

**[PDIC REGULATORY ISSUANCE NO. 2011-02,
March 04, 2011]**

**RULES AND REGULATIONS GOVERNING DEPOSIT ACCOUNTS OR
TRANSACTIONS EXCLUDED FROM THE COVERAGE OF DEPOSIT
INSURANCE**

Pursuant to its authority to prescribe and issue rules and regulations under Section 2 (d) (1) of Republic Act No. 3591, as amended (the "PDIC Charter"), the Board of Directors of the Philippine Deposit Insurance Corporation (PDIC), under Resolution No. 2010-12-160 dated December 15, 2010, approved the promulgation of the following implementing rules and regulations governing deposit accounts or transactions excluded from the coverage of deposit insurance under Sections 4 (f) and (g) of the PDIC Charter:

Section 1. Statement of Policy

PDIC is primarily tasked with promoting and safeguarding the interests of the depositing public by way of providing permanent and continuing insurance coverage on all insured deposits and in helping develop a sound and stable banking system at all times. To this end, only legitimate deposits of bona fide depositors shall be entitled to deposit insurance, unless otherwise excluded under Section 4(f) of the PDIC Charter and this Regulatory Issuance.

Section 2. Definition of Terms and Phrases

a. *Bona Fide Depositor* - refers to a natural or juridical person, or entity who/which is the owner of a deposit, as determined by PDIC under Regulatory Issuance No. 2009-003 (Determination of Beneficial Ownership of Legitimate Deposits), and whose deposit is recorded in the books of the bank.

b. *Deposit* - refers to the unpaid balance of money or its equivalent received by a bank in the usual course of business and for which it has given or is obliged to give credit to a commercial, checking, savings, time or thrift account, or created/issued in accordance with Bangko Sentral rules and Regulations and other applicable laws, together with such other obligations of a bank, which, consistent with banking usage and practices, the PDIC Board of Directors shall determine and prescribe by regulations to be deposit liabilities of the bank. It does not include deposit obligations of a bank which are payable at the office of the bank located outside of the Philippines; Provided, that, subject to the approval of the PDIC Board of Directors, any insured bank which is incorporated under the laws of the Philippines which maintains a branch outside the

Philippines may elect to include for insurance its deposit obligations payable only at such branch.

Under the foregoing definition of Deposit, the following terms shall be understood to have the following meaning:

1) *Money* - refers to a measure of value and a medium of exchange, authorized and accepted by law. It shall include: 1) coins and currency declared by the Philippine government to be acceptable and officially recognized payment for all debts, both public and private; 2) Philippine notes and coins issued and circulating in accordance with R.A. No. 7653; and 3) other currencies authorized to be accepted by banks with foreign currency deposit units.

2) *Equivalent (of money)* - refers to a representative of money as defined herein, such as, but not limited to, cleared personal checks, manager's or cashier's checks and money orders.

3) *Received by a Bank* - refers to the inflow into or receipt by a bank of money or its equivalent as consideration for the deposit made by the depositor or his/her duly authorized representative, which is recorded in the books of the bank.

4) *Usual Course of Business* - refers to the solicitation, acceptance, receipt, and/or recording of deposits in accordance with law, including rules and regulations governing deposit-taking practices or any amendments thereto, as issued or may be by the PDIC, Bangko Sentral ng Pilipinas (BSP) and/or the Anti-Money Laundering Council (AMLC).

c. *Directive to Cease and Desist (DCD)* - refers to directive issued by PDIC under this Regulatory Issuance prohibiting, among others, a bank and/or its directors, officers, employees or agents from offering, marketing or promoting, or continuing to offer, market or promote deposit products or accounts, or transactions, which constitute and/or emanate from an Unsafe and/or Unsound Banking Practice, and representing to the public that the said deposit products or accounts, or transactions, are insured by PDIC.

d. *Legitimate Deposit* - refers to money or its equivalent received by a bank as a deposit in the usual course of business and recorded in the books of the bank as such, and opened in accordance with established forms and requirements of the BSP and/ or the PDIC.

e. *Publication* - refers to the one-time printing in a newspaper of general circulation.

f. *Unlawful Activity* - refers to any act or omission or series or combination thereof involving or having direct relation to the

enumerations laid down in Section 3(i) of Republic Act No. 9160, otherwise known as the "Anti-Money Laundering Act of 2001, as amended".

g. *Unsafe and/or Unsound Banking Practice* - refers to:

1. Any act or omission which constitutes conducting business in an unsafe and/or unsound manner pursuant to PDIC Board Resolution No. 2010-02-003, which adopted the guidelines and principles contained in BSP Circular No. 341, series of 2002, as amended by BSP Circular No. 640, series of 2009, or
2. Such other acts or omissions which the PDIC Board, through regulation or resolution, may determine to constitute as conducting business in an unsafe and/or unsound manner.

Section 3. Exclusions from Deposit Insurance Coverage

PDIC shall not pay deposit insurance for the following accounts or transactions whether denominated, documented, recorded or booked as deposits by the bank:

- a. Investment products such as bonds and securities, trust accounts, and other similar instruments which do not fall under the definition of a Deposit.

The following features may be considered as grounds for determining that a product is an investment:

- 1) No debtor-creditor relationship exists between the bank and the client;
- 2) Relationship between the bank and the client is either that of a trustee-trustor or an agent-principal;
- 3) Principal amount is not protected;
- 4) Amount deposited is not withdrawable on demand; and/or
- 5) Other analogous features.

- b. Deposit accounts or transactions which are unfunded, or are fictitious or fraudulent.

1) A deposit account or transaction shall be deemed unfunded when no Money or Equivalent (of money) is Received by a Bank for such account or transaction.

2) A deposit account or transaction shall be deemed fictitious when it is simulated, feigned or is not a genuine deposit account or transaction, e.g. Money or Equivalent (of money) was made to appear to have been Received by a Bank, or the deposit account or the name of the depositor does not appear in the records of the bank.

3) A deposit account or transaction shall be deemed fraudulent whenever the bank and/ or depositor knowingly employ means calculated to deceive, including acts, omissions and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another, e.g. the named depositor denies ownership of the deposit.

c. Deposit accounts or transactions constituting, and/or emanating from, Unsafe and/or Unsound Banking Practice/s, as determined by the PDIC, in consultation with the BSP, after due notice and hearing, and Publication of the DCD issued by the PDIC against such deposit accounts or transactions, in accordance with Section 4 of this Regulatory Issuance.

d. Deposits that are determined to be the proceeds of an Unlawful Activity as defined under Republic Act No. 9160, as amended, subject to Section 6 of this Regulatory Issuance.

Section 4. Determination of Deposit Accounts or Transactions Constituting and/or Emanating from an Unsafe and/or Unsound Banking Practice and Issuance of a Directive to Cease and Desist (DCD)

The determination of deposit accounts or transactions which constitute and/or emanate from an Unsafe and/or Unsound Banking Practice/s and the issuance of a DCD thereof shall be governed by the following rules:

a. Unsafe and/or Unsound Banking Practice/s based on Bank Examination Findings

If in the course of an examination of a bank and after giving the bank an opportunity to comment on PDIC's findings in accordance with Regulatory Issuance No.2009-05 (Rules and

Regulations on Examination of Banks), the PDIC determines, in consultation with the BSP, that deposit account/s or transaction/s constitute and/or emanate from Unsafe and/or Unsound Banking Practice/s, the PDIC Board of Directors may issue a DCD:

- 1) Enjoining the bank from (a) offering or continuing to offer to the public the subject deposit account/s or transaction/s or other account/s or transaction/s which substantially have the same nature, characteristics, or features as those covered by the DCD and/or (b) representing that such deposit account/s or transaction/s are insured with PDIC; and
- 2) Advising the bank and the public of the withdrawal of deposit insurance coverage over these types or kinds of deposit account/s or transaction/s effective upon the Publication of the DCD until lifted or dissolved by PDIC.

b. Report or Complaint of Unsafe and/or Unsound Banking Practice/s

A report or complaint that a bank is offering a deposit product/s constituting and/ or emanating from Unsafe and/or Unsound Banking Practice/s shall be resolved in accordance with procedures laid down in PDIC Regulatory Issuance No. 2005-03. If, in accordance with these procedures, the PDIC determines, in consultation with the BSP, that deposit account/s or transactions/ constitute and/or emanate from Unsafe and/or Unsound Banking Practice/s, the PDIC Board of Directors may issue a DCD:

- 1) Enjoining the bank from (a) offering or continuing to offer to the public the subject deposit account/s or transaction/s or other account/s or transaction/s which substantially have the same nature, characteristics, or features as those covered by the DCD, and/or (b) representing that such deposit account/s or transaction/s are insured with PDIC; and
- 2) Advising the bank and the public of the withdrawal of deposit insurance coverage over these types or kinds of deposit account/s or transaction/s effective upon the Publication of the DCD until lifted or dissolved by PDIC.