

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Eighteenth Congress
First Regular Session



HOUSE BILL NO. 310

Introduced by Representative JOEY SARTE SALCEDA

**AN ACT
PROVIDING FOR THE COMPREHENSIVE REGULATORY AND LEGAL
FRAMEWORK FOR COLLECTIVE INVESTMENT SCHEMES**

EXPLANATORY NOTE

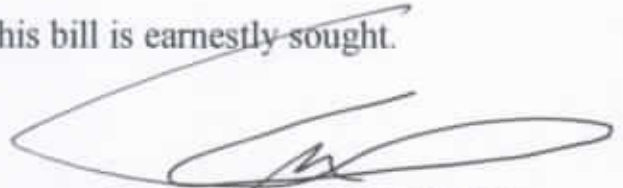
The Philippines, in recent year has received a couple of credit rating upgrades, which were the output of a generally stable political situation, strong remittances from abroad and improving fiscal position. Hence, to further strengthen and improve economic stability, the government should be committed 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.



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

TITLE I – GENERAL PROVISIONS

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

SEC. 2. *Declaration of Policy.* – It is hereby declared the policy of the State 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 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 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 citizen participation in economic activity and growth by widening their access to securities ownership and other investment assets as allowed under this Act;
 - (e) Provide equal protection to investors and the participants in all similar CIS and the same competitive environment for such schemes, with the imposition of standard requirements therein; and
 - (f) Encourage responsible investing through the dissemination of information on the opportunities and risks involved in investments.

SEC.3. *Purpose.* – This Act establishes a comprehensive regulatory and tax framework to enable CIS and all the participants therein to play key roles in the development of the capital market in a manner consistent with the policies declared in Section 2 hereof.

SEC.4. *Coverage.* – This Act shall apply to the establishment, management and operation of all CIS and the registration and sale of CIS securities in the Philippines.

SEC. 5. *Definitions.* – As used in this Act,

(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 or partnership having interlocking directors, managing partners, or officers with the juridical CIS, except in cases involving independent directors as defined under existing regulations: *Provided*, That for juridical CIS that are not corporations or partnerships, the term shall refer to such persons with equivalent duties or functions as directors or officers of corporations, or managing partners in a partnership;
 - (7) If a juridical CIS that is organized as a stock corporation, any other corporation having common stockholders owning at least ten percent (10%) of the outstanding voting stock of the juridical CIS or any partnership having partners who own at least ten percent (10%) of the interest in the juridical CIS: *Provided*, That for juridical CIS that are not corporations or partnerships, this term shall refer to the form of security ownership in the said entity;
 - (8) Any person who is a party to a management contract or any arrangement granting power to one corporation, partnership or entity to direct or cause the direction of management and policies of the other corporation, partnership or entity, or vice-versa; or
 - (9) Any person who has permanent proxy or voting trusts in favor of the corporation, partnership or entity constituting at least ten percent (10%) of the outstanding voting stock or voting power of the other corporation, partnership or entity, or vice versa;
- (b) *Appropriate regulatory agency* means:
- (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, Real Estate Investment Trusts (REITs), Exchange-Traded Funds (ETFs), Special Purpose Corporations or partnerships or other persons or other entities not under the regulation of the BSP or the IC;
- (c) *Broker* means any person duly licensed by the appropriate regulatory agency and, if required, 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;
- (d) *CIS distributor* means any stock corporation or broker licensed by the appropriate regulatory agency to engage in the offering or selling of CIS securities;
 - (e) *CIS investor* means any person who purchases or otherwise invests in CIS securities;
 - (f) *CIS plan* means the plan for the registration and sale of CIS securities filed with the appropriate regulatory agency in accordance with Sections 25, 27, 30 and 31 hereof, which shall be in lieu of the registration statement required to be filed pursuant to Republic Act No. 8799, otherwise known as "Securities Regulation Code" for the sale and offer for sale of securities to the public;
 - (g) *CIS securities* mean units of participation or similar interests in a contractual CIS or shares of stock or similar interests in a juridical CIS;
 - (h) *CIS security holder* means a stockholder, partner or other security holder, as applicable, of 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) *Commission* means the Securities and Exchange Commission;
 - (k) *Contractual CIS* means a CIS that is:
 - (1) Organized pursuant to a contract, such as a Unit Investment Trust Fund (UITF), REITs in a trust form, Exchange Traded Funds (ETFs) or a Separate Variable Account of a variable 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 Act; and
 - (3) That issues units of participation each of which represents an undivided interest in a pool of investment assets;
 - (l) *Control* means the condition that exists when the parent company 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 company owns half or less of the voting power of an entity when the

former has:

- (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, partners, or other 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, partners or other 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;
- (m) *Creation of a CIS* means the issuance of CIS securities upon its due registration or recognition by the appropriate regulatory agency;
- (n) *Custodian* means an entity duly authorized by the BSP to engage in the business of safekeeping investment assets, and act as the custodian of the investment assets of a CIS pursuant to this Act and the relevant regulations of the BSP, IC, and/or the SEC;
- (o) *Dealer* means a person duly licensed by the appropriate regulatory agency and accredited by the appropriate self-regulatory organization to engage in the buying and selling of securities, whether or not through a broker. 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;
- (p) *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;
- (q) *Fund manager* means a juridical person engaged in the business of managing the investment assets of a CIS or in the business of providing administrative and ancillary services for such CIS as licensed by the appropriate regulatory agency in accordance with Section 9 hereof, and performing the duties and responsibilities enumerated in Section 10 hereof;

- (r) *Independent auditor* means the independent external certified public accountant referred to in Section 19 hereof;
- (s) *Independent director* means a person other than an officer or employee of the corporation, its affiliates, or any other individual having any relationship with the corporation who would materially interfere with the exercise of independent judgment in carrying out the responsibilities of a director. An independent director shall possess the highest degree of independence, the qualifications and none of the disqualifications for independent directors as defined in RA 8799 or the Securities Regulation Code, and its implementing rules and regulations;
- (t) *Insurance company* means a company engaged in the insurance business that has been duly authorized by the IC to transact such business, as specifically defined under Republic Act No. 10607, as amended, otherwise known as the "Insurance Code";
- (u) *Investment adviser* means any person who regularly advises or recommends investment decisions pursuant to an advisory contract with a CIS investor regarding securities or other CIS portfolio offered by a fund manager, trustee or insurance company;
- (v) *Investment assets* means the securities and other assets in which the funds of a CIS may be invested in accordance with Section 38 hereof;
- (w) *Investment company* means a 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 Act;
- (x) *Investment house* means any enterprise which engages in the underwriting of securities of other companies, as defined in Section 2 of Presidential Decree No. 129, otherwise known as "The Investment Houses Law", as may be amended from time to time, and is registered pursuant to said law;
- (y) *Juridical CIS* means a CIS:
 - (1) Organized as a stock corporation such as an investment company or a partnership, including limited partnerships and limited liability companies whether incorporated in or outside the Philippines, or such other entity as the SEC shall allow in accordance with International Organization of Securities

Commissions (IOSCO) principles or the implementing rules and regulations of this Act;

- (2) That is also known as an investment company that pools the funds of investors to form a massive asset base which is then entrusted to a full time professional fund manager who develops and maintains a diversified portfolio of security investments: *Provided*, That limited partnerships that are managed by a general partner and pools the investments of limited partners, who are either qualified institutional investors or qualified individual investors;
- (3) 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 Act; and
- (4) That issues common stock or units of participation 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;
- (z) *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 Act and its implementing rules and regulations;
- (aa) *Organized Marketplace* means an exchange or 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 enforceable on the members and participants;
- (bb) *Person* means a natural or juridical person as defined in Republic Act No. 386, otherwise known as the "Civil Code of the Philippines";
- (cc) *Real Estate Investment Trust* or "*REIT*" means a Collective Investment Scheme formed principally for the purpose of acquiring, owning or operating income-generating real estate assets, as specifically defined in Republic Act No. 9856, otherwise known as "The Real Estate Investment Trust Act of 2009". For the purpose of clarity, a REIT in contractual or trust form organized under this Act shall, to the extent applicable, be governed by RA 9856;
- (dd) *Redemption* means the liquidation of a CIS security through its surrender to the issuer in exchange for its net asset value or the underlying securities it represents;

- (ee) *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 24 hereof;
- (ff) *Sale, sell, offer to sell or offer for sale* means a contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy a unit of participation, including security and interest therein, for value. Any such security, unit of participation or interest therein, given or delivered with, or as a bonus on account of, any purchase of securities, unit of participation 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;
- (gg) *Security* means any instrument or product defined under RA 8799, as amended, and its implementing rules and regulations;
- (hh) *Separate Variable Account Fund* means the segregated portfolio of investments established, maintained and invested in by an insurance company for its variable insurance contracts and accounted for separately and apart from its other investments and accounts, pursuant to RA 10607, as amended, under which the income, gains and losses, or the expenses incurred in the acquisition, disposal and management of investment assets allocated to such account, are credited to or charged against without regard to the other income, gains, losses and other expenses of the insurance company. The Separate Variable Account Fund shall be deemed a contractual CIS, and the units of participation therein shall be deemed as CIS securities, subject to this Act. The investment assets held in any such separate variable account shall be applied exclusively for the benefit of the owners or beneficiaries of the variable insurance contracts;
- (ii) *Special Purpose Corporation* means a juridical person created in accordance with Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines, solely for the purpose of securitization and to which the seller makes a true and absolute sale of assets, as specifically defined in Republic Act No. 9267, otherwise known as the "Securitization Act";
- (jj) *Special Purpose Trust* means a trust administered by an entity duly licensed to perform trust functions under Republic Act No. 8791, otherwise known as the "General Banking Law", and created for a special purpose such as securitization of

- assets;
- (kk) *Trust Entity* means any bank, non-bank financial institution or a stock corporation duly authorized by the Monetary Board of the BSP to engage in trust, investment management and fiduciary business;
- (ll) *Trustee* means a trust entity appointed and acting as the trustee of a contractual CIS pursuant to this Act;
- (mm) *Unit of Participation* means an undivided interest in the pool of investment assets of the CIS;
- (nn) *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.

TITLE II - COLLECTIVE INVESTMENT SCHEMES

Chapter 1 – Nature and Structure of Collective Investment Schemes

SEC. 6. *Collective Investment Schemes.* –

- (a) A Collective Investment Scheme (CIS) 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 investment assets or different classes thereof as allowed under this Act. All CIS shall be covered by and regulated by this Act and its implementing rules and regulations. A CIS may either be a juridical CIS, or has a contractual structure such as a unit investment trust fund, a special purpose trust, or similar scheme held by a trust entity or a separate account fund established pursuant to a variable unit linked insurance policy issued by an insurance company. All CIS shall be governed by and shall comply with the requirements of this Act, the pertinent provisions of RA 8799 and other applicable laws not inconsistent with this Act. For purposes of clarity, a REIT, ETF and other forms of investment arrangements existing and accepted in other international markets, consistent with the IOSCO Objectives and Principles of Securities Regulation, and allowed by the appropriate regulatory agency as may be formed or organized under this Act.
- (b) Subject to the regulation under this Act, none of the following arrangements shall be deemed a CIS:

- (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: *Provided, however,* That within ten (10) calendar days from the issuance of said security, the issuer shall notify the appropriate regulatory agency of the said transaction. For this purpose, beneficial ownership by a company shall be deemed to be beneficial ownership by one person: *Provided,* 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 outstanding securities of such company;
- (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 Act;
- (3) Any employees' stock, bonus, pension, retirement, provident or profit sharing plans which were transacted or contracted in the regular conduct of their ordinary business;
- (4) Any fund which is employed by the trust entity 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 financing, 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 inures 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 appropriate regulatory agency, 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.

SEC. 7. Juridical CIS. –

- (a) No company, partnership, or entity shall act as a juridical CIS unless duly licensed by the SEC, and no company, partnership, or entity shall be licensed as a juridical CIS under this Act, unless it shall:
 - (1) Be organized in the form of a stock corporation, such as an investment company or a partnership, including limited partnerships and limited liability companies whether incorporated in or outside the Philippines, or such other entity as the SEC shall allow in accordance with IOSCO principles or the implementing rules and regulations of this law;

- (2) Issue shares of stock consisting of common stock or units of participation, if a corporation, or issue units of interest, or other similar security, in the case of a partnership or other allowed structure or entity;
 - (3) In the case of a corporation, provide in its articles of incorporation that shareholders shall not be entitled to pre-emptive rights;
 - (4) At the time of registration, have 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. The SEC shall also prescribe the minimum required capital for a juridical CIS that is organized as partnership or other structure that may be allowed by the SEC;
 - (5) Hold the original subscription of securities and maintains 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-ended CIS, a reserve in liquid or semi-liquid assets, equal to at least ten *per centum* (10%) of its total investment 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 that is organized as a stock corporation 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 or partners of a juridical CIS shall, at incorporation or recording, 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 organized as a stock corporation shall be independent directors but in no case shall it be less than three (3) or as may be required by the appropriate regulatory agency.

Chapter 2 – Parties Involved In Collective Investment Schemes

SEC. 8. *Participants in the CIS.* – The following shall be considered as participants in the CIS:

- (a) Fund Manager;
- (b) Trustee or/Board of Directors (BOD), Partners, or other persons exercising similar functions, as appropriate;
- (c) Custodian;
- (d) CIS Distributor;
- (e) CIS Solicitor, and
- (f) Investment Adviser, as deemed appropriate

SEC. 9. *Fund manager.* – No company shall act as a fund manager for a CIS unless duly licensed by the appropriate regulatory agency. A company may be licensed as a fund manager for purposes of this Act if it meets the following criteria:

- (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): *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;
- (c) At least one-third (1/3) of the entire membership of the BOD of the fund manager, but in no case less than three (3), shall be independent directors or as may be required by the appropriate regulatory agency; and
- (d) 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 Act and its implementing rules and regulations, and other pertinent laws not inconsistent with this Act are, complied with.

SEC. 10. *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 the functions in accordance with the CIS plan, the provisions of this Act 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/BOD, CIS and auditor;
- (c) Ensure that the fund and 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 Act 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 and secure approval from the respective regulatory agency for the establishment and amendment of the CIS plan in accordance with this Act and its implementing rules and regulations;
- (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.

SEC. 11. *Prohibited Acts of the Fund Manager.* – The fund manager shall not:

- (a) Invest CIS funds in any security, property and investment asset in which such fund manager or any of its directors, officers, employees and affiliates has 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 a trust entity or an insurance company;
- (c) Pay or cause to be paid out of the CIS funds any fee, commission and other similar expense that has not been, or exceeds what have been provided for in the CIS plan, this Act 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 rebate or shared commission 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.

SEC. 12. *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 restriction or prohibition 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 of this Act 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 of this Act 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.

SEC. 13. *Board of Directors.* – The Board of Directors of a juridical entity shall act as the board of directors of a CIS. The duties and responsibilities of the board of directors of a contractual CIS under a trust arrangement shall be performed by its Trustees. In addition to those prescribed under existing laws and regulations, the following duties and responsibilities shall be exercised by the board of directors 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 Act 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 Act 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 Act 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 Act 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) Send, either by registered mail or other means authorized by the appropriate regulatory agency, annual reports for the investors as appropriate, which may be annual holding statements for UITFs as required by BSP, separate financial statements as required by IC for insurance companies, and in the case of Mutual Funds (MFs), the annual report as required by the SEC;
- (k) Propose and secure approval from the respective regulatory agency for the establishment or amendment of the CIS plan in accordance with the provisions of this Law and its implementing rules and regulations; and
- (l) Such other duties and responsibilities that the appropriate regulatory agency may prescribe.

SEC.14. *Custodian.* – 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.

Only entities duly authorized to engage in investment management or trust business by the BSP or authorized by their home regulator may be licensed by the BSP to act as custodian of investment assets of a CIS.

In addition to those prescribed under existing laws and regulations, a custodian shall have the following duties and responsibilities:

- (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) Providing for periodic inspections by employees and agents of the BSP.

SEC. 15. *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:

- (a) Extent of services to be rendered by the custodian;
- (b) Fees, remuneration and other expenses of the custodian;
- (c) Any restriction or prohibition regarding the performance by the custodian of its functions; and
- (d) Reporting requirements of the custodian.

SEC. 16. *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 Act, 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 entity under the supervision of the BSP;
 - (4) Any insurance broker or its agents under the supervision of the IC;
 - (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) The CIS distributor shall be principally responsible for marketing, distributing, 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 of this Act.

SEC.17. 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 restriction or prohibition 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.

SEC.18. 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 Act and its implementing rules and regulations, and RA 8799 and its implementing rules and regulations.

SEC.19. *Independent 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) In addition to those prescribed under existing laws and regulations, the following shall be the duties and responsibilities of an 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 the auditor's 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.

SEC.20. *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) Manage the 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 interest of CIS investors;
- (d) Establish systems, procedures and processes to be observed by its officers and employees to ensure compliance with this Act 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 is of good repute, has relevant expertise and experience to act in the capacity so appointed or employed;

- (g) Refrain from using the position to gain, directly or indirectly, an advantage for itself or for any other person or which may be detrimental to the interests of CIS investors;
- (h) Avoid and eliminate conflicts of interest in the performance of 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 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 as determined by the appropriate regulatory body shall be declared void.

SEC.21. 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 Act 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 Act, 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 Act 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 Act, 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 provision of securities, commodities, banking, real estate or insurance laws, or has aided, abetted, counseled, commanded, induced or procured such violation. The term "competent body" shall include a foreign court of competent jurisdiction and a foreign financial regulator; or
- (g) Is insolvent as may be determined by the appropriate regulatory agency.

SEC.22. *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 of individuals elected or appointed as directors or officers, partners or other equivalent personnel 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, partner, officer or other person performing similar functions who commits or omits an act which renders one unfit for the position.

In determining whether an individual is fit and proper to hold the position of a director, partner, officer or other similar position of the fund manager, trustee, insurance company, juridical CIS or CIS distributor, regard shall be given to one's 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, partner, consultant, or similar position 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, counseled, commanded, induced, or procured the violation of this Act, RA 8791, Republic Act No. 9160, as amended, otherwise known as the "Anti-Money Laundering Act" and its implementing rules, the Insurance Code, the Securities Regulation Code, or any related law, rule, regulation or order thereunder;
- (e) Any person who is 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 election or appointment.

Chapter 3 - Provisions Applicable to Contractual CIS

SEC. 23. 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 49(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 investment assets of each contractual CIS shall be deemed separate and independent of the investment 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.

SEC.24. *Registry of CIS Investors.* – An up-to-date registry 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. The registry shall be kept in written or other forms such as digital records, microfilm, microfiche or electronic recording that can allow the reproduction of information therein as maybe required by the registrar from time to time. 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 the provisions of RA 9160, as amended, such as, the reporting of covered transactions or suspicious transactions to the Anti-Money Laundering Council (AMLC) and the exercise of the power of the AMLC to examine or inquire into the details of the CIS account including the personal information of the CIS investors: *Provided*, That the processing of personal information shall only be to the minimum extent necessary for the achievement of the above purposes, and in a manner mindful of the data privacy rights of CIS investors.

SEC.25. *The Contractual CIS Plan.* – In addition to the matters specified in Section 31 hereof, a Contractual CIS Plan 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 49 (b)(2) of this Act;
- (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

SEC. 26. *Engagement of Fund Manager.* – A Juridical CIS shall engage a duly registered fund manager to perform the functions prescribed in Section 10 hereof. A majority of the directors, partners or other persons performing similar functions of the juridical CIS must not be directors, officers or employees of the fund manager. No Chairperson, Chief Executive Officer (CEO), President, Chief Operating Officer (COO) or equivalent positions may be interlocking but both the juridical CIS and the fund manager may simultaneously employ officers with lower rank with prior approval of the appropriate regulatory authority.

SEC.27. *The Juridical CIS Plan.* –

- (a) In addition to the matters specified in Section 31 hereof, a juridical CIS plan shall contain the following matters:
 - (1) Par value of the CIS securities issued by the juridical CIS;
 - (2) Dissolution of the juridical CIS and the rights of CIS security holders 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 reasonably current the information and documents contained in the CIS Plan.

SEC.28. *Dividends.* –

- (a) Dividends, or their equivalent, in the case of partnerships or other structures, shall be declared and paid in accordance with the requirements of the CIS plan, the Corporation Code and applicable laws and regulations: *Provided*, That the SEC may prescribe other requirements or restrictions in the declaration and payment of dividends or their equivalent by the juridical CIS as necessary or appropriate in the public interest and for the protection of the investors.
- (b) Dividend payments or their equivalent 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.

TITLE III – TAX PROVISIONS

SEC.29. *Tax Treatment of the CIS.* – Without prejudice to the exemptions under existing laws, all CIS shall be subject only to the following national internal revenue taxes:

(a) *Tax on Income or Gross Receipts of CIS.* – The income or gross receipts from investments or reinvestments of funds, including income incidental thereto, received or accrued by any CIS shall be subject to all applicable taxes imposed under Title II of the National Internal Revenue Code (NIRC) of 1997, as amended. However, such income or gross receipts shall be exempt from taxes imposed under Title V of the NIRC of 1997, as amended.

(b) *Tax on Gains upon Redemption, Sale, Barter, Exchange or other Disposition of CIS Securities.* – Any gain realized by the investor from the redemption of any form of CIS securities shall be covered by Section 32(B)(7)(H) of the NIRC of 1997, as amended. The sale, barter, exchange or other disposition of listed CIS securities through a local stock exchange, shall be exempt from the stock transaction tax imposed under Section 127(A) of the NIRC of 1997, as amended. If such CIS security is not listed and traded through a local stock exchange, any such gain shall be subject to applicable income tax imposed under Title II of the NIRC of 1997, as amended.

Gains realized from the transfer of securities in exchange for original issuance of CIS securities shall be exempt from tax imposed under Title II of the NIRC of 1997, as amended.

(c) The issuance of CIS securities, shares of stock upon creation of CIS, certificate of units of participation in a CIS, insurance policies evidencing participation in a CIS variable insurance, or any other form of document evidencing proof of participation in a CIS shall be exempt from documentary stamp tax imposed under Title VII of the NIRC of 1997, as amended.

(d) 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 Act that are not provided under RA 9856.

TITLE IV - REGISTRATION OF CIS SECURITIES AND OPERATIONS OF CIS

Chapter 1 - Registration and Suspension of Offer and Sale of CIS Securities

SEC.30. 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 registration statement, in such form and containing such information and documents as prescribed by this Act, 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, designated managing partner, 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 BOD.
- (c) Upon effectivity of the CIS plan, the juridical CIS, fund manager, trustee or insurance company shall state in every promotional or marketing 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 Act and applicable laws and regulations; or

(4) It is in the public interest to refuse the registration of such CIS securities.

In the event that the appropriate regulatory agency fails to approve or deny the proposed CIS plan within thirty (30) calendar days from receipt thereof, the proposed CIS plan is deemed approved.

- (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.

SEC. 31. *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 and/or Trustees;
- (c) A statement of the investment objectives and policies of the CIS 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 CIS security holders;
- (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 CIS security holders, in the case of juridical CIS;
- (l) Annual reports for distribution to investors as appropriate, which may be annual holding statements for UITFs as required by the BSP, separate financial statements for insurance companies as required by the IC, and in the case of MFs, the annual report as required by the SEC;
- (m) Public disclosures and reports;
- (n) Distribution plan of CIS investment 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 or the custodian in case of a juridical CIS, and the fund manager or trustee in case of contractual CIS. The CIS plan shall also be distributed to prospective investors and posted in the website, publication and/or other mode of information dissemination as required by the appropriate regulatory agency.

SEC.32. *Revocation of Registration or Suspension of Offer and Sale of Securities.* – The appropriate regulatory agency may revoke the registration of the CIS securities or order the suspension of the offer and sale of the CIS securities in accordance with Sections 13.1 and 13.4 of RA 8799, respectively, and its implementing rules and regulations.

Chapter 2 – Dealings in CIS Securities

SEC. 33. *Rights and Privileges of CIS Investors.* – Each CIS security shall be equal in all respects to every other CIS security belonging to the same class of CIS securities.

SEC. 34. *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 regulations: *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.

SEC. 35. *Payment for CIS Securities.* – Except as provided by law or regulation, no CIS shall issue any of its securities for services or for property other than cleared funds. Installment sales are expressly prohibited.

SEC.36. *Distribution, Redemption and Pricing of CIS Securities.* –

- (a) Unless otherwise allowed in this Act, 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 of this Act.

- (b) CIS investors have the right to surrender their securities for redemption, except in the case of closed-end CIS, in accordance with the CIS plan. Redemption shall not be suspended except pursuant to the CIS plan as approved by the appropriate regulatory agency 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.

Chapter 3 – Operations of CIS

SEC. 37. *Custody of Investment Assets.* – Every CIS shall place and maintain its investment assets with a custodian in accordance with Sections 14 and 15 hereof.

SEC. 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 Act, its implementing rules and regulations or the rules issued by 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 companies under the REITA;
 - (10) Real estate investment trusts or companies;
 - (11) Other CIS; and
 - (12) Such other investments or instruments existing and accepted in other international markets, such as those consistent with the IOSCO objectives and principles of Securities Regulation, as the appropriate regulatory agency may allow: *Provided, however,* That no CIS shall, directly or indirectly:

- (i) Acquire more than ten per centum (10%) of another CIS; or
 - (ii) 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 59 hereof, and as may be necessary or appropriate in the public interest or for the protection of investors, including regulations that provide for different percentages or further restrictions with respect to investments in other CIS or the concentration of investments by a CIS.

SEC. 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, partner, promoter or stockholder thereof; or
- (d) Allow any of its employees, officers, directors, organizers and incorporators, stockholders, partners, or CIS security holder in the case of juridical CIS 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 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 Act.

SEC. 40. *Meetings of CIS Investors.* –

- (a) Meetings of juridical CIS investors, as may be appropriate, shall be held annually for the purpose of electing directors. Notice shall be sent to all CIS investors by registered mail or other modes as may be authorized by the appropriate regulatory agency.

- (b) CIS investors may attend the meetings in person or by proxy. A quorum at said meeting shall consist of CIS security 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 appropriate regulatory agency 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) All other matters, such as changing the investment policy, may be adopted with prior written notice to the CIS investors but will be effective only after approval by the appropriate regulatory agency.
- (d) The appropriate regulatory agency shall prescribe by rule or regulation the requirements for the conduct of meetings.

SEC. 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 of this Act or the appropriate regulatory agency may prescribe. All promotional 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) Contain information about the CIS performance that shall be calculated and presented from the viewpoint of the public to whom the CIS is targeted;
- (c) Provide that the CIS performance information in advertisements is presented in a manner that will enable CIS investors to make meaningful comparisons among various CIS, and 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.

SEC. 42. *Reports and Financial Statements of CIS.* –

- (a) Every CIS shall file with the appropriate regulatory agency:

- (1) Such information and documents including financial statements as the implementing rules and regulations of this Act 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 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 paragraph (a) herein:
- (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 officer, partner, or other person performing similar functions, as the case may be, 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 statements mentioned above, or

such other material information as the appropriate regulatory agency 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 agency shall prescribe the forms for the reports and financial statements, or such other material information as the appropriate 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.

SEC. 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 of this Act.
- (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 of this Act and shall be applied consistently.

SEC. 44. Accounts and Records. – Every CIS, and every fund manager and trustee shall maintain and preserve for such period or periods as may be prescribed by the implementing rules and regulations of this Act, such accounts, books, and other documents that shall constitute the record forming the basis for financial statements required to be filed pursuant to this Act. All accounts, books and other records required to be maintained and preserved by a CIS, fund manager or trustee shall be subject to examination by the appropriate regulatory agency.

SEC. 45. Management and Trust Fees; Expenses Chargeable to Fund/CIS Investors. – The management or 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.

A fund manager, trustee, or 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 juridical CIS, the fees of directors, managing partners, or others persons performing similar functions shall be chargeable to the fund: *Provided*, That the total operating expenses shall not exceed ten *per centum* (10%) of its average investment fund or net worth as shown in its previous audited financial statements covering the immediately preceding fiscal year.

SEC. 46. *Dissolution.* —

(a) The juridical 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 or such percentage as may be prescribed by the appropriate regulatory agency taking into account the nature and size of the CIS and the number of CIS investors: *Provided*, 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; 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:

(b) A CIS may not be dissolved whenever any of the following conditions are obtaining:

- (1) The appropriate regulatory agency orders the transfer of the CIS to a willing and qualified fund manager, trustee or insurance company;

- (2) 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, or
- (3) The new company that is established as a result of the consolidation of trust entities, insurance companies or fund managers promptly obtains a license to act as trustee, insurance company or fund manager, as the case may be.
- (c) Upon dissolution of a CIS, the fund manager, trustee or insurance company shall distribute the proceeds and investment assets of the CIS to the CIS investors as prescribed by the CIS plan and in accordance with the implementing rules and regulations of this Act.

SEC. 47. *Merger or Consolidation.* – No merger or consolidation of CIS will be authorized by the appropriate regulatory agency 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; 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 of this Act shall prescribe the procedures and requirements for merger or consolidation in the public interest and for the protection of investors.

TITLE V– CIS INVESTORS PROTECTION FUND

SEC. 48. *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, and 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 investor's 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 this Section.

TITLE VI- SPECIAL RULES GOVERNING ESTABLISHMENT OF CONTRACTUAL CIS BY TRUST ENTITIES AND INSURANCE COMPANIES

SEC. 49. Establishment of Contractual CIS by Trust Entities and Insurance Companies.

(a) Any trust entity or insurance company may establish a contractual CIS: *Provided*, That the trust entity or insurance company may engage the services of a fund manager: *Provided, further*, That no director and/or officer of the trust entity or insurance company shall at the same time serve as director and/or officer of the fund manager: *Provided, finally*, That the trust entity or insurance company shall not engage a fund manager which is an affiliate of the trust entity 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 Act, the trust entity or insurance company shall comply with and observe the duties, responsibilities and prohibitions of a fund manager under Sections 9 and 10 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 subject to the implementing rules and regulations of this Act and approval of appropriate regulatory agency in accordance with such rules as the implementing rules and regulations shall prescribe, all of whom shall have the degree of independence, as may be determined by the appropriate regulatory agency based on international best practices like the ASEAN CIS: *Provided*, That a juridical entity organized and existing pursuant to the implementing rules and regulations of this Act may act as the Independent Oversight Body as provided herein.

The Independent Oversight Body shall have the following duties and responsibilities:

(i) Oversee 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;

- (ii) Ensure that the management and investments of the CIS funds are in accordance with the CIS plan;
- (iii) Guarantee that the trust entity or insurance company remedies any breach of the CIS plan or any contravention of the provisions of this Act or its implementing rules and regulations;
- (iv) Assure that CIS funds, investment assets and properties are clearly identified and held separately from the trust entity's or insurance company's own properties and other properties held in trust;
- (v) Monitor conflict of interest and adoption of measures to address the same for the best interest of the CIS investors.

TITLE VII –SANCTIONS, PENALTIES AND SMALL CLAIMS

SEC. 50. *Administrative Sanctions.* –

- (a) If, after due notice and hearing, the 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 appropriate regulatory agency;
 - (2) Any fund manager, trustee, insurance company, juridical 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 appropriate regulatory agency, 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 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): *Provided*, That the fine herein prescribed may be increased by the appropriate regulatory agency every five (5) years based on the current price index, to maintain its punitive value;
 - (ii) Disqualification from being an officer, member of the BOD, partner, or any person performing similar functions, of the fund manager, trustee, insurance company, juridical 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 Act.
- (d) If the offender is a corporation, partnership, or other juridical entity, the administrative sanctions may, in the discretion of the appropriate regulatory agency, be imposed upon such corporation, partnership, or other juridical entity and upon the officer or officers, or other persons performing similar functions, of the corporation, partnership, or entity responsible for the violation: *Provided*, That in case of the imposition of administrative fines, the appropriate regulatory agency may, in its discretion, impose such fines solely upon the officer, director, managing partner, or other persons performing similar functions, responsible for the violation: *Provided, further*, That if the officer is an alien, that person shall, in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

- (e) The directors, officers, managing partner, or other persons performing similar functions, of a corporation, partnership or other entity held administratively liable under this Section shall in no case recover the administrative liability from the CIS corporation partnership or entity.

SEC. 51. *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 pesos (P2,000,000.00), 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 (1) 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 CIS securities by the issuer of a CIS plan that has not been registered pursuant to this Act shall be penalized by imprisonment of six (6) years and one (1) 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
- (6) Violation of the provisions of this Act, its implementing rules and regulations or orders of the appropriate regulatory agency unless already provided in the

above enumeration of this Act 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 Act, its implementing rules and regulations, or their failure to observe and comply with the terms and conditions of the CIS plan.
 - (2) The directors, managing partners, officers or other persons performing similar functions of the juridical 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 juridical CIS, fund manager, trustee and/or insurance company resulting in the violation of any of the provisions of this Act, 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, managing partners, officers or other persons performing similar functions, recover their liability from the juridical CIS, fund manager, trustee and/or insurance company.
- (c) If the offender is a corporation, partnership, or other juridical entity, the criminal penalties shall be imposed upon the officer or officers of the corporation or entity responsible for the violation: *Provided*, That in case of the imposition of the fines, the court may, in its discretion, impose such fines solely upon the officer, director, managing partners, general partner or other persons performing similar functions who is responsible for the violation: *Provided, further*, That if such person is an alien, the person shall, in addition to the penalties prescribed, be deported without further proceedings after service of sentence.
- (d) The director/s, officer/s managing partner/s, or other person/s performing similar functions, of the corporation, partnership or entity held criminally liable under this

Section shall in no case recover the administrative liability from the CIS or corporation, partnership or entity, except if their failure to observe and comply with the terms and conditions of the CIS plan arises solely from incidents of *force majeure* or acts of god.

SEC. 52. *Small Claims Clause.* –

- (a) The appropriate regulatory agency under this provision 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 appropriate regulatory agency, for each CIS Investor. The proceedings before the appropriate regulatory agency shall be summary in nature, and the decision of the appropriate regulatory agency shall be final and immediately executory, unless restrained by the Court of Appeals or the Supreme Court.
- (b) Claims filed with the appropriate regulatory agency shall not be subject to the payment of filing fees.
- (c) The authority to adjudicate granted to the appropriate regulatory agency under this Section shall be concurrent with that of the civil courts, but the filing of a complaint with the appropriate regulatory agency shall preclude the civil courts from taking cognizance of a suit involving the same subject matter.
- (d) The appropriate regulatory agency, 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 appropriate regulatory agency may prescribe.

SEC. 53. *Full Disclosure and Transparency.* – All CIS, whether contractual or juridical, shall disclose all relevant and important information, such as the investment plan, attendant risks, insurance coverage 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 from them.

TITLE VIII – MISCELLANEOUS PROVISIONS

SEC. 54. *Cross Border Transactions.* – Cross offering or selling by authorized CIS in the Philippines or in another economy shall be subject to the regulations provided in a mutual or multilateral agreement/s which the Philippines is a signatory thereof.

SEC. 55. *Cooperation and Coordination.* – The appropriate regulatory agencies, with the SEC as the lead agency, shall adopt all other appropriate measures as may be necessary or desirable for the effective regulation of the products and uniform implementation and enforcement of this Act, taking into full account declaration of policy contained in Section 2 of this Act.

The coordination shall cover the following concerns:

- (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.

SEC. 56. *Transitory Provisions.* – Any CIS which at the time of the effectivity of this Act has been established, authorized, licensed or registered by the appropriate regulatory agency and has continued to exist, shall be deemed to have been authorized, licensed and registered under the provisions of this Act 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 of this Act within which to comply with such new requirements.

For a period of three (3) years from the effectivity of the implementing rules and regulations of this Act, the SEC shall undertake capacity building measures to enable it to exercise the powers and perform the functions presently being exercised and performed by the other regulatory agencies with respect to CIS products presently under their jurisdiction. Upon expiration of this period, the SEC shall exercise the powers and perform the functions given to

the BSP and Insurance Commission for CIS products, and shall be considered the sole appropriate regulatory authority referred to in this Act.

SEC. 57. *Partial Use of Income.* – To carry out the purposes of this Act, the SEC is hereby authorized, in addition to its annual budget, to retain and utilize five (5%) of its annual income.

SEC. 58. *Congressional Oversight Committee.* – To oversee the implementation of this Act, there shall be created a Congressional Oversight Committee on CIS (COCCIS) to be composed of the Chairpersons of the Senate Committee on Economic Affairs, Banks, Financial Institutions and Currencies, and Trade, Commerce and Entrepreneurship, the Chairpersons of the House of Representatives Committees on Economic Affairs, Banks and Financial Intermediaries, and Trade and Industry and two (2) members each from the Senate and the House of Representatives who shall be designated by the Senate President and the Speaker of the House of Representatives: *Provided,* That one (1) of the two (2) Senators and one (1) of the two (2) House Members shall be nominated by the respective Minority Leaders of the Senate and the House of Representatives. The Congressional Oversight Committee shall be jointly chaired by the Chairpersons of the Senate and House Committees on Economic Affairs. The Vice Chairperson of the Congressional Oversight Committee shall be jointly held by the Chairpersons of the Senate Committee on Banks, Financial Institutions and Currencies and the House of Representatives' Committee on Banks and Financial Intermediaries.

The Secretariat of the COCCIS shall be drawn from the existing personnel of the Senate and House of Representatives committees comprising the Congressional Oversight Committee.

SEC. 59 *Implementing Rules and Regulations.* – Consistent with the declaration of policy contained in Section 2 herein and the other relevant provisions of this Act, the appropriate regulatory agencies, with the SEC as lead agency, shall coordinate and jointly establish uniform rules and regulations implementing for this Act to include 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, managing partners, or other similar positions of fund managers, trustees, insurance companies, juridical CIS or CIS distributor;
- (c) Revocation, refusal or suspension of licenses of the fund manager, juridical CIS, trustee, insurance company, custodian, CIS distributor and CIS solicitor;
- (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 of 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 investment 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 investment 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 (2) newspapers of general circulation.

SEC. 60. *Effect on Existing Laws and Contracts.* – The rights and remedies provided by this Act shall be in addition to any and all other rights and remedies that exist under existing laws.

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

SEC. 61. *Suppletory Effect.* – This Act shall apply suppletorily to any law that may be hereinafter enacted on collective investment schemes governing specialized products or investments.

SEC. 62. *Separability Clause.* – Any portion or provision of this Act 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.

SEC. 63. *Repealing Clause.* – All laws, executive orders and/or rules and regulations or parts thereof which are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 64. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,