

[BSP CIRCULAR NO. 447, September 03, 2004]

REGULATIONS GOVERNING THE CREATION, ADMINISTRATION AND INVESTMENT/S OF UNIT INVESTMENT TRUST FUNDS

The Monetary Board in its Resolution Nos. 1026 and 1218 dated 22 July and 26 August 2004, respectively, approved (1) the following regulations governing the creation, administration and investment/s of Unit Investment Trust Funds to be added as Sections UX410 and U4410Q of the Manual of Regulations for Banks and the Manual of Regulations for Non-Bank Financial Institutions, respectively and (2) the amendments to the provisions of the Manual related therewith.

The regulations are intended to align the operation of pooled funds under management by trust entities with international best practices and to ensure differentiation from bank deposits and other direct liabilities of the financial institution. Sound operations of pooled funds will enhance their credibility with retail investors and will enable them to evolve as major institutional players that can support the deepening of the domestic capital market.

SECTION 1. Section UX410/U4410Q shall be added to read as follows:

SECTION UX410/U4410Q. Unit Investment Trust Funds - The following rules and regulations shall govern the creation, administration and investment/s of UIT Funds.

Subsection UX410.1/U4410Q.1 Definitions

a. *Unit Investment Trust Funds* - Unit Investment Trust Funds are open-ended pooled trust funds denominated in pesos or any acceptable currency, which are operated and administered by a trust entity and made available by participation. The term Unit Investment Trust Funds is synonymous to common trust funds (CTFs). As an open-ended fund, participation or redemption is allowed as often as stated in its plan rules.

b. *Trust Entity.* Any bank, investment house or a stock corporation duly authorized by the Monetary Board to engage in trust, investment management and fiduciary business.

c. *Board of Directors* - For this purpose, the term shall include a trust entity's duly constituted Board of Directors or its functional oversight equivalent which shall include the country head in the case of foreign banks/institutions.

Subsection UX410.2/U4410Q.2 Establishment of a Unit Investment Trust Fund - Any Trust Entity authorized to perform trust

functions may establish administer and maintain one or more UIT Funds subject to applicable provisions under this Circular.

Subsection UX410.3/U4410Q.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 interest in the fund as a whole.

Subsection UX410.4/U4410Q.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.

Subsection UX410.5/U4410Q.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 account (referred to as collective investments)
- d. The beneficial interest of each participation units 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.

Subsection UX410.6/U4410Q.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 Bangko Sentral for approval prior to its implementation.

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.

b. Manner in which the fund is to be operated. A statement of the fund's investment objectives and policies including limitations, *if any*.

c. 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.

d. The unitized NAVPu valuation methodology as prescribed under *Subsection UX410.5.D/U4410Q.5.d* shall be employed.

e. Terms and conditions governing the admission or redemption of units of participation in the fund. If the frequency of admission or redemption is other than daily; that is, any business day, the same should be explicitly stated in the Plan rules: *Provided* That the admission and redemption prices shall be based on the prevailing market value of underlying investments at that time.

f. 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.

g. Basis upon which the fund may be terminated. The Plan 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.

h. Liability clause of the trustee. There must be clear and prominent statement adjacent to where a client is required to sign that contract is not a deposit account but a trust agreement and that any loss/income is for the account of the participant; that the trustee is not liable for losses unless upon

willfull default; and that the fund is not insured by the PDIC;

i. 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 if such is necessary to preserve or enhance the value of the Fund. Such special expense shall be payable to a third party covered by a separate contract and disclosed to participants. 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.

j. 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 Bangko Sentral within ten (10) business days from approval of the amendments by the Board of Directors. 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.

Subsection UX410.7/U4410Q.7 Minimum disclosure requirements

a. **Disclosure of Unit Investment Trust 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 hereto attached as Appendix A*. The list of investment outlets shall be updated quarterly.