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AMENDMENTS TO THE RULES AND REGULATIONS ON TRUST, OTHER FIDUCIARY BUSINESS AND INVESTMENT MANAGEMENT ACTIVITIES

BSP MEMORANDUM TO ALL BANKS AND OTHER FINANCIAL INTERMEDIARIES PERFORMING TRUST, OTHER FIDUCIARY BUSINESS, AND INVESTMENT MANAGEMENT ACTIVITIES, May 17, 1993

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The Monetary Board, in its Resolution No. 342, dated 23 April 1993, approved the following amendments to the Rules and Regulations on Trust, Other Fiduciary Business, and Investment Management Activities:

SECTION 1. Subsection 404.1 is hereby amended so that Item 1 thereof shall read as follows:

> "Subsec. 404.1 Pre-requisities for Engaging in Trust and Other Fiduciary Business. A trust corporation, bank or investment house, before it may engage in trust and other fiduciary business, shall comply with the following requirements.

1. The applicant has COMBINED CAPITAL ACCOUNTS of at least P250 million. A bank or an investment house previously authorized to perform and is actually engaged in trust and other fiduciary business whose COMBINED CAPITAL ACCOUNTS ARE LESS THAN P250 million shall BE GIVEN A THREE-YEAR PERIOD FROM (effectivity date of this Memorandum) TO MEET THE MINIMUM AMOUNT. In case an institution fails to comply with this requirement, the Monetary Board may require the institution to desist from accepting new trust and other fiduciary accounts and from renewing expiring trust and other fiduciary contracts;

FOR DOMESTIC FINANCIAL INSTITUTION, "COMBINED CAPITAL ACCOUNTS" FOR PURPOSES OF THIS SUBSECTION SHALL MEAN THE TOTAL OF THE UNIMPAIRED PAID-IN CAPITAL, EARNED SURPLUS AND UNDIVIDED PROFITS, NET OF DEFERRED INCOME TAX, AND SUCH UNBOOKED VALUATION RESERVES AND OTHER CAPITAL ADJUSTMENTS AS MAY BE REQUIRED BY THE CENTRAL BANK; AND EXCLUDING ANY APPRAISAL SURPLUS OR APPRECIATION CREDIT AS A RESULT OF APPRECIATION OR AN INCREASE IN BOOK VALUE OF ASSETS.

FOR BRANCHES OF FOREIGN BANKS, "COMBINED CAPITAL ACCOUNTS" SHALL MEAN THE TOTAL OF THE ASSIGNED CAPITAL, IF ANY, AND NET DUE TO HEAD OFFICE ACCOUNT WHICH SHALL INCLUDE ALL NET AMOUNTS DUE TO OTHER BRANCHES OUTSIDE THE PHILIPPINES ACCOUNT, NET OR DEFERRED INCOME TAX AND SUCH VALUATION RESERVES AND OTHER CAPITAL ADJUSTMENTS AS MAY BE REQUIRED BY THE CENTRAL BANK;"

SECTION 2. Subsection 406.1 is hereby amended so that Item 1 thereof shall include an additional fourth (4th) paragraph which shall read as follows:

> "Subsec. 406.1 Organization. An institution authorized to engage in trust and other fiduciary business pursuant to Subsection __404.1 shall include in its by-laws, provisions on the organization plan or structure of the department, office or unit which shall conduct such business. The by-laws shall also include provisions on the creation of a trust committee; the appointment of a trust officer and other subordinate officers; and a clear

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definition of their duties and responsibilities as well as their line and staff functional relationships within the organization which shall be in accordance with the following guidelines:

1. Trust and other fiduciary business of an institution shall be carried out through a trust department which shall be organizationally, operationally, administratively and functionally separate and distinct from the other departments and/or businesses of the institution.

An institution, which is also engaged in investment management activities, shall conduct the same only through its trust department and the responsibilities of the board of directors, trust committee and trust officer shall be construed to include the proper administration and management of investment management activities.

No institution shall undertake any of the trust and other fiduciary business and whenever applicable, investment management activities outside the direct control, authority and management of the trust department or through any department or office which is involved in the other businesses of the institution, such as the Treasury, Funds Management or any similar department, otherwise, any such business shall be considered part of the institution's real liabilities.

THE INSTITUTION PROPER AND THE TRUST DEPARTMENT MAY SHARE THE FOLLOWING ACTIVITIES: A) ELECTRONIC DATA PROCESSING; B) CREDIT INVESTIGATION; C) COLLATERAL APPRAISAL; AND D) MESSENGERIAL, JANITORIAL AND SECURITY SERVICES."

SECTION 3. Subsection 406.2 is hereby amended to read as follows:

"Subsec. 406.2 Composition of Trust Committee. The Trust Committee shall be composed of AT LEAST five (5) members INCLUDING the president, the trust officer and directors who are appointed by the board of directors on a regular rotation basis and who are not officers of the BANK/institution PROPER. No member of the audit committee, if the institution has any, shall be concurrently designated as a member of the trust committee; PROVIDED, THAT IN THE CASE OF A TRUST COMMITTEE COMPOSED OF MORE THAN FIVE (5) MEMBERS, THE APPOINTMENT THEREIN OF AN OPERATING OFFICER MAY BE ALLOWED ONLY IF THE REQUIRED BALANCE IN THE MEMBERSHIP OF AT LEAST THREE (3) MEMBERS OF THE BOARD FOR EVERY OPERATING OFFICER SHALL BE MAINTAINED; PROVIDED FURTHER, THAT THE PHILIPPINE BRANCH OF A FOREIGN BANK MAY APPOINT ITS RESIDENT MANAGER OR CHIEF EXECUTIVE OFFICER IN LIEU OF THE PRESIDENT WHILE THE POSITIONS ALLOTED FOR MEMBERS OF THE BOARD MAY BE FILLED UP BY THE AREA MANAGER AND/OR OFFICERS/REPRESENTATIVES FROM THE HEAD OFFICE WHO ARE NOT INVOLVED IN AUDIT-RELATED ACTIVITIES.

FOR PURPOSES OF THIS SUBSECTION, THE TERM OFFICER SHALL INCLUDE THE PRESIDENT, EXECUTIVE VICE PRESIDENT, VICE PRESIDENT, GENERAL MANAGER, CORPORATE SECRETARY, TREASURER AND OTHERS MENTIONED AS OFFICERS OF THE INSTITUTION, OR THOSE WHOSE DUTIES AS SUCH ARE DEFINED IN THE BY-LAWS, OR ARE GENERALLY KNOWN TO BE OFFICERS OF THE INSTITUTION (OR ANY OF ITS BRANCHES AND OFFICES OTHER THAN THE HEAD OFFICE) EITHER THROUGH ANNOUNCEMENT, REPRESENTATION, PUBLICATION OR ANY KIND OF COMMUNICATION MADE BY THE INSTITUTION.

The board of directors shall duly note in the minutes the committee members and designate the chairman who shall be one of the directors referred to in item "a" above."

SECTION 4. Subsection 409.7 is hereby amended so that Item b thereof shall make general reference to applicable SEC registration rules which were amended recently:

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"Subsec. 409.7 Other Applicable Regulations on Loan and Investments. The loans and investments of trust and other fiduciary accounts shall be subject to existing laws, rules and regulations for banks and investment houses that shall include but need not be limited to the following:

b. Provisions of Section 4(e) of the "New Rules on Registration of Short Term Commercial Papers", AS AMENDED and Section 7(f) of the "New Rules on the Long Term Commercial Papers", AS AMENDED issued by the Securities and Exchange Commission, referred to by Subsections 1289.6, 2289.6 and 42890 of the Manual;"

These amendments shall take effect immediately.

Adopted: 17 May 1993

(Sgd.) JOSE L. CUISIA, JR.
Governor

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