

Republic of the Philippines  
HOUSE OF REPRESENTATIVES  
Quezon City

Seventeenth Congress  
First Regular Session

HOUSE BILL NO. 69

HOUSE OF REPRESENTATIVES

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Introduced by **Representative JOEY SARTE SALCEDA**

## COLLECTIVE INVESTMENT SCHEMES LAW

### EXPLANATORY NOTE

The Philippines, in recent year has received a couple of credit rating upgrades, which were the output of a generally stable political situation, strong remittances from abroad and improving fiscal position. Hence, to further strengthen and improve economic stability, the government should be committed to implement stronger administrative reforms and pass identified priority legislative measures that will help ease the investments constraints and facilitate simplicity in doing business in the country.

One of these priority measures is the need to harmonize the regulatory and tax framework for all form of Collective Investment Schemes (CIS). Countries, including the United Kingdom, Japan, Australia, Korea and Singapore, have adopted a single law to regulate all types of CIS. Presently, the Philippines has various laws governing investment companies (mutual funds), unit investment trust funds (UITFs), and separate account funds or variable unit linked insurance products.

These investment products are basically the same but differ in regulatory requirements (regulatory arbitrage) and taxation mainly because of differences in their governing laws. This regulatory and tax arbitrage give rise to an uneven playing field which will prove unfavorable to the growth of the industry. More importantly, such arbitrage will result in uneven levels of protection to the investing public.

Establishing a comprehensive regulatory and tax framework for all CIS products will eventually lead to a more competitive environment for the CIS industry and provide enhanced and uniform levels of protection to the investing public.

In view of the foregoing, approval of this bill is earnestly sought.

  
**JOEY SARTE SALCEDA**

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*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

ARTICLE I  
GENERAL PROVISIONS

SECTION 1. *Short Title* – This Law shall be known as the "**Collective Investment Schemes Law**".

SECTION 2. *Declaration of Policy* – The policy of the state is to:

(a) Promote investor protection by applying high governance standards in the establishment, management and operation of collective investment schemes (CIS) and the registration and sale of CIS securities in order to prevent abuse and protect the interests of the investing public, including but not limited to, the setting of standards for the eligibility of persons who establish, manage or operate collective investment schemes and register and sell CIS securities; the prevention, disclosure and elimination of all conflicts of interest which may prejudice the investing public; and the provision of independent third party supervision over the operations of collective investment schemes;

(b) Promote the growth of pooled investments and the development of the capital market by providing a favorable framework for collective investment schemes to facilitate the flow of investment capital from sources within the country and abroad;

(c) Encourage the participation in the collective investment scheme industry of the best qualified fund managers regardless of place of incorporation, and the best qualified investment advisers regardless of nationality;

(d) Broaden participation by Filipinos in ownership of securities and other assets allowed in this law so that more are able to share in economic growth;

(e) Provide equal protection to investors in all similar collective investment schemes, impose the same requirements and provide the same competitive environment for such schemes and the participants therein, and

(f) Encourage responsible investing through the dissemination of information on the opportunities and risks involved in investments.

SECTION 3. *Purpose* – The purpose of this Law is to establish a comprehensive regulatory and tax framework to enable collective investment schemes and all the participants therein to play a key role in the development of the capital market in a manner consistent with the policy declared in Section 2 hereof.

SECTION 4. *Coverage* – This Law shall apply to the establishment, management and operation of all collective investment schemes and the registration and sale of CIS securities in the Philippines.

SECTION 5. *Definitions* – When used in this Law, unless the context otherwise requires:

(a) "*Affiliate*" of another person means:

- (1) Any person directly or indirectly owning, controlling or holding with power to vote, ten per centum (10%) or more of the outstanding voting securities of such other person;
- (2) Any person ten per centum (10%) or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person;
- (3) Any person directly or indirectly controlling, controlled by, or under common control with, such other person;
- (4) Any officer, director, partner, or employee of such other person;
- (5) If such other person is a juridical CIS, any investment adviser, fund manager, CIS distributor, CIS solicitor and custodian thereof;
- (6) If a juridical CIS, any other corporation having interlocking directors or officers with the juridical CIS, except in cases involving independent directors as defined under existing regulations;
- (7) If a juridical CIS, having common stockholders owning at least ten percent (10%) of the outstanding voting stock of each juridical CIS and the other corporation;
- (8) Having a management contract or any arrangement granting power to one corporation to direct or cause the direction of management and policies of the other corporation, or vice-versa; or

- (9) Having permanent proxy or voting trusts on favour of the corporation constituting at least ten percent (10%) of the outstanding voting stock of the other corporation, or vice versa.

(b) "*Appropriate regulatory agency*" refers to:

- (1) The *Bangko Sentral ng Pilipinas* (BSP), in the case of banks, trust entities and other financial institutions supervised by the BSP;
- (2) The Insurance Commission (IC), as may be provided by law or by the order of any competent authority, in the case of insurance companies and other persons regulated by the IC; and
- (3) The Securities and Exchange Commission (SEC), in the case of investment companies or other persons not under the regulation of the BSP or the IC.

(c) "*Bank*" means an entity engaged in the lending of funds obtained from the public through the receipt of deposits of any kind and duly authorized to operate as a bank by the BSP.

(d) "*Broker*" means any person duly licensed by the appropriate regulatory agency and accredited by the appropriate self-regulatory organization to engage in the business of buying and selling securities for the account of others, but does not include a bank or any person solely by reason of the fact that such person is a CIS or a distributor of CIS securities.

(e) "*CIS distributor*" means any stock corporation or broker licensed by the appropriate regulatory agency to engage in the offering or selling of CIS securities.

(f) "*CIS investor*" means any person who purchases or otherwise invests in CIS securities.

(g) "*CIS plan*" means the plan for the registration and sale of CIS securities filed with the appropriate regulatory agency in accordance with Sections 24, 26, 29 and 30 hereof, which shall be in lieu of the registration statement required to be filed pursuant to the Securities Regulation Code (SRC) for the sale and offer for sale of securities to the public.

(h) "*CIS securities*" means, units of participation or similar interests in a contractual CIS or shares of stock or similar interests in a juridical CIS.

(i) "*CIS solicitor*" means a natural person who is duly licensed as such by the appropriate regulatory agency to sell CIS securities.

(j) "*Collective investment scheme*" or "*CIS*" shall have the meaning given in Section 6 hereof.

(k) "*Commission*" means the Securities and Exchange Commission (SEC).

(l) "*Common stock*" of a corporation means a class of shares with general voting rights.



(m) "*Company*" means a corporation, partnership, trust, or an association duly registered with the SEC and lawfully transacting business in the Philippines.

(n) "*Contractual CIS*" means a CIS:

- (1) Organized pursuant to a contract, such as a trust indenture, or as an investment component of an insurance contract;
- (2) Engaged, or holds itself out as being engaged, or proposes to engage, in the business of investing, reinvesting, and/or trading in securities or other investment assets allowed under this Law; and
- (3) That issues units of participation each of which represents an undivided interest in a pool of investment assets.

(o) "*Control*" is presumed to exist when the parent owns, directly or indirectly through subsidiaries, more than one half of the voting power of an entity unless, in exceptional circumstances, it can be clearly demonstrated that such ownership does not constitute control. Control is also presumed to exist even when the parent owns half or less of the voting power of an entity when there is:

- (1) Power over more than one half of the voting rights by virtue of an agreement with other investors;
- (2) Power to govern the financial and operating policies of an entity under a statute or an agreement;
- (3) Power to appoint or remove the majority of the members of the board of directors or equivalent governing body and control of the entity is by that board or body;
- (4) Power to cast the majority of votes at meetings of the board of directors or equivalent governing body and control of the entity is by that board or body; or
- (5) Any other arrangement similar to any of the above.

(p) "*Convicted*" includes being the subject of a verdict, judgment, or plea of guilty in the first instance, if such verdict, judgment or plea has not been reversed, set aside, or withdrawn, whether or not sentence has been served.

(q) "*Creation*" refers to the issuance or delivery of CIS securities upon the delivery of the underlying securities or investment assets.

(r) "*Corporation Code*" refers to the Corporation Code of the Philippines, *Batas Pambansa Blg. 68*, enacted on May 1, 1980, as may be amended from time to time, or any law subsequently enacted in replacement or substitution thereof.

(s) "*Custodian*" means an entity duly authorized by the BSP which is appointed to engage in the business of safekeeping investment assets, and act as the custodian of the

investment assets of a CIS pursuant to this Law and the relevant regulations of the BSP and/or the SEC.

(t) "*Dealer*" means any person duly licensed by the appropriate regulatory agency and accredited by the appropriate self-regulatory organization to buy and sell securities for his own account, in the ordinary course of business whether through a broker or otherwise. The term excludes banks, insurance companies, or CIS, or any person insofar as he is engaged in investing, reinvesting, or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of regular business.

(u) "*Director*" means a director of a corporation or any person performing similar functions with respect to any organization.

(v) "*Exchange*" means an organized marketplace or facility duly licensed by the SEC that brings together buyers and sellers and executes trades of securities and/or commodities.

(w) "*Fund manager*" means a juridical person engaged in the business of managing the investment assets of a CIS and/or engaged in the business of providing administrative and ancillary services for such CIS as licensed by the appropriate regulatory agency in accordance with Section 7, and having the duties and responsibilities enumerated in Section 8 hereof.

(x) "*General Banking Law*" refers to Republic Act No. 8791, as may be amended from time to time, or any law subsequently enacted in replacement or substitution thereof.

(y) "*Implementing Rules and Regulations*" refers to the uniform rules and regulations jointly formulated and issued by the appropriate regulatory agencies to implement the provisions of this Law, in accordance with Section 56 hereof.

(z) "*Independent auditor*" means the independent external certified public accountant referred to in Section 18 hereof.

(aa) "*Independent director*" refers to a person other than an officer or employee of the corporation, its affiliates, or any other individual having any relationship with the corporation which would materially interfere with the exercise of independent judgment in carrying out the responsibilities of a director. An independent director shall possess the degree of independence and all the qualifications and none of the disqualifications for independent directors as defined in the SRC and its implementing rules and regulations.

(bb) "*Independent oversight body*" refers to the body or entity referred to in Section 50(b) (2) hereof.

(cc) "*Insurance Code of the Philippines*" refers to the Presidential Decree No. 1460 otherwise known as 'The Insurance Code of 1978', as amended, or any law subsequently enacted in replacement or substitution thereof.

(dd) "*Insurance Company*" means a company engaged in the insurance or reinsurance business and duly issued by the Insurance Commission with a certificate of authority to transact such business, as specifically defined under the Insurance Code of the Philippines.

(ee) "*Investment adviser*" means any person who regularly advises or recommends investment decisions with regard to the securities or other portfolio of a CIS pursuant to an advisory contract with such CIS through the fund manager, trustee or insurance company.

(ff) "*Investment assets*" means the securities and other assets in which the funds of a CIS may be invested in accordance with Section 38 hereof.

(gg) "*Investment company*" means the stock corporation organized as a juridical CIS, which is engaged, or holds itself out as being engaged, or proposes to engage, in the business of investing, reinvesting, and/or trading in securities allowed under this Law.

(hh) "*Investment house*" means any enterprise which engages in the underwriting of securities of other companies, as defined in Section 2 of the Investment Houses Law, Presidential Decree No. 129, as may be amended from time to time, and is registered pursuant to said law.

(ii) "*Juridical CIS*" means a CIS:

- (1) Organized as a stock corporation or a partnership;
- (2) Engaged, or holds itself out as being engaged, or proposes to engage, in the business of investing, reinvesting, and/or trading in securities or other investment assets allowed under this Law; and
- (3) That issues common stock or (units of) interest in the partnership each share or unit of which represents an undivided interest in a pool of investment assets or, as may be allowed by the appropriate regulatory agency, represents underlying securities.

(jj) "*Net asset value*" means the value of all assets less all liabilities of a CIS as determined in accordance with generally accepted accounting principles and the provisions of this Law and its implementing rules and regulations.

(kk) "*Organized Marketplace*" is an exchange, an over-the-counter market, alternative trading system, or otherwise recognized as such by the SEC, and governed by, among others, transparent and binding rules and market conventions on membership, trading, price transparency, trade reporting, market monitoring and orderly conduct/operation of the market which are not enforceable on the members and participants.

(ll) "*Person*" means a natural or juridical person as defined in the Civil Code of the Philippines.

(mm) "*Redemption*" refers to the liquidation of a CIS security through the surrender of the CIS security to the issuer in exchange for its net asset value or the underlying securities it represents.

(nn) "*Registrar*" means the fund manager or trustee or such other person or persons as may from time to time be appointed by the trustee, or the fund manager with the prior

approval of the trustee, to perform all or any of the duties and functions of the registrar under Section 23 hereof.

(oo) "*Sale*", "*sell*", "*offer to sell*" or "*offer for sale*" means every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy a security or property or interest therein, for value. Any such security, property or interest therein, given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.

(pp) "*Security*" means any instrument or product defined as such by the SRC and its implementing rules and regulations.

(qq) "*Securities Regulation Code*" or "*SRC*" refers to Republic Act No. 8799, enacted on July 17, 2002, as may be amended from time to time.

(rr) "*Separate account fund*" means the segregated portfolio of investments established, maintained and invested in by an insurance company for its variable life insurance contracts and accounted for separately and apart from its other investments and accounts, pursuant to the Insurance Code of the Philippines, under which the income, gains and losses (whether or not realized) from, and expenses incurred on the acquisition, disposal and management of assets allocated to such account, are credited to or charged against such account without regard to the other income, gains, losses and other expenses of the insurance company. The Separate Account Fund shall be deemed a contractual CIS, and the units of participation therein shall be deemed as CIS securities, subject to this Law. The assets held in any such separate account shall be applied exclusively for the benefit of the owners or beneficiaries of the variable life insurance contracts.

(ss) "*Shareholder*" means a stockholder of a juridical CIS.

(tt) "*Trust institution*" means any bank, investment house or a stock corporation duly authorized by the Monetary Board of the BSP to engage in trust, investment management and fiduciary business.

(uu) "*Trustee*" means a trust institution appointed and acting as the trustee of a contractual CIS pursuant to this Law.

(vv) "*Unit Holder*" means a CIS investor in a contractual CIS.

(ww) "*Value*" means the market value or fair value of securities as may be determined in accordance with such rules and regulations as the appropriate regulatory agency may prescribe.

## ARTICLE II COLLECTIVE INVESTMENT SCHEMES

### Chapter 1 – Nature and Structure of Collective Investment Schemes



SECTION 6. *Collective Investment Schemes* – (a) A Collective Investment Scheme is any arrangement whereby funds are solicited from the investing public and pooled together for the purpose of investing, re-investing and/or trading in securities or other assets or different classes thereof as allowed under this Law. All CIS shall be covered by and regulated by this Law and its implementing rules and regulations. A CIS may either have a corporate structure, such as an investment company, or a contractual structure, such as a unit investment trust fund or similar scheme held by a trust institution or a separate account fund established pursuant to a variable unit linked life insurance policy issued by an insurance company. All CIS shall be governed by and shall comply with the requirements of this Law, the pertinent provisions of the SRC and other applicable laws not inconsistent with this law.

(b) Subject to the regulation under this law, none of the following arrangements shall be deemed a collective investment scheme:

- (1) Any arrangement whereby securities are issued to not more than nineteen (19) beneficial owners within any twelve-month period, and there is no current offering or intention to make a public offering of such securities. For purposes of this paragraph, beneficial ownership by a company shall be deemed to be beneficial ownership by one person; except that, if such company owns twenty-five per centum (25%) or more of the outstanding voting securities of the issuer, the beneficial ownership shall be deemed to be that of the holders of such company's outstanding securities;
- (2) Any insurance company in the conduct of its ordinary business; provided, however, that a separate account fund established by an insurance company shall be deemed a contractual CIS as defined under this Law;
- (3) Any employees' stock, bonus, pension, retirement, provident or profit sharing plan or fund, engaged in the regular conduct of their ordinary business;
- (4) Any fund which is employed by the trust institution solely as an aid to the administration of existing trust or fiduciary accounts covered by agreements separate from those in connection with the CIS; provided that interests in such fund are not advertised or offered for sale to the general public;
- (5) Any arrangement whereby an investment house, dealer, or broker, registered as such with the SEC, primarily engaged in the business of underwriting securities issued by other persons, purchases and sells securities for its own account, or effects transactions in securities for the account of others;
- (6) Any arrangement whereby a company primarily engages in the business of factoring or mortgage banking, by purchasing or otherwise acquiring accounts receivable and similar obligations or making loans in respect of goods or services of a business, or by purchasing or otherwise acquiring mortgages and other liens on or interests in real estate; provided that such arrangement does not include the business of issuing redeemable securities;
- (7) Any arrangement organized and operated by an entity exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory

purposes, where no part of the net earnings from such arrangement incurs to the benefit of any shareholder or member of such entity;

- (8) Any arrangement whereby an issuer is primarily engaged in investing in securities issued by a majority-owned subsidiary or subsidiaries of such issuer, where each such subsidiary is not a CIS; and
- (9) Any other arrangement that, pursuant to rule or order issued by the SEC, is determined not to be a CIS, or is excluded from the definition thereof as not necessary in the public interest and for the protection of investors.

(c) A CIS may either be open-end or closed-end, defined as follows:

- (1) "Open-end CIS" means a CIS where securities are offered and are always redeemable by the CIS; and
- (2) "Closed-end CIS" means a CIS where a fixed number of securities are offered in an initial public offering and thereafter may be traded in an organized market as determined by the SEC, but may not be redeemed by the CIS. A closed-end CIS shall not be allowed to increase its number of securities.

(d) A CIS may be constituted as a single compartment or as a multiple compartment CIS, defined as follows:

- (1) Single compartment CIS is a single CIS plan comprising of only one compartment or CIS or fund.
- (2) Multiple compartment CIS or otherwise known as umbrella CIS is a single CIS plan comprising of two or more compartments or sub-CIS or sub-funds.

SECTION 7. *Juridical Collective Investment Schemes* – (a) No company shall act as a juridical CIS unless duly licensed by the SEC, and no company shall be license as a juridical CIS for purposes of this Law, unless it shall:

- (1) Be organized in the form of a stock corporation;
- (2) Issue shares of stock consisting solely of common stock;
- (3) Provide in its articles of incorporation that shareholders shall not be entitled to pre-emptive rights;
- (4) Have, at the time of registration, an initial subscribed and paid-up capital of at least Fifty Million Pesos (P50,000,000.00) provided, however, that the SEC may prescribe a higher paid-up capital. The SEC may prescribe a lower minimum paid-up capital for any subsequent juridical CIS that is established and managed by the same fund manager;
- (5) Hold the original subscription of securities and maintain unimpaired its initial paid-up capital for a period of twelve (12) months following its registration

with the SEC as a juridical CIS, or such other period as the SEC may prescribe; and

- (6) Maintain at all times, if an open-end CIS, a reserve in liquid or semi-liquid assets, equal to at least ten per centum (10%) of its total assets, or such other percentage and in such form as the SEC may prescribe.

(b) Notwithstanding any provision of the Corporation Code to the contrary, no juridical CIS shall be required to comply with the minimum subscribed and paid-up capital relative to an increase in its authorized capital stock.

(c) The incorporators of a juridical CIS shall, at incorporation, fully pay in cash their respective subscriptions.

(d) The SEC may prescribe such other or additional requirements under subsection (a) of this section respecting the form, share structure, and level of restrictions on capitalization and reserves, as necessary or appropriate in the public interest or for the protection of investors.

(e) At least one third (1/3) of the entire membership of the Board of Directors of a juridical CIS shall be independent directors or as may be required by the appropriate regulatory agency.

## **Chapter 2 – Parties Involved in Collective Investment Schemes**

Participants in the CIS:

- (1) Fund Manager;
- (2) Trustee;
- (3) Custodian;
- (4) CIS Distributor; and
- (5) CIS Solicitor

SECTION 8. *Fund Manager* – No company shall act as a fund manager for a CIS unless duly licensed by the appropriate regulatory agency and no company shall be licensed as a fund manager for purposes of this Law, unless:

(a) It is organized as a stock corporation;

(b) It has a minimum paid-up capital of not less than One Hundred Million Pesos (P100,000,000.00);

(c) *Provided, however,* that the appropriate regulatory agency may prescribe a higher minimum paid-up capital taking into consideration, among other factors:

- (1) The risk-based principles on capital adequacy based on internationally accepted standards; and
- (2) The number and/or total net asset values of all CIS managed;

(d) At least one-third (1/3) of the entire membership of the Board of Directors of the fund manager or as may be required by the appropriate regulatory agency; and

(e) It has complied with such other requirements as may be prescribed by the appropriate regulatory agency.

In licensing a fund manager, the appropriate regulatory agency shall ensure that the requirements under this Law and its implementing rules and regulations and other pertinent laws not inconsistent with this law are complied with.

SECTION 9. *Duties and Responsibilities of the Fund Manager* – The fund manager shall have the following duties and responsibilities:

(a) Manage the investment assets of the CIS and perform its functions in accordance with the CIS plan, the provisions of this Law and its implementing rules and regulations for the exclusive interest of the CIS investors;

(b) Provide copies of financial and other records of CIS investments to the CIS investors, trustee, CIS and auditor;

(c) Ensure that the fund and the CIS securities are accurately valued or priced;

(d) Ensure that all payments out of CIS funds and investment assets are made in accordance with the CIS plan, this Law and its implementing rules and regulations;

(e) Comply with the instructions of the juridical CIS or the trustee to remedy a breach of the provisions or covenants of the CIS plan, its contract with the juridical CIS or trustee, the provisions of this Law or its implementing rules and regulations;

(f) Furnish the juridical CIS or the trustee with all contracts and agreements relating to the operation and management of the CIS;

(g) Report to the juridical CIS or the trustee and the CIS investors results of the CIS operations;

(h) Facilitate the redemption of CIS securities where applicable;

(i) Maintain proper accounting records and other records to:

(1) Enable a complete and accurate review of the CIS funds and investment assets; and

(2) Ensure that the CIS funds and investment assets are managed and administered in accordance with the CIS plan, its contract with the juridical CIS or trustee, this Law and its implementing rules and regulations;

(j) Propose amendments to the CIS plan and secure approval for those amendments which require investor approval in accordance with the provisions of this Law;



(k) File such information and documents to keep reasonably current, the information and documents contained in the CIS Plan; and

(l) Such other duties and responsibilities that the appropriate regulatory agency may prescribe.

SECTION 10. *Prohibited Acts of the Fund Manager* – The fund manager shall not:

(a) Invest CIS funds in any securities, property and assets in which such fund manager or any of its directors, officers, employees and affiliates have a substantial financial interest, subject to such exceptions and/or guidelines as may be prescribed by the appropriate regulatory agency;

(b) Engage in a business other than the business of managing, administering, marketing and distributing CIS funds and securities, provided that this prohibition shall not apply if the fund manager is, or a trust corporation/institution;

(c) Pay or cause to be paid out of the CIS funds any fees, commissions and other similar expenses that have not been, or exceed what have been, provided for in the CIS plan, this Law and its implementing rules and regulations or any other applicable laws and regulations;

(d) Retain any rebate from, or otherwise share in any commission with, any broker or dealer in consideration of transactions or investments of the CIS funds. Accordingly, any rebates or shared commissions shall be for the account of the CIS fund concerned; and

(e) Engage in such other acts as may be prohibited by rule or order of the appropriate regulatory agency.

SECTION 11. *Fund Management Agreement* – (a) The agreement between the fund manager and the trustee or the juridical CIS or the insurance company shall contain, among others, provisions pertaining to:

(1) Extent of services to be rendered;

(2) Any restrictions or prohibitions regarding the performance of the functions of the fund manager;

(3) All compensation to be paid thereunder which shall be clearly described in a transparent manner, and which shall be in accordance with such requirements and limitations as the implementing rules and regulations may prescribe;

(4) The term of the engagement and the manner of termination thereof, which shall be in accordance with such requirements or limitations as this Law and its implementing rules and regulations may prescribe;

(5) Reporting requirements to the trustee, juridical CIS, CIS investors and the appropriate regulatory agencies; and

(6) Such other terms or conditions as the implementing rules and regulations may prescribe.

(b) In all cases where the trustee or insurance company functions as a fund manager, the foregoing provisions which should otherwise be contained in the fund management agreement with the fund manager shall be contained in the CIS plan.

SECTION 12. *The Trustee* – Only a trust institution shall act as a trustee of a CIS. In authorizing a trust institution to engage in CIS activities, the Monetary Board of the BSP shall ensure that all relevant requirements under this Law or its implementing rules and regulations shall be complied with. The following, in addition to those prescribed under existing laws and regulations, shall be the duties and responsibilities of a trustee of a CIS:

(a) Monitor the activities of the CIS distributors in the sale and/or redemption of the CIS units and ensure that the provisions of any marketing document relating to the sale or offer for sale of the CIS securities do not contain any matter which is inconsistent with the provisions of the CIS plan, this Law and its implementing rules and regulations;

(b) Ensure that the management and investments of the CIS funds by the fund manager are in accordance with the CIS plan;

(c) Ensure that the fund manager remedies any breach of the CIS plan or the terms of its appointment as fund manager, or any contravention of the provisions of this Law or its implementing rules and regulations;

(d) Appoint an independent third-party custodian;

(e) Ensure that CIS funds and investment assets are clearly identified and held separately from its own properties and other properties held in trust;

(f) Ensure that all payments out of CIS funds and investment assets are made in accordance with the CIS plan, this Law and its implementing rules and regulations;

(g) Monitor the existence of conflict of interest situations and address the same for the best interests of the CIS investors;

(h) Report to the appropriate regulatory agency, as soon as practicable, any material development or breach of the provisions or covenants of the CIS plan, the provisions of this Law or its implementing rules and regulations that:

(1) Relates to the establishment, operation or dissolution of the CIS or to the registration and sale of CIS securities, and

(2) Has had or is likely to have a material adverse effect on the interests of the CIS investors;

(i) File such information and documents to keep reasonably current the information and documents contained in the CIS Plan;

(j) Call for annual or special meetings of the CIS investors;

(k) Propose amendments to the CIS plan and secure approval for those amendments which require investor approval in accordance with the provisions of this Law; and

(l) Such other duties and responsibilities that the appropriate regulatory agency may prescribe.

SECTION 13. *Custodian* – Only entities duly authorized to engage in investment management or trust business may be licensed by the BSP or authorize by their home regulator may act as custodian of assets of a CIS. Unless otherwise authorized by the appropriate regulatory authority taking into account the interest of the investing public, all CIS must appoint an independent third party custodian which shall have custody of the investment assets of the CIS. The following, in addition to those prescribed under existing laws and regulations, shall be the duties and responsibilities of a custodian:

(a) Hold the investment assets of a CIS in accordance with its agreement with the trustee or the juridical CIS; and

(b) Such other duties and responsibilities that the BSP may prescribe, which shall include:

(1) Earmarking, segregation and hypothecation of the investment assets of the CIS; and

(2) Provisions for periodic or other inspections by employees and agents of the BSP.

SECTION 14. *Appointment of Custodian* – The agreement between the custodian and the juridical CIS or the trustee or the insurance company of a contractual CIS shall contain, among others, provisions pertaining to:

(a) Extent of services to be rendered by the custodian;

(b) Fees, remuneration and other expenses of the custodian;

(c) Any restrictions or prohibitions regarding the performance by the custodian of its functions; and

(d) Reporting requirements of the custodian.

SECTION 15. *CIS Distributor* – (a) No entity shall be licensed by the appropriate regulatory agency as a distributor of CIS securities, unless:

(1) It is organized as a stock corporation;

(2) It has a minimum paid-up capital of at least Ten Million Pesos (P10,000,000.00), or such higher capitalization to be prescribed by the appropriate regulatory agency taking into consideration

- (i) the risk-based principles on capital adequacy based on internationally accepted standards, and
- (ii) the number and/or total net asset value of all CIS distributed; and

(3) It has complied with such other requirements as may be prescribed by the appropriate regulatory agency.

(b) For purposes of this Law, the following juridical persons may be licensed as a distributor of all types of CIS by the appropriate regulatory agency, provided that the requirements under this section and the implementing rules and regulations are complied with:

- (1) Any fund manager;
- (2) Any investment house;
- (3) Any bank, financial institution or trust institution under the supervision of the BSP;
- (4) Any insurance broker or their agents under the supervision of the Insurance Commission;
- (5) Securities brokerage firms or their agents and sales persons duly licensed by the SEC; and
- (6) Other persons as may be hereinafter allowed by the appropriate regulatory agency.

(c) A juridical CIS is not permitted to act as a distributor of securities of which it is the issuer, unless it complies with such rules and orders as the appropriate regulatory agency may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(d) Whenever a fund manager and/or its affiliate shall act as a CIS distributor of the CIS of which it is the fund manager, and whenever a trustee and/or its affiliate shall act as a CIS distributor of the CIS of which it is the trustee, the prior written consent of the appropriate regulatory agency shall be secured.

(e) The CIS distributor shall be principally responsible for marketing, distributing and selling CIS securities and safekeeping of identification documents as well as the minimum information required by existing Anti-Money Laundering laws, rules and regulations. It shall perform such other duties and responsibilities as the implementing rules and regulations may prescribe.

SECTION 16. *Marketing and Distribution Agreement* – (a) The agreement between the CIS distributor and the juridical CIS or the trustee or insurance company of a contractual CIS shall contain, among others, provisions pertaining to:

- (1) Extent of services to be rendered by the CIS distributor;



- (2) Fees, remuneration and other expenses of the CIS distributor;
- (3) Any restrictions or prohibitions regarding the performance of the functions by the CIS distributor;
- (4) Undertaking to employ or appoint only CIS solicitors duly licensed by the appropriate regulatory agency; and
- (5) Reporting requirements.

(b) In all cases where the trustee or insurance company functions as a CIS distributor, the foregoing provisions which should otherwise be contained in the marketing and distribution agreement with the CIS shall be contained in the CIS plan.

SECTION 17. *CIS Solicitor* – No person shall be allowed to solicit, sell or offer to sell CIS securities unless duly licensed by the appropriate regulatory agency after compliance with such requirements and standards for eligibility as may be prescribed in this law and its implementing rules and regulations and the SRC and its implementing rules and regulations.

SECTION 18. *Accountants and Auditors* – (a) The financial statements of every juridical CIS, fund manager and contractual CIS shall be audited and certified by an independent auditor duly accredited by the appropriate regulatory agency.

(b) The following, in addition to those prescribed under existing laws and regulations, shall be the duties and responsibilities of the independent auditor:

- (1) Report to the Board of Directors or the trustee of the CIS any irregularity or undesirable practice in the operation of the CIS which has come to its knowledge. Any material finding shall be reported by the independent auditor to the appropriate regulatory agency;
- (2) Report to the appropriate regulatory agency non-compliance by the fund manager and trustee with its contractual and regulatory requirements; and
- (3) Report to the appropriate regulatory agency whether the internal control and audit structures in the operation of the CIS are at an acceptable level.

SECTION 19. *Common Duties and Responsibilities of Parties* – In addition to their specific duties and responsibilities, each of the juridical CIS, fund manager, trustee, CIS distributor, CIS solicitor, and the CIS custodian shall have the following common duties and responsibilities:

- (a) Carry on and manage its business and the CIS in a proper, diligent and efficient manner;
- (b) Observe honesty, due care and diligence, utmost good faith and high standards of integrity;
- (c) Act in the best interests of the CIS investors;

(d) Establish systems, procedures and processes to be observed by its officers and employees to ensure compliance with this Law and its implementing rules and regulations and to protect the interests of the CIS investors;

(e) Take responsibility for all actions and omissions of any third party to whom it delegates any of its duties and responsibilities, except for any resulting damage or liability arising from *force majeure* or other similar occurrence beyond the control of such third party;

(f) Ensure that any person appointed or employed by it is of good repute, has relevant expertise and experience to act in the capacity so appointed or employed;

(g) Refrain from using its position to gain, directly or indirectly, an advantage for itself or for any other person or to cause detriment to the interests of CIS investors;

(h) Avoid and eliminate conflicts of interest in the performance of their functions, which may be identified by the appropriate regulatory agency as prejudicial to the interests of the investing public;

(i) Disclose all conflicts of interest in the performance of their functions; and

(j) Comply with orders, rules and regulations as may be prescribed by the appropriate regulatory agency.

Any contractual provision which protects or purports to protect the fund manager, juridical CIS, trustee, CIS distributor, CIS solicitor, or CIS custodian against any liability for willful misfeasance, malfeasance, fraud, bad faith, or gross negligence in the performance of their duties shall be void.

SECTION 20. *Revocation, Refusal or Suspension of License of the Fund Manager, Juridical CIS, Trustee, Insurance Company, Custodian, CIS Distributor and CIS Solicitor.* – The licensing or authorization of a fund manager, juridical CIS, trustee, insurance company, custodian, CIS distributor or CIS solicitor to engage in CIS business under this Law may be refused, or any license granted thereunder may be revoked, suspended, or limitations placed thereon by the appropriate regulatory agency if, after due notice and hearing, the appropriate regulatory agency which granted the license determines that the applicant or licensee:

(a) Has willfully violated any provision of this Law, any rule, regulation or order made hereunder, or any other law administered by the appropriate regulatory agency, or has failed to supervise, with a view to preventing such violation, another person who commits such violation;

(b) Has willfully made or caused to be made a materially false or misleading statement in any application for license or report filed with the appropriate regulatory agency, or has willfully omitted to state any material fact that is required to be stated therein or necessary to make the statement therein not misleading;

(c) Has failed to satisfy the qualifications or requirements for licensing prescribed under this Law and its implementing rules and regulations;

(d) Is enjoined or restrained by a competent body from engaging in securities, commodities, banking, real estate, insurance or similar activities;

(e) Is subject to an order of a competent body refusing, revoking or suspending any license or other permit under this Law, the implementing rules and regulations, any other law or regulation administered by the appropriate regulatory agency or any other governmental authority;

(f) Has been found by a competent body to have violated any provisions of securities, commodities, banking, real estate or insurance laws, or has aided, abetted, counselled, commanded, induced or procured such violation; or

(g) Has been judicially declared insolvent.

For purposes of this subsection, the term "competent body" shall include a foreign court of competent jurisdiction and a foreign financial regulator.

SECTION 21. *Fit and Proper Rule* – To maintain the quality of management of the CIS and afford better protection to CIS investors, the appropriate regulatory agency shall prescribe or pass upon and review the qualifications and disqualifications of individuals elected or appointed as directors or officers of fund managers, trustees, insurance companies, juridical CIS or CIS distributors and disqualify those found unfit. The appropriate regulatory agency may disqualify, suspend or remove any director or officer who commits or omits an act which renders him unfit for the position.

In determining whether an individual is fit and proper to hold the position of a director or officer of the fund manager, trustee, insurance company, juridical CIS or CIS distributor, regard shall be given to his integrity, experience, education, training, and competence: Provided, however, that the following persons, and those determined by the appropriate regulatory agency to be unfit, shall in no case be allowed to serve or act in the capacity of officer, director, consultant, of any fund manager, trustee, insurance company, juridical CIS or CIS distributor:

(a) Any person convicted of any crime involving any security or financial product;

(b) Any person convicted of an offense involving fraud or embezzlement, theft, estafa or other fraudulent, dishonest acts or transactions;

(c) Any person who, by reason of any misconduct, is enjoined by order, judgment, or decree by any court, quasi-judicial body or administrative agency of competent jurisdiction from acting as a director, officer, employee, consultant, or agent occupying any fiduciary position;

(d) Any person found by the appropriate regulatory agency to have violated, or aided, abetted, counselled, commanded, induced, or procured the violation of this Law, the General Banking Law, the Insurance Code, the SRC, or any related laws and any rules, regulations or orders thereunder;

(e) Any person judicially declared to be insolvent, or incapacitated to contract;



(f) Any person found guilty by a foreign court, regulatory authority or government agency of the acts or violations similar to any of the acts or misconduct enumerated in the foregoing paragraphs;

(g) Any person convicted by final judgment of an offense punishable by imprisonment for a period exceeding six (6) years; and

(h) Any person convicted by final judgment of violation of the Corporation Code committed within five (5) years prior to the date of his election or appointment.

### **Chapter 3 – Provisions applicable to Contractual CIS**

SECTION 22. *Establishment of a Contractual CIS* – (a) Any fund manager may establish, administer and manage one or more contractual CIS. Such fund manager shall enter into a fund management contract with a trustee or insurance company. In case the functions of the fund manager, on the one hand, and the trustee or insurance company, on the other hand, are performed by the same or affiliated entities, there must be an independent oversight body which shall be created pursuant to and shall perform the oversight duties and responsibilities enumerated in Section 50(b)(2) hereof.

(b) In a contractual CIS, the trust agreement shall be between the trustee and the CIS investors, and the insurance contract shall be between the insurance company and policy holders. The trust agreement or the insurance contract, as the case may be, shall define the rights and obligations of the parties.

(c) Notwithstanding any provision of law to the contrary, the assets of each contractual CIS shall be deemed separate and independent of the assets of the fund manager, trustee and/or insurance company, and shall not be available to the creditors of such fund manager, trustee and/or insurance company in the event of attachment, garnishment, execution, bankruptcy, insolvency or rehabilitation or any form of action or claim against the fund manager, trustee and/or insurance company.

(d) In case the functions of the fund manager, on the one hand, and the trustee or insurance company, on the other hand, are performed by the same or affiliated entities, there must be an independent oversight body which shall be created pursuant to, and shall perform the oversight duties and responsibilities enumerated in Section 50(b)(2) hereof.

SECTION 23. *Register of CIS Investors* – An up-to-date register of all CIS investors shall be kept and maintained by or under the control of a registrar, which could be the fund manager, trustee, distributor or insurance company, which may be kept and maintained either in written form or by other means which are capable of being reproduced in written form, including, but not limited to, computer records, microfilm, microfiche or electronic recording, as the fund manager registrar shall from time to time determine. There shall be entered into the registry such relevant information as may be prescribed by the fund manager or the trustee. Information about CIS investors shall be considered confidential in nature and may not be inquired or looked into except upon order of a court of competent jurisdiction or in the course of examination by the appropriate regulatory agency or for purposes of complying with existing Anti-Money Laundering Laws such as, but not limited to, the power of the Anti-Money Laundering Council (AMLC) to examine or inquire into the details of the CIS



account including the personal information of the CIS investors, the reporting of covered transactions or suspicious transactions to the AMLC.

SECTION 24. *The Contractual CIS Plan* – In addition to the matters specified in Section 30, a Contractual CIS shall contain the following matters:

(a) In cases where the trustee or its affiliate, or insurance company or its affiliate, performs the functions of the fund manager, a description of the independent oversight body, as prescribed under Section 22(d) of this Law;

(b) Initial unit value and the basis thereof;

(c) Basis upon which the CIS may be terminated. The CIS plan shall state the rights of participants in case of termination of the CIS; and

(d) Such other matters as the appropriate regulatory agency may prescribe.

#### **Chapter 4 – Provisions Applicable to Juridical CIS**

SECTION 25. *Engagement of Fund Manager* – Juridical CIS shall engage a duly registered fund manager to perform the functions prescribed in Section 8 hereof; *Provided*, that a majority of the directors of the juridical CIS are not directors, officers or employees of the fund manager; and *Provided further*, that no Chairman, Chief Executive Officer (CEO), President, Chief Operating Officer (COO) or equivalent positions may be interlocking but officers with lower rank may be common with prior approval of the appropriate regulatory authority.

SECTION 26. *The Juridical CIS Plan* – (a) In addition to the matters specified in Section 30, a juridical CIS plan shall contain the following matters:

(1) Par Value of the shares of stock of the juridical CIS;

(2) The dissolution of the juridical CIS and the rights of shareholders in case of dissolution of the juridical CIS;

(3) Borrowing of money in accordance with the rules and regulations as may be prescribed by the SEC;

(4) Extension of loans to other persons in accordance with the rules and regulations as may be provided by the SEC; and

(5) Such other matters as the SEC may prescribe.

(b) The juridical CIS shall file such information and documents to keep reasonable current the information and documents contained in the CIS Plan.

SECTION 27. *Dividends* – (a) Dividends shall be declared and paid in accordance with the requirements of the Corporation Code and applicable laws and regulations; *Provided*, that the Commission may prescribe other requirements or restrictions in the

declaration and payment of dividends by the juridical CIS as necessary or appropriate in the public interest and for the protection of the investors.

(b) Dividend payments shall be accompanied by a written statement which adequately discloses the source or sources of such payment. The SEC may prescribe the form of such statement as necessary or appropriate in the public interest and for the protection of the investors.

### ARTICLE III TAX PROVISIONS

SECTION 28. *Tax Treatment of CIS* – Without prejudice to the exemptions under existing laws, all CIS shall be subject only to the following national internal revenue taxes:

(a) *Imposition of Documentary Stamp Tax for CIS*. Any issuance of a document evidencing interest, ownership or participation in a CIS Security as defined under Section (5) hereunder shall be subject to documentary stamp tax at fifty percent (50%) of the rate prescribed under Section 188, Title VII of the National Internal Revenue Code (NIRC) of 1997.

(b) *Tax on Income or Gross Receipts of CIS*. The income or gross receipts from investments or reinvestments of funds received or accrued by any of CIS shall be subject to all applicable taxes imposed under Title II of the NIRC of 1997.

(c) *Tax on Gains upon Creation, Redemption, Sale, Barter, Exchange or other Disposition of CIS Securities*. Any gains realized by the investor upon redemption of CIS securities, or from sale, barter, exchange or other disposition of listed and unlisted CIS Securities through a local stock exchange, shall be excluded from gross income and exempt from taxation governed by Section 32(B)(7)(h) of the NIRC of 1997.

The same tax treatment shall apply to gains realized from the transfer of securities and commodity products in exchange for original issuance of CIS securities.

(d) *DST on the Creation, Redemption, Sale, Barter or Exchange of CIS Securities*. The creation, redemption, sale, barter, or exchange or other disposition of CIS securities listed and traded through a local stock exchange shall be exempt from documentary stamp tax. If not listed and traded through a local stock exchange, it shall be subject to documentary stamp tax at fifty percent (50%) of the rate as provided under Section 188, Title VII, of the NIRC of 1997.

The same tax treatment shall apply to the shares of stock transferred or exchanged for the creation or redemption of CIS Securities.

(e) A CIS that complies with the requirements of Republic Act No. 9856, otherwise known as The Real Estate Investment Trust Act of 2009, shall also be entitled to all the tax and other incentives under this Law.

ARTICLE IV  
REGISTRATION OF CIS PLAN AND OPERATIONS OF CIS

**Chapter 1 – Registration and Suspension of Offer and Sale of CIS Securities**

SECTION 29. *Filing of CIS Plans* – (a) No CIS securities shall be sold or offered for sale within the Philippines unless such securities have been registered through the filing of a CIS plan which has been rendered effective by the appropriate regulatory agency. The CIS Plan shall be filed together with a sworn statement, in such form and containing such information and documents as prescribed by this Law, the implementing rules and regulations or the appropriate regulatory agency. The CIS plan shall include any prospectus as required or permitted by the appropriate regulatory agency to be delivered to CIS investors. It shall be unlawful for any person to sell or offer for sale CIS securities unless the corresponding CIS plan has been duly filed with and rendered effective by the appropriate regulatory agency.

(b) The CIS plan shall be signed by the executive officer, principal operating officer, principal financial officer, comptroller, principal accounting officer, corporate secretary or persons performing similar functions of the juridical CIS, or the fund manager, trustee or insurance company in the case of a contractual CIS, accompanied by a duly verified resolution of the board of directors. The written consent of the expert named as having certified any part of the CIS plan or any document used in connection therewith shall also be filed.

(c) Upon effectivity of the CIS plan, the juridical CIS, fund manager, trustee or insurance company shall state in every sales material that all registration requirements of the CIS securities have been met and that all information are true and correct as represented by the juridical CIS, fund manager, trustee or insurance company or the person making the statement. Any untrue statement of fact or omission to state a material fact required to be stated therein or necessary to make the statement therein not misleading shall constitute fraud.

(d) The appropriate regulatory agency may refuse the registration of a CIS security if:

- (1) It contains a false or misleading statement;
- (2) It omits to state a material fact required to be stated therein or necessary to make the statement therein not misleading;
- (3) It does not comply with the requirements of this Law and applicable laws and regulations; or
- (4) It is in the public interest to refuse the registration of such CIS securities.

(e) If any change occurs in the facts set forth in the CIS plan, the juridical CIS, fund manager, trustee or insurance company shall file an amendment thereto setting forth the change.

SECTION 30. *Contents of the CIS Plan* – The CIS Plan shall contain the following matters:

(a) Title of the CIS Plan. This shall correspond to the product or brand name by which the CIS is proposed to be known and made available to its investors;

(b) Name of the fund manager;

(c) A statement of the CIS' investment objectives and policies including limitations, if any, and risk factors in investing in the CIS;

(d) Investment powers of the fund manager with respect to the CIS, including the character and kind of investments which may be purchased by the CIS;

(e) Profile of the proposed investors;

(f) Its classification, whether an open-end or closed-end fund;

(g) Total value of the CIS securities to be issued in case of closed-end CIS;

(h) Terms and conditions governing the issuance and redemption of CIS securities;

(i) Provision for the external audit of the CIS;

(j) Liabilities of the juridical CIS and the fund manager to the unit holders or shareholders;

(k) Amount of fees, commissions and other charges and expenses to be deducted from the fund, in the case of a contractual CIS, or to be paid by the shareholders, in the case of juridical CIS;

(l) Annual meetings of unit/policy holders or shareholders;

(m) Public disclosures and reports;

(n) Plan of distribution of CIS assets in case of dissolution; and

(o) Such other matters as the appropriate regulatory agency may prescribe.

A copy of the CIS plan shall be made available during regular office hours to any interested person at the principal office of the fund manager and juridical CIS in case of a juridical CIS, and the fund manager or trustee in case of contractual CIS. The CIS plan shall also be posted in the website, publication and/or other mode of information dissemination of the SEC and the CIS.

SECTION 31. *Revocation of Registration or Suspension of Offer and Sale of Securities.* – The appropriate regulatory agency may revoke the registration of the CIS securities in accordance with Section 13.1 of the SRC or order the suspension of the offer and sale of the CIS securities in accordance with Section 13.4 of the SRC and their implementing rules and regulations.



## **Chapter 2 – Dealings in CIS Securities**

SECTION 32. *Rights and Privileges of CIS Investors* – Each share of stock of a juridical CIS and each unit of participation of a contractual CIS shall be equal in all respects to every other share or unit belonging to the same class of shares or units.

SECTION 33. *Proxies; Voting Trust* – The appropriate regulatory agency may prescribe rules and regulations for the solicitation of proxies and the issuance and transfer of voting trust certificates in accordance with the requirements of the Corporation Code and applicable laws and regulation; Provided, that the SEC may prescribe other requirements or restrictions as may be necessary or appropriate in the public interest and for the protection of the investors; Provided, Further, That no proxies shall be used as a device to control the management of any CIS.

SECTION 34. *Payment for CIS Securities* – Except as provided by law, no CIS shall issue any of its securities for services or for property other than cleared funds. Instalment sales are expressly prohibited.

SECTION 35. *Distribution, Redemption and Pricing of CIS Securities* – (a) Unless otherwise allowed in this Law, CIS Securities shall be sold only through a licensed CIS Distributor and by licensed CIS Solicitors. Notwithstanding the pertinent provision of Section 65 of the Corporation Code, CIS Securities may be issued at the net asset value computed in accordance with Section 43.

(b) CIS investors have the right to surrender their securities for redemption in accordance with the CIS plan. Redemption shall not be suspended except pursuant to the CIS plan as approved by the Commission in the public interest or for the protection of investors. The redemption price of CIS Securities shall be at the applicable price described in the CIS Plan.

SECTION 36. *Transferability of Securities* – No CIS shall restrict the transferability or negotiability of its CIS securities except as provided in the CIS plan or by any rule or regulation prescribed by the appropriate regulatory agency.

## **Chapter 3 – Operations of CIS**

SECTION 37. *Custody of Investment Assets* – Every CIS shall place and maintain its investment assets in the custody of a custodian in accordance with Sections 13 and 14 hereof.

SECTION 38. *Investment Limitations* – (a) The CIS funds may be invested only in the following liquid or semi-liquid assets tradeable through an organized market, subject to limitations as may be provided by this Law, the implementing rules and regulations or the appropriate regulatory agency:

(1) Bank deposits;

(2) Securities issued by or guaranteed by the Philippine government, or the BSP;

- (3) Tradable securities issued by the government of a foreign country, any political subdivision of a foreign country or any supranational entity;
- (4) Exchange-listed securities;
- (5) Marketable instruments that are traded in an organized exchange or market;
- (6) Loans traded in an organized market;
- (7) Exchange traded funds;
- (8) Derivatives as may be authorized by the appropriate regulatory agency;
- (9) Real estate investment trusts or companies;
- (10) Other CIS; and
- (11) Such other investments or instruments as the appropriate regulatory agency may allow.

*Provided however*, that no CIS shall, directly or indirectly:

- (1) Acquire more than ten per centum (10%) of another CIS or any one company;  
or
- (2) Acquire securities of any issuer having an aggregate value in excess of twenty per centum (20%) of the net asset value of the acquiring CIS, or the weight of the security in a recognized benchmark or index, whichever is higher.

(b) The appropriate regulatory agencies may jointly issue such implementing rules and regulations, in accordance with Section 64 hereof, as may be necessary or appropriate in the public interest or for the protection of investors, that provide for different percentages or further restrictions with respect to investments in other CIS or the concentration of investments by a CIS.

SECTION 39. *Prohibited Acts of CIS* – It shall be unlawful for any CIS to –

(a) Purchase any security on margin, except such short-term credits as are necessary for the clearance of transactions;

(b) Participate on a joint or a joint and several basis in any trading account in securities;

(c) Generate funds for promoting the private business or industry of any employee, officer, director, promoter or stockholder thereof; or

(d) Allow any of its employees, officers, directors, organizers, incorporators or stockholders to sell real estate, personal property or any other kind of CIS property to the CIS at a price higher than the procurement cost or the market value thereof, or sell to any of the

aforementioned persons any property of the corporate CIS, or a portion thereof, at a price below the market value thereof.

The appropriate regulatory agency may, by rules and regulations prohibit CIS from engaging in such other acts as it may deem necessary or appropriate in the public interest or for the protection of investors, taking into account the policy and purpose of this Law.

SECTION 40. *Meetings CIS Investors* – (a) Meetings of CIS investors shall be held at least annually. The following matters shall be presented to the CIS investors:

- (1) Proposals to change investment policies in the CIS plan which shall require the approval of the CIS investors;
- (2) Report to the CIS investors of the engagement or replacement of the fund manager, trustee, CIS distributor, custodian and independent auditors;
- (3) Report of the fund manager of the financial condition of the fund and results of its operations; and
- (4) Any other matter pertaining to the management and operation of the CIS.

(b) CIS investors may attend meetings in person or by proxy. A quorum at meetings shall consist of unit holders or stockholders owning or representing at least ten per centum (10%) of the total number of units in the fund or the outstanding capital stock, respectively, or such other percentage as the Commission may prescribe taking into account the size of the CIS and the number of its CIS investors. At least a majority vote of those present or represented shall be required to constitute a valid act of the CIS investors.

(c) The appropriate regulatory agency shall prescribe by rule or regulation the requirements for the conduct of meetings.

SECTION 41. *Requirements for selling materials and advertisements* – Sales and marketing documents and advertisements shall be subject to such requirements as the implementing rules and regulations or the Commission may prescribe. All sales and marketing documents, and advertisements shall:

(a) Not contain any untrue statement of fact or omit to state any fact that is necessary in order to prevent the statements made, in the light of the circumstances in which they were made, from being misleading;

(b) The CIS performance information in advertisements should be calculated and presented from the viewpoint of the average investor to whom the CIS is targeted;

(c) All CIS should calculate and present their performance information in advertisements in a substantially similar manner so that CIS investors may (i) make meaningful comparisons among various CIS, and (ii) not be misled by differences in the method of calculation and presentation; and

(d) Comply with such other terms and conditions prescribed by the appropriate regulatory agency which are necessary or appropriate in the public interest or for the protection of CIS investors.

SECTION 42. *Reports and Financial Statements of CIS* – (a) Every CIS shall file with the appropriate regulatory agency, if any:

- (1) Such information and documents including financial statements as the implementing rules and regulations and the appropriate regulatory agency may require, to keep reasonably current the information and documents contained in the CIS plan filed under this Law; and
- (2) Copies of every periodic or interim report or similar communication transmitted to the CIS investors.

(b) Every CIS shall transmit to its CIS investors, at least annually, reports containing such of the following information and financial statements or their equivalent, as of the latest fiscal year, which reports shall not be misleading in any material respect in the light of the reports required to be filed pursuant to subsection (a):

- (1) A balance sheet accompanied by a statement of the aggregate value of investments on the date of such balance sheet;
- (2) A list showing the amounts and values of securities owned on the date of such balance sheet;
- (3) A statement of income, for the period covered by the report, which shall be itemized at least with respect to each category of income and expense representing more than five *per centum* (5%) of total income or expense;
- (4) A statement of surplus, which shall be itemized at least with respect to each charge or credit to the surplus account which represents more than five *per centum* (5%) of the total charges or credits during the period covered by the report;
- (5) A statement of the aggregate fees or remuneration paid by the CIS during the period covered by the report to (i) the fund manager, trustee, CIS distributor and independent auditor; and (ii) each director and all officers as regular or special compensation; and
- (6) A statement of the aggregate amounts of purchases and sales of investment assets made during the period covered by the report.

*Provided*, That the implementing rules and regulations may permit, in lieu of any item required under this subsection which may be inapplicable or inappropriate to any specified type or types of CIS, the inclusion of such item of a comparable character as it may deem applicable or appropriate to such type or types of CIS.

*Provided further*, that the reports and financial statement mentioned above, or such other important information as the appropriate regulatory agency or commission may



determine, shall also be posted in the website, publication and/or other mode of information dissemination of the appropriate regulatory agency and the CIS.

The appropriate regulatory agencies shall jointly prescribe the forms for the reports and financial statements, or such other important information as the regulatory agency may determine, so that CIS investors may make meaningful comparisons among various CIS, and will not be misled by differences in the method of calculation and presentation.

SECTION 43. *Net Asset Value* – (a) A CIS shall compute and post its net asset value per share/unit at such frequency as may be prescribed by the implementing rules and regulations or the Commission.

(b) The computation of the net asset value per share or unit shall be made in accordance with the valuation method prescribed by the implementing rules and regulations or the appropriate regulatory agency and shall be applied consistently.

SECTION 44. *Accounts and Records* – (a) Every CIS, and every fund manager and trustee shall maintain and preserve for such period or periods as the may be prescribed by the implementing rules and regulations, such accounts, books, and other documents as constituting the record forming the basis for financial statements required to be filed pursuant to this Law.

(b) All accounts, books and other records required to be maintained and preserved by any person pursuant to subsection (a) shall be subject to examination by the appropriate regulatory agency.

SECTION 45. *Management and Trust Fees; Expenses Chargeable to Fund/CIS Investors.* – The Management and Trust fees shall cover the CIS fair and equitable share of the routine administrative expenses of the fund manager, trustee and/or insurance company such as directors' fees, salaries and wages, supplies, credit investigation, collateral appraisal, security, messengerial and janitorial services, information technology expenses, annual report preparation, supervision fees, regulatory reporting expenses, and internal audit fees. Marketing, advertising, and other publicity or promotional related expenses shall be for the account of the fund manager, trustee, and insurance company and shall be considered covered by the management or trust fee.

However, the fund manager, trustee, and insurance company may charge special or reimbursable expenses from the CIS in case such expenses are (1) necessary to preserve or enhance the value of the CIS, (2) payable to an independent or non-related third party covered by a separate contract, and (3) disclosed to CIS investors. The fund manager, trustee, and insurance company shall secure prior approval of the appropriate regulatory agency for outsourcing services provided under existing regulations of the concerned regulatory agency. No other fees shall be charged to the fund CIS investors, except in case of a corporate CIS, the directors fees shall be chargeable to the fund.

SECTION 46. *Changes in Investment Policy* – Proposals to change the investment policies shall be subject to approval by the CIS investors pursuant to Section 40 hereof and by the Commission. The fund manager, trustee or insurance company shall disseminate to all CIS investors all material information pertaining to proposals to amend the investment

policies and objectives. The Commission shall prescribe by rule or regulation the requirements for changes in investment policies.

SECTION 47. *Dissolution* – (a) The corporate CIS, trustee or insurance company shall cause the dissolution of the CIS whenever any of the following grounds is present:

- (1) Dissolution is required by the CIS plan, when the specified conditions or time for dissolution have been met or reached;
- (2) Dissolution is agreed upon in a resolution of the CIS investors owning at least two-thirds (2/3) of the outstanding CIS Securities in a CIS at a meeting duly called for the purpose; *Provided, that*, the implementing rules and regulations may prescribe a different percentage interest taking into account the nature and size of the CIS and the number of CIS investors; *Provided, finally*, that there has been prior publication of the notice of time, place and object of the meeting for two (2) consecutive weeks in a newspaper of general circulation in the Philippines;
- (3) Dissolution is required by a final and executory order of the court;
- (4) Dissolution is ordered by the appropriate regulatory agency for non-compliance with the conditions for the lifting of a suspension or revocation order previously issued; provided that the appropriate regulatory agency or Commission shall not issue an order of dissolution within six months from the issuance of the suspension or revocation order; and
- (5) Dissolution is deemed necessary in view of the dissolution or the revocation of the license of the fund manager, trustee or insurance company;

*Provided*, that the CIS may not be dissolved whenever:

- (1) The appropriate regulatory agency orders the transfer of the CIS to a willing and qualified fund manager, trustee or insurance company;
- (2) The dissolution or the loss of license of the trustee, insurance company or fund manager is due to a merger and the surviving company in such merger is also an authorized trustee, insurance company or fund manager, as the case may be; or
- (3) The new company that is established as a result of the consolidation of trust institutions, insurance companies or fund managers promptly obtains a license to act as trustee, insurance company or fund manager, as the case may be.

(b) Upon dissolution, the fund manager, trustee or insurance company shall distribute the CIS assets to the CIS investors as prescribed by the CIS plan and in accordance with the implementing rules and regulations.

SECTION 48. *Merger or Consolidation* – No merger or consolidation of CIS will be authorized by the appropriate regulatory agency or Commission unless the following conditions are met:

(a) The merger or consolidation plan has been prepared in accordance with the requirements as may be prescribed by the appropriate regulatory agency or Commission; and

(b) The merger plan has been approved by the CIS investors owning at least two-thirds (2/3) of the outstanding CIS Securities in each of the CIS to be merged or consolidated in a meeting duly called for the purpose.

The implementing rules and regulations shall prescribe the procedures and requirements for merger or consolidation in the public interest and for the protection of investors.

## ARTICLE V CIS INVESTORS PROTECTION FUND

SECTION 49. *Establishment of the CIS Investors Protection Fund* – The appropriate regulatory agency shall define the rules and procedures for the creation and management of an investors protection fund, the contribution to which shall be determined as a proportion of the CIS, which shall be segregated from the CIS, for the purpose of compensating investors who suffer material loss in investment due to fraud, gross negligence or mismanagement; provided that, any contribution to the investors' protection fund shall not be chargeable to the CIS. A CIS that maintains an existing fund for the same purpose shall not be required to make contributions to the CIS investors protection fund, provided, that the appropriate regulatory agency has determined that the existing fund is of equivalent purpose, and the contributions to such fund are of equivalent value, as that of the CIS investors protection fund established pursuant to the section.

## ARTICLE VI SPECIAL RULES GOVERNING ESTABLISHMENT OF CONTRACTUAL CIS BY TRUST INSTITUTIONS AND INSURANCE COMPANIES

SECTION 50. *Establishment of Contractual CIS by Trust Institutions and Insurance Companies* – (a) Any trust institution or insurance company may establish a contractual CIS, subject to the following provisions: The trust institution or insurance company may engage the services of a fund manager; Provided, that no director and/or officer of the trust institution or insurance company shall at the same time serve as director and/or officer of the fund manager; Provided, further, that the trust institution or insurance company shall not engage a fund manager which is an affiliate of the trust institution or insurance company, unless it complies with the requirements of paragraph (b) (2) of this Section.

(b) The engagement of a fund manager shall not be required in cases where:

- (1) In addition to the functions of a trustee prescribed under this Law, the trust institution or insurance company shall comply with and observe the duties, responsibilities and prohibitions of a fund manager under Sections 8 and 9 hereof;



- (2) The CIS plan provides for the creation of an Independent Oversight Body. The independent oversight body shall be composed of at least three (3) members who shall be appointed in accordance with such rules as the implementing rules and regulations shall prescribe, all of whom shall have the qualifications and none of the disqualifications of an independent director, or may be a juridical entity organized and existing pursuant to the implementing rules and regulations.

The independent oversight body shall have the following duties and responsibilities:

- (1) Monitor the activities of the CIS distributors in the sale and/or redemption of the CIS units and ensure that the provisions of any marketing document relating to the sale or offer for sale of the CIS units do not contain any matter which is inconsistent with the provisions of the CIS plan, this Law and its implementing rules and regulations;
- (2) Ensure that the management and investments of the CIS funds are in accordance with the CIS plan;
- (3) Ensure that the trust institution or insurance company remedies any breach of the CIS plan or any contravention of the provisions of this Law or its implementing rules and regulations;
- (4) Ensure that CIS funds, assets and properties are clearly identified and held separately from the trust institution's or insurance company's own properties and other properties held in trust;
- (5) Monitor the existence of conflict of interest situations and address the same for the best interests of the CIS investors;

SECTION 51. *Administrative Sanctions* – (a) If, after due notice and hearing, the Commission or appropriate regulatory agency finds that:

- (1) There is a violation of this Law and its implementing rules and regulations or the rules or orders of the Commission or appropriate regulatory agency;
- (2) Any fund manager, trustee, insurance company, corporate CIS, CIS distributor or CIS solicitor has failed reasonably to supervise, with a view to preventing violations, another person subject to supervision who commits any such violation;
- (3) Any person has, in a CIS plan or in other reports, applications, accounts, records or documents required by this law and its implementing rules and regulations to be filed with the Commission, made any untrue statement of a material fact, or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading; or
- (4) Any person has refused to permit any lawful examination into its affairs, including the refusal to produce books, records or documents upon demand by the CIS investor or the Commission or appropriate regulatory agency, it shall,



in its discretion, and subject only to the limitations hereinafter prescribed, impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances:

- (i) A fine of no less than Ten thousand pesos (P10,000.00) nor more than One million pesos (P1,000,000.00);
- (ii) Disqualification from being an officer, member of the board of directors, or person performing similar functions, of the fund manager, trustee, insurance company, corporate CIS or CIS Distributor;
- (iii) Suspension of the license of such person;
- (iv) Revocation of the license of such person; and
- (v) Other penalties within the power of the appropriate regulatory agency to impose.

(b) The imposition of the foregoing administrative sanctions shall be without prejudice to the filing of criminal charges and civil cases against the entities and individuals responsible for the violation.

(c) The appropriate regulatory agency shall have the power to issue writs of execution to enforce the provisions of this section and to enforce payment of the fines, penalties, fees and other dues collectible under this Law.

(d) If the offender is a corporation or other juridical entity, the administrative sanctions may in the discretion of the Commission be imposed upon such corporation or other juridical entity and upon the officer or officers of the corporation, or entity responsible for the violation, *Provided, that*, in case of the imposition of administrative fines, the Commission may, in its discretion, impose such fines solely upon the officer or director responsible for the violation; and *Provided further that*, if such officer is an alien, he shall, in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

(e) The directors and other officer/s of a corporation held administratively liable under this Section shall in no case recover the administrative liability from the CIS or corporation of which he/they is/are a director/s or officer/s.

SECTION 52. *Criminal penalties* – (a) The following acts are criminal in nature and shall be penalized as follows:

- (1) Refusal to comply with the orders of the appropriate regulatory agency for the production of books, records or documents, or to undergo an examination shall be penalized by imprisonment of one (1) month to six (6) months or fine in the amount of One Hundred Thousand Pesos (P100,000.00) to Two Million (P2,000,000.00) Pesos, or both imprisonment and fine, at the discretion of the Court;
- (2) Selling or offering for sale a CIS security by unregistered sellers, distributors or solicitors shall be penalized by imprisonment of six (6) years and one day to twelve (12) years or fine equivalent to triple the contract price of each of the CIS securities sold, or both imprisonment and fine, at the discretion of the Court;

- (3) Selling or offering for sale by the issuer of CIS securities of a CIS plan that has not been registered pursuant to this Law shall be penalized by imprisonment of six (6) years and one day to twelve (12) years or fine equivalent to triple the contract price of each of the CIS securities sold or offered for sale, or both imprisonment and fine, at the discretion of the Court;
- (4) Any negligent act or omission that is prejudicial or injurious to the CIS investors shall be penalized by imprisonment of one (1) year and one (1) day to six (6) years and fine in the amount of fifty thousand pesos (P50,000.00) to five million pesos (P5,000,000.00), or both imprisonment and fine, at the discretion of the Court;
- (5) Any fraudulent act or omission that is prejudicial or injurious to the CIS investors shall be penalized by imprisonment of six (6) years and one (1) day to twelve (12) years and fine in the amount of five hundred thousand pesos (P500,000.00) to ten million pesos (P10,000,000.00), or both imprisonment and fine, at the discretion of the Court; and

Violation of the provisions of this Law, the implementing rules and regulations or orders of the appropriate regulatory agency shall be penalized by imprisonment of six (6) years and one (1) day to twelve (12) years and a fine in the amount of one hundred thousand pesos (P100,000.00) to five million pesos (P5,000,000.00); Provided that, repeated violations shall constitute *prima facie* evidence against the offender.

(b) Solidary Liability

- (1) The fund manager, trustee and/or insurance company shall be jointly and severally liable for actual losses and damages that CIS investors may directly suffer as a result of bad faith, gross negligence and/or willful misconduct by the fund manager, trustee and/or insurance company resulting in the violation of any of the provisions of this Law, its implementing rules and regulations, or their failure to observe and comply with the terms and conditions of the CIS plan.
- (2) The directors and/or officers of the corporate CIS, fund manager, trustee and/or insurance company shall also be jointly and severally liable for all losses and damages that CIS investors may suffer as a result of bad faith, gross negligence and/or willful misconduct by the corporate CIS, fund manager, trustee and/or insurance company resulting in the violation of any of the provisions of this Law, its implementing rules and regulations, or their failure to observe and comply with the terms and conditions of the CIS plan. Notwithstanding any provision of law to the contrary, in no case shall such directors and officers recover their liability from the corporate CIS, fund manager, trustee and/or insurance company.

(c) If the offender is a corporation or other juridical entity, the criminal penalties may in the discretion of the Court be imposed upon such corporation or other juridical entity and upon the officer or officers of the corporation or entity responsible for the violation, *Provided that*, in case of the imposition of fines, the Court may, in its

discretion, impose such fines solely upon the officer or director responsible for the violation; and Provided further that, if such officer is an alien, he shall in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

(d) The directors and other officer/s of a corporation held administratively liable under this Section shall in no case recover the administrative liability from the CIS or corporation of which he/they is/are a director/s or officer/s.

Except if their failure to observe and comply with the terms and conditions of the CIS plan arises solely from force majeure or acts of god.

SECTION 53. *Small Claims Clause* – (a) The Commission shall have the power to adjudicate any and all claims involving CIS amounting to not more than One Million Pesos (P1,000,000.00) or such higher amount as may be determined by the Commission for each CIS Investor. The proceedings before the Commission shall be summary in nature, and the decision of the Commission shall be final and immediately executory, unless restrained by the Court of Appeals or the Supreme Court.

(b) Claims filed with the Commission shall not be subject to the payment of filing fees.

(c) The authority to adjudicate granted to the Commission under this section shall be concurrent with that of the civil courts, but the filing of a complaint with the Commission shall preclude the civil courts from taking cognizance of a suit involving the same subject matter.

(d) The Commission, having due regard to the facts and circumstances of each claim, may refer the claim to compulsory arbitration, under such rules and regulations as the Commission may prescribe.

SECTION 54. *Mandatory Disclosure and Transparency* – Require all CIS whether contractual or corporate, to disclose all relevant and important information, such as but not limited to the investment plan, attendant risks, insurance coverage (if any) and all costs to be charged by the company on investors subscribing to the fund. All CIS distributors and solicitors should be required to fully explain the investment instrument and conduct due diligence on the suitability of prospective investors to understand rules attendant to investments before obtaining funds

## ARTICLE VII MISCELLANEOUS PROVISIONS

SECTION 55. *Transitory Provisions* – Any CIS which at the time of the effectivity of this Law has been established, authorized, licensed or registered by the Commission or the appropriate regulatory agency and has continued to exist, shall be deemed to have been authorized, licensed and registered under the provisions of this Law and its implementing rules and regulations and shall be subject to and governed by the provisions hereof; *Provided however that*, where any such CIS is affected by the new requirements of this Law and its implementing rules and regulations, said CIS shall, unless otherwise herein provided, be

given a period of not more than two (2) years from the effectivity of the implementing rules and regulations within which to comply with such new requirements.

SECTION 56. *Implementing Rules and Regulations* – Consistent with the declaration of policy contained in Section 2 and the other relevant provisions of this law, the appropriate regulatory agencies, with the Commission as the lead agency, shall coordinate and jointly establish uniform rules and regulations implementing this law, including but not limited to the following matters;

(a) Qualification and disqualification standards for fund managers, CIS distributors and CIS solicitors;

(b) Qualification and disqualification standards for directors and officers of fund managers, trustees, insurance companies, juridical CIS and CIS distributors;

(c) Revocation, refusal or suspension of licenses of the fund manager, juridical CIS, trustee, insurance company, custodian, CIS distributors and CIS solicitors;

(d) Filing amendment and suspension of CIS plans;

(e) Registration, distribution, sale and marketing of CIS securities;

(f) Disclosure requirements relating to the CIS;

(g) Regulation, supervision and monitoring the operations, management and/or activities of all CIS, fund managers, CIS distributors, CIS solicitors and other parties involved in CIS;

(h) Ascertainment of client suitability for CIS securities;

(i) Limitations or restrictions on the investments of CIS funds and on the other activities in which a CIS may engage;

(j) Requirements for selling materials and advertisements;

(k) Record-keeping, reporting and audit requirements for CIS fund manager and trustees;

(l) A minimum set of performance presentation standards including but not limited to:

(1) Standardized methodology for calculation of measures of risk and return appropriate for each type of CIS and the underlying assets;

(2) Construction of composites for each investment strategy defined by asset manager;

(3) Minimum rules for benchmark selection;

(4) Calculation and disclosure of all fees, charges and total expense ratios; and



- (5) Minimum contents and frequency of presentation.
- (m) A separate code of conduct to be adopted by each of the parties involved in CIS;
- (n) Requirements for changing investment policies;
- (o) Requirements for merger or consolidation of CIS;
- (p) Establishment of the CIS investors' protection fund;
- (q) Minimum requirements for inculcating financial literacy in investors;
- (r) Recognition of accreditation or license extended by the appropriate regulatory authority pursuant to this law; and
- (s) Other pertinent matters to be determined by the regulatory authorities;

The implementing rules and regulations may be repealed, amended or supplemented at any time in the same manner as the original implementing rules and regulations are adopted and issued pursuant to this Section.

The implementing rules and regulations and its amendments or supplements shall be published once a week for two (2) consecutive weeks in two newspapers of general circulation.

**SECTION 57. *Cooperation and Coordination*** – The appropriate regulatory agencies, with the Commission as the lead agency, shall adopt all other appropriate measures as may be necessary or desirable for the effective implementation and enforcement of this Law, taking into full account declaration of policy contained in Section 2.

The coordination shall cover such concerns as, but not necessarily limited to:

- (a) Ensuring that avoidable market failures are prevented;
- (b) Instilling measures that nurture systemic stability;
- (c) Providing equal access to relevant market information to stakeholders; and
- (d) Overseeing the conduct of CIS issuers to institutionalize consumer protection and address anti-competitive behavior.

**SECTION 58. *Effect on Existing Laws and Contracts*** – The rights and remedies provided by this Law shall be in addition to any and all other rights and remedies that exist under existing laws.

Nothing in this Law shall impair the obligation of existing contracts nor affect or be construed to affect existing criminal, civil or administrative cases.

**SECTION 59. *Separability Clause*** – Any portion or provision of this Law that may be declared unconstitutional or invalid shall not have the effect of nullifying other portions or

provisions hereof as long as such remaining portion or provision can still subsist and be given effect in their entirety.

SECTION 60. *Suppletory Effect* – This Law shall apply suppletorily to any law that may be hereinafter enacted on collective investment schemes governing specialized products or investments.

SECTION 61. *Repealing Clause* – All acts, laws, executive orders and/or rules and regulations or any part thereof which are inconsistent with the provisions of this Law are hereby repealed or modified accordingly.

SECTION 62. *Effectivity Clause* – This Law shall take effect upon its approval.

*Approved.*