number
Business Days and Hours

Serial No.:001	Original
Principal	Amount of Loan
Interes in absolute amount ¹	Date Loan Granted
Service Charge in amount	Maturity Date
Net Proceeds	Expiry Date of Redemption
	Interest Rate in percent: _____
	Please check:
	Per annum <input type="checkbox"/> Per Month <input type="checkbox"/> Per Day <input type="checkbox"/>
	Penalty interest in percent, if any

¹ Formula (Principal x Rate x Time)

Description of the Pawn	Appraised Value

Information on the Pawner			
Name		Sex	
Complete Residential Address		Date of Birth	
Telephone/mobile phone No.		Nationality	
E-mail address, if any:		Height	
Preferred Mode of notification: Please check		Weight	
<input type="checkbox"/> Mail to above address	<input type="checkbox"/> Text/SMS	<input type="checkbox"/> E-Mail	ID Presented

TERMS AND CONDITIONS OF STANDARD PAWN TICKET

1. The pawner hereby accepts the pawnshop’s appraisal as proper.
2. The pawnshop hereby agrees not to collect advance interest for a period of more than one (1) year.
3. The service charge is equivalent to one percent (1%) of the principal loan, but shall not exceed five pesos (P5.00). No other charges shall be collected.
4. This loan is renewable for such amount and period as may be agreed upon between the pawnshop and the pawner subject to the same requirements for a new loan.
5. Upon maturity of this loan, as indicated above, the pawner still has ninety (90) days from maturity date within which to redeem the pawn by paying the principal loan plus the interest that shall have accrued thereon.
6. The amount of interest due and payable after the maturity date of the loan up to the redemption period shall be computed upon redemption at the rate of interest provided

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- above based on the sum of the principal loan and interest earned as of the date of maturity. Any additional penalty and/or interest shall also be computed in the same manner.
7. The pawnshop shall notify the pawner of any change in its business address/location.
 8. The pawner shall advise the pawnshop of any change of address/contact number/ e-mail address.
 9. The pawnshop shall send a reminder to the pawner in the preferred mode of notification given above, or at the new address/mobile phone number or e-mail address, if such was provided by the pawner before the expiration of the ninety (90) day grace period. The pawnshop shall have the right to sell or dispose of the pawn if the pawner fails to redeem it within the ninety (90) day grace period.
 10. This ticket shall be surrendered at maturity date upon payment of the loan. In case of loss or destruction of this ticket, the pawner hereby undertakes to personally present an affidavit to the pawnshop before the redemption period expires. The pawnshop has two (2) days to decide whether to accept (1) the affidavit in place of the original pawn ticket; or (2) to issue a substitute pawn ticket, thereby cancelling the original.
 11. The pawner shall not assign, sell or in any other way alienate the pawn securing this loan without prior written consent of the pawnshop. If the pawnshop agrees, the terms and conditions of this contract remain enforceable.
 12. In case of pre-payment of this loan by pawner, the interest collected in advance shall accrue in full to the pawnshop.
 13. The pawner shall not be entitled to the excess of the public auction sale price over the amount of principal, interest and service fee; neither shall the pawnshop be entitled to recover the deficiency from the pawner.

(Signature or Thumbmark)
Pawner

(Signature)
Pawnshop's Authorized Representative

(As amended by Circular 656 dated 02 June 2009)

FORMAT OF STATEMENT OF UNDERSTANDING ON
PAWNSHOP TRANSACTION
(Appendix to Subsec. 4323P.1)

(Business Name of Pawnshop)

STATEMENT OF UNDERSTANDING

I ACKNOWLEDGE THAT I UNDERSTAND AND FULLY AGREE TO THE TERMS AND
CONDITIONS OF THIS CONTRACT OF PLEDGE/PAWNSHOP TRANSACTION, AND
TO THE FOLLOWING:

- 1. **Agreement as to Interest Rates.** The parties are generally free to agree in writing on the interest rates to be imposed in loans secured by pledge/pawned properties. In case of dispute, the regular courts of law have the vested power to determine the reasonableness and legality of interest rates.
- 2. **Degree of Diligence Required of a Pawnshop.** In accordance with Republic Act No. 386, as amended, the Civil Code of the Philippines, pawnshops shall take care of the thing pawned by exercising reasonable care and caution that an ordinary prudent person would as to his own property.
 - a. **Accountability in case of Fire.** The office building/premises and all pawns in the pawnshop, except those which are kept inside a fireproof vault, are insured against fire in accordance with the pertinent regulations of the Bangko Sentral ng Pilipinas (BSP). The amount of indemnity shall be dependent on the insurance policy agreement between the pawnshop and the insurance company.
 - b. **Accountability in case of robbery and other fortuitous events.** Any claim for restitution by pawners in case of loss, destruction or defect of the pawn due to robbery and other fortuitous event, with or without the fault or negligence of the pawnshop, its officers and directors, are cognizable by the regular courts.

I DECLARE UNDER THE PENALTY OF THE ANTI-FENCING LAW THAT I AM THE
OWNER OF THE PROPERTY SUBJECT OF THIS AGREEMENT.

(Signature of Pawner over Printed Name)
Date: _____

(As amended by Circular No. 656 dated 02 June 2009)

STANDARD ADDITIONAL STIPULATIONS IN PAWN TICKETS
(Appendix to Subsec. 4323P.1)

On Face of Pawn Ticket

1. Member: Chamber of Pawnbrokers of the Philippines

On Reverse Side of Pawn Ticket

1. I hereby authorize M_____, whose signature appears below, to redeem (or renew¹) my pawn covered by this pawn ticket.

Signature of Representative
(Signed in the presence of pawner)

Signature of Pawner

Received by: _____
Pawner/Authorized Representative
(Signed in the presence of pawnshop owner/employee)

2. Pinahihintulutan ko si G_____, na may lagda sa ibaba, para tubusin (o mapanibago*) ang aking sangla na binanggit sa papel na ito.

Lagda ng Kinatawan
(Nilagdaan sa harap ng nagsangla)

Lagda ng Nagsangla

Tinatanggap ko ang bagay/mga bagay na binanggit sa papel na ito:

Lagda ng Tumanggap

3. Received the article(s) in the same condition when pawned and redeemed.

Pawner

4. Acknowledgment: I hereby declare that the above-mentioned article(s) are my personal property and are free from liens and encumbrances.

Pawner

¹ As pawnshop may opt to allow/include in the pawn ticket.

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5. Venue of all judicial and administrative cases or proceedings and other legal incidents arising out of or in connection with this contract shall solely and exclusively be brought before appropriate courts, departments, offices or agencies of the government situated in (locality of pawnshop head office).
6. The authorized representative must present valid identification papers.
7. Upon expiration of the redemption period, the pawnshop has the right to open the sealed pawn for purposes of public auction.
8. For purposes of computing the amount of interest for pledge loans paid after maturity date, a fraction of (less than) a month shall be considered as one whole month.
9. Any one of the following:
 - a. In case this loan is not paid on maturity date, the pawner hereby agrees to pay in addition to accrued interest, two percent (2%) per month of the principal, as liquidated damages. For purposes of computing the amount of liquidated damages, a fraction of a month shall be considered as one (1) full month.
 - b. The pawnshop may at its sole option, allow redemption of pawn after expiration of the 90-day grace period. Provided the pawner shall pay the principal plus interest due at the rate prescribed herein and liquidated damages of two percent (2%) per month on the principal, counted after grace period. For purposes of computing the amount of liquidated damages, a fraction of a month shall be considered as one (1) full month.
 - c. In case this loan is not paid on maturity date, the pawner hereby agrees to pay in addition to accrued interest, two percent (2%) per month of the principal, as liquidated damages. For purposes of computing the amount of liquidated damages, a fraction of a month shall be considered as one (1) full month. The pawnshop may, at its sole option, allow redemption of pawn after expiration of the 90-day grace period upon payment by the pawner of the loan principal plus interest due and liquidated damages at the rates and manner of computation herein prescribed.
10. The pawner shall hereby notify the pawnshop of his/her intention to redeem the pawn twenty-four (24) hours prior to actual redemption.

(As amended by Circular No. 656 dated 02 June 2009)

STIPULATIONS NOT ALLOWED IN STANDARD PAWN TICKETS
(Appendix to Subsec. 4323P.1)

- 1. Advertisements such as “highest appraisal in town, dependable, honest”, or other similar terms.
- 2. Facsimile signature of authorized pawnshop representative.
- 3. “Terms and conditions accepted and payment received.”
- 4. “By ordinary or registered mail” in standard Term and Condition No. 9.
- 5. “Letter of authorization”, as title of third-party redemption/authorization feature.
- 6. Additional features such as “demand for receipt”, “authorized by the Bangko Sentral ng Pilipinas” and heading of ticket as “pawnshop receipt”.

(As amended by Circular No. 656 dated 02 June 2009)

ANTI-MONEY LAUNDERING REGULATIONS
(Appendix to Section 4691P)

(Deleted pursuant to Circular No. 706 dated 05 January 2011)

CERTIFICATION OF COMPLIANCE
WITH ANTI-MONEY LAUNDERING REGULATIONS

(Deleted pursuant to Circular No. 706 dated 05 January 2011)

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AMLC Resolution No. 292

**RULES ON SUBMISSION OF COVERED TRANSACTION REPORTS AND
SUSPICIOUS TRANSACTION REPORTS BY COVERED INSTITUTIONS**

(Deleted pursuant to Circular No. 706 dated 05 January 2011)

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**REVISED IMPLEMENTING RULES AND REGULATIONS
R.A. NO. 9160, AS AMENDED BY R.A. NO. 9194
(Appendix to Sec. 4691P)**

(Deleted pursuant to Circular No. 706 dated 05 January 2011)

“Know-Your-Pawner” Policy
(Appendix to Subsection 4301P.3)

A pawner who transacts with a pawnshop for the first time shall be required to present the original and submit a clear copy of at least one (1) valid photo-bearing identification document (ID) issued by an official authority.

The valid ID should indicate the pawner’s residential address, otherwise, he she is also required to present the original and submit a clear copy of a certification from the barangay where the pawner resides or a billing statement that indicates his/her residential address.

Valid IDs include the following:

- Passport, including those issued by foreign governments;
- Driver’s License;
- Professional Regulation Commission (PRC) ID;
- National Bureau of Investigation (NBI) Clearance;
- Police Clearance;
- Postal ID;
- Voter’s ID;
- Tax Identification Number,
- Barangay Certification;
- Government Service Insurance System (GSIS) e-Card;
- Social Security System (SSS) Card;
- Senior Citizen Card;
- Overseas Workers Welfare Administration (OWWA) ID;
- OFW ID;

- Seaman’s Book;
- Alien Certification of Registration/ Immigrant Certificate of Registration;
- Government Office and GOCC ID, [e.g. Armed Forces of the Philippines (AFP ID), Home Development Mutual Fund (HDMF ID)];
- Certification from the National Council for the Welfare of Disabled Persons (NCWDP);
- Department of Social Welfare and Development (DSWD) Certification;
- Integrated Bar of the Philippines (IBP) ID;
- Company IDs issued by private entities or institutions registered with or supervised or regulated either by the Bangko Sentral ng Pilipinas, Securities and Exchange Commission or Insurance Commission.

Where the customer or authorized signatory is a non-Philippine resident, similar IDs duly issued by the foreign government where the customer is a resident or a citizen may be presented.

The copy of the ID, barangay certificate or billing statement shall be kept by the pawnshop for convenience of the pawner who continues to transact with the pawnshop but said documents should be updated at least every three (3) years.

(As amended by Circular Nos. 706 dated 05 January 2011, 656 dated 02 June 2009)

ABSTRACT OF “SECTION 13 AND 14 OF P.D. NO. 114”
(PAWNSHOP REGULATION ACT)
(Appendix to Subsection 4324P.1)

Redemption of Pawn Items

A pawner who fails to pay his obligation has ninety (90) days from maturity date to redeem the pawn by paying the principal and interest.

Disposition of Unredeemed Pawn Items

- Unredeemed pawn items shall be sold/disposed of only through public auction;
- Pawner shall be notified of the public auction at least thirty (30) days before the expiration of the ninety (90)-day grace period through his/her preferred mode of notification;
- The notice to pawner shall contain the date, hour and place where the public auction shall be conducted;

- A pawnshop shall publish a notice of public auction in at least two newspapers circulated in the city or municipality where the pawnshop has its place of business six (6) days prior to the date of public auction. In remote areas where newspapers are neither published nor circulated, notice by newspaper publication shall be complied with by posting notices at the city or municipal hall and in two (2) other conspicuous public places where the pawnshop has its place of business;
- Pawner may participate in the said public auction.

(Circular No. 656 dated 02 June 2009)

**GUIDELINES TO GOVERN THE SELECTION, APPOINTMENT, REPORTING
REQUIREMENTS AND DELISTING OF EXTERNAL AUDITORS AND/OR
AUDITING FIRM OF COVERED ENTITIES
(Appendix to Sec. 4190P and Subsec. 4164P.4)**

Pursuant to Section 58 of the Republic Act No. 8791, otherwise known as "The General Banking Law of 2000", and the existing provisions of the executed Memorandum of Agreement (hereinafter referred to as the MOA) dated 12 August 2009, binding the Bangko Sentral ng Pilipinas (BSP), Securities and Exchange Commission (SEC), Professional Regulation Commission (IC) - Board of Accountancy (BOA) and the Insurance Commission (IC) for a simplified and synchronized accreditation requirements for external auditor and/or auditing firm, the Monetary Board, in its Resolution No. 950 dated 02 July 2009, approved the following revised rules and regulations that shall govern the selection and delisting by the BSP of covered institution which under special laws are subject to BSP supervision.

A. STATEMENT OF POLICY

It is the policy of the BSP to ensure effective audit and supervision of banks, QBs, trust entities and/or NSSLAs including their subsidiaries and affiliates engaged in allied activities and other FIs which under special laws are subject to BSP supervision, and to ensure reliance by BSP and the public on the opinion of external auditors and auditing firms by prescribing the rules and regulations that shall govern the selection, appointment, reporting requirements and delisting for external auditors and auditing firms of said institutions, subject to the binding provisions and implementing regulations of the aforesaid MOA.

B. COVERED ENTITIES

The proposed amendment shall apply to the following supervised institution, as categorized below, and their external auditors:

1. *Category A*
 - a. UBs/KBs;
 - b. Foreign banks and branches or subsidiaries of foreign banks, regardless of unimpaired capital; and
 - c. Banks, trust department of qualified banks and other trust entities with additional derivatives authority, pursuant to Sec. X611 regardless of classification, category and capital position.
2. *Category B*
 - a. TBs;
 - b. QBs;
 - c. Trust department of qualified banks and other trust entities;
 - d. National Coop Banks; and
 - e. NBFIs with quasi-banking functions.
3. *Category C*
 - a. RBs;
 - b. NSSLAs;
 - c. Local Coop Banks; and
 - d. Pawnshops.

The above categories include their subsidiaries and affiliates engaged in allied activities and other FIs which are subject to BSP risk-based and consolidated supervision: *Provided*, That an external auditor who has been selected by the BSP to audit covered entities under *Category A* is automatically qualified to audit entities under *Category B* and *C* and if selected by the BSP to audit covered entities under *Category B* is automatically qualified to audit entities under *Category C*.

C. DEFINITION OF TERMS

The following terms shall be defined as follows:

1. *Audit* – an examination of the financial statements of any issuer by an external auditor in compliance with the rules of the BSP or the SEC in accordance with then applicable generally accepted auditing and accounting principles and standards, for the purpose of expressing an opinion on such statements.

2. *Non-audit services* – any professional services provided to the covered institution by an external auditor, other than those provided to a covered institution in connection with an audit or a review of the financial statements of said covered institution.

3. *Professional Standards* - includes: (a) accounting principles that are (1) established by the standard setting body; and (2) relevant to audit reports for particular issuers, or dealt with in the quality control system of a particular registered public accounting firm; and (b) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards that the BSP or SEC determines (1) relate to the preparation or issuance of audit reports for issuers; and (2) are established or adopted by the BSP or promulgated as SEC rules.

4. *Fraud* – an intentional act by one (1) or more individuals among management, employees, or third parties that results in a misrepresentation of financial statements, which will reduce the consolidated total assets of the company by five percent (5%). It may involve:

- a. Manipulation, falsification or alteration of records or documents;
- b. Misappropriation of assets;
- c. Suppression or omission of the effects of transactions from records or documents;

d. Recording of transactions without substance;

e. Intentional misapplication of accounting policies; or

f. Omission of material information.

5. *Error* - an intentional mistake in financial statements, which will reduce the consolidated total assets of the company by five percent (5%). It may involve:

a. Mathematical or clerical mistakes in the underlying records and accounting data;

b. Oversight or misinterpretation of facts; or

c. Unintentional misapplication of accounting policies.

6. *Gross negligence* - wanton or reckless disregard of the duty of due care in complying with generally accepted auditing standards.

7. *Material fact/information* - any fact/information that could result in a change in the market price or value of any of the issuer’s securities, or would potentially affect the investment decision of an investor.

8. *Subsidiary* - 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 a bank, QB, trust entity, NSSLA or pawnshop.

9. *Affiliate* - a corporation, not more than fifty percent (50%) but not less than ten percent (10%) of the outstanding voting stock of which is directly or indirectly owned, controlled or held with power to vote by a bank, QB, trust entity, NSSLA or pawnshop and a juridical person that is under common control with the bank, QB, trust entity, NSSLA or pawnshop.

10. *Control* - exists when the parent owns directly or indirectly 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; or
- d. Power to cast the majority votes at meetings of the board of directors or equivalent governing body.

11. *External auditor* - means a single practitioner or a signing partner in an auditing firm.

12. *Auditing firm* – includes a proprietorship, partnership limited liability company, limited liability partnership, corporation (if any), or other legal entity, including any associated person of any of these entities, that is engaged in the practice of public accounting or preparing or issuing audit reports.

13. *Associate* – any director, officer, manager or any person occupying a similar status or performing similar functions in the audit firm including employees performing supervisory role in the auditing process.

14. *Partner* - all partners including those not performing audit engagements.

15. *Lead partner* – also referred to as engagement partner/partner-in-charge/managing partner who is responsible for signing the audit report on the consolidated financial statements of the audit client, and where relevant, the individual audit report of any entity whose financial statements form part of the consolidated financial statements.

16. *Concurring partner* - the partner who is responsible for reviewing the audit report.

17. *Auditor-in-charge* – refers to the team leader of the audit engagement.

D. GENERAL CONSIDERATION AND LIMITATIONS OF THE SELECTION PROCEDURES

1. Subject to mutual recognition provision of the MOA and as implemented in this regulation, only external auditors and auditing firms included in the list of BSP selected external auditors and auditing firms shall be engaged by all the covered institutions detailed in Item "B". The external auditor and/or auditing firm to be hired shall also be in-charge of the audit of the entity's subsidiaries and affiliates engaged in allied activities: *Provided*, That the external auditor and/or auditing firm shall be changed or the lead and concurring partner shall be rotated every five (5) years or earlier: *Provided further*, That the rotation of the lead and concurring partner shall have an interval of at least two (2) years.

2. Category A covered entities which have engaged their respective external auditors and/or auditing firm for a consecutive period of five (5) years or more as of 18 September 2009 shall have a one (1)-year period from said date within which to either change their external auditors and/or auditing firm or to rotate the lead and/or concurring partner.

3. The selection of the external auditors and/or auditing firm does not exonerate the covered institution or said auditors from their responsibilities. Financial statements filed with the BSP are still primarily the responsibility of the management of the reporting institution and accordingly, the fairness of the representations made therein is an implicit and integral part of the institution's responsibility. The independent certified public accountant's responsibility for the financial statements required to be filed with the BSP is confined to the expression of his opinion,

or lack thereof, on such statements which he has audited/examined.

4. The BSP shall not be liable for any damage or loss that may arise from its selection of the external auditors and/or auditing firm to be engaged by banks for regular audit or non-audit services.

5. Pursuant to paragraph (5) of the MOA, SEC, BSP and IC shall mutually recognize the accreditation granted by any of them for external auditors and firms of Group C or D companies under SEC, Category B and C under BSP, and insurance brokers under IC. Once accredited/selected by any one (1) of them, the above-mentioned special requirements shall no longer be prescribed by the other regulators.

For corporations which are required to submit financial statements to different regulators and are not covered by the mutual recognition policy of this MOA, the following guidance shall be observed:

a. The external auditors of UBs which are listed in the Exchange, should be selected/accredited by both the BSP and SEC, respectively; and

b. For insurance companies and banks that are not listed in the Exchange, their external auditors must each be selected/accredited by BSP or IC, respectively. For purposes of submission to the SEC, the financial statements shall be at least audited by an external auditor registered/accredited with BOA.

This mutual recognition policy shall however be subject to the BSP restriction that for banks and its subsidiary and affiliate bank, QBs, trust entities, NSSLAs, their subsidiaries and affiliates engaged in allied activities and other FIs which under special laws are subject to BSP consolidated supervision, the individual and consolidated financial statements thereof shall be audited by only one (1) external auditor/auditing firm.

6. The selection of external auditors and/or auditing firm shall be valid for a period of three (3) years. The SES shall make an annual assessment of the performance of external auditors and/or auditing firm 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.

E. QUALIFICATION REQUIREMENT

The following qualification requirements are required to be met by the individual external auditor and the auditing firm at the time of application and on continuing basis, subject to BSP's provisions on the delisting and suspension of accreditation:

- 1. Individual external auditor
 - a. General requirements

(1) The individual applicant must be primarily accredited by the BOA. The individual external auditor or partner in-charge of the auditing firm must have at least five (5) years of audit experience.

- (2) Auditor's independence.

In addition to the basic screening procedures of BOA on evaluating auditor's independence, the following are required for BSP purposes to be submitted in the form of notarized certification that:

(a) No external auditor may be engaged by any of the covered institutions under Item "B" hereof if he or any member of his immediate family had or has committed to acquire any direct or indirect financial interest in the concerned covered institution, or if his independence is considered impaired under the circumstances specified in the Code of Professional Ethics for CPAs. In case of a partnership, this limitation shall apply to the partners, associates and the auditor-in-charge of the engagement and members of their immediate family;

(b) The external auditor does not have/ shall not have outstanding loans or any

credit accommodations or arranged for the extension of credit or to renew an extension of credit (except credit card obligations which are normally available to other credit card holders and fully secured auto loans and housing loans which are not past due) with the covered institutions under Item "B" at the time of signing the engagement and during the engagement. In the case of partnership, this prohibition shall apply to the partners and the auditor-in-charge of the engagement; and

(c) It shall be unlawful for an external auditor to provide any audit service to a covered institution if the covered institution's CEO, CFO, Chief Accounting Officer (CAO), or comptroller was previously employed by the external auditor and participated in any capacity in the audit of the covered institution during the one-year preceding the date of the initiation of the audit;

(3) Individual applications as external auditor of entities under *Category A* above must have established adequate quality assurance procedures, such consultation policies and stringent quality control, to ensure full compliance with the accounting and regulatory requirements.

b. Specific requirements

(1) At the time of application, regardless of the covered institution, the external auditor shall have at least five (5) years experience in external audits;

(2) The audit experience above refers to experience required as an associate, partner, lead partner, concurring partner or auditor-in-charge; and

(3) At the time of application, the applicant must have the following track record:

(a) For *Category A*, he/she must have at least five (5) corporate clients with total assets of at least P50.0 million each.

(b) For *Category B*, he/she must have had at least three (3) corporate clients with total assets of at least P25.0 million each.

(c) For *Category C*, he/she must have had at least three (3) corporate clients with total assets of at least P5.0 million each;

2. Auditing firms

a. The auditing firm must be primarily accredited by the BOA and the name of the firm's applicant partner's should appear in the attachment to the certificate of accreditation issued by BOA. Additional partners of the firm shall be furnished by BOA to the concerned regulatory agencies (e.g. BSP, SEC and IC) as addendum to the firm's accreditation by BOA.

b. Applicant firms to act as the external auditor of entities under *Category A* in Item "B" must have established adequate quality assurance procedures, such consultation policies and stringent quality control, to ensure full compliance with the accounting and regulatory requirements.

c. At the time of application, the applicant firm must have at least one (1) signing practitioner or partner who is already selected/accredited, or who is already qualified and is applying for selection by BSP.

d. A registered accounting/auditing firm may engage in any non-auditing service for an audit client only if such service is approved in advance by the client's audit committee. Exemptions from the prohibitions may be granted by the Monetary Board on a case-by-case basis to the extent that such exemption is necessary or appropriate in the public interest. Such exemptions are subject to review by the BSP.

e. At the time of application, the applicant firm must have the following track record:

(1) For *Category A*, the applicant firm must have had at least twenty (20) corporate clients with total assets of at least P50.0 million each;

(2) For *Category B*, the applicant firm must have had at least five (5) corporate clients with total assets of at least P20.0 million each;

(3) For *Category C*, the applicant firm must have had at least five (5) corporate clients with total assets of at least P5.0 million each.

F. APPLICATION FOR AND/OR RENEWAL OF THE SELECTION OF INDIVIDUAL EXTERNAL AUDITOR

1. The initial application for BSP selection shall be signed by the external auditor and shall be submitted to the appropriate department of the SES together with the following documents/information:

- a. Copy of effective and valid BOA Certificate of Accreditation with the attached list of qualified partner/s of the firm;
- b. A notarized undertaking of the external auditor that he is in compliance with the qualification requirements under Item "E" and that the external auditor shall keep an audit or review working papers for at least seven (7) years in sufficient detail to support the conclusion in the audit report and making them available to the BSP's authorized representative/s when required to do so;
- c. Copy of Audit Work Program which shall include assessment of the audited institution's compliance with BSP rules and regulations, such as, but not limited to the following:

- (1) capital adequacy ratio, as currently prescribed by the BSP;
- (2) AMLA framework;
- (3) risk management system, particularly liquidity and market risks; and
- (4) loans and other risk assets review and classification, as currently prescribed by the BSP rules and regulations.

d. If the applicant will have clients falling under *Category A*, copy of the Quality Assurance Manual which, aside from the basic elements as required under the BOA basic quality assurance policies and procedures, specialized quality assurance procedures should be provided consisting of, among other, review asset quality,

adequacy of risk-based capital, risk management systems and corporate governance framework of the covered entities.

e. Copy of the latest AFS of the applicant's two (2) largest clients in terms of total assets.

2. Subject to BSP's provision on early deletion from the list of selected external auditor, the selection may be renewed within two (2) months before the expiration of the three (3)-year effectivity of the selection upon submission of the written application for renewal to the appropriate department of the SES together with the following documents/information:

- (a) copy of updated BOA Certificate of Accreditation with the attached list of qualified partner/s of the firm;
- (b) notarized certification of the external auditor that he still possess all qualification required under Item "F.1.b" of this Appendix;
- (c) list of corporate clients audited during the three (3)-year period of being selected as external auditor by BSP. Such list shall likewise indicate the findings noted by the BSP and other regulatory agencies on said AFS including the action thereon by the external auditor; and
- (d) written proof that the auditor has attended or participated in trainings for at least thirty (30) hours in addition to the BOA's prescribed training hours. Such training shall be in subjects like international financial reporting standards, international standards of auditing, corporate governance, taxation, code of ethics, regulatory requirements of SEC, IC and BSP or other government agencies, and other topics relevant to his practice, conducted by any professional organization or association duly recognized/accredited by the BSP, SEC or by the BOA/PRC through a CPE Council which they may set up.

The application for initial or renewal accreditation of an external auditor shall be accomplished by a fee of P2,000.00.

G. APPLICATION FOR AND/OR RENEWAL OF THE SELECTION OF AUDITING FIRMS

1. The initial application shall be signed by the managing partner of the auditing firm and shall be submitted to the appropriate department of the SES together with the following documents/information:

- a. copy of effective and valid BOA Certificate of Accreditation with attachment listing the names of qualified partners;
- b. notarized certification that the firm is in compliance with the general qualification requirements under Item "E.2" and that the firm shall keep an audit or review working papers for at least seven (7) years insufficient detail to support the conclusions in the audit report and making them available to the BSP's authorized representative/s when required to do so;
- c. copy of audit work program which shall include assessment of the audited institution's compliance with BSP rules and regulations, such as, but not limited to the following:
 - (1) capital adequacy ratio, as currently prescribed by the BSP;
 - (2) AMLA framework;
 - (3) risk management system, particularly liquidity and market risks; and
 - (4) loans and other risk assets review and classification, as currently prescribed by the BSP rules and regulations.

d. If the applicant firm will have clients falling under *Category A*, copy Quality Assurance Manual where, aside from the basic elements as required under the BOA basic quality assurance policies and procedures, specialized quality assurance procedures should be provided relative to, among others review asset quality, adequacy of risk-based capital, risk management systems and corporate governance framework of covered entities;

e. Copy of the latest AFS of the applicant's two (2) largest clients in terms of total assets; and

f. Copy of firm's AFS for the immediately preceding two (2) years.

2. Subject to BSP's provision on early deletion from the list of selected auditing firm, the selection may be renewed within two (2) months before the expiration of the three (3)-year effectivity of the selection upon submission of the written application for renewal to the appropriate department of the SES together with the following documents/information:

- a. a copy of updated BOA Certificate of Registration with the attached list of qualified partner/s of the firm;
- b. amendments on Quality Assurance Manual, inclusive of written explanation on such revision, if any; and
- c. notarized certification that the firm is in compliance with the general qualification requirements under Item "G.1.b" hereof;

The application for initial or renewal accreditation of an auditing firm shall be accompanied by a fee of P5,000.00.

H. REPORTORIAL REQUIREMENTS

1. To enable the BSP to take timely and appropriate remedial action, the external auditor and/or auditing firm must report to the BSP within thirty (30) calendar days after discovery, the following cases:

- a. Any material finding involving fraud or dishonesty (including cases that were resolved during the period of audit);
- b. Any potential losses the aggregate of which amounts to at least one percent (1%) of the capital;
- c. Any finding to the effect that the consolidated assets of the company, on a going concern basis, are no longer adequate to cover the total claims of creditors; and

d. Material internal control weaknesses which may lead to financial reporting problems.

2. The external auditor/auditing firm shall report directly to the BSP within fifteen (15) calendar days from the occurrence of the following:

a. Termination or resignation as external auditor and stating the reason therefor;

b. Discovery of a material breach of laws or BSP rules and regulations such as, but not limited to:

(1) CAR; and

(2) Loans and other risk assets review and classification.

c. Findings on matters of corporate governance that may require urgent action by the BSP.

3. In case there are no matters to report (e.g. fraud, dishonesty, breach of laws, etc.) the external auditor/auditing firm shall submit directly to BSP within fifteen (15) calendar days after the closing of the audit engagement a notarized certification that there is none to report.

The management of the covered institutions, including its subsidiaries and affiliates, shall be informed of the adverse findings and the report of the external auditor/auditing firm to the BSP shall include pertinent explanation and/or corrective action.

The management of the covered institutions, including its subsidiaries and affiliates, shall be given the opportunity to be present in the discussions between the BSP and the external auditor/auditing firm regarding the audit findings, except in circumstances where the external auditor believes that the entity's management is involved in fraudulent conduct.

It is, however, understood that the accountability of an external auditor/auditing firm is based on matters within

the normal coverage of an audit conducted in accordance with generally accepted auditing standards and identified non-audit services.

I. DELISTING AND SUSPENSION OF SELECTED EXTERNAL AUDITOR/AUDITING FIRM

1. An external auditor's duly selected pursuant to this regulation shall be suspended or delisted, in a manner provided under this regulation, under any of the following grounds:

a. Failure to submit the report under Item "H" of this Appendix or the required reports under Subsec. X190.1;

b. Continuous conduct of audit despite loss of independence as provided under Item "E.1" or contrary to the requirements under the Code of Professional Ethics;

c. Any willful misrepresentation in the following information/documents;

(1) application and renewal for accreditation;

(2) report required under Item "H"; and

(3) Notarized certification of the external auditor and/or auditing firm.

d. The BOA found that, after due notice and hearing, the external auditor committed an act discreditable to the profession as specified in the Code of Professional Ethics for CPAs. In this case, the BOA shall inform the BSP of the results thereof;

e. Declaration of conviction by a competent court of a crime involving moral turpitude, fraud (as defined in the Revised Penal Code), or declaration of liability for violation of the banking laws, rules and regulation, the Corporation Code of the Philippines, the Securities Regulation Code (SRC); and the rules and regulations of concerned regulatory authorities;

f. Refusal for no valid reason, upon lawful order of the BSP, to submit the requested documents in connection with an ongoing investigation. The external auditor should however been made aware of such investigation;

g. Gross negligence in the conduct of audits which would result, among others, in non-compliance with generally accepted auditing standards in the Philippines or issuance of an unqualified opinion which is not supported with full compliance by the auditee with generally accepted accounting principles in the Philippines (GAAP). Such negligence shall be determined by the BSP after proper investigation during which the external auditor shall be given due notice and hearing;

h. Conduct of any of the non-audit services enumerated under Item "E.1" for his statutory audit clients, if he has not undertaken the safeguards to reduce the threat to his independence; and

i. Failure to comply with the Philippine Auditing Standards and Philippine Auditing Practice Statements.

2. An auditing firms; accreditation shall be suspended or delisted, after due notice and hearing, for the following grounds:

a. Failure to submit the report under Item "H" or the required reports under Sec. X190.1.

b. Continuous conduct of audit despite loss of independence of the firm as provided under this regulation and under the Code of Professional Ethics;

c. Any willful misrepresentation in the following information/ documents;

(1) Application and renewal for accreditation;

(2) Report required under Item "H"; and

(3) Notarized certification of the managing partner of the firm.

d. Dissolution of the auditing firm/ partnership, as evidenced by an Affidavit of Dissolution submitted to the BOA, or upon findings by the BSP that the firm/partnership is dissolved. The accreditation of such firm/ partnership shall however be reinstated by the BSP upon showing that the said dissolution was solely for the purpose of admitting new partner/s have complied with the requirements of this regulation and thereafter shall be reorganized and re-registered;

e. There is a showing that the accreditation of the following number or percentage of external auditors, whichever is lesser, have been suspended or delisted for whatever reason, by the BSP:

(1) at least ten (10) signing partners and currently employed selected/accredited external auditors, taken together; or

(2) such number of external auditors constituting fifty percent (50%) or more of the total number of the firm's signing partners and currently selected/accredited auditors, taken together.

f. The firm or any one (1) of its auditors has been involved in a major accounting/ auditing scam or scandal. The suspension or delisting of the said firm shall depend on the gravity of the offense or the impact of said scam or scandal on the investing public or the securities market, as may be determined by the BSP;

g. The firm has failed reasonably to supervise an associated person and employed auditor, relating to the following:

(1) auditing or quality control standards, or otherwise, with a view to preventing violations of this regulations;

(2) provisions under SRC relating to preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto;

(3) the rules of the BSP under this Appendix; or

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(4) professional standards.

h. Refusal for no valid reason, upon order of the BSP, to submit requested documents in connection with an ongoing investigation. The firm should however be made aware of such investigation.

3. Pursuant to paragraph 8 of the aforesaid MOA, the SEC, BSP and IC shall inform BOA of any violation by an accredited/selected external auditor which may affect his/her accreditation status as a public practitioner. The imposition of sanction by BOA on an erring practitioner shall be without prejudice to the appropriate penalty that the SEC, IC or BSP may assess or impose on such external auditor pursuant to their respective rules and regulations. In case of revocation of accreditation of a public practitioner by BOA, the accreditation by SEC, BSP and IC shall likewise be automatically revoked/derecognized.

The SEC, BSP and IC shall inform each other of any violation committed by an external auditor who is accredited/selected by any one (1) or all of them. Each agency shall undertake to respond on any referral or endorsement by another agency within ten (10) working days from receipt thereof.

4. Procedure and Effects of Delisting/ Suspension.

a. An external auditor/auditing firm shall only be delisted upon prior notice to him/it and after giving him/it the opportunity to be heard and defend himself/itself by presenting witnesses/ evidence in his favor. Delisted external auditor and/or auditing firm may re-apply for BSP selection after the period prescribed by the Monetary Board.

b. BSP shall keep a record of its proceeding/investigation. Said proceedings/investigation shall not be public, unless otherwise ordered by the Monetary Board for good cause shown,

with the consent of the parties to such proceedings.

c. A determination of the Monetary Board to impose a suspension or delisting under this section shall be supported by a clear statement setting forth the following:

(1) Each act or practice in which the selected/accredited external auditor or auditing firm, or associated entry, if applicable, has engaged or omitted to engage, or that forms a basis for all or part of such suspension/delisting;

(2) The specific provision/s of this regulation, the related SEC rules or professional standards which the Monetary Board determined as has been violated; and

(3) The imposed suspension or delisting, including a justification for either sanction and the period and other requirements specially required within which the delisted auditing firm or external auditor may apply for re-accreditation.

d. The suspension/delisting, including the sanctions/penalties provided in Sec. X189 shall only apply to:

(1) Intentional or knowing conduct, including reckless conduct, that results in violation or applicable statutory, regulatory or professional standards; or

(2) Repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory or professional standards.

e. No associate person or employed auditor of a selected/accredited auditing firm shall be deemed to have failed reasonably to supervise any other person for purpose of Item "1.2.g" above, if:

(1) There have been established in and for that firm procedures, and a system for applying such procedures, that comply with applicable rules of BSP and that

would reasonably be expected to prevent and detect any such violation by such associated person; and

(2) Such person or auditor has reasonably discharged the duties and obligations incumbent upon that person by reason of such procedures and system, and had no reasonable cause to believe that such procedures and system were not being complied with.

f. The BSP shall discipline any selected external auditor that is suspended or delisted from being associated with any selected auditing firm, or for any selected auditing firm that knew, or in the exercise or reasonable care should have known, of the suspension or delisting of any selected external auditor, to permit such association, without the consent of the Monetary Board.

g. The BSP shall discipline any covered institution that knew or in the exercise of reasonable care should have known, of the suspension or delisting of its external auditor or auditing firm, without the consent of the Monetary Board.

h. The BSP shall establish for appropriate cases an expedited procedure for consideration and determination of the question of the duration of stay of any such disciplinary action pending review of any disciplinary action of the BSP under this Section.

J. SPECIFIC REVIEW

When warranted by supervisory concern, the Monetary Board may, at the expense of the covered institution require the external auditor and/or auditing firm to undertake a specific review of a particular aspect of the operations of these institutions. The report shall be submitted to the BSP and the audited institution simultaneously,

within thirty (30) calendar days after the conclusion of said review.

K. AUDIT BY THE BOARD OF DIRECTORS

Pursuant to Section 58 of RA. No. 8791, otherwise known as “The General Banking Law of 2000” the Monetary Board may also direct the board of directors of a covered institution or the individual members thereof, to conduct, either personally or by a committee created by the board, an annual balance sheet audit of the covered institution to review the internal audit and the internal control system of the concerned entity and to submit a report of such audit to the Monetary Board within thirty (30) calendar days after the conclusion thereof.

L. AUDIT ENGAGEMENT

Covered institutions shall submit the audit engagement contract between them, their subsidiaries and affiliates and the external auditor/auditing firm to the appropriate department of the SES within fifteen (15) calendar days from signing thereof. Said contract shall include the following provisions:

- 1. That the covered institution shall be responsible for keeping the auditor fully informed of existing and subsequent changes to prudential regulatory and statutory requirements of the BSP and that both parties shall comply with said requirements;
- 2. That disclosure of information by the external auditor/auditing firm to the BSP as required under Items “H” and “J” hereof, shall be allowed; and
- 3. That both parties shall comply with all the requirements under this Appendix.

(As amended by Circular No. 660 dated 25 August 2009)

MANUAL OF REGULATIONS FOR NON-BANK FINANCIAL INSTITUTIONS

N REGULATIONS

(Regulations Governing Other Non-Bank Financial Institutions)

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BSP Manual of Regulations for Non-Bank Financial Institutions

N Regulations
(Regulations Governing Other Non-Bank Financial Institutions)

Section 4101N Applicable Regulations on Trust and Other Fiduciary Activities. Trust operations and investment management activities of NBFIs not performing quasi-banking functions shall be subject to the applicable regulations on such activities of NBFIs performing quasi-banking functions in Part IV of the Q Regulations of this Manual, to the regulations in the other parts of the Q Regulations addressed also to trust entities and to the regulations implementing the Truth in Lending Act in Sec. 4307Q.

§ 4101N.1 Sanctions. Pursuant to Section 91 of R.A. No. 8791, the Monetary Board may impose sanctions and monetary penalty for any violation of the provisions of Part IV of the Q Regulations, of the regulations in the other parts of the Q Regulations addressed also to trust entities, and of the regulations implementing the Truth in Lending Act in Sec. 4309Q. This is without prejudice to the imposition of other sanctions as the Monetary Board may consider warranted that may include the suspension or revocation of an institution’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. If the offender is a director or officer of the trust entity, the Monetary Board may also suspend or remove such director or officer. If the violation is committed by a corporation, such corporation may be dissolved by *quo warranto* proceedings instituted by the Solicitor General.

The guidelines for the imposition of monetary penalty shown in *Appendix Q-39*

shall govern the imposition of monetary penalty for violations/offenses with administrative sanctions falling under Section 37 of R.A. No. 7653 on NBFIs not performing quasi-banking functions, their directors and/or officers.

(Circular No. 673 dated 10 December 2009)

Sec. 4102N Minimum Capital for Investment Houses. Investment houses not performing quasi-banking functions shall also be subject to the minimum capital requirement in Sec. 4112Q of this Manual.

Sec. 4103N Prior Bangko Sentral Authority on Quasi-Banking Functions. Borrowing by NBFIs from twenty (20) or more lenders for the purpose of relending or purchase of receivables or other obligations, which constitutes quasi-banking functions, shall be subject to prior BSP authority on performance of quasi-banking functions under BSP regulations.

§ 4103N.1 Quasi-banking functions
Quasi-banking functions shall consist of the following:

- a. Borrowing funds for the borrower’s own account;
- b. Twenty (20) or more lenders at any one (1) time;
- c. Methods of borrowing: issuance, endorsement, or acceptance of debt instruments of any kind, other than deposits, such as:
 - (1) acceptances;
 - (2) promissory notes;
 - (3) participations;
 - (4) certificates of assignment or similar instruments with recourse;

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- (5) trust certificates;
- (6) repurchase agreements; and
- (7) such other instruments as the Monetary Board may determine; and
- d. Purpose:
 - (1) relending, or
 - (2) purchasing receivables or other obligations.

As used in the definition of *quasi-banking functions*, the following terms and phrases shall be understood as follows:

Borrowing shall refer to all forms of obtaining or raising funds through any of the methods and for any of the purposes provided in Item "c" and "d", above whether the borrower's liability thereby is treated as real or contingent.

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.

Purchasing of receivables or other obligations shall refer to the acquisition of claims collectible in money, including interbank borrowings or borrowings between FIs, or of securities, of any amount and maturity, from domestic or foreign sources.

Relending shall refer to the extension of loans by an institution with antecedent borrowing transactions. Relending shall be presumed in the absence of express stipulation, when the institution is regularly engaged in lending.

Regularly engaged in lending shall refer to the practice of extending loans, advances, discounts or rediscounts as a matter of business, i.e., continuous or consistent lending as distinguished from isolated lending transactions.

The following guidelines shall govern lender count on borrowings or funds mobilized by NBFIs not performing quasi-banking functions:

1. For purposes of ascertaining the number of lenders/placers to determine whether or not an NBFIs is engaged in quasi-banking functions, the names of

payees on the face of each debt instrument shall serve as the primary basis for counting the lenders/placers except when proof to the contrary is adduced such as the official receipts or documents other than the debt instrument itself. In such case the actual/real lenders/placers as appearing in such proof, shall be the basis for counting the number of lenders/placers.

In a debt instrument issued to two (2) or more named payees under an *and/or* and *or* arrangement, the number of payees appearing on the instrument shall be the basis for counting the number of lenders/placers: *Provided, however,* That a debt instrument issued in the name of a husband and wife followed by the word *spouses*, whether under an *and*, *and/or* or *or* arrangement or in the name of a designated payee under an *in trust for* (ITF) arrangement shall be counted as one borrowing/ placement.

2. Each debt instrument payable to bearer shall be counted as one (1) lender/ placer, except when the NBFIs can prove that there is only one (1) owner for several debt instruments so payable.

3. Two (2) or more debt instruments issued to the same payee, irrespective of the date and amount shall be counted as one (1) borrowing or placement.

4. Debt instruments underwritten by investment houses or traded by securities dealers/brokers whether on a firm, standby or best efforts basis shall be counted on the basis of the number or purchasers thereof and shall not be treated as having been issued solely to the underwriter or trader: *Provided, however,* That in case of unsold debt instruments in a firm commitment underwriting, the underwriter shall be counted as a lender.

5. Each buyer, assignee, and/or indorsee shall be counted in determining the number of lenders/placers of funds mobilized through sale, assignment, and/or indorsement of securities or

receivables on a without recourse basis whenever the terms and/or attendant documentation, practice, or circumstances indicate that the sale, assignment, and/or indorsement thereof legally obligates the NBFI not performing quasi-banking functions to repurchase or reacquire the securities/receivables sold, assigned, indorsed or to pay the buyer, assignee, or indorsee at some subsequent time.

6. Funds obtained by way of advances from stockholders, directors, or officers, regardless of nature, shall be considered borrowed funds or funds mobilized and such stockholders, directors or officers shall be counted in determining the number of lenders/placers.

§ 4103N.2 Transactions not considered quasi-banking. The following shall not constitute quasi-banking:

a. Borrowing by commercial, industrial and other non-financial companies, through the means listed in Subsec. 4103N.1 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. 4103N.1: *Provided*, That:

(1) The institution selling without recourse shall indicate or stamp in conspicuous print on the instrument/s, as well as on the confirmation of sale, the phrase *without recourse* or *sans recourse* and the following statement:

(Name of non-bank) assumes
no liability for the payment,
directly or indirectly, of
this instrument.

(2) In the absence of the phrase *without recourse* or *sans recourse* and the above-required accompanying statement, the instrument so issued, endorsed or accepted shall automatically be considered as falling within the purview of the rules on quasi-banking:

Provided, further, That any of the following practices or practices similar and/or tantamount thereto in connection with a without recourse transaction renders such transaction as with recourse and within the purview of the rules on quasi-banking.

(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;

(b) Issuance by a financial intermediary of any form of guaranty on sale transactions or on negotiations or assignment of debt instruments without recourse; or

(c) Payment with the funds of the 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.

Any investment house violating the provisions of this Subsection shall be subject to the sanctions provided in Sections 12 and 16 of P.D. No. 129, as amended.

§ 4103N.3 Delivery of securities

a. Securities sold *on a without recourse basis* allowed under Subsec. 4101Q.3 (b) 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 BSP accredited 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 an NBFI 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 NBFI, its subsidiaries or affiliates, or of securities in bearer form.

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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 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;

(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 Q-38.

Sanctions. Violation of any of the provisions of Appendix Q-38 shall be subject to the sanctions/penalties under Subsec. 4144N.29.

(As amended by Circular No. 714 dated 10 March 2011, M-2007-002 dated 23 January 2007, M-2006-009 dated 18 July 2006, M-2006-002 dated 05 June 2006 and Circular No. 524 dated 31 March 2006)

§ 4103N.4 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 the 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 entity, its subsidiaries or affiliates, or of securities in bearer form. Existing securities being held under custodianship by 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, 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 this Subsection 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 date of Circular 457 dated 14 October 2004);

(2) the dealing NBFIs 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. 4144N and its subsections shall also govern the securities custodianship and securities registry operations relative to the sale of securities on a without recourse basis.

(As amended by M-2006-009 dated 18 July 2006, M-2006-002 dated 05 June 2006 and Circular No. 524 dated 31 March 2006)

Sec. 4104N Anti-Money Laundering Regulations. Covered institutions, including their subsidiaries and affiliates, shall comply with the provisions of Part 8 of Q Regulations, R.A. No. 9160 [Anti-Money Laundering Act (AMLA) of 2001], as amended, and its Implementing Rules and Regulations (IRR).

(As amended by Circular Nos. 706 dated 05 January 2011 and 612 dated 13 June 2008)

§§ 4104N.1 - 4104N.8 (Reserved)

§ 4104N.9 Sanctions and penalties. The provisions of Part 8 of the Q Regulations on sanctions and penalties are applicable for violation of the provisions of the AMLA.

(As amended by Circular No. 706 dated 05 January 2011)

Secs. 4105N - 4109N (Reserved)

§§ 4109N.1 - 4109N.15 (Reserved)

§ 4109N.16 Qualification and accreditation of non-bank financial institutions acting as trustee on any mortgage or bond issuance by any municipality, GOCC, or any body politic

a. *Applicability.* NBFIs 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.* An NBFI 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 department of the SES. The application shall be signed by the president or officer of equivalent rank of the NBFI 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; and

(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.* An NBFI applying for accreditation to act as trustee on any mortgage or bond issued by any municipality, GOCC, or any body politic must comply with the requirements in Appendix N-6.

d. *Independence of the trustee.* An NBFI 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 NBFI that will allow him or his related interests to elect at least one (1) member of the board of directors of such NBFI 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 NBFI 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, GOCC, 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 (i) deposited in any bank authorized to accept deposits from the Government or government entities: *Provided*, That the depository bank is not a subsidiary or affiliate of the trustee NBF, or (ii) 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 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.* An NBF designated as trustee of any mortgage or bond issued by any municipality, GOCC, or any body politic shall submit to the appropriate department of the 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.* An NBF authorized by the BSP to act as trustee of the proceeds of mortgage or bond issuance of a municipality, GOCC, 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 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 trustee on any mortgage or bond issuance by any municipality, GOCC, 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 120 days without pay of the directors/officers responsible for the violation.

Secs. 4110N - 4139N (Reserved)

Sec. 4140N 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 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 QBs while *NBFIs* shall refer to investment houses, finance companies, trust entities, insurance companies, securities dealers/brokers, credit card companies, 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 relationships 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 QBs or between a QB and a bank; and

(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) A bank and one (1) or more of its subsidiary bank/s, QB/s, and NBFI/s; and

(b) A QB and an NBFI.

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 QBs, or between a QB and a bank, and between a QB and an NBFI.

(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

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bank/s, QB/s, and NBFIs, 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 QBs or between a QB and a bank or between a QB and an NBFIs. 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 QB, other than an investment house, and not more than two (2) of its subsidiary bank/s, QB/s, and NBFIs, other than investment house/s;

(2) Between two (2) QBs, or between a QB, other than an investment house, and a bank, or between a QB and an NBFIs: *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 QB/bank and the interlocking arrangement is necessary for the holding company or the QB/bank to provide technical expertise or managerial assistance to its subsidiaries/affiliates;

(3) Between a QB and not more than two (2) of its subsidiary QB/s, and NBFIs;

(4) Between a bank and not more than two (2) of its subsidiary bank/s, QB/s, and NBFIs, other than investment house/s;

(5) Between a bank and not more than two (2) of its subsidiary QB/s, and NBFIs.

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 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 QB 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

(6) Concurrent officership positions in the same capacity which do not involve management functions, i.e., internal auditors, corporate secretary, assistant corporate secretary and security officer, between a QB and one (1) or more of its subsidiary QB/s and NBFIs, or between a bank and one (1) or more of its subsidiary QBs and NBFIs, or between bank/s, QB/s and NBFIs, 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.

(Circular No. 592 dated 28 December 2007)

§ 4140N.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.

(Circular No. 592 dated 28 December 2007)

Secs. 4141N - 4142N (Reserved)

Sec. 4143N Disqualification of Directors and Officers. The following regulations shall govern the disqualification of directors and officers of institutions under the supervisory and regulatory powers of the BSP other than banks, QBs, NSSLAs and pawnshops.

§ 4143N.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/trustees/officers/employees permanently disqualified by the Monetary

Board from holding a director/trustee position:

(1) Persons who have been convicted by final judgment of the court for offenses involving dishonesty or breach of trust such as estafa, embezzlement, extortion, forgery, malversation, swindling and theft;

(2) Persons who have been convicted by final judgment of the court for violation of banking laws;

(3) Persons who have been judicially declared insolvent, spendthrift or incapacitated to contract; or

(4) Directors, trustees, officers or employees of closed institutions under the supervisory and regulatory powers of the BSP who were responsible for such institutions' closure as determined by the Monetary Board.

b. *Temporarily disqualified*

Directors/trustees/officers/employees disqualified by the Monetary Board from holding a director/trustee position for a specific/indefinite period of time. Included are:

(1) Persons who refuse to fully disclose the extent of their business interest to the appropriate department of the SES when required pursuant to a provision of law or of a circular, memorandum or 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, or any twelve (12)-month period during said incumbency. This disqualification applies for purposes of the succeeding election;

(3) Persons who are delinquent in the payment of their obligations as defined hereunder:

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(a) *Delinquency in the payment of obligations* means that an obligation of a person with the institution where he/she is a director or officer, or at least two (2) obligations with other FIs, under different credit lines or loan contracts, are past due pursuant to Secs. X306, 4306Q, 4306S and 4303P;

(b) *Obligations* shall include all borrowings from any FI obtained by:

(i) A director, trustee 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, trustee or officer;

(iii) Any person whose borrowings or loan proceeds were credited to the account of, or used for the benefit of a director, trustee or officer;

(iv) A partnership of which a director, trustee 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 convicted for offenses involving dishonesty, breach of trust or violation of banking laws but whose conviction has not yet become final and executory;

(5) Directors, trustees and officers of closed institutions under the supervisory and regulatory powers of the BSP pending their clearance by the Monetary Board;

(6) Directors and trustees 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/re-election;

(7) Persons dismissed 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;

(8) Those under preventive suspension; and

(9) Persons with derogatory records with the NBI, court, police, Interpol and monetary authority (central bank) of other countries (for foreign directors and officers) involving violation of any law, rule or regulation of the Government or any of its instrumentalities adversely affecting the integrity and/or ability to discharge the duties of a director/trustee/officer. This disqualification applies until they have cleared themselves of involvement in the alleged irregularity.

(As amended by Circular No. 584 dated 28 September 2007)

§ 4143N.2 Persons disqualified to become officers

a. The disqualifications for directors mentioned in Subsec. 4143N.1 shall likewise apply to officers, except those stated in Item “b(2)”.

b. The spouses or relatives within the second degree of consanguinity or affinity are prohibited from holding officership positions across the following functional categories within an NBFi:

1. Decision making and senior management function, e.g., chairman, president, chief executive officer (CEO), chief operating officer (COO), general manager, and chief financial officer (CFO) other than the treasurer or controller;
2. Treasury function, e.g., Treasurer and Vice President – Treasury;
3. Recordkeeping and financial reporting functions, e.g., controller and chief accountant;
4. Safekeeping of assets, e.g., chief cashier;
5. Risk management function, e.g., chief risk officer;
6. Compliance function, e.g., compliance officer; and
7. Internal audit function, e.g., internal auditor.

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 extension office of an NBFIs or their respective equivalent positions is disqualified from holding or being appointed to any of said positions in the same branch or extension office.

(As amended by Circular No. 699 dated 17 November 2010)

§ 4143N.3 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. 4143N.1 and 4143N.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

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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 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 paragraphs “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. 4143N.1 and 4143N.2, shall be afforded the procedural due process prescribed above.

I. 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)

§ 4143N.4 *Effect of possession of disqualifications.* Directors/officers elected or appointed possessing any of the disqualifications as enumerated herein, shall vacate their respective positions immediately.

§ 4143N.5 *(Reserved)*

§ 4143N.6 *Watchlisting.* To provide the BSP with a central information file to be used as reference in passing upon and

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reviewing the qualifications of persons elected or appointed as trustee or officer of an institution under the supervisory and regulatory powers of the BSP, the SES shall maintain a watchlist of disqualified directors/trustees/officers under the following procedures:

a. *Watchlist categories.* Watchlisting shall be categorized as follows:

(1) Disqualification File “A” (Permanent)

– Directors/trustees/officers/employees permanently disqualified by the Monetary Board from holding a director/trustee/officer position.

(2) Disqualification File “B” (Temporary)

– Directors/trustees/officers/employees temporarily disqualified by the Monetary Board from holding a director/trustee/officer position.

b. *Inclusion of directors/trustees/officers/employees in the watchlist.* Upon recommendation by the appropriate department of the SES, the inclusion of directors/trustees/officers/employees in watchlist disqualification files “A” and “B” on the basis of decisions, actions or reports of the courts, institutions under the supervisory and regulatory powers of the BSP, NBI or any other administrative agencies shall first be approved by the Monetary Board.

c. *Notification of directors/trustees/officers/employees.* Upon approval by the Monetary Board, the concerned director/trustee/officer/employee shall be informed through registered mail, with registry return receipt card, at his last known address of his inclusion in the masterlist of watchlisted persons disqualified to be a director/trustee/officer in any institution under the supervisory and regulatory powers of the BSP.

d. *Confidentiality.* Watchlisting shall be for internal use only and may not be accessed or queried upon by outside parties including such institutions under the supervisory and regulatory powers of the

BSP, except with the authority of the person concerned and with the approval of the Deputy Governor, SES, the Governor, or the Monetary Board.

The 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 appropriate department of the SES is in *Appendix Q-45*.

Fls 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. Fls must obtain the said authorization on an individual basis.

e. *Delisting.* All delistings shall be approved by the Monetary Board upon recommendation of the appropriate department of the 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 laws becomes final and executory, in which case the director/trustee/officer/employee is relisted to Watchlist – Disqualification File “A” (Permanent); or

(c) Upon favorable decision or clearance by the appropriate body, i.e., court, NBI, institutions under the supervisory and regulatory powers of the BSP, or such other agency/body where the concerned individual had derogatory record.

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Directors/trustees/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 institution under the supervisory and regulatory powers of the BSP.

(As amended by CL-2007-001 dated 04 January 2007; and CL-2006-046 dated 21 December 2006)

Sec. 4144N Securities Custodianship and Securities Registry Operations. The following rules and regulations shall govern securities custodianship and securities registry operations of NBFIs under BSP supervision.

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 Q-38*.

Violation of any provision of the guidelines in *Appendix Q-38* shall be subject to the sanctions/penalties under Subsec. 4144N.29.

(As amended by Circular No. 714 dated 10 March 2011, 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)

§ 4144N.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.

§ 4144N.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 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.

§ 4144N.3 Prior Bangko Sentral approval. NBFIs under BSP supervision may act as securities custodian and/or registry only upon prior Monetary Board approval.

§ 4144N.4 Application for authority
A BSP-supervised entity desiring to act as securities custodian and/or registry shall file an application with the appropriate department of the SES. The application shall be signed by the highest ranking officer of the NBFI and shall be accompanied by a certified true copy of the resolution of the NBFI’s board of directors authorizing the NBFI to engage in securities custodianship and/or registry.

§ 4144N.5 Pre-qualification requirements for a securities custodian/registry

a. The securities custodian must be a NBFI under BSP supervision that is authorized to engage in investment management (for IHs with QB authority only) or trust business. The securities registry must be a NBFI under BSP supervision whether or not authorized to engage in investment management (for IHs with QB authority) or trust business;

b. It must have complied with the minimum capital accounts required under existing regulations not lower than an adjusted capital of P 300.0 million or such amounts as may be required by the Monetary Board in the future;

c. It must have a CAMELS composite rating of at least “4” (as rounded off) in the last regular examination;

d. It must have in place a comprehensive risk management system approved by its board of directors 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 department of the SES at the time of application for authority and within thirty (30) days from updates;

e. 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.

f. 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.

g. It has no reserve deficiencies during the eight (8) weeks immediately preceding the date of application;

h. It has set up the prescribed allowances for probable losses, both general and specific, as of date of application;

i. It has not been found engaging in unsafe and unsound practices during the last six (6) months preceding the date of application;

j. It has generally complied with laws, rules and regulations, orders or instructions of the Monetary Board and/or BSP Management;

k. It has submitted additional documents/ information which may be requested by the appropriate department of the SES, 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;

l. 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

m. 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.

n. A securities custodian which provides the value-added service of securities lending involving securities that are sold, offered for sale or distributed within the Philippines must be a duly-licensed lending agent registered with the SEC.

(As amended by Circular No. 714 dated 10 March 2011)

§ 4144N.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;

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- 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; and
- i. Acts as a collecting and paying agent in respect of dividends, interest earnings or proceeds from the sale/redemption/maturity of securities held under custodianship: *Provided, That* the custodian shall immediately make known to the securities owner all collections received and payments made with respect to the securities under custody.
- j. In addition to the above basic functions, it may perform the value-added service of securities lending as agent: *Provided, That* it complies with the pre-qualification requirements under Item “n” of Subsec. 4144N.5: *Provided, further, That* the securities lending service shall be covered by a Securities Lending Authorization Agreement (SLAA) which shall be attached to the custody contract.

A securities custodian which renders the value-added service of securities lending involving securities that are sold, offered and distributed within the Philippines shall comply with the pertinent rules and regulations of the SEC on securities lending and borrowing operations.

(As amended by Circular No. 714 dated 10 March 2011)

§ 4144N.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.

§ 4144N.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. Administration of securities custodianship accounts. Securities custodianship accounts must be administered in the entity’s Trust Unit.
- b. 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.

Securities held under custodianship shall be recorded in the books of the custodian at the face value of said securities in the other fiduciary sub-account “*Custodianship*”.

- c. 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.

- d. 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.

e. 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.
(As amended by Circular No. 714 dated 10 March 2011)

§ 4144N.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. An NBFI 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 NBFI 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 NBFI 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 Subsection shall, however, be subject to all other provisions of this Subsection.

§ 4144N.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. 4144N.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.

§ 4144N.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.

§ 4144N.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

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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 NBFI up to the original maturity of the loan or full payment thereof, whichever comes earlier.

§ 4144N.13 Basic security deposit
Securities held under custodianship whether booked in the Trust Department or carried in the regular books of the NBFI 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 lending as agent shall be subject to a higher basic security deposit of one percent (1%) of the total face value.

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.

(As amended by Circular No. 714 dated 10 March 2011)

§ 4144N.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.

§§ 4144N.15 - 4144N.28 (Reserved)

§ 4144N.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 120 days without pay of the directors/officers responsible for the violation.

Secs. 4145N – 4149N (Reserved)

Sec. 4150N Rules of Procedure on Administrative Cases Involving Directors and Officers of Trust Entities. The rules of procedure on administrative cases involving directors and officers of quasi-banks in Sec. 4150Q shall apply to directors and officers of trust entities.

Secs. 4151N – 4156N (Reserved)

Sec. 4157N Batas Pambansa Blg. 344 –An Act To Enhance The Mobility Of Disabled Persons By Requiring Certain Buildings, Institutions, Establishments And Public Utilities To Install Facilities And Other Devices. In order to promote the realization of the rights of disabled persons to participate fully in the social life and the development of the societies in which they live and the enjoyment of the opportunities available to other citizens, no license or permit for the construction, repair or renovation of public and private buildings for public use, educational institutions, airports, sports and recreation centers and complexes, shopping centers or establishments, public parking places, workplaces, public utilities, shall be granted or issued unless the owner or operator thereof shall install and incorporate in such building, establishment or public utility, such architectural facilities or structural features as shall reasonably enhance the mobility of disabled persons such as sidewalks, ramps, railings and the like. If feasible, all such existing buildings, institutions, establishments, or public utilities may be renovated or altered to enable the disabled persons to have access to them.

Secs. 4158N-4160N (Reserved)

Sec. 4161N 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.

Other NBFIs not performing quasi-banking functions 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 PRC.

Accounting treatment for prudential reporting. For prudential reporting, FIs 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. FIs 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

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outstanding government grants received. FI 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 Sec. 4172N 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 Nos. 572 dated 22 June 2007 and 494 dated 20 September 2004)

Sec. 4162N Reports. NBFIs without quasi-banking functions but are subsidiaries/affiliates of banks and QBs and investment houses without quasi-banking functions but with trust operations shall submit to the appropriate department of the SES the reports listed in *Appendix N-1* in the forms as may be prescribed by the Deputy Governor, SES, BSP.

Any change in, or amendment to, the articles of incorporation, by-laws or material documents required to be submitted to the BSP shall be reported by submitting copies of the amended articles of incorporation, by-laws, or material documents to the appropriate department of the SES within fifteen (15) days following such change.

§ 4162N.1 Categories and signatories of reports. Reports required to be submitted to the BSP are classified into Categories A-2 and B reports as indicated in the list of reports required to be submitted to the BSP in *Appendix N-1*.

Appendix N-2 prescribes the signatories for each report category and the

requirements on signatory authorization. Reports submitted by NBFIs in computer media shall be subject to the same requirements.

A report submitted to the BSP under the signature of an officer who is not authorized in accordance with the requirements in this Subsection shall be considered as not having been submitted.

§ 4162N.2 Manner of filing. The submission of the reports shall be effected by filing them personally with the appropriate department of the SES or with the BSP Regional Offices/Units, or by sending them by registered mail or special delivery through private couriers unless otherwise specified in the circular or memorandum of the BSP.

§ 4162N.3 Sanctions in case of willful delay in the submission of reports

a. *Definition of terms.* For purposes of this Subsection, the following definitions shall apply:

(1) *Report* shall refer to any report or statement required of an NBFI to be submitted to the BSP periodically or within a specified period.

(2) *Willful delay in the submission of reports* shall refer to the failure of an NBFI to submit a report on time. 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 an NBFI as defined in the Labor Code or national emergency affecting operations of NBFIs, shall not be considered as willful delay.

b. *Fines for willful delay in submission of reports.* NBFIs incurring willful delay in the submission of required reports shall pay a fine in accordance with the following schedule:

- I. For Categories A-2 reports
Per day of default until the report is filed P300
- II. For Category B reports
Per day of default until the report is filed P 60

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 FI is situated, delay or default shall start to run on the day following the next working day. The due date/deadline for submission of reports to BSP as prescribed under Sec. 4162N governing the frequency and deadlines indicated in *Appendix N-1* shall be automatically moved to the next business day whenever a half-day suspension of business operations in government offices is declared due to an emergency such as typhoon, floods, etc.

For purposes of establishing delay or default, the date of acknowledgment by the appropriate department of the SES or the BSP Regional Offices/Units appearing on the copies of such reports filed or submitted, or the date of mailing postmarked on the envelope/the date of registry/special delivery receipt, as the case may be, shall be considered as the date of filing by the NBF.

c. *Manner of payment or collection of fines* – NBFs shall, within fifteen (15) calendar days from receipt of the statement of account from the appropriate department of the BSP, pay the fines imposed thereon for willful delay on the submission of reports.

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

Sec. 4163N (Reserved)

Sec. 4164N 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.

§ 4164N.1 Status. 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.

§ 4164N.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.

§ 4164N.3 Qualification standards of the internal auditor. The internal auditor of subsidiaries and/or affiliates of a UB or a KB must be a 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 subsidiaries and/or affiliates of a TB, QB, trust entity or national cooperative 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 cooperative 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 subsidiaries and/or affiliates of an RB, NSSLA or local cooperative 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 cooperative 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.

§ 4164N.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. 4165N - 4171N (Reserved)

Sec. 4172N Financial Audit. NBFIs 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 FI. Report of such audit shall be submitted to the board of directors 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 FI. 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 FI to the board of directors; 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 FI 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 FI to submit to the board of directors, 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 FI 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 term 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 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 LOC shall be accompanied by the certification of the external auditor of the date of its submission to the board of directors.

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 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 concerned institution by an acceptable external auditor may also be allowed.

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Banks and other FIs under the concurrent jurisdiction of the BSP and COA shall, however, submit a copy of the 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 the FI 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 the comments and observations and the names of the directors present and absent, among other things.”

FIs 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 Q-33*.

The audited annual financial statements required to be submitted 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.

The reports and certifications of institutions concerned, schedules and attachments required under this Subsection shall be considered *Category B* reports, delayed submission of which shall be

subject to the penalties under Subsec. 4162N.3

(As amended by Circular Nos. 554 dated 22 December 2006 and 540 dated 09 August 2006)

§ 4172N.1 Audited financial statements of non-bank financial institutions. The following rules shall govern the utilization and submission of AFS of NBFIs.

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 NBFIs with subsidiaries shall be presented side by side on a solo basis (parent) and on a consolidated basis (parent and subsidiaries).

(Circular No. 540 dated 09 August 2006)

§ 4172N.2 Posting of audited financial statements. FIs shall post in conspicuous places in their head offices, all their branches and other offices, as well as in their respective websites, their latest financial audit report.

(Circular No. 540 dated 09 August 2006)

Secs. 4173N - 4179N (Reserved)

Sec. 4180N Selection, Appointment, Reporting Requirements and Delisting of External Auditors and/or Auditing Firm; Sanction

a. *Rules and regulations.* The revised rules and regulations that shall govern the selection, appointment, reporting requirements and delisting of external auditors and auditing firms by the BSP of covered institutions which under special laws are subject to BSP supervision are shown in *Appendix N-5*.

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 covered institution, its audit committee and the directors approving the hiring of external auditors/auditing firm who/which are not in the BSP list of selected auditors for covered institutions or for hiring, and/or retaining the services of the external auditor/auditing firm in violation of any of the provisions of this Section and for non-compliance with the Monetary Board directive under Item “K” in *Appendix N-5*. Erring external auditors/auditing firm may also be reported by the BSP to the PRC for appropriate disciplinary action.
(As amended by Circular Nos. 660 dated 25 August 2009 and 529 dated 11 May 2006)

Sec. 4181N Publication Requirements. The quarterly CSOC of a trust entity and its subsidiaries and affiliates shall be published side by side with the statement of condition of its head office and its branches/other offices as of such dates as the BSP may require within twenty (20) working days from receipt of call letter, in any newspaper of general circulation in the country in the prescribed format.

The CSOC of a QB/trust entity and its subsidiaries and associates shall conform with the guidelines of PAS 27 “Consolidated and Separate Financial Statements”, except that for purposes of 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”. For purposes of separate financial statements, investments in financial/non-financial allied/non-allied

subsidiaries/associates, including insurance subsidiaries/associates, shall be accounted for using the equity method.
(As amended by Circular No. 494 dated 20 September 2004)

Secs. 4182N - 4189N (Reserved)

Sec. 4190N Duties and Responsibilities of Non-Bank Financial Institutions and their Directors/Officers in All Cases of Outsourcing of Non-Bank Financial Institution Functions. The rules on outsourcing of banking functions as shown in *Appendix Q-37* shall be adopted in so far as they are applicable to FIs.
(As amended by Circular Nos. 642 dated 30 January 2009, 610 dated 26 May 2008, 596 dated 11 January 2008, 548 dated 25 September 2006 and 543 dated 08 September 2006)

Sec. 4191N (Reserved)

Sec. 4192N Prompt Corrective Action Framework. The framework for the enforcement of PCA on banks which is in *Appendix Q-40*, shall govern the PCA taken on FIs to the extent applicable, or by analogy.
(Circular No. 523 dated 31 March 2006, as amended by Circular No. 664 dated 15 September 2009)

Sec. 4193N Supervision by Risks. The guidelines on supervision by risk in *Appendix Q-42* which provide guidance on how QBs should identify, measure, monitor and control risks shall govern the supervision by risks of FIs to the extent applicable.

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 an FI’s internal risk management processes are integrated and comprehensive. All FIs should follow the guidance in risk management efforts.
(Circular No. 510 dated 03 February 2006)

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Sec. 4194N Market Risk Management

The guidelines on market risk management for QBs as shown in *Appendix Q-43* shall govern the market risk management of FIs to the extent applicable.

The guidelines 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 is applied to this risk. FIs 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 FIs.

(Circular No. 544 dated 15 September 2006)

Sec. 4195N Liquidity Risk Management. The guidelines on liquidity risk management for QBs as shown in *Appendix Q-44* shall govern

the liquidity risk management of FIs to the extent applicable.

The guidelines 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. FIs 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.

These guidelines are intended for general application; specific application will depend on the size and sophistication of a particular FI and the nature and complexity of its activities.

(Circular No. 545 dated 15 September 2006)

Secs. 4196N - 4200N (Reserved)

Secs. 4201N - 4300N (Reserved)

Sec. 4301N 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 subsidiary/affiliate credit card companies of banks/QBs, aligned with global best practices.

§ 4301N.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 (1) or a combination of any of the following:

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- (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 FI 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.

§ 4301N.2 Risk management system
To safeguard their interests, subsidiary/ affiliate credit card companies of banks/ QBs 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. Issuance, distribution and activation of cards;
- e. Supplementary or extension cards;
- f. Cash advances;
- g. Billing and payments;

- h. Deferred payment program or special installment plans;
- i. Collection of past due accounts;
- j. Handling of accounts for write-off;
- k. Suspension, cancellation and withdrawal or termination of card;
- l. Renewal of cards, upgrade or downgrade of credit limit;
- m. Lost or stolen cards and their replacement;
- n. Accounts of DOSRI and employees;
- o. Disposition of errors and/or questions about the billing statement statement of account and other customers' complaints; and
- p. Dealings with marketing agents/ collection agents.

(As amended by Circular No. 702 dated 15 December 2010)

§ 4301N.3 Minimum requirements
NBFIs and their subsidiary or affiliate credit card companies shall not issue pre-approved credit cards.

Before issuing credit cards, NBFIs and/ or their subsidiary/affiliate credit card companies of banks/QBs must exercise, in accordance with the provisions of Subsec. 4312N.1, 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 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, specifically those solicited by third party representatives/agents, shall undergo a strict credit risk assessment process and the information stated thereon validated and verified by authorized personnel of the NBFIs and their subsidiary/affiliate credit card companies other than those handling marketing.

(As amended by Circular No. 702 dated 15 December 2010)

§ 4301N.4 Information to be disclosed

Subsidiary/affiliate credit card companies of banks/QBs 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; and

j. other fees, such as membership/renewal fees, processing fees, collection fees, credit investigation fees and attorney's fees.

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.

NBFIs and their subsidiary or affiliate credit card companies shall also provide the following information to their cardholders:

- 1. A table of the applicable fees, penalties and interest rates on credit card transactions, including the period covered by and the manner of and reason for the

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imposition of such penalties, fees and interests; fees and applicable conversion reference rates for third currency transactions, in plain sight and language, on materials for marketing credit cards, such as brochures, flyers, primers and advertising materials, on credit card application forms, and on credit card billing statements: *Provided*, That these disclosures are in addition to the full disclosure of the fees, charges and interest rates in the terms and conditions of the credit card agreement found elsewhere on the application form and billing statement; and

2. A reminder to the cardholder in the monthly billing statement, or its equivalent document, that payment of only the minimum amount due or any amount less than the total amount due for the billing cycle/period, would mean the imposition of interest and/or other charges: *Provided*, That such table of fees, penalties and interest rates and reminder shall be printed in plain language and in bold black letters against a light or white background, and using the minimum Arial 12 theme font and size, or its equivalent in readability, and on the first page, if applicable document has more than one page.

Transitory provisions. NBFIs and their subsidiary or affiliate credit card companies shall be given a period of 120 days from the 06 January 2011 to fully implement the required disclosure requirements.
(As amended by Circular No. 702 dated 15 December 2010)

§ 4301N.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.

§ 4301N.6 Finance charges. The amount of finance charges in connection with any credit card transaction shall refer to interest charged to the cardholder.

§ 4301N.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 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.

§ 4301N.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.

§ 4301N.9 Confidentiality of information. Subsidiary/affiliate credit card companies of banks/QBs 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 FIs, 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.

§ 4301N.10 *Suspension, termination of effectivity and reactivation.* Subsidiary/affiliate credit card companies of banks/QBs 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.

§ 4301N.11 *Inspection of records covering credit card transactions* Subsidiary/affiliate credit card companies of banks/QBs 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.

§ 4301N.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.

§ 4301N.13 *Handling of complaints* Subsidiary/affiliate credit card companies of banks/QBs 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 credit card company in writing of any billing error or discrepancy. Within ten (10) calendar days from receipt of such written notice, the credit card company shall send a written acknowledgement 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.

§ 4301N.14 *Unfair collection practices* Subsidiary/affiliate credit card companies of banks/QBs, collection agencies, counsels and other agents may resort to all reasonable

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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. 4301N.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.

NBFIs and their subsidiary/affiliate credit card companies shall inform their cardholder in writing of the endorsement of the collection of their account to a collection agency/agent, or the endorsement of their account from one collection agency/

agent to another, at least seven (7) days prior to the actual endorsement. The notification shall include the full name of the collection agency and its contact details: *Provided*, That the required notification in writing shall be included in the terms and conditions of the credit card agreement. NBFIs and their subsidiary/affiliate credit card companies shall adopt policies and procedures to ensure that personnel handling the collection of accounts, whether these are in-house collectors, or third-party collection agents, shall disclose his/her full name/true identity to the cardholder.

(As amended by Circular No. 702 dated 15 December 2010)

§ 4301N.15 Sanctions. Violations of the provisions of 4301N.1, 4301N.5 to 4301N.13 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.
- Violations of the provisions of of Secs. 4301N.2 to 4301N.4 and 4301N.14 shall be subject to any or all of the following sanctions depending upon their severity:
- a. *First offense.* Reprimand for the directors/officers responsible for the violation;
 - b. *Second offense.* 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;
 - c. *Subsequent offense/s:*
 - i. Prohibition on the NBFI concerned from the extension of additional credit accommodation against personal security; and

ii. Penalties and sanctions provided under Sections 36 and 37 of R. A. No. 7653. *(As amended by Circular No. 702 dated 15 December 2010)*

Sec. 4302N Classification of Credit Card Receivables. Credit card receivables shall be classified in accordance with age as follows:

<u>No. of days past due</u>	<u>Classification</u>
91 - 120	Substandard
121 - 180	Doubtful
181 or more	Loss

The foregoing is the minimum classification requirement. Management may therefore formulate additional specific guidelines.

Sec. 4303N Updating of Information Provided to Credit Information Bureaus FIs 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) business days from the end of the month when such full payment was received. For this purpose, it shall be the responsibility of the reporting FIs 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)*

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Sec. 4312N Grant of Loans and Other Credit Accommodations. The following regulations shall be observed in the grant of loans and other credit accommodations.

§ 4312N.1 General guidelines Consistent with safe and sound business practices, an NBFI 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, an NBFI 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 NBFI. For this purpose, an NBFI shall obtain adequate information on his/their credit standing and financial capacities.

In addition to the usual information sheet about the borrower, an NBFI 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 NBFI 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

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information and/or an authority of the NBF 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 material detail, the NBF 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 NBF 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 fisher folk, 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 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 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 Section, 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 MSME Development 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)

§ 4312N.2 Purpose of loans and other credit accommodations. Before granting a loan or other credit accommodation, an NBFI 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 NBFI 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 NBFI 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 NBFI 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 NBFI and such written approval shall form part of the contract between the NBFI and the borrower.

(Circular No. 622 dated 16 September 2008)

§ 4312N.3 Prohibited use of loan proceeds. NBFIs are prohibited from requiring their borrowers to acquire shares of stock of the lending NBFI out of the loan or other credit accommodation proceeds from the same NBFI.

(Circular No. 622 dated 16 September 2008)

§ 4312N.4 Signatories. NBFIs 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)

§ 4312N.5 Sanctions
(Renumbered as 4312N.15 by Circular No. 702 dated 15 December 2010)

§§ 4312N.6 - 4312N.9 (Reserved)

§ 4312N.10 Minimum required disclosure. NBFIs shall provide a table of the applicable fees, penalties and interest rates on loan transactions, including the period covered by and the manner of and reason for the imposition of such penalties, fees and interests; fees and applicable conversion reference rates for third currency transactions, in plain sight and language, on materials for marketing loans such as brochures, flyers, primers and advertising materials, on loan application forms, and on billing statements: *Provided*, That these disclosures are in addition to the full disclosure of the fees, charges and interest rates in the terms and conditions of the loan agreement found elsewhere on the application form and billing statement: *Provided further*, That such table of fees, penalties and interest rates shall be printed in plain language and in bold black letters against a light or white background, and using the minimum Arial 12 theme font and size, or its equivalent in readability, and on the first page, if the applicable document has more than one (1) page.

Transitory provision: NBFIs shall be given a period of 120 days from 06 January 2011 to fully implement the required disclosure requirements.

(Circular No. 702 dated 15 December 2010)

§ 4312N.11 Unfair collection practices. NBFIs, collection agencies, counsels and other agents may resort to all reasonable and legally permissible means to collect amounts due them under the loan agreement: *Provided*, That in the exercise of their rights and performance of 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 borrowers who allegedly refuse to pay debts, except as allowed under Subsec. 4312N.12;
- 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 borrower; 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 borrower has given express permission or said times are the only reasonable or convenient opportunities for contact.

NBFIs shall inform their borrowers in writing of the endorsement of the collection of their account to a collection agency/agent, or the endorsement of their account from one (1) collection agency/agent to another, at least seven (7) days prior to the actual endorsement. The notification shall include the full name of the collection agency and its contact details: *Provided*, That the required notification in writing shall be included in the terms and conditions of the loan agreement. NBFIs shall adopt policies and procedures to ensure that personnel handling the collection of

accounts, whether these are in-house collectors, or third-party collection agents, shall disclose his/her full name/true identity to the borrower.

(As amended by Circular No. 702 dated 15 December 2010)

§ 4312N.12 Confidentiality of Information. NBFIs shall keep strictly confidential the data on the borrower or consumer, except under the following circumstances:

- a. disclosure of information is with the consent of the borrower or consumer;
- b. release, submission or exchange of customer information with other financial institutions, credit information bureaus, lenders, 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 NBFIs to enforce its rights against the borrower;
- e. disclosure to third party service providers solely for the purpose of assisting or rendering services to the NBFI in the administration of its lending business; and
- f. disclosure to third parties such as insurance companies, solely for the purpose of insuring the NBFI from borrower default or other credit loss, and the borrower from fraud or unauthorized charges.

§§ 4312N.13 - 4312N.14 (Reserved)

§ 4312N.15 Sanctions. Any violation of the provisions of Subsecs. 4312N.1 to 4312N.4 shall be subject to the sanctions provided under Sections 36 and 37 of R.A. No. 7653.

Violation of the provisions of Subsections 4312N.10 to 4312N.12 shall be subject to any or all of the following sanctions depending upon their severity:

- a. *First offense.* Reprimand for the directors/officers responsible for the violation;
- b. *Second offense.* Disqualification of the NBFI concerned from the credit facilities of the BSP except as may be allowed under Section 84 of R. A. No. 7653;
- c. *Subsequent offense/s:*
 - i. Prohibition on the NBFI concerned from the extension of additional credit accommodation against personal security; and
 - ii. Penalties and sanctions provided under Sections 36 and 37 of R. A. No. 7653.

(Circular No. 702 dated 15 December 2010)

Sec. 4313N Bank DOSRI Rules and Regulations Applicable to Government Borrowings in Government-Owned Or - Controlled Financial Institutions. The provisions of Secs. X326 to X337 of the Manual of Regulations for Banks (MORB), to the extent applicable, shall also apply to loans, other credit accommodations, and guarantees granted to the National

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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 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 of the MORB:

(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 participating financial institutions (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 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 of the MORB;

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 related interests of the Republic of the Philippines and/or its agencies/departments/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

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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, and 580 dated 09 September 2007)

Sec. 4314N Loans Against Personal Security. The grant, renewal, restructuring or extension of unsecured loans shall, in addition to the requirements of Section 4312N, 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.

(Circular No. 622 dated 16 September 2008)

Secs. 4315N-4390N (Reserved)

Sec. 4391N Investments in Debt and Marketable Equity Securities. The classification, accounting procedures, valuation, sales and transfers of investments in debt securities and marketable equity securities shall be in accordance with the guidelines in Appendices Q-20 and Q-20- a.

Penalties and sanctions. The following penalties and sanctions shall be imposed on FIs and concerned officers found to violate the provisions of these regulations:

a. Fines of P2,000/day to be imposed on NBFIs for each violation, reckoned from the date the violation was committed up to the date it was corrected; and

b. Sanctions to be imposed on concerned officers:

(1) First offense – reprimand the officers responsible for the violation; and

(2) Subsequent offenses – suspension of ninety (90) days without pay for officers responsible for the violation.

(Circular No. 476 dated 16 February 2005 as amended by Circular Nos. 628 dated 31 October 2008, 626 dated 23 October 2008 and 585 dated 15 October 2007)

Secs. 4392N - 4400N (Reserved)

Secs. 4401N - 4500N (Reserved)

Secs. 4501N - 4510N (Reserved)

Sec. 4511N Foreign Exchange Dealers/ Money Changers and/or Remittance Agents Operations. The following rules and regulations shall govern the registration and operations of foreign exchange dealers (FXDs)/money changers (MCs) and/or remittance agents:

§ 4511N.1 Registration. Qualified persons or non-bank institutions wishing to act as FXDs/MCs and/or remittance agents are required to register with the BSP before they can operate as such.

For this purpose, the term money changers, interchangeably referred to as foreign exchange dealers, shall refer to those regularly engaged in the business of buying and/or selling foreign currencies.

Remittance agents, on the other hand, shall refer to persons or entities that offer to remit, transfer or transmit money on behalf of any person to another person and/or entity. These include money or cash couriers, money transmission agents, remittance companies and the like.

§ 4511N.2 Application for registration

The application for a certificate of registration to act as FXD/MC and/or remittance agent, in the prescribed form (Item “A”, Appendix N-8), must be duly supported by the following documents:

a. Incorporation papers duly authenticated by the SEC (for corporation/partnership); or copy of the certificate of registration duly authenticated by the Department of Trade and Industry (DTI) (for single proprietorship);

b. Copy of business license/permit from the city or municipality having territorial jurisdiction over the place of establishment and operation;

c. List of stockholders/partners/proprietor/directors/principal officers as the case maybe;

d. Notarized Deed of Undertaking (Item “B”, Appendix N-8) to strictly comply with the requirements of all relevant laws, rules and regulations, signed either by the owner, partner, president or officer of equivalent rank; and

e. Any additional document which the BSP may require from time to time. FXDs/MCs and remittance agents existing prior to 12 May 2005 (effectivity date of Circular 471 dated 24 January 2005) may continue to operate as such: *Provided*, That an application for registration supported by documents mentioned above has been filed within ninety (90) calendar days from 12 May 2005.

A certificate of registration to act as FXD/MC or remittance agent shall be issued by the BSP and shall become the basis for an electronic registry of all BSP registered FXDs/MCs and remittance agents in the country.

§ 4511N.3 Applicability of other laws/regulations. FX dealers, money changers, and remittance agents are subject to the provisions of R.A. No. 7653, R.A. No. 9160

(Anti-Money Laundering Act of 2001), as amended, its IRR, and Part 8 of Q Regulations.

(As amended by Circular No. 706 dated 05 January 2011)

§ 4511N.4 Required seminar/training

Prior to the issuance of the certificate of registration, the officer(s) as well as the personnel directly involved in foreign exchange operations shall attend a seminar on the requirements of the Anti-Money Laundering Act (AMLA) particularly on customer identification, record keeping and reporting of covered and suspicious transactions, to be conducted by the AMLC or by any of its recognized or accredited service providers. The provisions of this Section shall also apply to officers appointed after the issuance of the certificate of registration.

The officer(s)-in-charge and the personnel who attended the required seminar shall echo the said training to all employees within thirty (30) calendar days from such attendance or as new employees are hired.

§ 4511N.5 Sale and purchase of foreign currencies by FXDs/MCs. The following minimum procedures shall be observed on sale and purchase of foreign currencies by FXDs/MCs:

a. Official receipts, in case of sales, and accountable forms in case of purchases, shall be issued in numerical order to evidence sale/purchase of foreign currencies;

b. The amount of foreign currencies sold shall be indicated in the official receipts both in words and in figures. The staff serving the particular transaction as well as the person buying/selling foreign currency shall sign in their usual signatures on the receipt;

c. A daily record of foreign exchange transactions shall be maintained where all foreign exchange sale and purchase

transactions shall be posted chronologically. The daily record shall be kept on file at the FXD/MC premises and shall be available for AMLC inspection/examination any time;

d. All copies of cancelled receipts shall be marked and stamped “CANCELLED” for internal control purposes; and

e. Foreign exchange transactions shall be conducted only at the entity’s principal place of business and other authorized branches.

§ 4511N.6 Application to sell/purchase foreign currencies by FXDs/MCs. FXDs/MCs shall require the seller or buyer of foreign currency to fill up and sign an application form, which shall contain the following minimum data and information:

- a. *For individual customers -*
- (1) Date;
 - (2) Printed name and signature of customer;
 - (3) Present address;
 - (4) Permanent address;
 - (5) Date and place of birth;
 - (6) Telephone number;
 - (7) Nationality;
 - (8) Amount and currency sold/purchased in words and figures; and
 - (9) Source of foreign currency/ies or purpose of purchase

b. *For corporate/juridical customers -* In addition to a signed application containing the applicable information in Item “a” above, photocopies of the following documents shall be required:

- (1) Articles of incorporation/partnership;
- (2) By-Laws;
- (3) Official address or principal business address;
- (4) List of directors/partners/principal stockholders; and

(5) Authority and identification of the person purporting to act in behalf of the client.

For subsequent transactions with the same corporate client, FXDs/MCs need not require submission of additional documents enumerated in Item “b” above unless there are changes thereto.

As a means of further identification, FXDs/MCs shall require the presentation of a government-issued identification document such as SSS/GSIS/voter’s ID, driver’s license or passport.

A sample of application to sell/purchase foreign currencies is shown in Item “C”, Appendix N-8.

§ 4511N.7 Additional requirement FXDs/MCs shall require an accomplished application form and submission/presentation of supporting documents listed in Item “D” of Appendix N-8 for the sale of foreign exchange in the amount exceeding US\$10,000 or its equivalent for non-trade current account purposes. For the sale of foreign exchange for all other purposes, FXDs/MCs shall require submission of an accomplished application form and supporting documents listed in Items “B”, “C” and “D” of Appendix N-8, regardless of the amount involved.

(As amended by Circular No. 652 dated 05 May 2009)

§ 4511N.8 Requirements for remittance agents. RAs shall maintain accurate and meaningful originator information on funds transferred/remitted by requiring the sender/remitter to fill up and sign an application form, which shall contain the following minimum data and information:

- a. *For individual customers -*
- (1) Date;
 - (2) Printed name and signature of remitter;
 - (3) Present address;

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(4) Permanent address;

(5) Date and place of birth;

(6) Telephone number;

(7) Nationality;

(8) Amount and currency to be remitted;

(9) Source of foreign currency; and

(10) Name of and relationship with beneficiary/ies.

b. For corporate/juridical customers

In addition to a signed application containing the applicable information in Item "a", a photocopy of the authority and identification of the person purporting to act in behalf of the client shall be required.

As a means of further identification, RAs shall require the presentation of a government-issued identification document such as SSS/GSIS/voter’s ID, driver’s license or passport.

For purposes of compliance with the requirements, an RA may rely on the referral of its office/correspondent bank abroad: *Provided*, That the RA maintains a record of such referral together with the minimum identification, information documents required under the law and its implementing rules and regulations.

§ 4511N.9 Anti-Money Laundering Council Reportorial Requirements.

FXDs/ MCs and RAs are required to submit to the AMLC a report on covered transactions and suspicious transactions in accordance with the applicable provisions of Part 8 of Q Regulations.

(As amended by Circular No. 706 dated 05 January 2011)

§ 4511N.10 - 4511N.14 (Reserved)

§ 4511N.15 Sanctions.

Monetary penalties and other sanctions for the following violations committed by erring FXDs/MCs and RAs may be imposed:

Nature of Violation/ Exception	Sanctions/Penalties
a. Operating without prior BSP registration	Applicable penalties under Section 36 of R.A. No. 7653; Watchlisting of partners/principal officers
b. Violation of any of the provisions of R.A. No. 9160, amended and its IRR	Applicable penalty prescribed under as the Act
c. Other violations of the provisions/ requirements in this Section	Penalties and sanctions which may be imposed by the AMLC

§ 4511N.16 Industry association

Membership in an existing association of BSP-registered FXDs/MCs as well as RAs is encouraged.

Secs. 4512N - 4600N (Reserved)

Sec. 4601N Fines and Other Charges.

The following regulations shall govern imposition of monetary penalties on NBFIs, their directors and/or officers and the payment of such penalties or fines and other charges by these entities.

(Circular No. 585 dated 15 October 2007)

§ 4601N.1 Guidelines on the imposition of monetary penalties; payment of penalties or fines.

The following are the guidelines on the imposition of monetary

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penalties on NBFIs, their directors and/or officers and the payment of such penalties or fines and other charges by these entities:

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 (1)-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 (1)-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 reckoned from the business day immediately following the day said penalty becomes due and payable up to the day of actual payment. The penalty approved by the Governor/MB to be imposed on the NBFIs, its directors and/or officers 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 (15) day period shall be automatically debited against their corresponding DDA on the following business day without additional charge. If the balance of the concerned NBFI’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 business 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 NBFI, 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 NBFI 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 NBFI/ individual concerned.

(Circular No. 585 dated 15 October 2007, as amended by Circular No .662 dated 09 September 2009)

Sec. 4602N (Reserved)

Sec. 4603N **Non-Bank BSP Supervised Entities.** NBBSEs that may subsequently be authorized to engage in FX forwards and swaps as dealers shall be covered by the

provisions under Subsecs. 4625Q to 4625Q.9, and 4625Q.14.

(Circular No. 591 dated 27 December 2007)

Secs. 4604N - 4640N (Reserved)

Sec. 4641N **Electronic Services.** The guidelines concerning electronic activities as may be applicable, are found in Sec. 4701Q and its Subsections.

(Circular No. 649 dated 09 March 2009)

Sec. 4642N **Issuance and Operations of Electronic Money.** The following guidelines shall govern the issuance of electronic money (e-money) and the operations of electronic money issuers (EMIs).

(Circular No. 649 dated 09 March 2009)

§ 4642N.1 **Declaration of policy.** It is the policy of the BSP to foster the development of efficient and convenient retail payment and fund transfer mechanisms in the Philippines. The availability and acceptance of e-money as a retail payment medium will be promoted by providing the necessary safeguards and controls to mitigate the risks associated in an e-money business.

(Circular No. 649 dated 09 March 2009)

§ 4642N.2 **Definitions**

E-money shall mean monetary value as represented by a claim on its issuer, that is -

- a. electronically stored in an instrument or device;
- b. issued against receipt of funds of an amount not lesser in value than the monetary value issued;
- c. accepted as a means of payment by persons or entities other than the issuer;
- d. withdrawable in cash or cash equivalent; and
- e. issued in accordance with this Section.

Electronic money issuer shall be classified as follows:

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- a. Banks (hereinafter called EMI-Bank);
 - b. NBFI supervised by the BSP (hereinafter called EMI-NBFI); and
 - c. Non-bank institutions registered with the BSP as a money transfer agent under Section 4511N of the MORNBFI (hereinafter called EMI-Others).
- For purposes of this Section:
- a. *Electronic instruments or devices* shall mean cash cards e-wallets accessible via mobile phones or other access device, stored value cards, and other similar products.
 - b. E-money issued by NBFIs shall not be considered as deposits.
- (Circular No. 649 dated 09 March 2009)*

§ 4642N.3 Prior Bangko Sentral approval. NBFIs planning to be an EMI-NBFI shall comply with the requirements of Sec. 4641N and Sec. 4190N, when applicable.

NBFIs planning to be an EMI-Others shall register with the BSP as a money transfer agent in accordance with the provisions of Sec. 4511N. To qualify for registration, they have to comply with the following requirements:

- a. They must be a stock corporation with a minimum paid-up capital of P100 million;
- b. They shall engage only in the business of e-money and other activities related or incidental to the business of e-money, such as money transfer/remittance. An existing entity engaged in activities not related to the business of e-money but wishing to act as EMI-Others must do so through a separate entity duly incorporated exclusively for such purpose;
- c. They shall not engage in the extension of credit, unless they comply with the provisions of Subsec. 4633N.5;
- d. To further protect the e-money holders and ensure that e-money redemptions are adequately met at all times,

the entity should have sufficient liquid assets equal to the amount of outstanding e-money issued. The liquid assets should remain unencumbered and may take any of the following forms:

- (1) bank deposits separately maintained for liquidity purposes;
- (2) government securities set aside for the purpose; and
- (3) such other liquid assets as the BSP may allow.

Records pertaining to the above liquid assets shall be made available for inspection by BSP at any time and the confidentiality of bank deposits and government securities shall be waived.

e. The BSP shall be allowed access to review the e-money systems and databases of the entity. Whenever the circumstances warrant, such access shall extend to the agents, partners, service providers or outsourced entities of the EMI-Others in view of their participation in the e-money business; and

f. EMI-Others shall submit to the SDC, its AFS within thirty (30) days from date of report of its external auditors.

In case the NBFI is already registered with the BSP as a money transfer agent, it is required to meet the additional requirements mentioned above to qualify as EMI-Others.

(Circular No. 649 dated 09 March 2009)

§ 4642N.4 Common provisions. The following provisions are applicable to all EMIs:

- a. E-money instrument issued shall be subject to aggregate monthly load limit of P100,000 unless a higher amount has been approved by BSP. In case an EMI issues several e-money instruments to a person (e-money holder), the total amount loaded in all the e-money instruments shall be consolidated in determining compliance with the aggregate monthly load limit;
- b. EMIs shall put in place a system to maintain accurate and complete record of e-money instruments issued, the identity of

e-money holders, and the individual and consolidated balances thereof. The system must have the capability to monitor the movement of e-money transactions and link e-money instruments issued to common e-money holders. The susceptibility of a system to intentional or unintentional misreporting of transaction and balances shall be sufficient ground for imposition by the BSP of sanctions, as may be applicable.

c. E-money may only be redeemed at face value. It shall not earn interest nor rewards and other similar incentives convertible to cash, nor be purchased at a discount. E-money is not considered a deposit hence it is not insured with the PDIC.

d. EMLs shall not ensure that e-money instruments clearly identify the issuer who is ultimately responsible to the e-money holders. This shall be communicated to the client who shall acknowledge the same in writing.

e. It is the responsibility of EMLs to ensure that their distributors/e-money agents comply with all applicable requirements of the Anti-Money Laundering laws, rules and regulations.

f. EMLs shall provide an acceptable redress mechanism to address the complaints of its customers.

g. EMLs shall disclose in writing and its customers shall signify agreement to the information embodied in Item “c” above upon their participation in the e-money system. In addition, it shall provide clear guidance in English and Filipino on consumers’ right of redemption, including conditions and fees for redemption, if any. Information on available redress procedures for complaints together with the address and contact information of the issuer shall also be provided.

h. Prior to the issuance of e-money, EMLs should ensure that the following minimum systems and controls are in place:

(1) Sound and prudent management, administrative and accounting procedures and adequate internal control mechanisms;

(2) Properly-designed computer systems which are thoroughly tested prior to implementation;

(3) Appropriate security policies and measures intended to safeguard the integrity, authenticity and confidentiality of data and operating processes;

(4) Adequate business continuity and disaster recovery plan; and

(5) Effective audit function to provide periodic review of the security control environment and critical systems.

i. EMLs shall provide the SDC quarterly statements containing, among others, information on investments, volume of transactions, total outstanding e-money balances, and liquid assets in such forms as may be prescribed later on.

j. EMLs shall notify BSP in writing of any change or enhancement in the e-money facility thirty (30) days prior to implementation. If said change or enhancement requires prior BSP approval, the same shall be evaluated accordingly. Any change or enhancement that shall expand the scope or change the nature of the e-money instrument shall be subject to prior approval of the Deputy Governor, SES. These changes or enhancements may include the following:

(1) Additional capabilities of the e-money instrument/s, like access to new channels (e.g. inclusion of internet channel in addition to merchant Point of Sale terminals);

(2) Change in technology service providers and other major partners in the e-money business (excluding partner merchants), if any; and

(3) Other changes or enhancements.

(Circular No. 649 dated 09 March 2009)

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§ 4642N.5 *Quasi-bank license requirement.* EMI-NBFIs and EMI-Others that engage in lending activities must secure a quasi-banking license from the BSP.
(Circular No. 649 dated 09 March 2009)

§ 4642N.6 *Sanctions.* Monetary penalties and other sanctions for the following violations committed by EMI-NBFIs, and EMI-Others shall be imposed:

Nature of Violation Exception	Sanction/Penalties
1. Issuing e-money without prior BSP approval	Applicable penalties under Sections 36 & 37 of R.A. No. 7653; Watchlisting of owners/partners/principal officers
2. Violation of any of the provisions of R.A. No. 9160 (Anti-Money Laundering Law of 2001 as amended by R.A.No. 9191 and its implementing rules and regulations	Applicable penalties prescribed under the Act
3. Violation/s of this Section	Penalties and sanctions under the abovementioned laws and other applicable laws, rules and regulations

In addition, the susceptibility of a system to intentional or unintentional misreporting of transactions and balances shall be sufficient ground for appropriate BSP action or imposition of sanctions, whenever applicable.
(Circular No. 649 dated 09 March 2009)

§ 4642N.7 *Transitory provisions.* An EMI-NBFI and EMI-Other granted an authority to issue e-money prior to 26 March 2009 may continue to exercise such authority: *Provided,* That it shall submit to

the BSP, within one (1) month from the 26 March 2009 a certification signed by the President or Officer with equivalent rank and function that it is in compliance with all the applicable requirements of this Section. Otherwise, they are required to submit within the same period the measures they will undertake, with the corresponding timelines, to conform to the provisions that they have not complied with subject to BSP approval.
(Circular No. 649 dated 09 March 2009)

§§ 4642N.8 - 4642N.10 *(Reserved)*

§ 4642N.11 *Outsourcing of services by Electronic Money Issuers (EMIs) to Electronic Money Network Service Providers (EMNSP).* The guidelines on outsourcing of services by EMIs to EMNSP are shown in *Appendix Q-55*.
Sanctions. Violations committed by EMIs pertaining to outsourcing activities to EMNSP shall be subject to monetary penalties as graduated under *Appendix Q-39* and/or other non-monetary sanctions under Section 37 of RA No. 7653.
Transitory provisions. EMIs that were granted an authority to outsource their e-money activities to an EMNSP may continue to exercise such authority provided that they have to conform to the provisions of *Appendix Q-55* within a six-month period from 20 January 2011.
(Circular 704 dated 22 December 2010)

Secs. 4643N - 4652N *(Reserved)*

Sec. 4653N *Accounting for Financial Institution Premises; Other Fixed Assets* FI premises, furniture, fixture and equipment shall be accounted for using the cost model under PAS 16 “Property, Plant and Equipment.”
(Circular No. 494 dated 20 September 2004)

Secs. 4654N - 4659N (Reserved)

Sec. 4660N 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 practices.

Towards this end, NBFIs under BSP supervision, including FXDs/MCs and RAs, 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.

Non-bank remittance service providers 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. 4661N - 4694N (Reserved)

Sec. 4695N Valid Identification Documents

The provisions of Part 8 of Q Regulations on Valid Identifications documents shall apply to all types of financial transactions by NBFIs, including financial transactions involving OFWs.

(Circular No. 564 dated 03 April 2007, as amended by Circular Nos. 706 dated 05 January 2011, 657 dated 16 June 2009 and 608 dated 20 May 2008)

Secs. 4696N - 4698N (Reserved)

Sec. 4699N General Provision on Sanctions. Any violation of the preceding provisions shall be subject to Section 36 of R.A. No. 7653.

Secs. 4700N - 4799N (Reserved)

Secs. 4800N - 4900N (Reserved)

TRUST CORPORATION
 (Stand-Alone Trust)

Section 4901N Trust Corporation; Statement of Policy. It is the policy of the Bangko Sentral to promulgate rules and regulations necessary for the proper conduct and development of trust, other fiduciary business and investment management activities. Toward this end, authority to engage in trust, other fiduciary business and investment management activities shall be granted to all qualified trust corporations which meet the requirements provided herewith.
(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4401Q)

§ 4901N.1 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 (IMAs) in *Appendix Q-48* 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.

Trust corporation 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.
(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4401Q)

Sec 4902N Scope of Trust, Other Fiduciary Business and Investment Management Activities. A trust corporation shall be a stock corporation primarily created, and duly authorized by the Monetary Board, to engage only in trust, other fiduciary business and investment management activities, which shall act as trustee or administer any trust or hold property in trust or on deposit for the use and benefit of others, and/or act as financial consultant, investment adviser or portfolio manager. It shall administer the funds or property under its custody with the diligence that a prudent man would exercise in the conduct of an enterprise of a like character with similar aims: *Provided*, That the trust corporation shall not accept and administer funds or property of any bank and/or QB, and act as trustee, fiduciary, financial consultant, investment adviser, or portfolio manager of such funds or property. It shall also be known or referred to as a stand-alone trust corporation.

A trust corporation may accept peso and foreign currency denominated accounts: *Provided*, That in the case of foreign currency denominated accounts, all relevant laws, rules and regulations issued by local regulatory agencies are complied with.

A trust corporation may be a subsidiary or an affiliate of a bank and/or a NBFIs: *Provided*, That the investing bank and/or NBFIs cannot engage in trust, other fiduciary business and investment management activities both directly through its separate and distinct department or other similar unit in the bank or NBFIs, and indirectly through a subsidiary or affiliate trust corporation: *Provided*, further, That a bank and/or NBFIs

may acquire or invest in the equity of not more than two (2) trust corporations: *Provided, finally,* That in the case of an investing bank, the acquisition or investment in the equity of a trust corporation shall be subject to all relevant laws, rules and regulations on equity investment of banks in a financial allied enterprise and the following limitations and restrictions:

1. *In a single enterprise.* The equity investment of a bank in a single trust corporation shall be within the following ratios in relation to the total subscribed capital stock and to the total voting stock of the trust corporation:

INVESTOR/INVESTING BANK					
	UB	KB	TB	RB	Coop Bank
Limit in single trust corporation	100%	49%	40%	40%	40%

Provided: That the equity investment of a UB and a KB in any single trust corporation shall not exceed, at any time, twenty-five percent (25%) of the net worth of the investor/investing bank as defined in Sec. X106 and Subsec. X121.5.

2. *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 investor/investing bank

INVESTOR/INVESTING BANK					
	UB	KB	TB	RB	Coop Bank
Aggregate Limit	50%	35%	25%	25%	25%

(Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4402Q)

§ 4902N.1 *Scope of regulations.* The regulations are divided into three (3) Sub-Parts where:

A. *Trust and Other Fiduciary Business* shall apply to trust corporations authorized to engage in trust and other fiduciary business including investment management activities;

B. *Investment Management Activities* shall apply to trust corporations without trust authority but engaged in investment management activities; and

C. *General Provisions* shall apply to both.

(Circular No. 710 dated 19 January 2011)

§ 4902N.2 *Borrowings.* A trust corporation cannot engage in quasi-banking functions, particularly the borrowing of funds from the public for the purpose of relending the said funds. The trust corporation however retains the right to borrow as is inherent to any duly registered corporate entity.

(Circular No. 710 dated 19 January 2011)

Sec 4903N *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 trust-licensed institutions resulting from a contract or agreement whereby the institution 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 such

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institution. 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 institution (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 trustor 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 person with the latter’s authority.

m. *Trust Officer* shall refer to the designated head or officer-in-charge of the trust corporation.

n. *Trust account* shall refer to an account where transactions arising from a trusteeship are kept and recorded.

o. *Fiduciary account* shall refer to an account where transactions arising from any of the other fiduciary businesses are kept and recorded.

p. *Investment Manager* shall refer to any person or entity engaged in investment management activities as herein defined.

q. *Investment Management Department* shall refer to the department, unit, group, division or any aggrupation which carries out the investment management activities of a trust corporation that does not have an authority to engage in trust and other fiduciary business.

r. *Investment Management Officer* shall refer to the designated head or officer-in-charge of the investment management department of an institution which does not have the authority to engage in trust and other fiduciary business.

s. *Investment management account* shall refer to an account where transactions arising from investment management activities are kept and recorded.

(Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4403Q)

A. TRUST AND OTHER FIDUCIARY
 BUSINESS

Sec. 4904N Organizational Requirements
 (Circular No. 710 dated 19 January 2011)

§ 4904N.1 *Application for authority to establish.* The incorporators/directors of the proposed trust corporation shall file and

submit to the Monetary Board through the appropriate department of the SES an application for authority to establish a trust corporation to primarily engage in trust, other fiduciary business and investment management activities, which shall be duly signed by all incorporators/directors, together with the following documents:

a. Accomplished biographical data of each incorporator, subscriber, proposed director and officer, if applicable;

b. Certified Statement of Assets and Liabilities as of a date not earlier than ninety (90) days prior to the filing of the application of each of the incorporator, subscriber, proposed director and officer together with the evidences of asset ownership such as bank certification/statement, savings passbook, certificate of time deposit, bond or stock certificate, transfer certificate of title and tax declaration. A waiver of rights under R.A. No. 1405, as amended, shall also be submitted for purposes of verification of the declared assets, pursuant to the provisions of the Anti-Money Laundering Law, as amended;

c. Certified photocopies of Income Tax Returns (ITRs) for the last three calendar years of each incorporator, subscriber, proposed director and officer or similar document from the home country in the case of Non-Filipino citizens;

d. Clearance from the National Bureau of Investigation (NBI) and Bureau of Internal Revenue (BIR) of each of the incorporator, subscriber, proposed director and officer or similar document from the home country in the case of Non-Filipino citizens;

e. Certification from home country's supervisory authority that the Non-Filipino citizen has no derogatory record;

f. For corporate subscribers, the following additional documents shall be submitted:

(1) Copy of the board resolution authorizing the corporation to invest in such

trust corporation and designating the person who will represent the corporation in connection therewith;

(2) Copy of the latest articles of incorporation and by-laws;

(3) Updated list of directors and principal officers;

(4) Current list of major stockholders, indicating the citizenship and the number, amount and percentage of the voting and non-voting share held by them;

(5) A copy each of the corporation's audited financial statements for the last two (2) years prior to the filing of the application;

(6) A copy of the corporation's annual report to the stockholders for the year immediately preceding the date of filing of the application;

(7) Certified photocopies of ITRs and BIR clearance for the last two (2) calendar years; and

(8) For foreign corporation, it shall also submit a certification from its home country's supervisory authority that it has no objection to the investment of such company in a trust corporation in the Philippines and that adequate information on such foreign corporation shall be provided to the Bangko Sentral to the extent allowed under existing laws.

g. Detailed plan of operation and economic justification for establishing a trust corporation. The plan should describe and analyze the industry and the market area from which the trust corporation expects to draw majority of its trust business and establish a strategy for its ongoing operation. It should also describe how the trust corporation will be organized and controlled internally;

h. Projected financial statements for the first five (5) years together with assumptions. These should be consistent with its proposed plan of operation and would show sufficient capital to support its strategy and operation;

i. Detailed plan on how the subscribers would put up the required capitalization for

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the proposed trust corporation; and
 j. Such other information that the Bangko Sentral may require.

The application shall be considered filed and submitted on a first-come, first-served basis: *Provided*, That all required documents are complete and properly accomplished: *Provided*, further, That in case of banks and NBFIs that decide to spin-off their trust department to a trust corporation, the documentary requirements under Items "f" and "g" may not be submitted.

Grounds for disapproval of application.
 The Monetary Board may deny the application to organize a trust corporation on the basis of any of the findings that:

- a. The trust corporation is being organized for any purpose other than to engage in the business of a legitimate trust corporation;
- b. The trust corporation’s financial program is against the law, Bangko Sentral rules and regulations, public policy, and public standard; and
- c. There exist other reasons, which the Monetary Board may consider as sufficient ground for such disapproval.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4404Q)

§ 4904N.2 Required capital. Upon incorporation/establishment, a trust corporation shall have a minimum paid-in capital of P300 million. Thereafter, the trust corporation is required to maintain a minimum unimpaired combined capital account of P300 million, or such amounts as may be prescribed by the Monetary Board in the future, for assets under management up to P20 billion.

For assets under management amounting to more than P20 billion, an incremental capital shall be provided and computed as a percentage of the book value of the total volume of assets under management based on the following:

Assets Under Management (AUM) (In Billions)	Incremental Capital Requirement Based on Total Volume of AUM
Above P20.0 - P100.0	6 basis points
Above P100.0 - P250.0	8 basis points
Above P250.0 - P500.0	10 basis points
Above P500.0	12 basis points

The assets under management, for this purpose, shall be computed based on the average of the quarter-end balances of assets under management of the preceding four (4) quarters.

The provision on incremental unimpaired combined capital shall be subject to periodic review.

For purposes of this Subsection, combined capital accounts shall mean the total capital stock, retained earnings and profit and loss summary, net of (a) valuation reserves on the allowable proprietary assets, and such other capital adjustments as may be required by the Bangko Sentral, and (b) appraisal surplus or appreciation credit as a result of appreciation or an increase in book value of the assets of the trust corporation.

Whenever the combined capital accounts of the trust corporation are deficient with respect to the preceding paragraphs, the Monetary Board, after considering the report of the appropriate department of the SES on the state of solvency of the trust corporation concerned, shall require the trust corporation to institute necessary corrective action(s) to address its capital deficiency which may include the submission of an acceptable capitalization program. Otherwise, the Monetary Board shall require the trust corporation, among others, to maintain net income and limit or prohibit the distribution of dividends to increase its capital accounts, or restrict the acceptance of new trust, other fiduciary and IMAs or introduction of new trust products or unit investment trust fund, until such

corporation complies with the minimum capital requirement.

Failure of the trust corporation to meet the minimum capital requirement shall be a ground for the imposition of sanctions and suspension/revocation of the authority to engage in trust, other fiduciary business and investment management activities.

(Circular No. 710 dated 19 January 2011)

§4904N.3 Requirements for the issuance of the certificates of authority to register and to operate

a. Within sixty (60) days from receipt of advice of approval by the Monetary Board/Governor of their application for authority to establish a trust corporation, the incorporators shall:

(1) Submit seven (7) copies of the articles of incorporation, treasurer's sworn statement and by-laws which shall include provisions on the appointment of a president/trust officer or its equivalent position, if any, and other subordinate officers, and a clear definition of their duties and responsibilities; and

(2) Deposit with any universal/commercial bank the initial paid-up capital of the proposed trust corporation.

b. Within thirty (30) days from receipt of advice of approval by the Monetary Board/Governor of their application for authority to establish a trust corporation, it shall pay a non-refundable license fee of P500 thousand pesos to the Bangko Sentral.

c. Within thirty (30) days after the articles of incorporation and by-laws had been passed upon by the Office of the General Counsel and Legal Services, and the corresponding certificate of authority to register had been issued, the incorporators shall effect the filing and registration of said documents with the SEC.

Articles of incorporation; by-laws. The articles of incorporation and by-laws of any trust corporation, or any amendment

thereto, shall not be registered with the SEC unless accompanied by a certificate of authority issued by the Monetary Board.

(Circular No. 710 dated 19 January 2011)

(Equivalent of Section 4404Q.3)

§4904N.4 Pre-operating requirements

Within six (6) months from receipt of advice of approval by the Monetary Board/Governor of their application for authority to establish a trust corporation to primarily engage in trust, other fiduciary business and investment management activities, the incorporators shall secure the certificate of authority to operate the trust, other fiduciary business and investment management activities and submit to the appropriate department of the SES the following:

a. Copy of the articles of incorporation and by-laws including proof of registration with the SEC;

b. Certification of compliance with the conditions of approval duly signed by the incorporators, including the set-up of the basic security deposit mentioned in Subsec. 4905N.1;

c. Names and positions of individuals designated as chairman and members of the board of directors, president/trust officer and other subordinate officers of the trust corporation with their respective bio-data and statement of duties and responsibilities;

d. Organizational chart which shows the names of departments/units with respective functions and responsibilities and designations of officers/employees including responsibilities of personnel within the said departments/units. The organizational chart should show clear accountability of the management structure and should provide for independent check and balance by the board of directors;

e. Risk Management Manual and Operations Manual embodying the policies, systems, and operating procedures of each department/unit in the organization covering

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the areas on (a) signing/delegated authorities, (b) procedures/flow of paperwork, and (c) other matters, together with the certification of the President /Trust Officer of the trust corporation that these manuals were prepared and aligned with existing Bangko Sentral rules and regulations on risk management and trust, other fiduciary and investment management activities and shall be implemented. A trust corporation is expected to have in place, a risk management system that is appropriate to the nature and complexity of the trust corporation’s fiduciary activities;

f. Excerpts of the minutes of the organizational/director’s meetings confirming all organizational and pre-opening transactions relative to activities undertaken by the trust corporation to operate the trust, other fiduciary business and investment management activities (e.g., appointment of officers, and approval of authorized signatories);

g. Alphabetical list of all stockholders with the number and percentage of voting stocks owned/held;

h. List of natural persons/stockholders certified by the Corporate Secretary, owning voting stocks in the trust corporation and are related to other identified stockholders within the third (3rd) degree of consanguinity or affinity, indicating the combined percentage of voting stocks held by these persons in the particular trust corporation, as well as juridical persons, including corporations that are wholly-owned or a majority of the stock of which is owned by any of such persons, including their wholly- or majority-owned subsidiaries;

i. Certification by the President/Trust Officer of the trust corporation that no person who is the spouse or relative within the second (2nd) degree of consanguinity or affinity of any person holding the position

of Chairman, President/Trust Officer, Chief Executive Officer, Chief Operating Officer, Executive Vice-President, Senior Vice President or any position of equivalent rank, General Manager, Treasurer, Chief Cashier, or Chief Accountant will be appointed to any of said positions in the trust corporation; and
 j. Other documents/papers which may be required.

(Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4404Q.4)

§ 4904N.5 Commencement of trust, other fiduciary business and investment management activities. The trust corporation shall commence operation within one (1) year from date of approval by the Monetary Board of their application for authority to establish a trust corporation to primarily engage in trust, other fiduciary business and investment management activities: *Provided*, That the trust corporation may be granted by the Deputy Governor, SES, a final extension of six (6) months subject to the formal presentation of valid justification and documentary proof that the trust corporation can commence operation within the six (6)-month period. Otherwise, upon recommendation of the Deputy Governor, SES, the Monetary Board shall revoke the authority to establish a trust corporation to primarily engage in trust, other fiduciary business and investment management activities.

(Circular No. 710 dated 19 January 2011)

Sec. 4905N Security for the Faithful Performance of Trust and Other Fiduciary Business and Allowable Proprietary Assets

(Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4405Q)

§ 4905N.1 Basic security deposit. Trust corporations, duly authorized by the

Monetary Board, shall establish a basic security deposit for the faithful performance of trust and other fiduciary duties and investment management activities equivalent to the required capital under Subsec 4904N.2: *Provided*, That at no time shall the basic security deposit be less than P300 million. The basic security deposit shall be in the form of securities acceptable to the Bangko Sentral, earmarked in favor of the Bangko Sentral: *Provided, further*, That the trust corporation shall issue an authorization in favor of the Bangko Sentral to withdraw, dispose and disburse the proceeds thereof to settle any claims arising from the breach of its duties as evidenced by a final and executory court order: *Provided, finally*, That the trust corporation shall not withdraw, transfer or replace such earmarked securities without prior written instruction from the Bangko Sentral.

Scripless securities under Registry of Scripless Securities (RoSS) system of the Bureau of Treasury (BTr) may be used as basic security deposit for trust duties using the guidelines in *Appendix Q-21*.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4405Q.1)

§4905N.2 Allowable proprietary assets

1. Assets owned by the trust corporation shall be for the purpose of engaging in the business of trust, other fiduciary and investment management activities and maintaining the minimum capital requirement.

Eligible Securities. The allowable proprietary assets shall include eligible government securities deposited with the Bangko Sentral in compliance with the basic security deposit requirement provided under Subsec 4905N.1, which consist of:

a. Evidences of indebtedness of the Republic of the Philippines and of the Bangko Sentral 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 maturities of not more than three (3) years from the date of deposit with the Bangko Sentral;

b. NDC Agri-Agra ERAP Bonds, regardless of remaining maturities;

c. Five (5) - and Ten (10) - year Special Purpose Treasury Bonds (SPTBs) 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 Internal Revenue Allotments (IRA) 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;

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

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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 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

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.

2. In the determination of the financial condition of any trust corporation doing business in the Philippines, the allowable proprietary assets shall consist of:

a. Investments in eligible government securities defined in Item "1" hereof;

b. Investments in securities issued by or guaranteed by the Philippine government, or the BSP;

c. Investments in bank deposits, and highly liquid and investment grade securities, including:

(1) money market instruments;

(2) those issued by central governments and central banks of foreign countries with the highest credit quality given by any two (2) internationally accepted rating agencies; and

(3) securities issued by any supranational entity;

d. Loans and other credit accommodations

(1) secured by obligations of the Philippine Government or of the BSP;

(2) fully guaranteed by the Philippine Government as to the payment of principal and interest;

(3) secured by highly liquid and investment grade securities;

(4) to the extent covered by the hold-out on or assignment of, bank deposits held in the Philippines; and

(5) which the Monetary Board may from time to time specify as non-risk items;

e. Real and other properties, including building, furniture and fixtures, safes, equipments, and other fixed assets, utilized/ to be utilized by the trust corporation in the conduct of its trust, other fiduciary business and investment management activities: *Provided*, That the total investment in such real estate and improvements thereof, including all other fixed assets, shall not exceed thirty percent (30%) of the combined capital accounts; and

f. Other assets, not inconsistent with the provisions of paragraphs "a" to "d" hereof, which are deemed to be readily realizable and available for the payment of liabilities, losses or claims at values to be determined in accordance with the Financial Reporting Package for Trust Institutions.

For purposes of investing the allowable assets, the trust corporation shall not

(a) commingle their proprietary funds/ assets with the assets under management; and

(b) invest the same in their own unit investment trust fund or other trust products.

(Circular No. 710 dated 19 January 2011)

(Equivalent of Section 4405Q.2)

§4905N.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.
(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4405Q.3)

§ 4905N.4 Compliance period; sanctions.
The trust corporation 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 and other fiduciary duties:

- a. On the trust corporation:
i. Monetary penalty/ies:

Penalty per Calendar Day	Offense		First	Second	Third and subsequent offense(s)
	Trust Asset Size				
	Trust corporation with Full Trust Authority and with Trust Assets of	Up to P500 million	P600	P700	P800
		Above P500 Million but not exceeding P1 billion	P1,000	P1,250	P1,500
		Above P1 billion but not exceeding P10 billion	P2,000	P3,000	P4,000
		Above P10 billion but not exceeding P50 billion	P5,000	P6,000	P7,000
		Above P50 billion	P8,000	P9,000	P10,000

- ii. Non-monetary penalty beginning with the third offense (all trust corporations) – 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 trust corporation’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 trust corporation, 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.
(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4405Q.4)

§4905N.5 Reserves against peso denominated Trust and Other Fiduciary Accounts (TOFA) – Others

In addition to the basic security deposit, an institution authorized to engage in trust and other fiduciary business shall maintain reserves on TOFA- Others, except accounts held under:

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- (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 and living trust);
- (8) Executorship;
- (9) Guardianship;
- (10) Life Insurance Trust; and
- (11) Pre-need Plans (institutional/individual).

The reserves to be maintained shall be as follows:

- (i) Regular reserves 6%
- (ii) Liquidity reserves 11%

The liquidity reserves 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 Q-41*.

(i) Short-term market-yielding government securities purchased directly from the BSP-TD.

(ii) NDC Agri-Agra ERAP Bonds, regardless of maturity; 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 TOFA-Others shall be provided by the institution out of said funds.

(Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4405Q.5)

§ 4905N.6 *Composition of reserves*

a. The provisions of Section 4254Q shall govern the composition of reserves against TOFA-Others of trust corporations.

For purposes of this Subsection, a special deposit account shall be maintained by the institutions with the BSP exclusively for trust reserves which deposits up to forty percent (40%) of the required reserves against 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 percent (4%) per annum, based on the average daily balance of said deposits to be credited quarterly.

Likewise, trust corporations may also maintain a special demand deposit account with local banks exclusively for trust duties.

Published interest rates that will be applied on BSP’s Special Deposit Accounts of trust corporations shall be inclusive of the twelve percent (12%) VAT.

b. The portion of reserves that may be maintained in the form of short-term market-yielding government securities refers to government securities shall be purchased directly from the BSP Treasury Department at one-half percent (1/2%) 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 short-term market yielding government securities shall be in addition to other forms of eligible reserves such as cash in vault or on deposit with the 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 Q-21*.

(Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4405Q.6)

§ 4905N.7 Computation of reserve position. Trust corporation authorized to engage in trust and other fiduciary business shall calculate daily the required and available reserves on the value per books of its TOFA-Others, based on the seven-day week, starting Friday and ending Thursday including Saturdays, Sundays, holidays, non-business days and days when there is no clearing: *Provided*, That with reference to holidays, non-business days and days where there is no clearing, the reserve position at the close of business day immediately preceding such holidays, non-business days and days where there is no clearing, shall apply thereon. 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 TOFA-Others of the prior week.

For purposes of computing the required and available statutory and liquidity reserves for TOFA-Others, the term *value per books* shall refer to the total volume of TOFA Others less booked "Allowance for Probable Losses".

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4405Q.7)

§ 4905N.8 Reserve deficiencies; sanctions. The computation of reserve deficiencies for TOFA-Others, of trust corporations authorized to engage in trust and other fiduciary business, including the sanctions are as follows:

a. Whenever the reserve position of any trust corporation computed in the manner specified in Subsec. 4905N.7 is below the required minimum, the trust corporation concerned 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 the trust corporation 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, the trust corporation 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.

b. In cases where the trust corporation has chronic reserve deficiency on deposit substitute liabilities, the Monetary Board may:

(1) limit or prohibit the making of new loans or investments by the trust corporation concerned;

(2) prohibit the declaration of cash dividends; and/or

(3) impose such other sanctions, as it may deem necessary. The board of directors of such trust corporation shall be notified of such chronic reserve deficiency and the penalties therefor, and shall be required to immediately correct the reserve position of the trust corporation.

As used in this Section, the following terms shall have the following meanings:

Chronic reserve deficiency shall mean having net reserve deficiency for two (2) consecutive weeks.

New loan and new investment shall refer to any loan and any investment involving disbursement of funds.

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c. Fines on legal reserve deficiencies on deposit substitute liabilities shall be paid by the trust corporation in accordance with Subsec. 4939N: *Provided*, That where the credit balance of the trust corporation’s demand deposit account (DDA) with the BSP is insufficient and it fails to settle the assessment within fifteen (15) days from receipt, the Monetary Board may limit or prohibit the making of new loans or investments by the trust corporation.

(Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4405Q.8)

§ 4905N.9 Report of compliance. Every trust corporation shall make a weekly report to the BSP of its daily required and available reserves TOFA-Others, to be submitted not later than the close of the third business day following the reference week.

(As amended by Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4405Q.9)

Sec. 4906N Incorporators, Directors, Officers and Management

(Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4406Q)

§ 4906N.1 Incorporators. The incorporators/subscribers and proposed directors and officers must be persons of integrity and of good credit reputation in the business community. The subscribers must have adequate and legitimate financial capacity to pay for their proposed subscriptions in the trust corporation.

The incorporators/subscribers and proposed directors and officers must not have been convicted of any crime involving moral turpitude, and unless otherwise allowed under the provisions of existing laws, are not officers or employees of a government agency, instrumentality, department or office charged with the supervision of, or the granting of credit to trust entities.

(Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4406Q.1)

§ 4906N.2 Limits on the number of the members of the board of directors. The number of members of the board of directors of the trust corporation shall not be less than five (5) nor more than fifteen (15), at least two of whom are independent directors, as defined under Subsec 4141Q.1 as follows:

a. Is not or has not been an officer or employee of the trust corporation, its subsidiaries or affiliates or related interests during the past three (3) years counted from the date of his election;

b. Is not a director or officer of the related companies of the trust corporation’s majority stockholder;

c. Is not a majority stockholder or substantial shareholder of the trust corporation, any of its related companies, or of its majority shareholder;

d. 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 trust corporation, or any of its related companies;

e. Is not acting as a nominee or representative of any director or majority stockholder or substantial shareholder of the trust corporation, or any of its related companies or majority stockholder or substantial shareholder; and

f. Is free from any business or other relationship with the trust corporation or any of its major stockholders which could materially interfere with the exercise of his judgment, i.e., has not engaged and does not engage in any transaction with the institution, any of its related companies or 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 or influence with the exercise of his judgment.

An independent director of a trust corporation 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 any of the said concerned entities.

The biographical data of the independent director shall be accompanied by a certification under oath that the above criteria have been complied with.

Non-Filipino citizens may become members of the board of directors of a trust corporation to the extent of the foreign participation in the equity of said trust corporation: *Provided*, That pursuant to Section 23 of the Corporation Code of the Philippines (Batas Pambansa Blg. 68), a majority of the directors must be residents of the Philippines.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4406Q.2)

§ 4906N.3 Qualifications of directors, officers and staff

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 by an entity duly accredited by the BSP;
- d. He must be fit and proper for the position of a director of the trust corporation. In determining whether a person is fit and proper for the position of a director, the following matters must be considered:
 - i. integrity/probity;

- ii. competence;
- iii. education;
- iv. diligence; and
- v. experience/training; and
- e. He shall have at least one (1) year of actual experience on trust, other fiduciary business and investment management activities or shall have passed the training program on said business/activities conducted or accredited by the BSP;

The foregoing qualifications for directors shall be in addition to those required or prescribed under R. A. No. 8791, the Corporation Code of the Philippines (Batas Pambansa Blg. 68) and other existing applicable laws and regulations.

Officers shall include the president/trust officer, chief executive officer, chief operating officer, senior vice president, vice-president, general manager, treasurer, secretary, and others mentioned as officers of the trust corporation, or those whose duties as such are defined in the by-laws, or are generally known to be the officers of the trust corporation (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 trust corporation: *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.

An officer shall have the following minimum qualifications:

- a. He shall be at least twenty-one (21) years of age;
- b. He shall be at least a college graduate; 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

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proper for a particular position, the following matters must be considered:

- i. integrity/probity;
- ii. competence;
- iii. education;
- iv. diligence; and
- v. experience/training

Provided, That the president/trust officer who shall be appointed shall also have the following:

- i. At least five (5) years of actual experience in trust, other fiduciary and investment management operations; or
- ii. At least five (5) years of actual experience as officer of a bank, NBFIs or related field; and passed the training program in trust, other fiduciary and investment management operations acceptable to the BSP.

Provided, further, That officers of the trust corporation with position of Senior Vice President and up, except for the president/trust officer, shall at least possess the requirement in (ii) as provided above.

The foregoing qualifications for officers shall be in addition to those required or prescribed under R. A. No. 8791, the Corporation Code of the Philippines (Batas Pambansa Blg. 68) and other existing applicable laws and regulations.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4406Q.3)

§ 4906N.4 Responsibilities of administration

a. *Board of Directors.* As a general policy, the board of directors shall be directly responsible for the proper administration and management of the institution's trust, other fiduciary business and investment management activities. It has the ultimate responsibility for understanding the nature and level of risks taken by the trust corporation. It shall recognize its responsibility to provide proper oversight

of the risk management process for fiduciary activities, and the official records of the board of directors shall clearly reflect the proper discharge of that responsibility. 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.

Aside from the powers/responsibilities and duties prescribed under Subsecs. 4141Q.3, and 4906N.4.a. and 4906N.4.b, the responsibilities of the board of directors shall include, but need not be limited, to the following:

(1) It shall establish strategic direction, ethical culture and risk tolerance standards for its fiduciary activities. In carrying out these responsibilities, the board of directors shall approve policies and procedures that set operational standards, and risk principles and limits. These policies shall be consistent with the trust corporation's broader business strategies, capital strength, management expertise and overall willingness to take risk. There should be well-designed monitoring systems that will allow the board of directors to hold related committees and officers accountable for operating within established tolerances;

(2) It shall take steps to clearly understand the various types of risks associated with trust, other fiduciary and investment management services and products offered and administered and to ensure that a reporting system that identifies and quantifies the risks in terms that are meaningful to the board of directors is developed and implemented;

(3) It shall ensure that resources are devoted to implement a sound risk

management system;

(4) It shall ensure that independent risk management function, and compliance program are in place;

(5) It shall establish appropriate organizational structure with delineations of authority, responsibility and accountability through all levels of the organization;

(6) It shall establish an appropriate staffing pattern and adopt operating budgets that shall enable the trust corporation to effectively carry out its functions. It shall likewise ensure that relevant training is continuously provided to the board of directors, president/trust officer, subordinate officers and staff, in the administration and operation, and risk management of all phases of trust, other fiduciary business and investment management activities, as well as assign competent staff for the internal audit, risk management, and compliance functions;

(7) It shall develop and implement adequate policies, procedures and practices relevant to trust, other fiduciary business and investment management activities that translate its objectives and risk tolerances into operating standards and are well understood by concerned personnel and consistent with its intent;

(8) It shall ensure that policies and procedures consistently address the material areas of risks and are periodically reviewed, and modified when necessary, to remain appropriate, sound and responsive to significant changes in the trust corporation's activities;

(9) It shall establish and maintain an effective system of controls, including enforcement of official lines of authority, and appropriate separation of duties;

(10) It shall ensure that all appropriate approvals are obtained and adequate operation procedures and risk control systems are in place;

(11) It shall keep each member of the board informed of the developments on trust, other fiduciary business and investment management activities, including pertinent products and services, laws, rules and regulations. Members shall attend relevant training and seminar for this purpose; and

(12) It shall oversee the implementation and maintenance of management information and other systems to identify, measure, monitor and control risks attached to the fiduciary activities of the trust corporation.

For this purpose, the board of directors shall meet periodically on a monthly basis or at least a minimum of nine (9) meetings in a calendar year, keep minutes of its actions, and make periodic reports thereon. Up to twenty-five percent (25%) of the actual meetings of the board of directors for a year may be conducted through modern technologies such as, but not limited to, teleconferencing and videoconferencing, as long as majority of the directors are physically present and the director(s) who is (are) taking part in the said meetings through said modern technologies can actively participate in the deliberations on matters taken up therein.

The board of directors shall designate the president as trust officer of the trust corporation.

Constitution of prescribed committees. In addition to the audit, corporate governance and risk management committees prescribed to be constituted under Subsection 4141Q.3.c.(9), the board of directors shall constitute a committee which shall be primarily responsible for the proper administration of the trust corporation's allowable proprietary assets and liabilities.

b. Specific duties and responsibilities of a director.

(1) To conduct fair business transactions

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with the trust corporation and to ensure that personal interest does not bias board decisions. A director 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 undivided loyalty, utmost care and in the best interest of the trustors, principals and beneficiaries. A director must always act in good faith, with the care which an ordinarily prudent man would exercise under similar circumstances. A director must administer trust, other fiduciary and investment management affairs by placing interests of trustors, principals and beneficiaries above those of the trust corporation.

(3) To devote time and attention necessary to properly discharge his duties and responsibilities. A director should devote sufficient time to familiarize himself with the institution's business. He must be constantly aware of the institution's condition and be knowledgeable enough to contribute meaningfully to the board's work. He must attend and actively participate in board and committee meetings, request and review meeting materials, ask questions, and request explanations and be familiar with audits and supervisory communications. 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 trustors, principals, beneficiaries, and the institution.

(6) To be generally informed of both the trust corporation's business environment and legal and regulatory framework controlling its activities. A director should 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 Bangko Sentral and where applicable, the requirements of other regulatory agencies and must exercise care to see that these are not violated. He should also keep himself informed of the industry developments and business trends in order to safeguard the institution's competitiveness.

(7) To observe confidentiality. A director must observe the confidentiality of non-public information acquired by reason of his position as director. He may not disclose said information to any other person without the authority of the board.

Every member of the board shall participate in at least seventy-five percent (75%) of all board meetings every year: *Provided*, 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

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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 seventy-five percent (75%) minimum attendance in board meetings.

c) Appointment and responsibilities of a president/trust officer. As maybe provided in the by-laws or delegated and decided by the board of directors, the president/trust officer shall have general supervision and direction of the business affairs of the trust corporation, particularly those relevant to trust, other fiduciary and investment management matters under the following areas:

(a) The administration of trust, other fiduciary and IMA;

(b) The implementation of policies and instructions of the board of directors;

(c) The submission of reports on matters which require the attention of the board of directors;

(d) The maintenance of adequate books, records and files for each trust, other fiduciary and investment management account; and

(e) The maintenance of necessary controls and measures to protect assets under his custody and held in trust, other fiduciary and investment management capacity.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4406Q.4)

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§ 4906N.9 Outsourcing services. Trust corporations are covered by the requirement of prior Bangko Sentral approval for outsourcing services under *Appendix Q-37*.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4406Q.4)

§ 4906N.10 Approval/Confirmation of the election/appointment of directors, president/trust officer and officers. The appointment/election of the Board of

directors, chief executive officer, chief operating officer, senior vice presidents or equivalent rank shall be subject to the confirmation of the Monetary Board.

If the Monetary Board finds 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.

The appointment/designation of the president/trust officer shall require prior approval of the Monetary Board. The bio-data of the proposed president/trust officer shall be submitted to the appropriate department of the SES.

The documentary requirements on the approval of the appointment of trust officers are listed in App. Q-57a.

(Circular No. 710 dated 19 January 2011 as amended by CL-2011-045 dated 01 July 2011)

(Equivalent of Section 4406Q.10)

§4906N.11 Appointment of a compliance officer and a risk officer. The trust corporation shall appoint a compliance officer, and a risk officer who are both independent from the backroom and front office trust operations and shall independently report to the board of directors or to their respective designated board level committees. The provisions relevant to the performance and appointment/designation of the compliance officer as provided under Subsec. 4180Q.2 shall apply.

(Circular No. 710 dated 19 January 2011)

§ 4906N.12 Prohibitions to become officer. No appointive or elective public official, whether full-time or part-time, shall at the same time serve as officer of the trust corporation.

(Circular No. 710 dated 19 January 2011)

§4906N.13 Disqualification of directors and officers. Grounds for disqualification of directors and officers as

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enumerated under Subsecs. 4143Q.1 and 4143Q.2 shall also include the following:

- a. Non-possession of experience and training qualifications;
- b. Negligence in the performance of the duties and responsibilities stipulated in the contract creating the trust, other fiduciary and IMA and which directly or indirectly caused material loss/impairment of the managed trust, other fiduciary and investment management assets;
- c. Entering into an arrangement or scheme which will compromise or prejudice the interest, rights and privileges of the trustor, principal and/or beneficiaries; and
- d. Other grounds as may be approved by the Monetary Board.

The foregoing grounds for disqualification for directors shall be in addition to those prescribed under the Corporation Code of the Philippines (Batas Pambansa Blg. 68) and other existing applicable laws and regulations.

(Circular No. 710 dated 19 January 2011)

§ 4906N.14 Watchlisting of directors and officers. The watchlisting of directors and officers, as defined under Subsec. 4143Q.5 shall apply.

(Circular No. 710 dated 19 January 2011)

§ 4906N.15 Interlocking directorship/officership.

- a. Interlocking directorship between a trust corporation and another FI shall be allowed except with investment houses.
- b. No interlocking directorship and officership, and interlocking officership and secondments, shall be allowed between trust corporations and between a trust corporation and any FI except, with prior approval of the Monetary Board, on concurrent officership position in the same capacity which do not involve management functions such as internal auditor, corporate secretary, assistant corporate secretary, and

security officer, within a group. 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.

(Circular No. 710 dated 19 January 2011)

Sec. 4907N 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 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 corporation 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; and

(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.

(Circular No. 710 dated 19 January 2011)

(Equivalent of Section 4407Q)

Sec. 4908N 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 trust corporation'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 trust corporations, may be deemed as conducting business in an unsafe or unsound manner, the Monetary Board, upon report of the head of the SES 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 trust corporation;

b. The act or omission has resulted or may result in material loss or damage or abnormal risk to the trust corporation'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 trust corporation 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

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and grossly disadvantageous to the trust corporation, 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 Q - 24*.

In line with the statement of principles governing trust and other fiduciary business under Subsec. 4901N.1, 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 corporation 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 trust corporation or IH 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 trust corporation; and
- e. Requiring clients to sign documents in blank.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4408Q)

§§ 4908N.1 – 4908N.8 (Reserved)

§ 4908N.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 trust corporation conducts business in an unsafe and unsound manner:

- a. Issue an order requiring the trust corporation 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 trust corporation, to be imposed on the trust corporation, their directors and/or responsible officers;
- c. Suspension of lending operations or authority to accept new trust accounts or to make new investments;
- d. Suspension of responsible directors and/or officers;
- e. Revocation of trust authority; and/or
- f. 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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4408Q.9)

Sec. 4909N Trust and Other Fiduciary Business. The conduct of trust and other fiduciary business shall be subject to the following regulations.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4409Q)

§ 4909N.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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4409Q.1)

§ 4909N.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 deposit substitutes of the institution or deposits with other banks, or 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 Q-46*.

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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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4409Q.2)

§ 4909N.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 interests 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. 4909N.2.

Directors, officers, stockholders, and their related interest covered by this Subsection shall be those considered as such under existing regulations on loans to DOSRI in Part III-E of the Q regulations 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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4409Q.3)

§ 4909N.4 Ceilings on loans. In case a trust corporation is a subsidiary or affiliate of a bank and/or QB, the assets under management of the trust corporation shall not form part of the relevant exposures of the parent bank and/or QB for purposes of calculating the Single Borrower’s Limit (SBL) and the ceilings for accommodations to DOSRI of the said parent bank and/or QB.

The purchases by the trust corporation,

in behalf of its clients, of securities or instruments issued by its parent bank and/ or QB shall not form part of the relevant exposures of the trust corporation for purposes of calculating the SBL and DOSRI ceilings of the said trust corporation.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4409Q.4)

§ 4909N.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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4409Q.5)

§ 4909N.6 Other applicable regulations on loans and investments – trust and other fiduciary accounts. The loans and investments of trust and other fiduciary accounts shall be subject to pertinent laws, rules and regulations for trust corporations that shall include, but need not be limited to, the following:

- a. Requirements of Sections 39 and 40 of R.A. No. 8791 (The General Banking Law of 2000);
- 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 the Registration of Long-Term Commercial Papers issued by the SEC (Appendices Q-7 and Q-8).
- c. Criteria for past due accounts; and
- d. Qualitative appraisal of loans, investments and other assets that may require provisions for probable losses which shall be booked in accordance with the Financial Reporting Package for Trust Institutions (FRPTI);
- e. Requirements of Sections 3 and 8 of the Securities and Regulation Code (SRC); and

f. Provisions of Section 44 – Investments by Philippine residents – of the BSP Manual of Regulations on Foreign Exchange Transactions (FX Manual), such that the cross-currency investments of peso trust and other fiduciary accounts, including peso unit investment trust (UIT) funds, shall be subject to the following conditions:

(1) All cash flows of the trustee or fiduciary shall only be in pesos. In case the foreign exchange acquired or received by the trustee or fiduciary as dividends/earnings or divestment proceeds on such investment are intended for reinvestment abroad, the same proceeds are not required to be inwardly remitted and sold for pesos through authorized agent banks: *Provided*, That such proceeds are reinvested abroad within two (2) banking days from receipt of the funds abroad;

(2) The trustee or fiduciary shall purchase, invest, reinvest, sell, transfer or dispose foreign currency-denominated financial instruments, including securities as defined in Section 3 of the SRC, through a distributor or underwriter duly authorized or licensed by the government of the issuer of such instruments, or a counterparty FI (seller or buyer) accredited by the trustee or fiduciary: *Provided*, That, the conduct, documentation, and settlement of any of these transactions shall be outside Philippine jurisdiction;

(3) The trustee or fiduciary shall record cross-currency investment transactions in the peso regular books at their foreign currency amounts and their local currency equivalent using the Philippine Dealing System peso/US dollar closing rate and the New York US dollar/third currencies closing rate; and

(4) The trustee or fiduciary shall comply with the reportorial requirements that may be prescribed by the BSP, which shall include as a minimum, the foreign currency

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amount and the local currency equivalent of the total cross currency investments with details on: (a) type of investments; and (b) amount of cash flow converted.

For purposes of this Subsection, “resident”, as defined under Section 1 of the FX Manual, shall refer to the (a) trustee or fiduciary that administers the assets received in trust or in other fiduciary capacity; or (b) principal that engages the services of the investment manager under an investment management agreement.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4409Q.6)

§ 4909N.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*.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4409Q.7)

§ 4909N.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 trust indenture/agreement shall only be between individuals who are Filipino citizens or resident aliens and trust corporations acting as trustee. The trust indenture/agreement shall be non-negotiable and non-transferable;

b. 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-trust corporation 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 five percent (5%) three (3) years to less than four (4) years twelve percent (12%) less than three (3) years twenty percent (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.

c. 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

d. Tax-exempt individual trust accounts established under this Subsec. shall be subject to the provisions of Subsecs. 4909N.1(c) and 4909N.2 up to 4909N.7.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4409Q.3)

§ 4909N.9 Living trust accounts. The guidelines on living trust accounts are as follows:

a. *Definition.* *Living Trust* is defined under the Financial Reporting Package for Trust Institutions (FRPTI), 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

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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 institution 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) 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 No. 710 dated 19 January 2011)

(Equivalent of Section 4409Q.9)

§§ 4909N.10 – 4909N.15 (Reserved)

§ 4909N.16 *Qualification and accreditation of trust corporations acting as trustee on any mortgage or bond issuance by any municipality, government-owned or controlled corporation, or any body politic*

a. *Applicability*. Trust corporations 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 trust corporation 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 department of the SES. The application shall be signed by the president or officer of equivalent rank of the trust corporation 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 trust corporation applying for accreditation to act as trustee on any mortgage or bond issued by any municipality, GOCC, or any body politic must comply with the requirements in *Appendix Q-31*.

d. *Independence of the trustee*. A trust corporation 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 trust corporation that will allow him or his related interests to elect at least one (1) member of the board of directors of such trust corporation 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 trust corporation 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 (i) deposited in a bank authorized to accept deposits from the Government or government entities: *Provided*, That the depository bank is not a subsidiary or affiliate of the trustee trust corporation, or (ii) 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 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 trust corporation designated as trustee of any mortgage or bond issued by any municipality, GOCC, or any body politic shall submit to the appropriate department of the 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 trust corporation authorized by the BSP to act as trustee of the proceeds of mortgage or bond issuance of a municipality, GOCC, 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

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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 120 days without pay of the directors/officers responsible for the violation.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4409Q.16)

§ 4909N.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 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 pre-need 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 with banks, and/or of deposit substitutes or of mortgage and chattel mortgage bonds issued by the trustee/fiduciary or by 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 FIs.

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 pre-need 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.* Institutions performing trust and other fiduciary

business 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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4409Q.17)

Sec. 4910N Unit Investment Trust Funds
The following rules and regulations shall govern the creation, administration and investment/s of Unit Investment Trust (UIT) Funds.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4410Q)

§ 4910N.1 Definition

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 corporation and made available by participation. 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 corporation's duly constituted board of directors or its functional oversight equivalent which shall include the country head in the case of foreign institutions.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4410Q.1)

§ 4910N.2 Establishment of a unit investment trust fund. Any trust corporation

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authorized to perform trust functions may establish, administer and maintain one (1) or more UIT Funds subject to applicable provisions under this Section.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4410Q.2)

§ 4910N.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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4410Q.3)

§ 4910N.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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4410Q.4)

§ 4910N.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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4410Q.5)

§ 4910N.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 P10,000.00.

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. 4910N.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 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

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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. 4192Q.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.

(Circular No. 710 dated 19 January 2011)

(Equivalent of Section 4410Q.6)

§ 4910N.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 Q-34*. 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 terms¹.

(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

¹Example: "Fixed Income Securities" does not really mean a guarantee of fixed earnings of the investors participation; "risk-free" government securities which may be sovereign risk free but not interest rate risk-free.

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 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. 4910N.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 Q - 34a*. 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.

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(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 corporations 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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4410Q.7)

§ 4910N.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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4410Q.8)

§ 4910N.9 Allowable investments and valuation. UITF investments shall be limited to bank deposits and the following financial instruments:

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- (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;
- (f) Loans arising from repo agreements which are transacted through an exchange recognized by the SEC, subject to the condition that the repo contracts may be pre-terminated lawfully by the trust entity administering the UITF and acting as lender, with due notice to its counterparty and the market operator; and
- (g) Such other tradable investments outlets/categories as the BSP may allow.

Provided, That the investment of the peso UITF in tradable foreign currency denominated financial instruments shall be subject to Items “e” and “f” of Subsec. 4909N.6.

Provided, further, 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 UITF 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. 4910N.6 and specified in the quarterly “list of investment outlets” as

provided in Item “a” of Subsec. 4910N.7.

(Circular No. 710 dated 19 January 2011)

(Equivalent of Section 4410Q.9)

§ 4910N.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. 4910N.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.

(Circular No. 710 dated 19 January 2011)

(Equivalent of Section 4410Q.10)

§ 4910N.11 Unit investment trust fund administration support

a. *Backroom operations.* Administrative rules on backroom under Sec. 4921Q 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 reconciliation 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.

(Circular No. 710 dated 19 January 2011)

(Equivalent of Section 4410Q.11)

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§ 4910N.12 Counterparties
a. *Dealings with related interests/parent bank/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.
(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4410Q.12)

§ 4910N.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.
(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4410Q.13)

§ 4910N.14 Exemptions from statutory and liquidity reserves, single borrowers limit, directors, officers, stockholders and their related interest. The provisions on reserves, single borrower’s limit and DOSRI ceilings under Secs. 4330Q and 4331Q, respectively, applicable to trust funds in general shall not be made applicable to UIT Funds.
(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4410Q.13)

Sec. 4911N Investment Management Activities. The conduct of investment management activities shall be subject to the following regulations.
(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4411Q)

§ 4911N.1 Minimum documentary requirements. An IMA 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) Prenumbered 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 Q-14*.

(Circular No. 710 dated 19 January 2011)

(Equivalent of Section 4411Q.1)

§ 4911N.2 Minimum size of each investment management account. No IMA shall be accepted or maintained for an amount less than P1.0 million. An IMA reduced to less than P1.0 million due to investment losses shall be exempt from this requirement.

(Circular No. 710 dated 19 January 2011)

(Equivalent of Section 4411Q.2)

§ 4911N.3 Commingling of funds. Two (2) or more individual IMAs 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 million: *Provided, further*, That such commingling has been fully disclosed and specifically agreed in writing by the clients.

(Circular No. 710 dated 19 January 2011)

(Equivalent of Section 4411Q.3)

§ 4911N.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 deposit substitutes maintained with the institution or deposits with banks, 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

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(4) Collateral security(ies), if any.
(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4411Q.4)

§ 4911N.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 IMA to another trust, fiduciary or IMA except where the investment is in any of those

enumerated in Items “a” to “d” of Subsec. 4911N.4.

Directors, officers, stockholders and their related interests (DOSRI) covered by this Subsection shall be those considered as such under existing regulations on loans to DOSRI under Part III – E of the Q regulations. 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 transaction and their relationships (shall not apply to Item “d” of this Subsec.);
- (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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4411Q.5)

§ 4911N.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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4411Q.6)

§ 4911N.7 *Ceilings on loans.* In case a trust corporation is a subsidiary or affiliate of a bank and/or QB, the assets under management of the trust corporation shall not form part of the relevant exposures of the parent bank and/or QB for purposes of calculating the Single Borrower’s Limit (SBL) and the ceilings for accommodations to

DOSRI) of the said parent bank and/or QB.

The purchases by the trust corporation, in behalf of its clients, of securities or instruments issued by its parent bank and/or QB shall not form part of the relevant exposures of the trust corporation for purposes of calculating the SBL and DOSRI ceilings of the said trust corporation.

(Circular No. 710 dated 19 January 2011)

(Equivalent of Section 4411Q.7)

§ 4911N.8 Other applicable regulations on loans and investments – investment management account. The loans and investments of IMAs shall be subject to pertinent laws, rules and regulations for trust corporations that shall include, but need not be limited to, the following:

a. Requirements of Sections 39 and 40 of R.A. No. 8791 (The General Banking Law of 2000);

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 Q - 7 and Q - 8*);

c. Criteria for past due accounts;

d. Qualitative appraisal of loans, investments and other assets that may require provision for probable losses which shall be booked in accordance with the FRPTIs;

e. Requirements of Sections 3 and 8 of the SRC; and

f. Provisions of Section 44 – Investments by Philippine Residents – of the FX Manual, such that the cross-currency investments of peso IMAs, shall be subject to the following conditions:

(1) All cash flows of the investment manager shall only be in pesos. In case the foreign exchange acquired or received by the principal as dividends/earnings or divestment proceeds on such investment are intended for reinvestment abroad, the same proceeds are not required to be inwardly

remitted and sold for pesos through authorized agent banks: *Provided*, That such proceeds are reinvested abroad within two (2) banking days from receipt of the funds abroad;

(2) The investment manager shall purchase, invest, reinvest, sell, transfer or dispose foreign currency-denominated financial instruments, including securities as defined in Section 3 of the SRC, through a distributor or underwriter duly authorized or licensed by the government of the issuer of such instruments, or a counterparty FI (seller or buyer) authorized in writing by the principal and/or accredited by the investment manager: *Provided*, That, the conduct, documentation, and settlement of any of these transactions shall be outside Philippine jurisdiction;

(3) The investment manager shall record cross-currency investment transactions in the peso regular books at their foreign currency amounts and their local currency equivalent using the Philippine Dealing System peso/US dollar closing rate and the New York US dollar/third currencies closing rate; and

(4) The investment manager shall comply with the reportorial requirements that may be prescribed by the BSP, which shall include as a minimum, the foreign currency amount and the local currency equivalent of the total cross currency investments with details on: (a) type of investments; and (b) amount of cash flow converted.

For purposes of this Subsection, “resident”, as defined under Section 1 of the FX Manual, shall refer to the principal that engages the services of the investment manager under an investment management agreement.

(Circular No. 710 dated 19 January 2011)

(Equivalent of Section 4411Q.8)

§ 4911N.9 Operating and accounting methodology. IMAs shall be operated and

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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*.

(Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4411Q.9)

§ 4911N.10 *Tax-exempt individual investment management accounts.* The following shall be the features/requirements of IMAs 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 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;

b. The minimum amount of investment for an IMA shall be P1.0 million;

c. 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 IMA 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;

d. The investment manager may accept additional funds for inclusion in IMAs 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 IMAs 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

d. Tax-exempt individual IMAs established under this Subsection shall be subject to the provisions of Subsecs. 4911N.1(b) and 4911N.2 up to 4911N.8.

(Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4411Q.10)

Sec. 4912N (Reserved)

Sec. 4913N **Required Retained Earnings Appropriation.** A trust corporation authorized to engage in trust and other fiduciary business shall, before the declaration of dividends, carry to retained earnings appropriated for trust business 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 retained earnings shall amount to twenty percent (20%) of its authorized capital stock and no part of such retained earnings shall at any time be paid out in dividends but losses accruing in the course of its business may be charged against surplus.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4413Q)

B. INVESTMENT MANAGEMENT
ACTIVITIES

Sec. 4914N Authority to Perform
Investment Management

Scope of Investment Management Activities. A trust corporation shall be a stock corporation primarily created, and duly authorized by the Monetary Board, to engage in investment management activities i.e., act as financial consultant, investment adviser or portfolio manager. It shall administer the funds or property under its custody with the diligence that a prudent man would exercise in the conduct of an enterprise of a like character with similar aims: *Provided*, That the trust corporation shall not accept and administer funds or property of any bank and/or QB, and act as trustee, fiduciary, financial consultant, investment adviser, or portfolio manager of such funds or property. It shall also be known or referred to as a stand-alone trust corporation.

A trust corporation may accept peso and foreign currency denominated accounts: *Provided*, That in the case of foreign currency denominated accounts, all relevant laws, rules and regulations issued by local regulatory agencies are complied with.

A trust corporation may be a subsidiary or an affiliate of a bank and/or a NBF: *Provided*, That the investing bank and/or

NBFI cannot engage in trust, other fiduciary business and investment management activities both directly through its separate and distinct department or other similar unit in the bank or NBF, and indirectly through a subsidiary or affiliate trust corporation: *Provided further*, That a bank and/or NBF may acquire or invest in the equity of not more than two (2) trust corporations: *Provided finally*, That in the case of an investing bank, the acquisition or investment in the equity of a trust corporation shall be subject to all relevant laws, rules and regulations on equity investment of banks in a financial allied enterprise and the following limitations and restrictions:

1. *In a single enterprise.* The equity investment of a bank in a single trust corporation shall be within the following ratios in relation to the total subscribed capital stock and to the total voting stock of the trust corporation:

INVESTOR/INVESTING BANK					
	UB	KB	TB	RB	Coop Bank
Limit in single trust corporation	100%	49%	40%	40%	40%

Provided, That the equity investment of a UB and a KB in any single trust corporation shall not exceed, at any time, twenty-five percent (25%) of the net worth of the investor/investing bank as defined in Sec. X106 and Subsec. X121.5.

2. *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 investor/investing bank:

INVESTOR/INVESTING BANK					
	UB	KB	TB	RB	Coop Bank
Aggregate Limit	50%	35%	25%	25%	25%

(Circular No. 710 dated 19 January 2011)

§ 4914N.1 Application for authority to establish. The incorporators/directors of the proposed trust corporation shall file and

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submit to the Monetary Board through the appropriate department of the SES an application for authority to establish a trust corporation to primarily engage in trust, other fiduciary business and investment management activities, which shall be duly signed by all incorporators/directors, together with the following documents:

- a. Accomplished biographical data of each incorporator, subscriber, proposed director and officer, if applicable;
- b. Certified Statement of Assets and Liabilities as of a date not earlier than ninety (90) days prior to the filing of the application of each of the incorporator, subscriber, proposed director and officer together with the evidences of asset ownership such as bank certification/statement, savings passbook, certificate of time deposit, bond or stock certificate, transfer certificate of title and tax declaration. A waiver of rights under R.A.No. 1405, as amended, shall also be submitted for purposes of verification of the declared assets, pursuant to the provisions of the Anti-Money Laundering Law, as amended;
- c. Certified photocopies of Income Tax Returns (ITRs) for the last three calendar years of each incorporator, subscriber, proposed director and officer or similar document from the home country in the case of Non-Filipino citizens;
- d. Clearance from the National Bureau of Investigation (NBI) and Bureau of Internal Revenue (BIR) of each of the incorporator, subscriber, proposed director and officer or similar document from the home country in the case of Non-Filipino citizens;
- e. Certification from home country's supervisory authority that the Non-Filipino citizen has no derogatory record;
- f. For corporate subscribers, the following additional documents shall be submitted:

- (1) Copy of the board resolution authorizing the corporation to invest in such trust corporation and designating the person who will represent the corporation in connection therewith;
- (2) Copy of the latest articles of incorporation and by-laws;
- (3) Updated list of directors and principal officers;
- (4) Current list of major stockholders, indicating the citizenship and the number, amount and percentage of the voting and non-voting share held by them;
- (5) A copy each of the corporation's audited financial statements for the last two (2) years prior to the filing of the application;
- (6) A copy of the corporation's annual report to the stockholders for the year immediately preceding the date of filing of the application;
- (7) Certified photocopies of ITRs and BIR clearance for last two calendar years;
- (8) For foreign corporation, it shall also submit a certification from its home country's supervisory authority that it has no objection to the investment of such company in a trust corporation in the Philippines and that adequate information on such foreign corporation shall be provided to the Bangko Sentral to the extent allowed under existing laws.
- g. Detailed plan of operation and economic justification for establishing a trust corporation. The plan should describe and analyze the industry and the market area from which the trust corporation expects to draw majority of its trust business and establish a strategy for its ongoing operation. It should also describe how the trust corporation will be organized and controlled internally;
- h. Projected financial statements for the first five years together with assumptions. These should be consistent with its proposed plan of operation and would show

sufficient capital to support its strategy and operation;

i. Detailed plan on how the subscribers would put up the required capitalization for the proposed trust corporation; and

j. Such other information that the Bangko Sentral may require.

The application shall be considered filed and submitted on a first-come, first-served basis; *Provided*, That all required documents are complete and properly accomplished; *Provided further*, That in case of banks and non-bank financial institutions that decide to spin-off their trust department to a trust corporation, the documentary requirements under Items "f" and "g" may not be submitted.

(Circular No. 710 dated 19 January 2011)

§4914N.2 Required capital. Upon incorporation/establishment, a trust corporation shall have a minimum paid-in capital of P300 million. Thereafter, the trust corporation is required to maintain a minimum unimpaired combined capital account of P300 million, or such amounts as may be prescribed by the Monetary Board in the future, for assets under management up to P20 billion.

For assets under management amounting to more than P20 billion, an incremental capital shall be provided and computed as a percentage of the book value of the total volume of assets under management based on the following:

Assets Under Management (AUM)	Incremental Capital Requirement Based on Total Volume of AUM
Above P20.0 billion - P100.0 billion	6 basis points
Above P100.0 billion - P250.0 billion	8 basis points
Above P250.0 billion - P500.0 billion	10 basis points
Above P500.0 billion	12 basis points

The assets under management, for this purpose, shall be computed based on the average of the quarter-end balances of assets under management of the preceding four quarters.

The provision on incremental unimpaired combined capital shall be subject to periodic review.

For purposes of this Section, combined capital accounts shall mean the total capital stock, retained earnings and profit and loss summary, net of (a) valuation reserves on the allowable proprietary assets, and such other capital adjustments as may be required by the BSP; and (b) appraisal surplus or appreciation credit as a result of appreciation or an increase in book value of the assets of the trust corporation.

Whenever the combined capital accounts of the trust corporation are deficient with respect to the preceding paragraphs, the Monetary Board, after considering the report of the appropriate supervisory and examining department of the Bangko Sentral on the state of solvency of the trust corporation concerned, shall require the trust corporation to institute necessary corrective action(s) to address its capital deficiency which may include the submission of an acceptable capitalization program. Otherwise, the Monetary Board shall require the trust corporation, among others, to maintain net income and limit or prohibit the distribution of dividends to increase its capital accounts, or restrict the acceptance of new trust, other fiduciary and investment management accounts or introduction of new trust products or unit investment trust fund, until such corporation complies with the minimum capital requirement.

Failure of the trust corporation to meet the minimum capital requirement shall be a ground for the imposition of

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sanctions and suspension/revocation of the authority to engage in trust, other fiduciary business and investment management activities.

(Circular No. 710 dated 19 January 2011)

§4914N.3 Requirements for the issuance of the certificates of authority to register and to operate

a. Within sixty (60) days from receipt of advice of approval by the Monetary Board/Governor of their application for authority to establish a trust corporation, the incorporators shall:

(1) Submit seven (7) copies of the articles of incorporation, treasurer’s sworn statement and by-laws which shall include provisions on the appointment of a president/trust officer or its equivalent position, if any, and other subordinate officers, and a clear definition of their duties and responsibilities; and

(2) Deposit with any universal/commercial bank the initial paid-up capital of the proposed trust corporation.

b. Within thirty (30) days from receipt of advice of approval by the Monetary Board/Governor of their application for authority to establish a trust corporation, it shall pay a non-refundable license fee of five hundred thousand pesos (P500,000.00) to the Bangko Sentral.

c. Within thirty (30) days after the articles of incorporation and by-laws had been passed upon by the Office of the General Counsel and Legal Services, and the corresponding certificate of authority to register had been issued, the incorporators shall effect the filing and registration of said documents with the SEC.

Articles of incorporation; by-laws. The articles of incorporation and by-laws of any trust corporation, or any amendment thereto, shall not be registered with the SEC unless accompanied by a certificate

of authority issued by the Monetary Board.

(Circular No. 710 dated 19 January 2011)

§ 4914N.4 Pre-operating requirements

Within six (6) months from receipt of advice of approval by the Monetary Board/Governor of their application for authority to establish a trust corporation to primarily engage in trust, other fiduciary business and investment management activities, the incorporators shall secure the certificate of authority to operate the trust, other fiduciary business and investment management activities and submit to the appropriate supervising and examining department of the BSP the following:

a. Copy of the articles of incorporation and by-laws including proof of registration with the SEC;

b. Certification of compliance with the conditions of approval duly signed by the incorporators, including the set-up of the basic security deposit mentioned in Subsec. 4915N.1;

c. Names and positions of individuals designated as chairman and members of the board of directors, president / trust officer and other subordinate officers of the trust corporation with their respective bio-data and statement of duties and responsibilities;

d. Organizational chart which shows the names of departments/units with respective functions and responsibilities and designations of officers/employees including responsibilities of personnel within the said departments/units. The organizational chart should show clear accountability of the management structure and should provide for independent check and balance by the board of directors;

e. Risk Management Manual and Operations Manual embodying the policies, systems, and operating procedures of each department/unit in the organization covering the areas on (a) signing/delegated

authorities, (b) procedures/flow of paperwork, and (c) other matters, together with the certification of the President / Trust Officer of the trust corporation that these manuals were prepared and aligned with existing Bangko Sentral rules and regulations on risk management and trust, other fiduciary and investment management activities and shall be implemented. A trust corporation is expected to have in place, a risk management system that is appropriate to the nature and complexity of the trust corporation’s fiduciary activities;

f. Excerpts of the minutes of the organizational/director’s meetings confirming all organizational and pre-opening transactions relative to activities undertaken by the trust corporation to operate the trust, other fiduciary business and investment management activities (e.g., appointment of officers, and approval of authorized signatories);

g. Alphabetical list of all stockholders with the number and percentage of voting stocks owned/held;

h. List of natural persons/stockholders certified by the Corporate Secretary, owning voting stocks in the trust corporation and are related to other identified stockholders within the third (3rd) degree of consanguinity or affinity, indicating the combined percentage of voting stocks held by these persons in the particular trust corporation, as well as juridical persons, including corporations that are wholly-owned or a majority of the stock of which is owned by any of such persons, including their wholly- or majority-owned subsidiaries;

i. Certification by the President/Trust Officer of the trust corporation that no person who is the spouse or relative within the second (2nd) degree of consanguinity or affinity of any person holding the position of Chairman,

President/Trust Officer, Chief Executive Officer, Chief Operating Officer, Executive Vice-President, Senior Vice President or any position of equivalent rank, General Manager, Treasurer, Chief Cashier, or Chief Accountant will be appointed to any of said positions in the trust corporation; and

j. Other documents/papers which may be required.

(Circular No. 710 dated 19 January 2011)

§ 4914N.5 Commencement of trust, other fiduciary business and investment management activities. The trust corporation shall commence operation within one (1) year from date of approval by the Monetary Board of their application for authority to establish a trust corporation to primarily engage in trust, other fiduciary business and investment management activities; *Provided*, That the trust corporation may be granted by the Deputy Governor, Supervision and Examination Sector, a final extension of six (6) months subject to the formal presentation of valid justification and documentary proof that the trust corporation can commence operation within the six (6)-month period. Otherwise, upon recommendation of the Deputy Governor, Supervision and Examination Sector, the Monetary Board shall revoke the authority to establish a trust corporation to primarily engage in trust, other fiduciary business and investment management activities.

The trust corporation shall submit a written notice to the appropriate department of the SES of the actual date of commencement of trust, other fiduciary and investment management operations not later than ten (10) days from such opening.

(Circular No. 710 dated 19 January 2011)

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§ 4914N.6 *Borrowings.* A trust corporation cannot engage in quasi-banking functions, particularly the borrowing of funds from the public for the purpose of relending the said funds. The trust corporation however retains the right to borrow as it is inherent to any duly registered corporate entity.
 (Circular No. 710 dated 19 January 2011)

§ 4914N.7 *Grounds for disapproval of application.* The Monetary Board may deny the application to organize a trust corporation on the basis of any of the findings that:
 a. The trust corporation is being organized for any purpose other than to engage in the business of a legitimate trust corporation;
 b. The trust corporation’s financial program is against the law, BSP rules and regulations, public policy, and public standard; and
 c. There exist other reasons, which the Monetary Board may consider as sufficient ground for such disapproval.
 (Circular No. 710 dated 19 January 2011)

Sec. 4915N *Security for the Faithful Performance of Investment Management Activities and Allowable Proprietary Assets* The provisions of Subsecs. 4905N.1 up to 4905N.4 shall apply in complying with the required security for the faithful performance of IMA and the allowable proprietary assets for trust corporations engaged in investment management activities only.
 (Circular No. 710 dated 19 January 2011)

Sec. 4916N *Organization and Management.* The provisions under Subsecs. 4906N.1 up to 4906N.4 and Subsecs. 4906N.10 up to 4906N.15 shall govern the organization and management of trust corporations 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. IMAs in lieu of trust and other fiduciary accounts;
 c. Investment management committee in lieu of trust committee; and
 d. Investment management officer in lieu of trust officer.
 (Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4416Q)

Sec. 4917N *Non-Investment Management Activities.* The provisions of Sec. 4907N shall apply in determining non-investment management activities except that the terms *trust, other fiduciary, trustee* and *fiduciary* shall be disregarded.
 (Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4417Q)

Sec. 4918N *Unsound Practices.* The provisions of Sec. 4908N shall govern the unsound practices for IMAs.
 (Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4418Q)

Sec. 4919N *Conduct of Investment Management Activities.* The provisions of Sec. 4911N shall govern the conduct of investment management activities of trust corporation without trust license that is engaged in investment management activities.
 (Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4419Q)

Sec. 4920N *Required Retained Earnings Appropriation.* The provisions of Sec. 4913N shall apply in complying with the required retained earnings appropriation of trust corporation authorized to engage in investment management activities.
 (Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4420Q)

C. GENERAL PROVISIONS

Sec. 4921N Books and Records. The trust corporation shall keep books and records on trust, other fiduciary and IMAs separate and distinct from the books and records of its other businesses and shall follow the FRPTI prescribed by the BSP. Each trust, other fiduciary or IMA shall have a record separate from all other accounts except only in the case of UITFs 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 UITF and the extent of the interest of such trustors. Books and records shall contain full information relative to each trust, other fiduciary or IMA and shall be supported by duplicate signed copies of related documents. Said records and duplicate signed copies or 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 trust corporation shall maintain separate general ledger accounts and other relevant sub-accounts for tax-exempt individual trust accounts, UITFs and individual management accounts established under Section 24(B)(1) of R.A. No. 8424 and Subsecs. 4909N.8, 4911N.10, and Item “8” of *Appendix Q*-32. It 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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4421Q)

Sec. 4922N Assets Under Management Assets under management shall represent all funds, properties and securities,

denominated in peso and other foreign currency, which the trust corporation, acting as trustee, fiduciary and agent, shall manage, administer, hold, and/or take custody, for the use and benefit of others. In the performance of its trust, other fiduciary business and investment management activities, the assets under management of the trust corporation shall be kept separate and distinct from the general or other business owned and operated by its parent company, subsidiaries and related interest including all other funds, properties, and assets owned by such trust corporation.

(Circular No. 710 dated 19 January 2011)

Sec. 4923N Fees and Commissions. A trust corporation 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 UITFs, the fee which a trustee may charge each participant shall be fully disclosed by the trustee in the UITF plan, prospectus, flyers, posters and all forms of advertising materials to market the fund 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 IMA or beneficiaries of the trust, other fiduciary or IMA by stockbrokers, real

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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 IMA or the beneficiaries thereof.

Officers and employees of the trust department or investment management department of institutions, 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 IMA.

No institution shall collect, for its own account, referral and/or arrangement fees, or any other fees that take the nature of payment to the institution 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. 4901N and 4907N.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4423Q)

Sec. 4924NTaxes. The terms and conditions of trust, other fiduciary or investment management agreements, including UITF 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 UITFs, individual trust and investment management accounts established under Section 24(B)(1) of R.A. No. 8424, the trust corporation shall

be responsible for obtaining the tax-exemption certifications which may be required by the BIR for the interest-bearing instruments where the UITFs, individual trust funds and investment management funds will be invested. Likewise, it 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 UITF 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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4424Q)

Sec. 4925N Reports Required

§4925N.1 To trustor, beneficiary, principal. Trust corporations shall render reports on the trust, other fiduciary or IMAs 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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4425Q.1)

§4925N.2 To the Bangko Sentral. A trust corporation shall submit periodic reports prescribed by the appropriate department of the SES on its trust and other fiduciary business and investment management activities within the deadline indicated in Appendix Q-3.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4425Q.2)

§ 4925N.3 Audited financial statements. The trust corporation shall adopt the provisions of the Philippine Financial Reporting Standards (PFRS)/Philippine Accounting Standards (PAS) in all respect, for purposes of preparing the AFS of its trust and other fiduciary and investment management activities. The following guidelines shall likewise be observed in the preparation of the AFS:

- (a) A complete set of financial statements shall comprise of the following:
- (1) Balance sheet as of the end of the period;
 - (2) Income statement for the period;
 - (3) Statement of changes in accountabilities, which shall show a reconciliation of the net carrying amount at the beginning and end of the period of the following accounts:

- (i) principal;
- (ii) accumulated income; and
- (iii) net unrealized gains/(losses) on available for sale financial assets, separately disclosing the changes in each of the foregoing accounts;

(4) Notes, which shall comprise of a summary of significant accounting policies and other disclosure requirements provided under PFRS/PAS: *Provided*, That for purposes of complying with the disclosure of the nature and extent of risks arising from financial instruments as required under PFRS 7, disclosure statements may be made based on the general categories of contractual relationships (i.e., UITF-trust, institutional-trust, and individual-trust; other fiduciary; institutional-agency, and individual-agency; and special purpose trust) of the trust corporation with its clients; and

(5) Balance sheet as at the beginning of the earliest comparative period when a trust corporation applies an accounting policy retrospectively or when it makes a retrospective restatement of items in the financial statements, or when it reclassifies items in the financial statements.

(b) The balance sheet, income statement and statement of changes in accountabilities shall be presented for each of the general categories of contractual relationships (i.e., UITF-trust, institutional trust, and individual-trust; other fiduciary; institutional-agency, and individual-agency; and special purpose trust) of the trust corporation with its clients.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4425Q.3)

Sec. 4926N Audits

§ 4926N.1 Internal audit. The trust corporation’s internal auditor shall include

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among his functions, the conduct of periodic audits 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 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.

(Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4426Q.1)

§4926N.2 *External audit.* The trust and other fiduciary business and investment management activities shall be subject to the annual financial audit by independent external auditors required under Sec. 4190Q.

The audit of the assets and accountabilities of the trust corporation, 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 shall be covered by an audit report to be submitted to the trust corporation’s board of directors and to the BSP within the prescribed period containing, among other things, the complete set of financial statements of the trust/investment management prepared in accordance with the provisions of Sec. 4926N together with the other information required by the BSP to be submitted under Sec. 4190Q: *Provided*, That a reconciliation statement of the balance sheet in the AFS and the FRPTI shall be prepared for each of the general

categories of contractual relationships (i.e., UITF trust, institutional-trust, and individual trust; other fiduciary; institutional-agency, and individual-agency; and special purpose trust) of the trust corporation with its clients following the format in *Appendix Q-50*.

(Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4426Q.2)

§ 4926N.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 trust corporation.

(Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4426Q.3)

Sec. 4927N *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.

(Circular No. 710 dated 19 January 2011)
 (Equivalent of Section 4427Q)

Sec. 4928N Receivership. Whenever a receiver is appointed by the Monetary Board for a trust corporation, the receiver shall, pursuant to the instructions of the Monetary Board, proceed to close the trust, other fiduciary and IMAs 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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4428Q)

Sec. 4929N Revocation of Trust License
The Monetary Board, after considering the report of the appropriate supervisory and examining department of the BSP, may revoke the trust corporation’s authority to engage in trust, other fiduciary business and investment management activities in accordance with Section 37 of R. A. No. 7653 (The New Central Bank Act). Upon revocation of the trust, other fiduciary and investment management license, the trust corporation shall be required to wind down and liquidate its trust, other fiduciary business and investment management activities, and distribute the proceeds thereof to its clients. It shall be unlawful for any such trust corporation to thereafter perform or engage in trust, other fiduciary business and investment management activities.

The BSP shall take the necessary action to protect the rights and interest of all clients whose assets, properties and funds are held in trust or under the management, administration, or custody of the trust corporation. In the event that the BSP finds it detrimental for the clients of the trust corporation, i.e., trustor/principal/

beneficiary, to proceed with the liquidation of the assets under management, it may appoint a temporary successor-trustee(s) to take over the management and administration of the trust corporation’s trust, other fiduciary and investment management accounts, until the trustor/principal/beneficiary has appointed his/her own successor-trustee. The revocation of the trust, other fiduciary and investment management license does not absolve the trust corporation, the members of the board of directors, and officers, from any administrative and monetary sanctions as well as applicable civil and criminal charges that may be imposed under the New Central Bank Act or other applicable laws, rules and regulations.

In case of a trust corporation which license has been revoked by the Monetary Board, any director or officer thereof who refuses to turn over the corporation’s records and assets under management to the appointed successor-trustee(s), or who tampers with the corporation’s records, or who appropriates for himself for another party or destroys or causes the misappropriation and destruction of the trust corporation’s assets under management, or who receives or permits or causes to be received in said corporation any part or all of the assets under management, or who pays out or permits or causes to be transferred any part thereof, shall be subject to the penal provisions of the New Central Bank Act.

(Circular No. 710 dated 19 January 2011)

Secs. 4930N - 4938N (Reserved)

Sec. 4939N Payment of Fines and Other Charges. The following regulations shall govern the payment of fines and other charges by trust corporation.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4902Q)

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§ 4939N.1 Guidelines on the imposition of monetary penalties. The following are the guidelines on the imposition of monetary penalties on trust corporation, 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-(1)-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 (1)-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 the 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 reckoned from the business day immediately following the day said penalty becomes due and payable up to the day 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 trust corporation which maintain DDA with the BSP, penalties which remain unpaid after the lapse of the fifteen (15)-day period shall be automatically debited against their corresponding DDA on the following business day without additional charge. If the balance of the concerned trust corporation’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 business 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 trust corporation, 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 trust corporation 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 trust corporation/individual concerned.
(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4902Q.1)

§ 4939N.2 Payment of fines. Trust corporations shall, within fifteen (15) calendar days from receipt of the statement of account from the BSP, pay the fines for reserve deficiency, reportorial delay/ deficiency, refusal to permit examination, or failure to comply with, or violation of, any law or any order, instruction or regulation issued by the Monetary Board, or any order, instruction or ruling by the Governor.

For trust corporations which maintain DDAs with the BSP, fines which are unpaid after the lapse of the fifteen (15)-day period shall be automatically debited against the corresponding DDA of the trust corporation concerned: *Provided*, That if the balance of the entity’s account is insufficient to cover the fines due, such fines shall be paid not later than the following business day. For the purpose of this Section, *business day* means a day on which the BSP head office and the head office of the trust corporation are open for business. For uniform implementation of the above regulations, the procedural guidelines embodied in *Appendix Q-22* shall be observed.
(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4902Q.2)

§ 4902Q.3 (Reserved)

§ 4939N.4 Check/demand draft payments to the Bangko Sentral. Trust corporations shall make all check and demand draft payments for transactions other than those required to be paid through the trust corporations’ DDA either to the BSP Cash Department or to the BSP Regional Offices and Branches. Such payments shall be accompanied by the appropriate form as shown in *Appendix Q-22a*. Payments not accompanied by the required payment forms shall be presumed to be additions to reserves and shall be credited to the DDA of the paying trust corporation. Check payments shall be value-dated when the check is cleared.
(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4902Q.4)

Sec. 4940Q (Reserved)

Sec. 4941N Securities Custodianship and Securities Registry Operations. The following rules and regulations shall govern securities custodianship and securities registry operations of trust corporations. 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 Q-38*. Violation of any provision of the guidelines in *Appendix Q-38* shall be subject to the sanctions/penalties under Subsec. 4941N.29.
(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4441Q)

§4941N.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

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view of protecting investors.
(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4441Q.1)

§4941N.2 Applicability of this regulation. This regulation shall govern securities custodianship and securities registry operations of trust corporations under BSP supervision. It shall cover all their transactions in securities as defined in Section 3 of the 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 trust corporation 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 maintain the stock and transfer book for shares of stock.
(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4441Q.2)

§4941N.3 Prior Bangko Sentral approval. Trust corporations may act as securities custodian and/or registry only upon prior Monetary Board approval.
(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4941Q.3)

§4941N.4 Application for authority
A trust corporation desiring to act as securities custodian and/or registry shall file an application with the appropriate department of the SES. The application shall be signed by the highest ranking officer of the institution and shall be accompanied by a certified true copy of the resolution of its board of directors authorizing the institution to engage in securities custodianship and/or registry.
(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4441Q.4)

§4941N.5 Pre-qualification requirements for a securities custodian/registry

- a. It must be a trust corporation;
- b. It must have complied with the minimum capital accounts required under existing regulations not lower than an adjusted capital of P300 million or such amounts as may be required by the Monetary Board in the future;
- c. It must have a CAMELS composite rating of at least “4” (as rounded off) in the last regular examination;
- d. It must have in place a comprehensive risk management system approved by its board of directors 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 department of the SES at the time of application for authority and within thirty (30) days from updates;
- e. 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 systemcovering 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.

- f. 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.
- g. It has no reserve deficiencies during the eight (8) weeks immediately preceding the date of application;
- h. It has set up the prescribed allowances for probable losses, both general and specific, as of date of application;
- i. It has not been found engaging in unsafe and unsound practices during the last six (6) months preceding the date of application;
- j. It has generally complied with laws, rules and regulations, orders or instructions of the Monetary Board and/or BSP Management;
- k. It has submitted additional documents/information which may be requested by the appropriate department of the SES, 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;
- l. 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
- m. 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.
- n. A securities custodian which provides the value-added service of securities lending involving securities that are sold, offered for sale or distributed

within the Philippines must be a duly-licensed lending agent registered with the SEC.
(Circular No. 710 dated 19 January 2011, as amended by Circular No. 714 dated 14 March 2011)
(Equivalent of Section 4441Q.5)

- §4941N.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;
 - i. Acts as a collecting and paying agent: in respect of dividends, interest earnings or proceeds from the sale/redemption/maturity of securities held under custodianship: *Provided, further,* That the custodian shall immediately make known to the securities owner all collections received and payments made with respect to the securities under custody; and
 - j. In addition to the above basic functions, it may perform the value-added service of securities lending as agent: *Provided,* That it complies with the pre-qualification requirements under Item “n” of Subsec. 4941N.5: *Provided, further,* That the securities lending service shall be covered by a Securities Lending

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Authorization Agreement (SLAA) which shall be attached to the custody contract;A securities custodian which renders the value-added service of securities lending involving securities that are sold, offered and distributed within the Philippines shall comply with the pertinent rules and regulations of the SEC on securities lending and borrowing operations.

(Circular No. 710 dated 19 January 2011, as amended by Circular No. 714 dated 14 March 2011)
(Equivalent of Section 4441Q.6)

§4941N.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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4441Q.7)

§ 4941N.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. Securities held under

custodianship shall be recorded in the books of the custodian at the face value of said securities in the other fiduciary sub-account *Custodianship*”

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.

(Circular No. 710 dated 19 January 2011, amended by Circular No. 714 dated 14 March 2011)
(Equivalent of Section 4441Q.8)

§ 4941N.9 Independence of the registry and custodian. A BSP-accredited securities registry must be a third party with

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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 trust corporation 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 institution 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 trust corporation 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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4441Q.9)

§4941N.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. 4941N.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 Subsec. 4235Q.5.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4441Q.10)

§4941N.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.

(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4441Q.11)

§4941N.12 Anti-money laundering regulations. Covered institutions, including their subsidiaries and affiliates, shall comply with the provisions of Part 8 of Q Regulations, R.A. No. 9160 (Anti-Money Laundering Act of 2001), as amended, and its Implementing Rules and Regulations (IRR).

(Circular No. 706 dated 05 January 2011, as amended by Circular No. 710 dated 19 January 2011)

§4941N.13 Basic security deposit

Securities held under custodianship 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

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or P500,000 whichever is higher. However, securities held under custodianship where the custodian also performs securities 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: *“Safekeeping and Custodianship - Securities Held Under Custodianship with Securities 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.

*(Circular No. 710 dated 19 January 2011, amended by Circular No. 714 dated 14 March 2011)
(Equivalent of Section 4441Q.13)*

§4941N.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.

*(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4441Q.14)*

§§ 4941N.15 – 4941N.28 (Reserved)

§ 4941N.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 120 days without pay of the directors/officers responsible for the violation.

*(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4441Q.29)*

Secs. 4942N – 4997N (Reserved)

Sec. 4998N Annual Supervision Fee. Trust corporations shall pay to the BSP an annual supervision fee of 1/32 of 1% of the average monthly balance of assets under management. The average monthly balance shall refer to the sum of the twelve month-end balances of the preceding calendar year divided by a factor of twelve. Said annual supervision fee shall be paid by the trust corporations on or before end-February of every year; *Provided*, That the annual supervision fee on the first year of operations shall be equal to the 1/32 of 1% of the initial paid-up capital. Non-payment of the supervisory fee within the prescribed period shall subject the concerned trust corporation to the sanctions prescribed under Sections 34, 35, 36 and 37 of R.A. No. 7653

(Circular No. 710 dated 19 January 2011)

Sec. 4999N Sanctions. Pursuant to Section 91 of R. A. No. 8791, the Monetary Board may impose sanctions and monetary penalty for any violation of the provisions of the foregoing regulations, and of the regulations implementing the Truth in Lending Act in Sec. 4309Q of the MORNBFIL. This is without prejudice to the imposition of other sanctions as the Monetary Board may consider warranted that may include the suspension or revocation of a trust corporation’s authority to engage in trust, other fiduciary business and investment management activities and such other sanctions as may be provided by law. If

the offender is a director or officer of the trust corporation, the Monetary Board may also suspend or remove such director or officer. If the violation is committed by a corporation, such corporation may be dissolved by quo warranto proceedings instituted by the solicitor general. The guidelines for the imposition of monetary penalty shown in *Appendix N-9* shall govern the imposition of monetary penalty for violations/offenses with administrative sanctions falling under Section 37 of R. A. No. 7653 on trust corporations, their directors and/or officers.
(Circular No. 710 dated 19 January 2011)
(Equivalent of Section 4499Q)

LIST OF REPORTS REQUIRED FROM NON-BANK FINANCIAL INSTITUTIONS
(Appendix to Sec. 4162N)

Category	Form No.	MOR Ref.	Report Title	Frequency	Submission Deadline	Submission Procedure
A-1		4162N (Cir. No. 708 dated 01.10.11)	Report on Financial Assets Designated/Mandatorily Measured at Fair Value Through Profit or Loss	Monthly	15 banking days after end of reference month	SDC
A-1		4162N (Cir. No. 708 dated 01.10.11)	Report on Initial Application of PFRS 9	-do-	15 banking days after end of reference month of initial application of PFRS 9	-do-
A-2	BSP-7-26-02-A	4162N (M-008 dated 02.14.08)	Consolidated Statement of Condition (CSOC)	-do-	15 banking days after end of reference month	Email to SDC @ sdcnbfi@bsp.gov.ph
	BSP-7-26-03B		Consolidated Statement of Income and Expenses (CSIE)	-do-	-do-	-do-
			Control Prooflist	-do-	-do-	messengerial or postal services
A-2	BSP-7-26-02 Schedule 1 (IHs only)	4162N	Schedule of Loans/Receivables, Trading Account Securities (TAS) - Loans and Underwritten Debt Securities	- do -	- do -	Original - Appropriate department of the SES Duplicate - SDC or cc:mail/electronic transmission Separate report for Head Office and each Branch; and a Consolidated Report for Head Office and Branches

Category	Form No.	MOR Ref.	Report Title	Frequency	Submission Deadline	Submission Procedure
A-2	BSP-7-26-02 Schedule 1	4162N	Schedule of Loans/Receivables and Trading Account Securities - Loans	Monthly	15th business day from end of reference month	Original - Appropriate department of the SES Duplicate - SDC or cc:mail/electronic transmission Separate report for Head Office and each Branch; and a Consolidated Report for Head Office and Branches
A-2	BSP-7-26-02 Schedule 2 (FCs only)	4162N	Schedule of Trading Account Securities - Investments, Available for Sale Securities and Investment in Bonds and Other Debt Instruments (IBODI)	- do -	- do -	-do-
A-2	BSP-7-26-02 Schedule 3	4162N	Interest Rate and Maturities Matching	- do -	- do -	-do-
A-2	BSP-7-26-02 Schedule 4	4162N	Remaining Maturities of Selected Accounts	- do -	- do -	Original - Appropriate department of the SES Duplicate - SDC or cc:mail/electronic transmission
A-2	BSP-7-26-02 Schedule 5	4162N	Schedule of Bills Payables and Bonds	- do -	- do -	- do -
A-2	BSP-7-26-02 Schedule 6 (FCs only)	4162N	Data on Firm's Businesses	- do -	- do -	- do -
A-2	BSP-7-26-03	4162N	Statement of Income and Expenses	- do -	- do -	- do -

Category	Form No.	MOR Ref.	Report Title		Frequency	Submission Deadline	Submission Procedure
A-2	BSP-7-26-24	4162N (Rev. Aug. 2003 per CL dated 08.06.03)	Credit and Equity Exposures to Individuals/ Companies/Groups Aggregating P 1.0 Million and above		Quarterly	15th business day from end of reference quarter	Electronic submission/ diskette - SDC Fax to SDC
A-2	Unnumbered (no prescribed form) (Entities with Trust/ Fund Management Only)	4101N	Report on required and available reserves on Peso-denominated Common Trust Funds (CTFs), such other managed peso funds and TOFA-Others		Weekly	3rd business day following reference week	Original - Appropriate department of the SES Duplicate - SDC or cc:mail/electronic transmission
A-2	Unnumbered	4144N.12 (Rev. May 2002 as amended by Cir. No. 612 dated 06.03.08)	Report on Suspicious Transactions		As transaction occurs	10th business day from date of transaction/ knowledge	Original and duplicate - Anti-Money Laundering Council (AMLC)
			Report on Covered Transactions		As transaction occurs	10th business day from date of transaction/ knowledge	To be submitted to the Anti-Money Laundering Council
A-2	Unnumbered	4144N.12	Financial Reporting Package for Trust Institutions		Quarterly	20th banking day after end of reference quarter	SDC Sdc-frpti@bsp.gov.ph
			Schedules:				
A-2	Unnumbered	(Cir. 609 dated 05.26.08 as amended by M-2008-022 dated 06.26.08)	Balance Sheet				
			A1 to A2	Main Report			
			B to B2	Details of Investments in Debt and Equity Securities			
			C to C2	Details of Loans and Receivables			

Category	Form No.	MOR Ref.	Report Title	Frequency	Submission Deadline	Submission Procedure
A-3	Unnumbered		D to D2	Wealth/Assets/Fund Management - UITF		
			E	Fiduciary Accounts		
			E1 to E1b	Other Fiduciary Services - UITF		
			Income Statement			
			Control Prooflist			
	SES II Form 15 (NP08-TB)	4101N.16	Waiver of the Confidentiality of Information under Sections 2 and 3 of R.A. No. 1405, as amended		-do-	-do-
		4162N (CL-2007-050 dated 10.04.07 and CL-2007-059 dated 11.28.07)	Report on Borrowings of BSP Personnel		As transaction occurs	15 banking days after end of reference quarter
					Quarterly	
		4162N (As amended by M-2008-024 dated 07.31.08)	Biographical Data of Directors/Officers - If submitted in diskette form - Notarized first page of each of the directors'/officers' bio-data saved in diskette and control prooflist - If sent by electronic mail - Notarized first page of Biographical Data or Notarized list of names of Directors/Officers whose Biographical Data were submitted thru electronic mail to be faxed to SDC (CL dated 01.09.01)		After election or appointment and as changes occur	7th banking day from the date of the meeting of the board of directors in which the directors/officersare elected or appointed
						Electronic mail or CD form to SDC or if hard copy Original to appropriate department of the SES, Duplicate to SDC

Category	Form No.	MOR Ref.	Report Title	Frequency	Submission Deadline	Submission Procedure
B	Unnumbered	4162N	Board Resolution on NBFIs signatories of reports submitted to Bangko Sentral	As authorized	3rd day from date of resolution	Drop Box - SEC Central Receiving Section Original - SEC Duplicate - BSP
B			General Information Sheet	Annually	30th business day from annual stockholders' meeting	e-mail -sdcothers-emony@bsp-gov.ph hard copy -SDC
B	Forms I and II Schedule 1 to 3	M-031 dated 09.11.09 and Cir. No 649 dated 03.09.09	Report on Electronic Money Transactions Quarterly Statement of E-Money Balances and Activity - Volume and Amount of E-Money Transactions Quarterly Statement of Liquidity Cover Schedules 1 - E-Money Balances 2 - Bank Deposits 3 - Govenmenr Securities and Others	Quartely	15 banking days after end of reference quarter	

**GUIDELINES ON PRESCRIBED REPORTS SIGNATORIES
AND SIGNATORY AUTHORIZATION
(Appendix to Subsec. 4162N.1)**

Category A-2 reports of head offices shall be signed by the president, executive vice-presidents, vice-presidents or officers holding equivalent positions. Such reports of other offices/units (such as branches) shall be signed by their respective managers/officers in-charge. Likewise, the signing authority in this category shall be contained in a resolution approved by the board of directors in the format prescribed in Annex N-2-a.

Category B reports shall be signed by officers or their alternates, who shall be duly designated in a resolution approved by the board of directors in the format as prescribed in Annex N-2-b.

Copies of the board resolutions on the report signatory designations shall be submitted to the appropriate supervising and examining department of the BSP within three (3) days from the date of resolution.

FORMAT OF RESOLUTION FOR SIGNATORIES OF CATEGORY A-2 REPORTS

Resolution No. _____

Whereas, it is required under Subsec. 4162N.1 that Category A-2 reports of head offices be signed by the president, executive vice-presidents, vice-presidents or officers holding equivalent positions, and that such reports of other offices be signed by the respective managers/officers-in-charge;

Whereas, it is also required that aforesaid officers of the institution be authorized under a resolution duly approved by the institution’s Board of Directors;

Whereas, we, the members of the Board of Directors of (Name of Institution), are conscious that, in designating the officials who would sign said Category A-2 reports, we are actually empowering and authorizing said officers to represent and act for or in behalf of the Board of Directors in particular and (Name of Institution) in general;

Whereas, this Board has full faith and confidence in the institution’s President (and/or the Executive Vice-President, etc., as the case may be) and, therefore, assumes responsibility for all the acts which may be performed by aforesaid officers under their delegated authority;

Now, therefore, we, the members of the Board of Directors, resolve, as it is hereby resolved that:

Name of Officer	Specimen Signature	Position Title	Report No.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

are hereby authorized to sign the Category A-2 reports of _____.
(Name of Institution)

Done in the City of _____, Philippines, this _____ day of _____, 20__ .

CHAIRMAN OF THE BOARD

_____ DIRECTOR	_____ DIRECTOR
_____ DIRECTOR	_____ DIRECTOR
_____ DIRECTOR	_____ DIRECTOR

ATTESTED BY:

CORPORATE SECRETARY

FORMAT OF RESOLUTION FOR SIGNATORIES OF CATEGORY B REPORTS

Resolution No. _____

Whereas, it is required under Subsec. 4162N.1 that Category B reports be signed by officers or their alternates;

Whereas, it is also required that aforesaid officers of the institution be authorized under a resolution duly approved by the institution’s Board of Directors;

Whereas, we the members of the Board of Directors of (Name of Institution) are conscious that, in designating the officials who would sign said Category B reports, we are actually empowering and authorizing said officers to represent and act for or in behalf of the Board of Directors in particular and (Name of Institution) in general;

Whereas, this Board has full faith and confidence in the institution’s authorized signatories and, therefore, assumes responsibility for all the acts which may be performed by aforesaid officers under their delegated authority;

Now, therefore, we, the members of the Board of Directors, resolve, as it is hereby resolved that:

	Name of Authorized Signatory/Alternate	Specimen Signature	Position Title	Report No.
1. Authorized (Alternate)	_____	_____	_____	_____
2. Authorized (Alternate)	_____	_____	_____	_____
etc.	_____	_____	_____	_____

are hereby authorized to sign the Category B reports of _____.
(Name of Institution)

Done in the City of _____, Philippines, this ____ day of _____, 20__ .

CHAIRMAN OF THE BOARD

_____ DIRECTOR	_____ DIRECTOR
_____ DIRECTOR	_____ DIRECTOR
_____ DIRECTOR	_____ DIRECTOR

ATTESTED BY:

CORPORATE SECRETARY

ANTI-MONEY LAUNDERING REGULATIONS
(Appendix to Section 4104N)

(Deleted pursuant to Circular No. 706 date 05 January 2011)

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Annex N-3-a

**CERTIFICATION OF COMPLIANCE WITH
ANTI-MONEY LAUNDERING REGULATIONS**

(Deleted pursuant to Circular No. 706 dated 05 January 2011)

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Annex N-3-b

AMLC Resolution No. 292

**RULES ON SUBMISSION OF COVERED TRANSACTION REPORTS AND
SUSPICIOUS TRANSACTION REPORTS BY COVERED INSTITUTIONS**

(Deleted pursuant to Circular No. 706 dated 05 January 2011)

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**REVISED IMPLEMENTING RULES AND REGULATIONS
R.A. NO. 9160, AS AMENDED BY R.A. NO. 9194
(Appendix to Sec. 4104N)**

(Deleted by Circular No. 706 dated 05 January 2011)

**GUIDELINES TO GOVERN THE SELECTION, APPOINTMENT, REPORTING
REQUIREMENTS AND DELISTING OF EXTERNAL AUDITORS AND/OR
AUDITING FIRM OF COVERED ENTITIES**
(Appendix to Secs. 4180N and 4190N)

Pursuant to Section 58 of the Republic Act No. 8791, otherwise known as "The General Banking Law of 2000", and the existing provisions of the executed Memorandum of Agreement (hereinafter referred to as the MOA) dated 12 August 2009, binding the Bangko Sentral ng Pilipinas (BSP), Securities and Exchange Commission (SEC), Professional Regulation Commission (IC) - Board of Accountancy (BOA) and the Insurance Commission (IC) for a simplified and synchronized accreditation requirements for external auditor and/or auditing firm, the Monetary Board, in its Resolution No. 950 dated 02 July 2009, approved the following revised rules and regulations that shall govern the selection and delisting by the BSP of covered institution which under special laws are subject to BSP supervision.

A. STATEMENT OF POLICY

It is the policy of the BSP to ensure effective audit and supervision of banks, QBs, trust entities and/or NSSLAs including their subsidiaries and affiliates engaged in allied activities and other FIs which under special laws are subject to BSP supervision, and to ensure reliance by BSP and the public on the opinion of external auditors and auditing firms by prescribing the rules and regulations that shall govern the selection, appointment, reporting requirements and delisting for external auditors and auditing firms of said institutions, subject to the binding provisions and implementing regulations of the aforesaid MOA.

B. COVERED ENTITIES

The proposed amendment shall apply to the following supervised institution, as categorized below, and their external auditors:

1. *Category A*
 - a. UBs/KBs;
 - b. Foreign banks and branches or subsidiaries of foreign banks, regardless of unimpaired capital; and
 - c. Banks, trust department of qualified banks and other trust entities with additional derivatives authority, pursuant to Sec. X611 regardless of classification, category and capital position.
2. *Category B*
 - a. TBs;
 - b. QBs;
 - c. Trust department of qualified banks and other trust entities;
 - d. National Coop Banks; and
 - e. NBFIs with quasi-banking functions.
3. *Category C*
 - a. RBs;
 - b. NSSLAs;
 - c. Local Coop Banks; and
 - d. Pawnshops.

The above categories include their subsidiaries and affiliates engaged in allied activities and other FIs which are subject to BSP risk-based and consolidated supervision: *Provided*, That an external auditor who has been selected by the BSP to audit covered entities under *Category A* is automatically qualified to audit entities under *Category B* and *C* and if selected by the BSP to audit covered entities under *Category B* is automatically qualified to audit entities under *Category C*.

C. DEFINITION OF TERMS

The following terms shall be defined as follows:

1. *Audit* – an examination of the financial statements of any issuer by an external auditor in compliance with the rules of the BSP or the SEC in accordance with then applicable generally accepted auditing and accounting principles and standards, for the purpose of expressing an opinion on such statements.

2. *Non-audit services* – any professional services provided to the covered institution by an external auditor, other than those provided to a covered institution in connection with an audit or a review of the financial statements of said covered institution.

3. *Professional Standards* - includes: (a) accounting principles that are (1) established by the standard setting body; and (2) relevant to audit reports for particular issuers, or dealt with in the quality control system of a particular registered public accounting firm; and (b) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards that the BSP or SEC determines (1) relate to the preparation or issuance of audit reports for issuers; and (2) are established or adopted by the BSP or promulgated as SEC rules.

4. *Fraud* – an intentional act by one (1) or more individuals among management, employees, or third parties that results in a misrepresentation of financial statements, which will reduce the consolidated total assets of the company by five percent (5%). It may involve:

- a. Manipulation, falsification or alteration of records or documents;
- b. Misappropriation of assets;
- c. Suppression or omission of the effects of transactions from records or documents;

d. Recording of transactions without substance;

e. Intentional misapplication of accounting policies; or

f. Omission of material information.

5. *Error* - an intentional mistake in financial statements, which will reduce the consolidated total assets of the company by five percent (5%). It may involve:

a. Mathematical or clerical mistakes in the underlying records and accounting data;

b. Oversight or misinterpretation of facts; or

c. Unintentional misapplication of accounting policies.

6. *Gross negligence* - wanton or reckless disregard of the duty of due care in complying with generally accepted auditing standards.

7. *Material fact/information* - any fact/information that could result in a change in the market price or value of any of the issuer’s securities, or would potentially affect the investment decision of an investor.

8. *Subsidiary* - 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 a bank, QB, trust entity or NSSLA.

9. *Affiliate* - a corporation, not more than fifty percent (50%) but not less than ten percent (10%) of the outstanding voting stock of which is directly or indirectly owned, controlled or held with power to vote by a bank, QB, trust entity or NSSLA and a juridical person that is under common control with the bank, QB, trust entity or NSSLA.

10. *Control* - exists when the parent owns directly or indirectly 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; or
- d. Power to cast the majority votes at meetings of the board of directors or equivalent governing body.

11. *External auditor* - means a single practitioner or a signing partner in an auditing firm.

12. *Auditing firm* – includes a proprietorship, partnership limited liability company, limited liability partnership, corporation (if any), or other legal entity, including any associated person of any of these entities, that is engaged in the practice of public accounting or preparing or issuing audit reports.

13. *Associate* – any director, officer, manager or any person occupying a similar status or performing similar functions in the audit firm including employees performing supervisory role in the auditing process.

14. *Partner* - all partners including those not performing audit engagements.

15. *Lead partner* – also referred to as engagement partner/partner-in-charge/managing partner who is responsible for signing the audit report on the consolidated financial statements of the audit client, and where relevant, the individual audit report of any entity whose financial statements form part of the consolidated financial statements.

16. *Concurring partner* - the partner who is responsible for reviewing the audit report.

17. *Auditor-in-charge* – refers to the team leader of the audit engagement.

D. GENERAL CONSIDERATION AND LIMITATIONS OF THE SELECTION PROCEDURES

1. Subject to mutual recognition provision of the MOA and as implemented in this regulation, only external auditors and auditing firms included in the list of BSP selected external auditors and auditing firms shall be engaged by all the covered institutions detailed in Item "B". The external auditor and/or auditing firm to be hired shall also be in-charge of the audit of the entity's subsidiaries and affiliates engaged in allied activities: *Provided*, That the external auditor and/or auditing firm shall be changed or the lead and concurring partner shall be rotated every five (5) years or earlier: *Provided further*, That the rotation of the lead and concurring partner shall have an interval of at least two (2) years.

2. Category A covered entities which have engaged their respective external auditors and/or auditing firm for a consecutive period of five (5) years or more as of 18 September 2009 shall have a one (1)-year period from said date within which to either change their external auditors and/or auditing firm or to rotate the lead and/or concurring partner.

3. The selection of the external auditors and/or auditing firm does not exonerate the covered institution or said auditors from their responsibilities. Financial statements filed with the BSP are still primarily the responsibility of the management of the reporting institution and accordingly, the fairness of the representations made therein is an implicit and integral part of the institution's responsibility. The independent certified public accountant's responsibility for the financial statements required to be filed with the BSP is confined to the expression of his opinion,

or lack thereof, on such statements which he has audited/examined.

4. The BSP shall not be liable for any damage or loss that may arise from its selection of the external auditors and/or auditing firm to be engaged by banks for regular audit or non-audit services.

5. Pursuant to paragraph (5) of the MOA, SEC, BSP and IC shall mutually recognize the accreditation granted by any of them for external auditors and firms of Group C or D companies under SEC, Category B and C under BSP, and insurance brokers under IC. Once accredited/selected by any one (1) of them, the above-mentioned special requirements shall no longer be prescribed by the other regulators.

For corporations which are required to submit financial statements to different regulators and are not covered by the mutual recognition policy of this MOA, the following guidance shall be observed:

a. The external auditors of UBs which are listed in the Exchange, should be selected/accredited by both the BSP and SEC, respectively; and

b. For insurance companies and banks that are not listed in the Exchange, their external auditors must each be selected/accredited by BSP or IC, respectively. For purposes of submission to the SEC, the financial statements shall be at least audited by an external auditor registered/accredited with BOA.

This mutual recognition policy shall however be subject to the BSP restriction that for banks and its subsidiary and affiliate bank, QBs, trust entities, NSSLAs, their subsidiaries and affiliates engaged in allied activities and other FIs which under special laws are subject to BSP consolidated supervision, the individual and consolidated financial statements thereof shall be audited by only one (1) external auditor/auditing firm.

6. The selection of external auditors and/or auditing firm shall be valid for a period of three (3) years. The SES shall make an annual assessment of the performance of external auditors and/or auditing firm 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.

E. QUALIFICATION REQUIREMENT

The following qualification requirements are required to be met by the individual external auditor and the auditing firm at the time of application and on continuing basis, subject to BSP's provisions on the delisting and suspension of accreditation:

- 1. Individual external auditor
 - a. General requirements

(1) The individual applicant must be primarily accredited by the BOA. The individual external auditor or partner in-charge of the auditing firm must have at least five (5) years of audit experience.

- (2) Auditor's independence.

In addition to the basic screening procedures of BOA on evaluating auditor's independence, the following are required for BSP purposes to be submitted in the form of notarized certification that:

(a) No external auditor may be engaged by any of the covered institutions under Item "B" hereof if he or any member of his immediate family had or has committed to acquire any direct or indirect financial interest in the concerned covered institution, or if his independence is considered impaired under the circumstances specified in the Code of Professional Ethics for CPAs. In case of a partnership, this limitation shall apply to the partners, associates and the auditor-in-charge of the engagement and members of their immediate family;

(b) The external auditor does not have/ shall not have outstanding loans or any

credit accommodations or arranged for the extension of credit or to renew an extension of credit (except credit card obligations which are normally available to other credit card holders and fully secured auto loans and housing loans which are not past due) with the covered institutions under Item "B" at the time of signing the engagement and during the engagement. In the case of partnership, this prohibition shall apply to the partners and the auditor-in-charge of the engagement; and

(c) It shall be unlawful for an external auditor to provide any audit service to a covered institution if the covered institution's CEO, CFO, Chief Accounting Officer (CAO), or comptroller was previously employed by the external auditor and participated in any capacity in the audit of the covered institution during the one-year preceding the date of the initiation of the audit;

(3) Individual applications as external auditor of entities under *Category A* above must have established adequate quality assurance procedures, such consultation policies and stringent quality control, to ensure full compliance with the accounting and regulatory requirements.

b. Specific requirements

(1) At the time of application, regardless of the covered institution, the external auditor shall have at least five (5) years experience in external audits;

(2) The audit experience above refers to experience required as an associate, partner, lead partner, concurring partner or auditor-in-charge; and

(3) At the time of application, the applicant must have the following track record:

(a) For *Category A*, he/she must have at least five (5) corporate clients with total assets of at least P50.0 million each.

(b) For *Category B*, he/she must have had at least three (3) corporate clients with total assets of at least P25.0 million each.

(c) For *Category C*, he/she must have had at least three (3) corporate clients with total assets of at least P5.0 million each;

2. Auditing firms

a. The auditing firm must be primarily accredited by the BOA and the name of the firm's applicant partner's should appear in the attachment to the certificate of accreditation issued by BOA. Additional partners of the firm shall be furnished by BOA to the concerned regulatory agencies (e.g. BSP, SEC and IC) as addendum to the firm's accreditation by BOA.

b. Applicant firms to act as the external auditor of entities under *Category A* in Item "B" must have established adequate quality assurance procedures, such consultation policies and stringent quality control, to ensure full compliance with the accounting and regulatory requirements.

c. At the time of application, the applicant firm must have at least one (1) signing practitioner or partner who is already selected/accredited, or who is already qualified and is applying for selection by BSP.

d. A registered accounting/auditing firm may engage in any non-auditing service for an audit client only if such service is approved in advance by the client's audit committee. Exemptions from the prohibitions may be granted by the Monetary Board on a case-by-case basis to the extent that such exemption is necessary or appropriate in the public interest. Such exemptions are subject to review by the BSP.

e. At the time of application, the applicant firm must have the following track record:

(1) For *Category A*, the applicant firm must have had at least twenty (20) corporate clients with total assets of at least P50.0 million each;

(2) For *Category B*, the applicant firm must have had at least five (5) corporate

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clients with total assets of at least P20.0 million each;

(3) For *Category C*, the applicant firm must have had at least five (5) corporate clients with total assets of at least P5.0 million each.

F. APPLICATION FOR AND/OR RENEWAL OF THE SELECTION OF INDIVIDUAL EXTERNAL AUDITOR

1. The initial application for BSP selection shall be signed by the external auditor and shall be submitted to the appropriate department of the SES together with the following documents/information:

a. Copy of effective and valid BOA Certificate of Accreditation with the attached list of qualified partner/s of the firm;

b. A notarized undertaking of the external auditor that he is in compliance with the qualification requirements under Item "E" and that the external auditor shall keep an audit or review working papers for at least seven (7) years in sufficient detail to support the conclusion in the audit report and making them available to the BSP's authorized representative/s when required to do so;

c. Copy of Audit Work Program which shall include assessment of the audited institution's compliance with BSP rules and regulations, such as, but not limited to the following:

(1) capital adequacy ratio, as currently prescribed by the BSP;

(2) AMLA framework;

(3) risk management system, particularly liquidity and market risks; and

(4) loans and other risk assets review and classification, as currently prescribed by the BSP rules and regulations.

d. If the applicant will have clients falling under *Category A*, copy of the Quality Assurance Manual which, aside from the basic elements as required under the BOA

basic quality assurance policies and procedures, specialized quality assurance procedures should be provided consisting of, among other, review asset quality, adequacy of risk-based capital, risk management systems and corporate governance framework of the covered entities.

e. Copy of the latest AFS of the applicant's two (2) largest clients in terms of total assets.

2. Subject to BSP's provision on early deletion from the list of selected external auditor, the selection may be renewed within two (2) months before the expiration of the three (3)-year effectivity of the selection upon submission of the written application for renewal to the appropriate department of the SES together with the following documents/information:

(a) copy of updated BOA Certificate of Accreditation with the attached list of qualified partner/s of the firm;

(b) notarized certification of the external auditor that he still possess all qualification required under Item "F.1.b" of this Appendix;

(c) list of corporate clients audited during the three (3)-year period of being selected as external auditor by BSP. Such list shall likewise indicate the findings noted by the BSP and other regulatory agencies on said AFS including the action thereon by the external auditor; and

(d) written proof that the auditor has attended or participated in trainings for at least thirty (30) hours in addition to the BOA's prescribed training hours. Such training shall be in subjects like international financial reporting standards, international standards of auditing, corporate governance, taxation, code of ethics, regulatory requirements of SEC, IC and BSP or other government agencies, and other topics relevant to his practice, conducted by any professional organization or

association duly recognized/accredited by the BSP, SEC or by the BOA/PRC through a CPE Council which they may set up.

The application for initial or renewal accreditation of an external auditor shall be accomplished by a fee of P2,000.00.

G. APPLICATION FOR AND/OR RENEWAL OF THE SELECTION OF AUDITING FIRMS

1. The initial application shall be signed by the managing partner of the auditing firm and shall be submitted to the appropriate department of the SES together with the following documents/information:

a. copy of effective and valid BOA Certificate of Accreditation with attachment listing the names of qualified partners;

b. notarized certification that the firm is in compliance with the general qualification requirements under Item "E.2" and that the firm shall keep an audit or review working papers for at least seven (7) years insufficient detail to support the conclusions in the audit report and making them available to the BSP's authorized representative/s when required to do so;

c. copy of audit work program which shall include assessment of the audited institution's compliance with BSP rules and regulations, such as, but not limited to the following;

(1) capital adequacy ratio, as currently prescribed by the BSP;

(2) AMLA framework;

(3) risk management system, particularly liquidity and market risks; and

(4) loans and other risk assets review and classification, as currently prescribed by the BSP rules and regulations.

d. If the applicant firm will have clients falling under Category A, copy Quality Assurance Manual where, aside from the basic elements as required under the BOA basic quality assurance policies

and procedures, specialized quality assurance procedures should be provided relative to, among others review asset quality, adequacy of risk-based capital, risk management systems and corporate governance framework of covered entities;

e. Copy of the latest AFS of the applicant's two (2) largest clients in terms of total assets; and

f. Copy of firm's AFS for the immediately preceding two (2) years.

2. Subject to BSP's provision on early deletion from the list of selected auditing firm, the selection may be renewed within two (2) months before the expiration of the three (3)-year effectivity of the selection upon submission of the written application for renewal to the appropriate department of the SES together with the following documents/information:

a. a copy of updated BOA Certificate of Registration with the attached list of qualified partner/s of the firm;

b. amendments on Quality Assurance Manual, inclusive of written explanation on such revision, if any; and

c. notarized certification that the firm is in compliance with the general qualification requirements under Item "G.1.b" hereof;

The application for initial or renewal accreditation of an auditing firm shall be accompanied by a fee of P5,000.00.

H. REPORTORIAL REQUIREMENTS

1. To enable the BSP to take timely and appropriate remedial action, the external auditor and/or auditing firm must report to the BSP within thirty (30) calendar days after discovery, the following cases:

a. Any material finding involving fraud or dishonesty (including cases that were resolved during the period of audit);

b. Any potential losses the aggregate of which amounts to at least one percent (1%) of the capital;

c. Any finding to the effect that the consolidated assets of the company, on a going concern basis, are no longer adequate to cover the total claims of creditors; and

d. Material internal control weaknesses which may lead to financial reporting problems.

2. The external auditor/auditing firm shall report directly to the BSP within fifteen (15) calendar days from the occurrence of the following:

a. Termination or resignation as external auditor and stating the reason therefor;

b. Discovery of a material breach of laws or BSP rules and regulations such as, but not limited to:

(1) CAR; and

(2) Loans and other risk assets review and classification.

c. Findings on matters of corporate governance that may require urgent action by the BSP.

3. In case there are no matters to report (e.g. fraud, dishonesty, breach of laws, etc.) the external auditor/auditing firm shall submit directly to BSP within fifteen (15) calendar days after the closing of the audit engagement a notarized certification that there is none to report.

The management of the covered institutions, including its subsidiaries and affiliates, shall be informed of the adverse findings and the report of the external auditor/auditing firm to the BSP shall include pertinent explanation and/or corrective action.

The management of the covered institutions, including its subsidiaries and affiliates, shall be given the opportunity to be present in the discussions between the BSP and the external auditor/auditing firm regarding the audit findings, except in circumstances where the external auditor believes that the entity's

management is involved in fraudulent conduct.

It is, however, understood that the accountability of an external auditor/auditing firm is based on matters within the normal coverage of an audit conducted in accordance with generally accepted auditing standards and identified non-audit services.

I. DELISTING AND SUSPENSION OF SELECTED EXTERNAL AUDITOR/AUDITING FIRM

1. An external auditor's duly selected pursuant to this regulation shall be suspended or delisted, in a manner provided under this regulation, under any of the following grounds:

a. Failure to submit the report under Item "H" of this Appendix or the required reports under Subsec. X190.1;

b. Continuous conduct of audit despite loss of independence as provided under Item "E.1" or contrary to the requirements under the Code of Professional Ethics;

c. Any willful misrepresentation in the following information/documents;

(1) application and renewal for accreditation;

(2) report required under Item "H"; and

(3) Notarized certification of the external auditor and/or auditing firm.

d. The BOA found that, after due notice and hearing, the external auditor committed an act discreditable to the profession as specified in the Code of Professional Ethics for CPAs. In this case, the BOA shall inform the BSP of the results thereof;

e. Declaration of conviction by a competent court of a crime involving moral turpitude, fraud (as defined in the Revised Penal Code), or declaration of liability for violation of the banking laws, rules and regulation, the Corporation Code of the Philippines, the Securities Regulation Code

(SRC); and the rules and regulations of concerned regulatory authorities;

f. Refusal for no valid reason, upon lawful order of the BSP, to submit the requested documents in connection with an ongoing investigation. The external auditor should however been made aware of such investigation;

g. Gross negligence in the conduct of audits which would result, among others, in non-compliance with generally accepted auditing standards in the Philippines or issuance of an unqualified opinion which is not supported with full compliance by the auditee with generally accepted accounting principles in the Philippines (GAAP). Such negligence shall be determined by the BSP after proper investigation during which the external auditor shall be given due notice and hearing;

h. Conduct of any of the non-audit services enumerated under Item "E.1" for his statutory audit clients, if he has not undertaken the safeguards to reduce the threat to his independence; and

i. Failure to comply with the Philippine Auditing Standards and Philippine Auditing Practice Statements.

2. An auditing firms; accreditation shall be suspended or delisted, after due notice and hearing, for the following grounds:

a. Failure to submit the report under Item "H" or the required reports under Sec. X190.1.

b. Continuous conduct of audit despite loss of independence of the firm as provided under this regulation and under the Code of Professional Ethics;

c. Any willful misrepresentation in the following information/ documents;

(1) Application and renewal for accreditation;

(2) Report required under Item "H"; and

(3) Notarized certification of the managing partner of the firm.

d. Dissolution of the auditing firm/ partnership, as evidenced by an Affidavit of Dissolution submitted to the BOA, or upon findings by the BSP that the firm/partnership is dissolved. The accreditation of such firm/ partnership shall however be reinstated by the BSP upon showing that the said dissolution was solely for the purpose of admitting new partner/s have complied with the requirements of this regulation and thereafter shall be reorganized and re-registered;

e. There is a showing that the accreditation of the following number or percentage of external auditors, whichever is lesser, have been suspended or delisted for whatever reason, by the BSP:

(1) at least ten (10) signing partners and currently employed selected/accredited external auditors, taken together; or

(2) such number of external auditors constituting fifty percent (50%) or more of the total number of the firm's signing partners and currently selected/accredited auditors, taken together.

f. The firm or any one (1) of its auditors has been involved in a major accounting/auditing scam or scandal. The suspension or delisting of the said firm shall depend on the gravity of the offense or the impact of said scam or scandal on the investing public or the securities market, as may be determined by the BSP;

g. The firm has failed reasonably to supervise an associated person and employed auditor, relating to the following:

(1) auditing or quality control standards, or otherwise, with a view to preventing violations of this regulations;

(2) provisions under SRC relating to preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto;

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(3) the rules of the BSP under this Appendix; or

(4) professional standards.

h. Refusal for no valid reason, upon order of the BSP, to submit requested documents in connection with an ongoing investigation. The firm should however be made aware of such investigation.

3. Pursuant to paragraph 8 of the aforesaid MOA, the SEC, BSP and IC shall inform BOA of any violation by an accredited/selected external auditor which may affect his/her accreditation status as a public practitioner. The imposition of sanction by BOA on an erring practitioner shall be without prejudice to the appropriate penalty that the SEC, IC or BSP may assess or impose on such external auditor pursuant to their respective rules and regulations. In case of revocation of accreditation of a public practitioner by BOA, the accreditation by SEC, BSP and IC shall likewise be automatically revoked/derecognized.

The SEC, BSP and IC shall inform each other of any violation committed by an external auditor who is accredited/selected by any one (1) or all of them. Each agency shall undertake to respond on any referral or endorsement by another agency within ten (10) working days from receipt thereof.

4. Procedure and Effects of Delisting/Suspension.

a. An external auditor/auditing firm shall only be delisted upon prior notice to him/it and after giving him/it the opportunity to be heard and defend himself/itself by presenting witnesses/ evidence in his favor. Delisted external auditor and/or auditing firm may re-apply for BSP selection after the period prescribed by the Monetary Board.

b. BSP shall keep a record of its proceeding/investigation. Said proceedings/ investigation shall not be public, unless otherwise ordered by the Monetary Board

for good cause shown, with the consent of the parties to such proceedings.

c. A determination of the Monetary Board to impose a suspension or delisting under this section shall be supported by a clear statement setting forth the following:

(1) Each act or practice in which the selected/accredited external auditor or auditing firm, or associated entry, if applicable, has engaged or omitted to engage, or that forms a basis for all or part of such suspension/delisting;

(2) The specific provision/s of this regulation, the related SEC rules or professional standards which the Monetary Board determined as has been violated; and

(3) The imposed suspension or delisting, including a justification for either sanction and the period and other requirements specially required within which the delisted auditing firm or external auditor may apply for re-accreditation.

d. The suspension/delisting, including the sanctions/penalties provided in Sec. X189 shall only apply to:

(1) Intentional or knowing conduct, including reckless conduct, that results in violation or applicable statutory, regulatory or professional standards; or

(2) Repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory or professional standards.

e. No associate person or employed auditor of a selected/accredited auditing firm shall be deemed to have failed reasonably to supervise any other person for purpose of Item "1.2.g" above, if:

(1) There have been established in and for that firm procedures, and a system for applying such procedures, that comply with applicable rules of BSP and that would reasonably be expected to prevent and detect any such violation by such associated person; and

(2) Such person or auditor has reasonably discharged the duties and obligations incumbent upon that person by reason of such procedures and system, and had no reasonable cause to believe that such procedures and system were not being complied with.

f. The BSP shall discipline any selected external auditor that is suspended or delisted from being associated with any selected auditing firm, or for any selected auditing firm that knew, or in the exercise or reasonable care should have known, of the suspension or delisting of any selected external auditor, to permit such association, without the consent of the Monetary Board.

g. The BSP shall discipline any covered institution that knew or in the exercise of reasonable care should have known, of the suspension or delisting of its external auditor or auditing firm, without the consent of the Monetary Board.

h. The BSP shall establish for appropriate cases an expedited procedure for consideration and determination of the question of the duration of stay of any such disciplinary action pending review of any disciplinary action of the BSP under this Section.

J. SPECIFIC REVIEW

When warranted by supervisory concern, the Monetary Board may, at the expense of the covered institution require the external auditor and/or auditing firm to undertake a specific review of a particular aspect of the operations of these institutions. The report shall be submitted to the BSP and the audited institution simultaneously, within thirty (30) calendar days after the conclusion of said review.

K. AUDIT BY THE BOARD OF DIRECTORS

Pursuant to Section 58 of RA. No. 8791, otherwise known as “The General Banking Law of 2000” the Monetary Board may also direct the board of directors of a covered institution or the individual members thereof, to conduct, either personally or by a committee created by the board, an annual balance sheet audit of the covered institution to review the internal audit and the internal control system of the concerned entity and to submit a report of such audit to the Monetary Board within thirty (30) calendar days after the conclusion thereof.

L. AUDIT ENGAGEMENT

Covered institutions shall submit the audit engagement contract between them, their subsidiaries and affiliates and the external auditor/auditing firm to the appropriate department of the SES within fifteen (15) calendar days from signing thereof. Said contract shall include the following provisions:

1. That the covered institution shall be responsible for keeping the auditor fully informed of existing and subsequent changes to prudential regulatory and statutory requirements of the BSP and that both parties shall comply with said requirements;
2. That disclosure of information by the external auditor/auditing firm to the BSP as required under Items “H” and “J” hereof, shall be allowed; and
3. That both parties shall comply with all the requirements under this Appendix.

(As amended by Circular No. 660 dated 25 August 2009)

**QUALIFICATION REQUIREMENTS
FOR A BANK/NON-BANK FINANCIAL INSTITUTION 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
(Appendix to Subsec. 4109N.16)**

A bank/NBFI 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 following requirements:		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;	
a. It must be a bank or NBFI under BSP supervision;		f. The by-laws of the institution shall include among others, provisions on the following:	
b. It must have a license to engage in trust and other fiduciary business;		(1) The organization plan or structure of the department, office or unit which shall conduct the trust and other fiduciary business of the institution;	
c. It must have complied with the minimum capital accounts required under existing regulations, as follows:		(2) The creation of a trust committee, the appointment of a trust officer and subordinate officers of the trust department; and	
UBs and KBs	The amount required under existing regulations or such amount as may be required by the Monetary Board in the future	(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.	
Branches of Foreign Banks	The amount required under existing regulations	g. The bank's operation during the preceding calendar year and for the period immediately preceding the date of application has been profitable;	
Thrift Banks	P650.0 million or such amounts as may be required by the Monetary Board in the future	h. It has not incurred net weekly reserve deficiencies during the eight (8) weeks period immediately preceding the date of application;	
NBFIs	Adjusted capital of at least P300.0 million or such amount as may be required by the Monetary Board in the future.	i. 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 preceding examinations prior to the date of application, particularly on the following:	
d. Its risk-based capital adequacy ratio is not lower than twelve percent (12%) at the time of filing the application;		(1) election of at least two (2) independent directors;	
e. The articles of incorporation or governing charter of the institution shall		(2) attendance by every member of the board of directors in a special seminar for board of directors conducted or accredited by the BSP;	

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- (3) the ceilings on credit accommodations to DOSRI;
- (4) liquidity floor requirements for government deposits;
- (5) single borrower’s loan limit; and
- (6) investment in bank premises and other fixed assets.
- j. It maintains adequate provisions for probable losses commensurate to the quality of its assets portfolio but not lower than the required valuation reserves as determined by the BSP;
- k. 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;

- l. 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;
 - m. It has a CAMELS Composite Rating of at least "3" in the last regular examination with management rating of not lower than "3"; and
 - n. It is a member of the PDIC in good standing (for banks only).
- 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.

FORMAT CERTIFICATION
(Appendix to Subsec. 4211N.12)

Name of Bank

CERTIFICATION

Pursuant to the requirements of Subsec 4211N.12, I hereby certify that on all banking days of the semester ended _____ that the _____ (NBFI) 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 it 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:

1. 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:
 - a. Issuer and its financial condition;
 - b. Term and maturity date;
 - c. Applicable interest rate and its computation;
 - d. Tax features (whether taxable, tax paid or tax-exempt);
 - e. Risk factors and investment considerations;
 - f. Liquidity feature of the instrument:
 - f.1. Procedures for selling the security in the secondary market (e.g., OTC or exchange);
 - f.2. Authorized selling agents; and
 - f.3. Minimum selling lots.
 - g. Disposition of the security
 - g.1. Registry (address and contact numbers)
 - g.2. Functions of the registry
 - g.3. Pertinent registry rules and procedures
 - h. Collecting and Paying Agent of the principal and interest
 - i. Other pertinent terms and conditions of the security and if possible, a copy of the prospectus or information sheet of the security.
2. Informed the client that pursuant to BSP Circular No. 392 dated 23 July 2003 –
 - 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 NBFI, 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

- 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
3. Clearly stated to the client that:
- a. The NBFI 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
 - b. The NBFI is not performing any advisory or fiduciary function.

Name of Officer
Position

Date _____

SUBSCRIBED AND SWORN to before me, this _____ day of _____, affiant exhibiting his Community Tax Certificate No.(s) as indicated below:

Name	Community Tax Cert. No.	Date/Place Issued
------	----------------------------	----------------------

Notary Public

FORMAT CERTIFICATION

Name of NBFI

CERTIFICATION

Pursuant to the requirements of Subsec. 4211N.12, I hereby certify that as of 31 January 2005, the _____ (name of NBFI) does not have any outstanding 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.

Name of Officer
Position

SUBSCRIBED AND SWORN to before me, this _____ day of _____, affiant exhibiting his Community Tax Certificate as indicated below:

<u>Name</u>	Community Tax	<u>Date/Place</u>
	<u>Cert. No.</u>	<u>Issued</u>

Notary Public

REGISTRATION AND OPERATIONS OF FOREIGN EXCHANGE DEALERS/
MONEY CHANGERS AND REMITTANCE AGENTS
(Appendix to Sec. 4511N)

A. Application for Registration

Name of Applicant

Address

Telephone No./Fax No.

Date

Bangko Sentral ng Pilipinas
A. Mabini St., Malate, Manila

Gentlemen:

We hereby apply for authority to act as (foreign exchange dealer/money changer or remittance agent). We are currently engaged in this business since _____ (if applicable).

In support of this application, we submit the following documents:

- Incorporation papers duly authenticated by the Securities and Exchange Commission (for corporation or partnership);
- Copy of the Certificate of Registration with the Department of Trade and Industry (for single proprietorship);
- Copy of business license/permit from the city or municipality having territorial jurisdiction over the place of establishment and operation;
- List of stockholders/partners/proprietor/directors/principal officers as the case maybe;
- Notarized Deed of Undertaking to strictly comply with the requirements of all relevant laws, rules and regulations, signed by the owner, partner, president or officer of equivalent rank.

Very truly yours,

(Signature of authorized officer over printed name)

Designation

B. Deed of Undertaking

Name of Applicant

Address

Telephone No./Fax No.

DEED OF UNDERTAKING

I, (name and designation), of legal age and under oath, declare the following:

1. That I have been duly authorized by (name of institution) and its Board of Directors/ Partners/Owners to bind (name of institution) to strictly comply with all the requirements, rules and regulations of the Bangko Sentral ng Pilipinas regarding the registration and operations of foreign exchange dealers/money changers/remittance agents as well as the provisions of the Anti-Money Laundering Act of 2001 (R.A. No. 9160, as amended by R.A. No. 9194) and its implementing rules and regulations.
2. That I certify that (name of institution) undertakes to strictly comply with all the requirements, rules and regulations of the Bangko Sentral ng Pilipinas regarding the licensing and operations of foreign exchange dealers/money changers/remittance agents as well as with all the provisions of the Anti-Money Laundering Act of 2001 (R.A. No. 9160) and its implementing rules and regulations.
3. That I certify that (name of institution), through and with full knowledge and agreement of its Board of Directors/Partners/Owners, understands and accepts that in case of violations of any of the aforementioned laws, rules and regulations, (name of institution) and its Board of Directors/Partners/Owners/Stockholders/Officers/employees responsible for such violation/s shall be subject to the administrative sanctions prescribed under Section 36 of R.A. No. 7653, otherwise known as the “New Central Bank Act” and other applicable laws, rules and regulations.

(Signature over printed name)

Designation

Subscribed and sworn to before me this ____ of _____, 20 ____, affiant exhibiting to me his/her Community Tax Certificate No. _____ issued at _____ on _____.

NOTARY PUBLIC

C. Application to Sell/Purchase Foreign Currency

Name of Foreign Exchange Dealer/Money Changer/Remittance Agent

Address

APPLICATION TO SELL/PURCHASE FOREIGN CURRENCY

1. Date : _____
2. Printed Name of Customer : _____
3. Signature : _____
4. Present Address : _____
5. Date and Place of Birth : _____
6. Telephone Number : _____
7. Nationality : _____
8. Currency Sold/Purchased : US Dollar _____ Others (specify)
9. Amount Sold/Purchased : In figures _____
In words _____
10. Source of Foreign Currency : _____

OFW/Balikbayan/Returning Resident

Tourist

Expatriate based in the Philippines

Foreign Currency Deposit Account

Holder

Domestic Resident – Excess Travel

Funds

Others (please specify)
11. Purpose of Purchase : _____

D. Minimum Documentary Requirements for the Sale of Foreign Currencies

A. Sale of foreign exchange for non-trade current account purposes exceeding USD10,000	
Purposes	Documents Required (All originals except as indicated)
1. Foreign travel funds	Applicant's passport and passenger ticket
2. Educational expenses/student maintenace abroad	Photocopy of proof of enrolment with, or billing statement from, school abroad
3. Correspondence studies	Photocopy of proof of enrolment with, or billing statement from, school abroad
4. Medical Expenses	Photocopy of billing statement (for services rendered/expenses incurred abroad) or certification issued by doctor/hospital abroad indicating cost estimate (on the treatment to be administered)
5. Emigrants' assets (including inheritance, legacies, and income from properties)	<div>a. Photocopies of:<div><div>i. Emigrant's visa or proof of residence of emigrant abroad</div><div>ii. Notarized Deed of Sale covering assets (e.g., real estate, vehicles, machineries/equipment, etc.) and;</div><div>iii. Proof of income received from properties in the Philippines.</div></div>b. In the absence of the emigrant, a notarized Special Power of Attorney (SPA) for emigrant's representative/ agent. If SPA was executed abroad, original of SPA authenticated by Philippine consulate abroad.</div>
6. Salary/bonus/dividend/other benefits of foreign expatriates (including peso savings)	<div>a. Employment contract/Certification of employer on the amount of compensation paid to the foreign national during the validity of the contract stating whether the same had been paid in foreign exchange or in pesos, and if in foreign exchange, proof that the foreign exchange was previously sold for pesos to AABs;</div> <div>b. ACR I-Card and DOLE Alien Employment Permit of the foreign national;</div>

Purposes	Documents Required (All originals except as indicated)
	<div><div>c. Applicant's notarized certification that the FX remitted is net of local expenses incurred or net of previous transfers abroad; and</div><div>d. If amount to be remitted comes from sources other than salaries, information regarding the sources supported by appropriate documents should be submitted.</div></div>
7. Foreign nationals' income taxes due to foreign governments	<div><div>a. ACR-I Card and DOLE Alien Employment Permit; and</div><div>b. Photocopy of income tax return covering the income tax payment sought to be remitted.</div></div>
8. Sales proceeds of domestic assets by foreign expatriates	<div><div>a. ACR I-Card; and</div><div>b. Photocopy of proof of sale of asset/s.</div></div>
9. Producers' share in movie revenue/TV film rentals	<div><div>1. Statement of remittable share rental or rental; and</div><div>2. Copy of contract/agreement.</div></div>
10. Commissions on exports due foreign agents	<div><div>a. Billing statement from non-resident agent; and</div><div>b. Photocopy of contract/agreement.</div></div>
11. Freight charges on exports/imports	<div><div>a. Billing statement; and</div><div>b. Photocopy of contract/agreement.</div></div>
12. Charters and leases of vessels/aircrafts	<div><div>a. Billing statement from non-resident lessor/owner of vessel/aircraft; and</div><div>b. Photocopy of contract/agreement.</div></div>
13. Port disbursements abroad for aircraft and vessels of Philippine registry or chartered by domestic operators and salvage fees	<div><div>a. Billing statement; and</div><div>b. Photocopy of contract/agreement.</div></div>
14. Satellite and other telecommunication services	<div><div>a. Billing Statement; and</div><div>b. Photocopy of contract/agreement.</div></div>
15. Other services such as advertising, consultancy, IT, fees for other professional services	<div><div>a. Billing statement; and</div><div>b. Photocopy of contract/agreement.</div></div>

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Purposes	Documents Required (All originals except as indicated)
16. Share in head office expenses (including reimbursements)	a. Audited schedules of allocation of expenses for the periods covered; b. Certification from the head office that the share in head office expenses remain unpaid and outstanding; and c. Audited financial statements of the Philippine branch.
17. Insurance/Reinsurance premium due to foreign insurance companies	Billings/Invoices of insurance companies/brokers abroad.
18. Claims against domestic insurance companies by brokers abroad	Billings/Invoices from foreign insurer/reinsurer.
19. Net Peso revenues of foreign airlines/shipping companies	a. Statement of Net Peso Revenues (Peso revenues less expenses) certified by authorized officer of airline/shipping company; and b. Photocopy of contract/agreement.
20. Royalty/Copyright/Franchise/Patent/Licensing fees	a. Statement/Computation of the royalty/copyright/franchise/patent/licensing fee; and b. Photocopy of contract/agreement.
21. Net peso revenues of embassies/consulates of foreign countries	Statement of net peso revenues (Peso revenues less expenses) certified by the Embassy's/Consulate's authorized officer.
22. FX obligations of Philippine credit card companies to international credit card companies/non-resident merchants	Summary billings
23. Support of dependents abroad	a. Consular certificate or its equivalent documents to prove that the dependent is permanently residing abroad not earlier than one (1) year from FX application date; and b. Certified true copy of birth certificate, marriage contract, adoption papers, whichever is applicable.

Purposes	Documents Required (All originals except as indicated)
24. Subscriptions to foreign magazines or periodicals	a. Billing statement
25. Membership dues and registration fees to associations abroad	a. Proof of membership; and b. Billing statement
26. Mail fees	a. Copy of contract or agreement; and b. Billing statement

B. Sale of foreign exchange for payment of foreign/foreign currency loans, regardless of amount	
Purposes	Documents Required (All originals except as indicated)
Foreign/foreign currency loan payments	Billing statement from creditor. Amounts that may be purchased shall be limited to maturing amounts on scheduled due dates. Remittance of FX purchased shall coincide with the due dates of the obligations to be serviced. FX-selling entity shall stamp "FX SOLD", date of sale and the amount/s sold on the original billing statement.
Payments related to guarantees and similar arrangements including risk take over arrangements Resulting FX liabilities arising from guarantees and similar arrangements including Risk Take Over Arrangements (RTO) not involving foreign/FCDU loans	Copies of: a. Arrangements/contracts covered by the guarantee/similar arrangement; b. Standby Letter of Credit (SLC) or guarantee contract/agreement; c. Proof/notice of original obligor's default and creditor's call on the guarantee; and d. Billing statement from the non-resident or local bank guarantor
Payments related to Build-Operate-Transfer and similar financing schemes with transfer arrangements	

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Purposes	Documents Required (All originals except as indicated)
Regular Fees	Copies of: a. Covering arrangements/contracts; and b. Billing statement from private sector project company/proponent

C. Sale of foreign exchange for capital repatriation/remittance of dividends/profits/earnings, outward investments and residents' investments in foreign currency-denominated bonds/ notes issued by the Republic of the Philippines and other Philippine entities, regardless of amount	
Purposes	Documents Required (All originals except as indicated)
1. Capital repatriation of: a. Portfolio investments in: i. PSE-listed securities ii. Peso government securities iii. Money market instruments (MMI) iv. Peso bank deposits b. Foreign direct equity investments	Broker's sales invoice Confirmation of purchase for peso government securities Matured contract for MMI Proof of withdrawal of deposit or matured certificate of deposit, as applicable a. Photocopy of proof of sale or relevant documents showing the amount to be repatriated; in case of dissolution/ capital reduction, proof of distribution of funds/assets such as statement of net assets in liquidation; b. Detailed computation of the amount applied for in the attached format (Attachment 2) prepared by the selling stockholder's representative; and c. Photocopy of pertinent audited financial statements
2. Remittance of dividends/profits/earnings/ interests	a. Photocopy of PSE-cash dividends notice and Phil. Central Depository (PCD) printout of cash dividend payment or computation of interest earned issued by MMI issuer or bank;

Purposes	Documents Required (All originals except as indicated)
	<div>b. Photocopy of secretary's sworn statement on the board resolution covering the dividend declaration;</div> <div>c. Photocopy of latest audited financial statements or interim financial statements covering the dividend declaration period (for direct foreign equity investments)</div>
<div>3. Residents' outward investment</div> <div>a. Direct equity investments</div> <div></div> <div>b. Portfolio investments</div>	<div>a. Photocopy of investment proposal/agreement, or subscription agreement; and</div> <div>b. Photocopy of deed of sale or assignment of the investments</div> <div>a. Photocopy of subscription agreement, or bond/stock offering;</div> <div>b. Swift payment order instruction from the counterparty/broker/trader indicating the name of payee and type kind of investment authenticated by the broker/trader; and</div> <div>c. Photocopy of investor's order to broker/trader to buy the securities</div>
4. Residents' investments in FX-denominated bonds/notes issued by the Republic of the Philippines and other Philippine entities	<div>a. Photocopy of subscription agreement or bond offering;</div> <div>b. Swift payment order instruction from the counterparty/broker/trader indicating the name of payee and type/kind of investment authenticated by the broker/trader; and</div> <div>c. Photocopy of investor's order to broker/trader to buy the securties</div>

D. Sale of foreign exchange for payment of importations, regardless of amount	
Purposes	Documents Required (All originals except as indicated)
Payment of merchandise imports	<div>a. Bill of lading or airway bill covering the merchadise imports; and</div> <div>b. Commercial invoice</div>

(As amended by Circular No. 652 dated 05 May 2009)

COMPUTATION SHEET

Name of FX FXD/MC: _____ Date of FX Sale: _____

TYPE OF INWARD FOREIGN INVESTMENT TRANSACTION

- ☐ Remittance of Cash Dividends/Profits
- ☐ Repatriation of Capital

Name of Investee Firm: _____

Name of Investor: _____

REMITTANCE OF CASH DIVIDENDS/PROFITS

Record Date: _____

Payment Date: _____

Amount of Dividends/Share
or Rate of Profits: _____

Base Shares (Php)	Dividends/Profits per Share	Total Amount (Php)
_____	_____	_____
_____	_____	_____
	A. Gross Peso Amount Remittable	_____
	B. Less: Taxes/Charges	_____
	C. Net Peso Amount Remittable	_____
	D. Foreign Exchange Applied for Remittance (C/FX rate ^{1/})	_____

REPATRIATION OF CAPITAL

Total Amount/ No. of Shares	Outstanding Balance Before This Repatriation	Amount/No. of Shares Applied for Repatriation
_____	_____	_____
_____	_____	_____
	A. Total No. of Shares/Amount Applied For Repatriation	_____
	B. Selling Price/Share (if applicable)	_____
	C. Gross Peso Amount Repatriable (A x B)	_____
	D. Taxes/Charges	_____
	E. Net Peso Amount Repatriable (C - D)	_____
	F. Foreign Exchange Applied for Repatriation (E/FX rate ^{1/})	_____

Prepared by:

Signature over Printed Name
of Authorized Representative
of Applicant

Company Affiliation of
Investor’s Representative

Date

^{1/} To be supplied by FX Selling Bank

THE GUIDELINES FOR THE IMPOSITION OF MONETARY PENALTY FOR VIOLATIONS/OFFENSES WITH SANCTIONS FALLING UNDER SECTION 37 OF R. A. NO. 7653 ON TRUST CORPORATIONS, DIRECTORS AND/OR OFFICERS
(Appendix to Sec. 4999N)

The schedule of penalty, categorized based on: (1) the nature of offenses such as minor, less serious, and/or serious, and (2) the size of the assets under management of the trust corporation, shall be as follows

A. For Serious Offense

Asset Size	Up to P200 million	Above P200 million but not exceeding P500 million	Above P500 million but not exceeding P1 billion	Above P1 billion but not exceeding P10 billion	Above P10 billion but not exceeding P50 billion	Above P50 billion
Penalty Range						
Minimum	P 500	P 1, 000	P 3, 000	P 10, 000	P 18, 000	P 25, 000
Medium	750	1, 500	5, 000	12, 500	20, 000	27, 500
Maximum	1, 000	2, 000	7, 000	15, 000	22, 000	30, 000

B. For Less Serious Offense

Asset Size	Up to P200 million	Above P200 million but not exceeding P500 million	Above P500 million but not exceeding P1 billion	Above P1 billion but not exceeding P10 billion	Above P10 billion but not exceeding P50 billion	Above P50 billion
Penalty Range						
Minimum	P 300	P 600	P 1, 000	P 3, 000	P 7, 000	P 15, 000
Medium	350	700	1, 250	4, 000	8, 500	17, 500
Maximum	400	800	1, 500	5, 000	10, 000	20, 000

C. For Minor Offense

Asset Size	Up to P200 million	Above P200 million but not exceeding P500 million	Above P500 million but not exceeding P1 billion	Above P1 billion but not exceeding P10 billion	Above P10 billion but not exceeding P50 billion	Above P50 billion
Penalty Range						
Minimum	P 150	P 300	P 600	P 1, 000	P 3, 000	P 6, 000
Medium	200	400	700	1, 500	4, 000	8, 000
Maximum	250	500	800	2, 000	5, 000	10, 000

For purposes of this Regulation, the following definition of terms shall mean:

1. **Serious Offense** - This refers to unsafe or unsound quasi-banking practice. An unsafe or unsound practice is one (1) in which there has been some conduct, whether act or omission, which is contrary to accepted standards of prudent quasi-banking operation and may result to the exposure of the quasi-bank and its shareholders to abnormal risk or loss.

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In determining the acts or omissions included under the unsafe or unsound banking practice, an analysis of the impact thereof on the banks/quasi-banks/trust entities’ operations and financial condition must be undertaken, including evaluation of capital position, asset condition, management, earnings posture and liquidity position. The following circumstances shall be considered:

- (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 Bangko Sentral 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 quasi-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, quasi-bank or trust entity, whether or not the director or officer profited or will profit thereby.

Certain acts or omissions as falling under this classification maybe determined based on the guidelines provided under *Appendix Q-24*.

- 2. **Less Serious Offense** - These include major acts or omissions defined as quasi-bank/ individual’s failure to comply with the requirements of banking laws, rules and regulations, provisions of Manual of Regulations(MOR)/Circulars/Memorandum as well as Monetary Board directives/instructions having *material*^{1/} impact on quasi-bank’s solvency, liquidity or profitability and/or those violations classified as major offenses under the Report of Examination, except those classified under unsafe or unsound banking practice.
- 3. **Minor Offense** - These include acts or omissions which are procedural in nature, can be corrected immediately and do not have material impact on the solvency, liquidity and profitability of the quasi-bank. All other acts or omissions that cannot be classified under the major offenses/violations will be classified under this category.
- 4. **Minimum** refers to the range of penalties to be imposed if the mitigating factor(s) outweigh the aggravating circumstances.
- 5. **Medium** refers to the penalty to be imposed in the absence of any mitigating and aggravating circumstances or if the mitigating factor(s) offset the aggravating factor(s).

^{1/} SFAS/IAS defines materiality as any information, which if omitted or misstated, could influence the economic decisions of users taken on the basis of the financial statements. Per Financial Accounting Standard Board (FASB), it is defined as the magnitude of an omission or misstatement of accounting information.

6. **Maximum** refers to the penalty to be imposed if the aggravating circumstances outweigh the mitigating factor(s).

In determining the amount of penalty, a two-stage assessment shall be conducted as follows:

Step 1: Determine the nature of offense whether it is: (a) Serious; (b) Less Serious; or (c) Minor Offense; and

Step 2: Determine whether there are aggravating and/or mitigating factors (as listed and defined in *Annex A*).

Both the aggravating and mitigating factors shall be considered for initial penalty imposition and subsequent requests for reconsideration thereto.

The foregoing monetary penalties shall be without prejudice to the imposition of non-monetary sanctions, if and when deemed applicable by the Monetary Board. Violations of banking laws and Bangko Sentral regulations with specific penal clause are not covered by this Regulation.
(As amended by Circular Nos. 673 dated 10 December 2009 and 645 dated 13 February 2009)

Aggravating and Mitigating Factors to be Considered in the Imposition of Penalty

1. Aggravating Factors:

(a) Frequency of the commission of specific violation- This pertains to commission or omission of a specific offense involving either the same or different transaction. This will also refer to a violation which may have been corrected in the past but found repeated in another transaction/account in the subsequent examination.

In determining frequency, the number of times of commission or omission of a specific offense during the preceding three (3)- year period shall also be considered.

The word “offense” pertains to a violation that connotes infraction of existing BSP rules and regulations as well as non-compliance with BSP/MB directives.

(b) Duration of Violations Prior to Notification – This pertains to the length of time prior to the latest notification on the violation. Violations that have been existing for a long time before it was revealed/ discovered in the regular examination or are under evaluation for a long time due to pending requests or correspondences from trust corporations on whether a violation has actually occurred shall be dealt with through this criterion. Violations outstanding for more than one (1) year prior to notification, at the minimum, will qualify as violations outstanding for a long time.

Continuation of offense or omission after notification – This pertains to the persistence of an act of offense after the latest notification on the existence of the violation, either from the appropriate department of the SES or from the Monetary Board and/or Deputy Governor, in cases where the violation has been elevated accordingly. This covers the period after the final notification of the existence of the violation until such time that the violation has been corrected and/or remedied. The corrective

action shall be reckoned with from the date of notification.

(d) Concealment – This factors pertains to the cover up of a violation. In evaluating this factor, one shall consider the intention of the party(ies) involved and whether pecuniary benefit may accrue accordingly. Intention precedes concealment. The act of concealing an offense or omission carries with it the intention to defraud regulators. Moreover, the amount of pecuniary benefit, which may or may not accrue from the offense or omission, shall also be considered under this factor.

Concealment may be apparent in cases when trust corporation officers purposely complicates the transaction to make it difficult to uncover or refuse to provide information/documents that would support the violation/offense committed.

In as much as concealment and intention are speculative matter and may be difficult to establish, appropriate support of facts or circumstantial evidence in this factor shall be considered.

(e) Loss or risk of loss to trust corporation – In assessing this factor, “potential loss” refers to any time at which the trust corporation was in danger of sustaining a loss.

· *Substantial actual loss* – The trust corporation has been exposed to a significant loss of earnings and capital. The volume of accounts involved in the loss is substantial/ significant in relation the institution’s assets and capital. The trust corporation/individual may have substantial/serious violations that could impact the reputation and earnings of the trust corporation.

· *Minimal actual loss or substantial risk of loss* – The trust corporation has incurred minimal loss or will be exposed to substantial risk of loss of earnings or capital although

both do not materially impact financial condition. The volume of accounts involved for minimal loss or substantial risk of loss is reasonable and manageable. While a loss was incurred, the trust corporation could absorb the loss in the normal course of business. Substantial risk of loss includes any potential losses the aggregate of which amounts to at least one percent (1%) of the capital of the trust corporation¹.

· *Minimal risk of loss* – The risk exposure on earnings or capital is minimal. Trust corporation is not vulnerable to significant loss. The volume of accounts involved for potential loss/risk is minimal/negligible. The risk of loss would have little impact on the trust corporation or its financial condition. The risk of loss aggregating to less than one percent (1%) of the capital of the trust corporation will fall under this classification.

(f) Impact to trust/asset or investment management industry – In assessing this factor, it is appropriate to consider any possible negative impact or harm to the trust corporation. (e.g., A violation of law involving insider abuse may result in adverse publicity for the institution, possibly causing a sudden mass redemption/withdrawal of trust investments or termination of trust, other fiduciary or investment management accounts and affecting the trust corporation’s trust business). Resulting effect on the trust/asset or investment management industry on the violation/offenses committed by the trust corporation, if any, will also be considered. Sources of data may come from news reports.

· *Substantial impact on trust corporation.*
– *No impact on trust/asset or investment management industry.* This may involve reputational risk of the trust corporation as a result of negative publicity generated for example, by involvement of trust corporation’s director/officer in activities not acceptable to the regulatory bodies. This may also involve insider abuse of authority/power. However,

the trust/asset or investment management industry is not affected for this isolated case.

· *Moderate impact on trust/asset or investment management industry or on public perception of trust/asset or investment management industry.* This may involve poor corporate governance and mismanagement of trust corporation that may result to erosion of public confidence.

· *Substantial impact on trust/asset or investment management industry or on public perception of trust/asset or investment management industry.* This is a worst-case scenario. The violations/irregular activities of the trust corporation may totally erode the trust and confidence of the investing public resulting to a nationwide mass redemption/withdrawal of trust investments or termination of trust, other fiduciary or investment management accounts. Pessimistic perception of the investing public on the trust/asset or investment management is highly observed.

2. Mitigating Factors

(a) Good Faith – Good Faith is the absence of intention of the erring individual/entity in the commission of a violation.

· Full Cooperation – This is determined by the actions of the individual and/or trust corporation towards the regulators after or even before notification of the offense and/or omission. Assistance rendered by the trust corporation during the investigation and/or examination conducted relative to the cited offense and/or omission may be viewed favorably when computing the amount of penalty to be imposed on the trust corporation/individual.

· With positive measures/action undertaken although not corrected immediately. The trust corporation is willing to remedy/correct the violation but is being restrained of its capacity to take immediate action thus, will undertake a Memorandum of Undertaking/Commitment

¹ Cir. 410 dated 29 October 2003 provides that external auditors of trust entities must report to BSP, among others, any potential losses the aggregate of which amounts to at least one percent (1%) of the capital to enable the BSP to take timely and appropriate remedial action.

for a specified period as a sign of good faith. The trust corporation has started to rectify the infraction by instituting reforms in their operations or systems.

· *Voluntary disclosure of offense* – Voluntary disclosure of the trust corporation of the offense committed before it is discovered by BSP examiners in the regular/special examination or in the supervisory work (e.g. submission of reports to the BSP disclosing

the violation committed by the trust corporation based on the internal auditor’s findings) may be considered as the highest level of mitigation under this factor.

The burden of proof, however, falls on the trust corporation/individual to support its/his/her claim of good faith and may be used as basis to mitigate the amount of penalty that may be imposed.

(Circular No. 710 dated 19 January 2011)