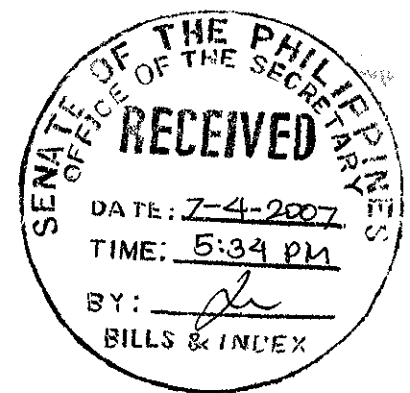


FOURTEENTH CONGRESS OF THE REPUBLIC  
OF THE PHILIPPINES  
*First Regular Session*



**SENATE**

S. No. 1181

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Introduced by SENATOR EDGARDO J. ANGARA

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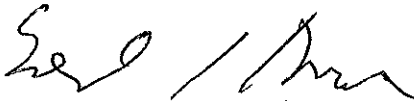
**EXPLANATORY NOTE**

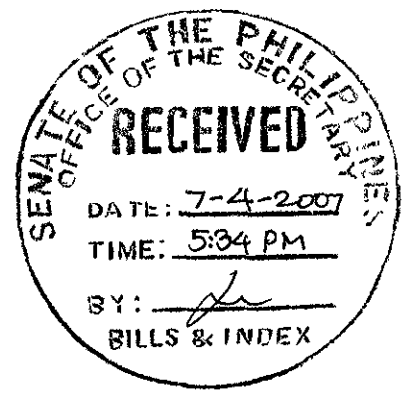
The worldwide trend in the regulation of collective investment schemes ("CIS") is to have single law to regulate all types of CIS. Countries such as the United Kingdom, Japan, Australia, Korea and Singapore have adopted this approach. In the Philippines however, investment companies (mutual funds) and unit investment trust funds ("UITFs"), the most common forms of CIS, are still governed by varying laws and regulations. As such, there are differences in regulatory requirements (regulatory arbitrage) and taxation among the different forms of CIS, even though the investment products they offer to the public are essentially the same. It is believed that this regulatory arbitrage gives rise to an uneven playing field which will prove unfavorable to the growth of the industry. More importantly, such regulatory arbitrage will result in uneven levels of protection to the investing public.

This bill proposes to establish a comprehensive regulatory framework for all forms of CIS that seeks to eliminate existing differences in regulatory treatment. This bill also seeks to balance the interests of the investors, by incorporating mechanisms that would safeguard the public interest, at the same time recognizing the interests of the other parties involved in the CIS industry, by giving them flexibility to expand their CIS businesses.

With the passage of this bill, it is anticipated that even middle to low income individuals will explore more investment opportunities in CIS, thereby gaining access to the capital markets. The economy, in turn, is expected to benefit greatly from an expanded capital base.

In view of the foregoing, the urgent passage of the proposed measure is requested.

  
EDGARDO J. ANGARA  
Senator



SENATE

S. No. 1181

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Introduced by SENATOR EDGARDO J. ANGARA

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**COLLECTIVE INVESTMENT SCHEMES LAW**

*Be it enacted by the Senate and 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".

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

- (a) Promote investor protection by applying high governance standards in the establishment, sale, management and operation of collective investment schemes in order to prevent abuse and protect the interests of the investing public, including but not limited to, the setting of standards for the eligibility of persons who establish, sell, manage or operate collective investment schemes; the prevention, disclosure and elimination of all conflicts of interest which may prejudice the investing public; and the provision of independent third party supervision over the operations of collective investment schemes;
- (b) Promote the growth of pooled investments and the development of the capital market by providing a favorable framework for collective investment schemes to facilitate the flow of investment capital from sources within the country and abroad;
- (c) Encourage the participation in the collective investment scheme industry of the best qualified fund managers and investment advisers regardless of origin;
- (d) Broaden participation by Filipinos in ownership of securities and

1 other assets allowed in this Law so that more are able to share in  
2 economic growth; and

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

7  
8 **SECTION 3. Purpose** – The purpose of this Law is to establish a  
9 comprehensive regulatory framework to enable collective investment schemes  
10 and all the participants therein to play a key role in the development of the  
11 capital market in a manner consistent with the policy declared in Section 2  
12 hereof.

13  
14 **SECTION 4. Coverage** – This Law shall apply to the establishment,  
15 sale, management and operation of all collective investment schemes in the  
16 Philippines. i

17  
18 **SECTION 5. Definitions** – When used in this Law, unless the context  
19 otherwise requires:

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

- 21 1. any person directly or indirectly owning, controlling or holding  
22 with power to vote, ten per centum (10%) or more of the  
23 outstanding voting securities of such other person;
- 24 2. any person ten per centum (10%) or more of whose outstanding  
25 voting securities are directly or indirectly owned, controlled, or  
26 held with power to vote, by such other person;
- 27 3. any person directly or indirectly controlling, controlled by, or  
28 under common control with, such other person;
- 29 4. any officer, director, partner, or employee of such other person;  
30 and
- 31 5. if such other person is a corporate CIS, any investment  
32 adviser, fund manager, CIS distributor, CIS solicitor and  
33 custodian thereof. ii

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

- 35 1. the *Bangko Sentral ng Pilipinas*, in the case of banks, trust  
36 entities and other financial institutions supervised by the

1                    *Bangko Sentral ng Pilipinas;*

2                    2. the Insurance Commission, in the case of insurance companies;  
3                    and

4                    3. the Securities and Exchange Commission, in the case of  
5                    investment companies or other persons not under the  
6                    regulation of the *Bangko Sentral ng Pilipinas* or the Insurance  
7                    Commission.

8                    (c) **"Bank"** means an entity engaged in the lending of funds obtained  
9                    from the public through the receipt of deposits of any kind and duly  
10                    authorized to operate as a bank by the Monetary Board of the *Bangko*  
11                    *Sentral ng Pilipinas*.<sup>iii</sup>

12                    (d) **"Broker"** means any person engaged in the business of buying and  
13                    selling securities for the account of others, but does not include a bank  
14                    or any person solely by reason of the fact that such person is a CIS or a  
15                    distributor of CIS securities. <sup>iv</sup>

16                    (e) **"CIS"** means a collective investment scheme

17                    (f) **"CIS distributor"** means any stock corporation licensed by the  
18                    appropriate regulatory agency to engage in the selling of CIS  
19                    securities.

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

22                    (h) **"CIS plan"** means the plan for the CIS registered with the  
23                    Commission in accordance with Sections 24 and 27 hereof.

24                    (i) **"CIS securities"** means, units of participation in a contractual CIS  
25                    or shares of stock in a corporate CIS.

26                    (j) **"CIS solicitor"** means a natural person who is duly licensed as  
27                    such or a broker who is duly accredited by the appropriate regulatory  
28                    agency to sell CIS securities.<sup>v</sup>

29                    (k) **"Collective investment scheme"** shall have the meaning given in  
30                    Section 6 hereof.

31                    (l) **"Commission"** means the Securities and Exchange Commission.

32                    (m) **"Common stock"** of a corporation means a class of shares with  
33                    general voting rights.<sup>vi</sup>

34                    (n) **"Company"** means a corporation, partnership, trust, or an  
35                    association duly registered with the Commission and lawfully  
36                    transacting business in the Philippines.

1 (o) ***“Contractual CIS”*** means a CIS:

- 2 1. organized pursuant to a contract, such as a trust indenture, or  
3 as part of an insurance contract;
- 4 2. engaged, or holds itself out as being engaged, or proposes to  
5 engage, in the business of investing, reinvesting, and/or trading  
6 in securities or other investment assets allowed under this Law;  
7 and
- 8 3. issues units of participation each of which represents an  
9 undivided interest in a pool of investment assets.

10 (p) ***“Control”*** is presumed to exist when the parent owns, directly or  
11 indirectly through subsidiaries, more than one half of the voting power  
12 of an entity unless, in exceptional circumstances, it can be clearly  
13 demonstrated that such ownership does not constitute control. Control  
14 also exists when the parent owns half or less of the voting power of an  
15 entity when there is vii:

- 16 1. power over more than one half of the voting rights by virtue of  
17 an agreement with other investors;
- 18 2. power to govern the financial and operating policies of an entity  
19 under a statute or an agreement;
- 20 3. power to appoint or remove the majority of the members of the  
21 board of directors or equivalent governing body and control of  
22 the entity is by that board or body;
- 23 4. power to cast the majority of votes at meetings of the board of  
24 directors or equivalent governing body and control of the entity  
25 is by that board or body; or
- 26 5. any other arrangement similar to any of the above.

27 (q) ***“Convicted”*** includes being the subject of a verdict, judgment, or  
28 plea of guilty, if such verdict, judgment or plea has not been reversed,  
29 set aside, or withdrawn, whether or not sentence has been  
30 imposed.viii

31 (r) ***“Corporate CIS”*** means a CIS:

- 32 1. organized as a stock corporation;
- 33 2. engaged, or holds itself out as being engaged, or proposes to  
34 engage, in the business of investing, reinvesting, and/or trading  
35 in securities or other investment assets allowed under this  
36 Law; and

1           3. issues common stock each of which represents an undivided  
2           interest in a pool of investment assets.

3       (s) **"Corporation Code"** means the Corporation Code of the  
4       Philippines, B.P. 68, enacted on May 1, 1980, as may be amended  
5       from time to time, or any law subsequently enacted in replacement or  
6       substitution thereof.

7       (t) **"Custodian"** means an entity duly authorized by the Monetary  
8       Board to engage in the business of safekeeping investment assets,  
9       which is appointed and acts as the custodian of the investment assets  
10      of a CIS pursuant to this Law and the relevant regulations of the  
11      Monetary Board and/or the Commission.

12      (u) **"Dealer"** means any person who buys and sells securities for his  
13      own account, in the ordinary course of business whether through a  
14      broker or otherwise. The term excludes banks, insurance companies,  
15      or CIS, or any person insofar as he is engaged in investing,  
16      reinvesting, or trading in securities, or in owning or holding  
17      securities, for his own account, either individually or in some fiduciary  
18      capacity, but not as a part of regular business.

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

21      (w) **"Exchange"** means an organized marketplace or facility that  
22      brings together buyers and sellers and executes trades of securities  
23      and/or commodities. xi

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

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

33      (z) **"Implementing Rules and Regulations" or "IRR"** means the  
34      uniform rules and regulations jointly formulated and issued by the  
35      appropriate regulatory agencies to implement the provisions of this  
36      Law, in accordance with Section 62 hereof.

- 1 (aa) ***“Independent auditor”*** means the independent certified public  
2 accountant referred to in Section 18 hereof.
- 3 (bb) ***“Independent director”*** refers to a person other than an officer or  
4 employee of the corporation, its affiliates, or any other individual  
5 having any relationship with the corporation which would materially  
6 interfere with the exercise of independent judgment in carrying out  
7 the responsibilities of a director. An independent director shall  
8 possess all the qualifications and none of the disqualifications for  
9 independent directors as defined in the Securities Regulation Code  
10 and its implementing rules.
- 11 (cc) ***“Independent oversight body”*** refers to the body or entity  
12 referred to in Section 50(b)(2) hereof.
- 13 (dd) ***“Insurance Code of the Philippines”*** means Presidential Decree  
14 No. 1460 otherwise known as ‘The Insurance Code of 1978’, as  
15 amended, or any law subsequently enacted in replacement or  
16 substitution thereof.
- 17 (ee) ***“Insurance company”*** means a company engaged in the insurance  
18 or reinsurance business and duly issued by the Insurance Commission  
19 with a certificate of authority to transact such business, as specifically  
20 defined under the Insurance Code of the Philippines. "xiii
- 21 (ff) ***“Investment adviser”*** means any person who regularly advises or  
22 recommends investment decisions with regard to the securities or  
23 other portfolio of a CIS pursuant to an advisory contract with such  
24 CIS through the fund manager or trustee.xiv
- 25 (gg) ***“Investment assets”*** means the securities and other assets in  
26 which the funds of a CIS may be invested in accordance with Section  
27 37 hereof.
- 28 (hh) ***“Investment company”*** means the stock corporation organized  
29 pursuant to a corporate CIS, which is engaged, or holds itself out as  
30 being engaged, or proposes to engage, in the business of investing,  
31 reinvesting, and/or trading in securities allowed under this Law.
- 32 (ii) ***“Investment house”*** means any enterprise which engages in the  
33 underwriting of securities of other companies, as defined in Section 2  
34 of the Investment Houses Law, Presidential Decree No. 129, as may  
35 be amended from time to time, and is registered pursuant to said law.
- 36

- 1 (jj) ***"Net asset value"*** means the value of all assets less all liabilities of  
2 a CIS as determined in accordance with generally accepted accounting  
3 principles and the provisions of this Law and its implementing rules  
4 and regulations. xv
- 5 (kk) ***"Person"*** means a natural or juridical person as defined in the Civil  
6 Code of the Philippines.xvi
- 7 (ll) ***"Registrar"*** means the fund manager or trustee or such other person  
8 or persons as may from time to time be appointed by the trustee, or  
9 the fund manager with the prior approval of the trustee, to perform  
10 all or any of the duties and functions of the registrar under Section  
11 24 hereof.
- 12 (mm) ***"Sale", "sell" "offer to sell" or "offer for sale"*** means every  
13 contract of sale or disposition of, attempt or offer to dispose of, or  
14 solicitation of an offer to buy a security or property or interest  
15 therein, for value. Any such security, property or interest therein,  
16 given or delivered with, or as a bonus on account of, any purchase of  
17 securities or any other thing, shall be conclusively presumed to  
18 constitute a part of the subject of such purchase and to have been  
19 sold for value. xvii
- 20 (nn) ***"Security"*** means any instrument or product defined as such by the  
21 Securities Regulation Code and its implementing rules.
- 22 (oo) ***"Securities Regulation Code"*** means Republic Act No. 8799,  
23 enacted on July 17, 2002, as may be amended from time to time. xviii
- 24 (pp) ***"Separate account fund"***<sup>xix</sup> – means the segregated portfolio of  
25 investments established, maintained and invested in by an insurance  
26 company for its variable life insurance contracts and accounted for  
27 separately and apart from its other investments and accounts,  
28 pursuant to the Insurance Code of 1978, as amended (PD 1460), under  
29 which the income, gains and losses (whether or not realized) from, and  
30 expenses incurred on the acquisition, disposal and management of  
31 assets allocated to such account, are credited to or charged against  
32 such account without regard to the other income, gains, losses and  
33 other expenses of the insurance company. The Separate Account Fund  
34 shall be deemed a contractual CIS, and the units of participation  
35 therein shall be deemed as CIS securities, subject to this Law. The  
36 assets held in any such separate account shall be applied exclusively



1 for the benefit of the owners or beneficiaries of the variable life  
2 insurance contracts.xx

3 (qq) *“Shareholder”* means a stockholder of a corporate CIS.

4 (rr) *“Trust institution”* – means any bank, investment house or a  
5 stock corporation duly authorized by the Monetary Board to engage in  
6 trust, investment management and fiduciary business.

7 (ss) *“Trustee”* means a trust institution appointed and acting as the  
8 trustee of a contractual CIS pursuant to this Law.

9 (tt) *“Unit Holder”* – means an investor in a contractual CIS.

10 (uu) *“Value”* means the market value or fair value of securities as may  
11 be determined in accordance with such rules and regulations as the  
12 Commission may prescribe.

## 13 14 **TITLE II - COLLECTIVE INVESTMENT SCHEMES**

### 15 16 **Chapter 1 – Nature and Structure of Collective Investment Schemes**

#### 17 18 **SECTION 6. *Collective Investment Schemes* –**

19 (a) A Collective Investment Scheme (CIS) is any arrangement  
20 whereby funds are solicited from the investing public for the  
21 purpose of investing, re-investing and/or trading in securities or  
22 other assets allowed under this Law. All CIS shall be covered by  
23 and regulated pursuant to this Law. A CIS may have a  
24 corporate structure, such as an investment company, or a  
25 contractual structure, such as a unit investment trust fund or  
26 similar scheme held by a trust institution or a separate account  
27 fund established pursuant to a variable unit linked life  
28 insurance policy issued by an insurance company. All CIS shall  
29 be governed by and shall comply with the requirements of this  
30 Law.

31 (b) None of the following arrangements shall be deemed a collective  
32 investment scheme subject to regulation under this Law:

- 33 1. Any arrangement whereby securities are issued to not more  
34 than nineteen (19)xxi beneficial owners within any twelve-  
35 month period, and there is no current offering or intention to  
36 make a public offering of such securities. For purposes of this

1 paragraph, beneficial ownership by a company shall be  
2 deemed to be beneficial ownership by one person; except that,  
3 if such company owns twenty-five per centum (25%) or more  
4 of the outstanding voting securities of the issuer, the  
5 beneficial ownership shall be deemed to be that of the  
6 holders of such company's outstanding securities;

7 2. Any insurance company in the conduct of its ordinary  
8 business; provided, however, that a separate account fund  
9 established by an insurance company shall be deemed a  
10 contractual CIS as defined under this Law.

11 3. Any employees' stock, bonus, pension, retirement or profit  
12 sharing plan or fund, engaged in the conduct of their  
13 ordinary business;

14 4. Any fund which is employed by the trust entity solely as an  
15 aid to the administration of existing trust or fiduciary  
16 accounts covered by agreements separate from those in  
17 connection with the CIS; provided that interests in such fund  
18 are not advertised or offered for sale to the general public.

19 5. Any arrangement whereby an investment house, dealer, or  
20 broker, registered as such with the Commission, primarily  
21 engaged in the business of underwriting securities issued by  
22 other persons, purchases and sells securities for its own  
23 account, or effects transactions in securities for the account  
24 of others;

25 6. Any arrangement whereby a company primarily engages in  
26 the business of factoring or mortgage banking, by purchasing  
27 or otherwise acquiring accounts receivable and similar  
28 obligations or making loans in respect of goods or services of  
29 a business, or by purchasing or otherwise acquiring  
30 mortgages and other liens on or interests in real estate;  
31 provided that such arrangement does not include the  
32 business of issuing redeemable securities;

33 7. Any arrangement organized and operated by an entity  
34 exclusively for religious, educational, benevolent, fraternal,  
35 charitable, or reformatory purposes, where no part of the net  
36 earnings from such arrangement inures to the benefit of any

1 shareholder or member of such entity;

2 8. Any arrangement whereby an issuer is primarily engaged in  
3 investing in securities issued by a majority-owned subsidiary  
4 or subsidiaries of such issuer, where each such subsidiary is  
5 not a CIS; and

6 9. Any other arrangement that, pursuant to rule or order issued  
7 by the Commission, is determined not to be a CIS, or is  
8 excluded from the definition thereof as not necessary in the  
9 public interest and for the protection of investors.

10  
11 (c) A CIS may either be open-end or closed-end, defined as follows:

12 1. "Open-end CIS" means a CIS where redeemable securities  
13 are offered or are outstanding such as but not limited to  
14 mutual funds; and

15 2. "Closed-end CIS" means a CIS where the securities offered or  
16 outstanding are not redeemable securities.

17  
18 **Chapter 2 – Parties Involved In Collective Investment Schemes**

19  
20 **SECTION 7. *Fund manager***– No company shall act as a fund  
21 manager unless duly licensed by the appropriate regulatory agency, and no  
22 company shall be licensed as a fund manager for purposes of this Law,  
23 unless:

24 (a) It is organized as a stock corporation;

25 (b) It has a minimum paid-up capital of not less than Fifty Million  
26 Pesos (P50,000,000.00); Provided, however, that the appropriate  
27 regulatory agency may prescribe a higher minimum paid-up capital  
28 taking into consideration, among other factors:

29 1. the risk-based principles on capital adequacy based on  
30 internationally accepted standards; and

31 2. the number of CIS managed;

32 (c) The majority of the members of the Board of Directors of the fund  
33 manager shall be independent directors, provided that this  
34 requirement shall not apply if the fund manager is the trust  
35 department of a bank or an insurance company; and

36 (d) It has complied with such other requirements as may be prescribed

1 by the Commission or the appropriate regulatory agency.

2  
3 In licensing a fund manager, the appropriate regulatory agency  
4 shall ensure that the requirements under this Law and the IRR are  
5 complied with.

6  
7 **SECTION 8. *Duties and Responsibilities of the Fund Manager* -**

8 The fund manager shall have the following duties and responsibilities:

- 9 (a) Manage the investment assets of the CIS and perform its functions  
10 in accordance with the CIS plan, the provisions of this Law and its  
11 implementing rules and regulations for the exclusive interest of the  
12 CIS investors;
- 13 (b) Provide copies of financial and other records of CIS investments to  
14 the CIS investors, trustee, corporate CIS and auditor;
- 15 (c) Ensure that the fund and the CIS securities are accurately valued  
16 or priced;
- 17 (d) Ensure that all payments out of CIS funds, assets and properties  
18 are made in accordance with the CIS plan, this Law and its  
19 implementing rules and regulations;
- 20 (e) Comply with the instructions of the corporate CIS or the trustee to  
21 remedy a breach of the provisions or covenants of the CIS plan, its  
22 contract with the corporate CIS or trustee, the provisions of this  
23 Law or its implementing rules and regulations;
- 24 (f) Furnish the corporate CIS or the trustee with all contracts and  
25 agreements relating to the operation and management of the CIS;
- 26 (g) Report to the corporate CIS or the trustee and the CIS investors  
27 results of the CIS operations;
- 28 (h) Call for and attend annual or special meetings of the unit holders of  
29 a contractual CIS, or attend meetings of stockholders of a corporate  
30 CIS;
- 31 (i) Monitor the activities of the CIS distributors in the sale of the CIS  
32 securities;
- 33 (j) Facilitate the redemption of CIS securities;
- 34 (k) Maintain proper accounting records and other records to:
- 35 1. enable a complete and accurate review of the CIS funds, assets  
36 and properties; and

1           2. ensure that the CIS funds, assets and properties are managed  
2           and administered in accordance with the CIS plan, its contract  
3           with the corporate CIS or trustee, this Law and its  
4           implementing rules and regulations;

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

8           (m) Report to the Commission, as soon as practicable, any material  
9           development or breach of the provisions or covenants of the CIS  
10          plan, the provisions of this Law or its implementing rules and  
11          regulations, that:

12               1. relates to the establishment, distribution, management,  
13               operation or dissolution of the CIS, and

14               2. has had or is likely to have a material adverse effect on the  
15               interests of the CIS investors; and

16          (n) Such other duties and responsibilities that the Commission may  
17          prescribe.

18  
19          **SECTION 9. *Prohibited Acts of the Fund Manager.*** - The fund  
20          manager shall not:

21          (a) Purchase securities and investment assets for its own account;

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

27          (c) Engage in a business other than the business of managing,  
28          administering, marketing and distributing CIS funds and  
29          securities, provided that this prohibition shall not apply if the fund  
30          manager is the trust department of a bank or an insurance  
31          company;

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

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

5 (f) Engage in such other acts as may be prohibited by rule or order of  
6 the Commission  
7

8 **SECTION 10. *Fund Management Agreement*** - (a) The agreement  
9 between the fund manager and the trustee or the corporate CIS shall contain,  
10 among others, provisions pertaining to:

- 11 1. Extent of services to be rendered;
- 12 2. Any restrictions or prohibitions regarding the performance of  
13 the functions of the fund manager;
- 14 3. All compensation to be paid thereunder which shall be clearly  
15 described in a transparent manner, and which shall be in  
16 accordance with such requirements and limitations as the IRR  
17 may prescribe;
- 18 4. The term of the engagement and the manner of termination  
19 thereof, which shall be in accordance with such requirements or  
20 limitations as the IRR may prescribe;
- 21 5. Reporting requirements to the trustee, corporate CIS, CIS  
22 investors and the appropriate regulatory agencies; and
- 23 6. Such other terms or conditions as the IRR may prescribe.

24 (b) In all cases where the trustee or insurance company functions as a  
25 fund manager, the foregoing provisions which should otherwise be contained  
26 in the fund management agreement with the fund manager shall be  
27 contained in the CIS plan.  
28

29 **SECTION 11. *The Trustee*** – Only a trust institution shall act as a  
30 trustee of a CIS. In authorizing a trust institution to engage in CIS activities,  
31 the Monetary Board shall ensure that all relevant requirements under this  
32 Law or the IRR shall be complied with. The following, in addition to those  
33 prescribed under existing laws and regulations, shall be the duties and  
34 responsibilities of a trustee of a CIS:

- 35 (a) Monitor the activities of the CIS distributors in the sale and/or  
36 redemption of the CIS units and ensure that the provisions of any

1 marketing document relating to the sale or offer for sale of the CIS  
2 securities do not contain any matter which is inconsistent with the  
3 provisions of the CIS plan, this Law and its implementing rules and  
4 regulations;

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

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

11 (d) Appoint an independent third-party custodian;

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

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

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

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

24 1. relates to the establishment, operation or dissolution of the  
25 CIS, and

26 2. has had or is likely to have a material adverse effect on the  
27 interests of the CIS investors;

28 (i) Call for annual or special meetings of the CIS investors in the event  
29 the fund manager fails or refuses to do so;

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

33 (k) Such other duties and responsibilities that the Commission may  
34 prescribe.

35

1           **SECTION 12. Corporate CIS** – (a) No company shall act as a  
2 corporate CIS unless duly licensed by the Commission, and no company shall  
3 be licensed as a corporate CIS for purposes of this Law, unless it shall:

- 4           1.     Be organized in the form of a stock corporation;
- 5           2.     Issue shares of stock consisting solely of common stock;
- 6           3.     Provide in its articles of incorporation that shareholders shall  
7                 not be entitled to pre-emptive rights;
- 8           4.     Have, at the time of registration, an initial subscribed and paid-  
9                 up capital of at least fifty million pesos (P50,000,000.00)  
10                provided, however, that the Commission may prescribe a higher  
11                paid-up capital. The Commission may prescribe a lower  
12                minimum paid-up capital for any subsequent corporate CIS that  
13                is established and managed by the same fund manager;
- 14          5.     Maintain unimpaired its initial paid-up capital for a period of  
15                twelve (12) months following its registration with the  
16                Commission as a corporate CIS, or such other period as the  
17                Commission may prescribe; and
- 18          6.     Maintain at all times, if an open-end company, a reserve in  
19                liquid or semi-liquid assets, equal to ten per centum (10%) of the  
20                total assets of such company, or such other percentage and in  
21                such form as the Commission may prescribe.

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

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

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

33          (e) The majority of the members of the board of directors of a corporate  
34                CIS shall be independent directors.

35



1           **SECTION 13. *Custodian*** – Only entities duly licensed by the  
2 Monetary Board may act as custodian of assets of a CIS. Unless otherwise  
3 authorized by the appropriate regulatory authority taking into account the  
4 interest of the investing public, all CIS must appoint an independent third  
5 party custodian which shall have custody of the investment assets of the CIS.  
6 The following, in addition to those prescribed under existing laws and  
7 regulations, shall be the duties and responsibilities of a custodian:

8           (a) Hold the property of a CIS in accordance with its agreement with  
9           the trustee or the corporate CIS; and

10          (b) Such other duties and responsibilities that the Monetary Board  
11          may prescribe, which shall include:

12           1. Earmarking, segregation and hypothecation of the investment  
13           assets of the CIS; and

14           2. Provisions for periodic or other inspections by employees and  
15           agents of the Monetary Board.

16  
17           **SECTION 14. *Appointment of Custodian*** – The agreement between  
18 the custodian and the corporate CIS or the trustee of a contractual CIS shall  
19 contain, among others, provisions pertaining to:

20           1.     Extent of services to be rendered by the custodian;

21           2.     Fees, remuneration and other expenses of the custodian;

22           3.     Any restrictions or prohibitions regarding the performance by  
23           the custodian of its functions; and

24           4.     Reporting requirements of the custodian.

25  
26           **SECTION 15. *CIS Distributor*** – (a) No entity shall be licensed as a  
27 distributor of CIS securities, unless:

28           1.     It is organized as a stock corporation;

29           2.     It has a minimum paid-up capital of not less than ten million  
30           pesos (P10,000,000.00), or such higher capitalization to be  
31           prescribed by the Commission taking into consideration (i) the  
32           risk-based principles on capital adequacy based on  
33           internationally accepted standards, and (ii) the number of CIS  
34           distributed; and

35           3.     It has complied with such other requirements as may be  
36           prescribed by the Commission.

1 (b) For purposes of this Law, the following juridical persons may be  
2 licensed as a CIS distributor by the appropriate regulatory agency, provided  
3 that the requirements under this section and the IRR are complied with:

- 4 1. Any fund manager;
- 5 2. Any investment house;
- 6 3. Any bank, financial institution or trust institution under the  
7 supervision of the Bangko Sentral ng Pilipinas;
- 8 4. Any insurance company under the supervision of the Insurance  
9 Commission; and
- 10 5. Other persons as may be hereinafter allowed by the Commission.

11  
12 (c) A corporate CIS is not permitted to act as a distributor of securities  
13 of which it is the issuer, unless it complies with such rules and orders as the  
14 Commission may prescribe as necessary or appropriate in the public interest  
15 or for the protection of investors.

16  
17 (d) Whenever a fund manager and/or its affiliate shall act as a CIS  
18 distributor of the CIS of which it is the fund manager, and whenever a  
19 trustee and/or its affiliate shall act as a CIS distributor of the CIS of which it  
20 is the trustee, the prior written consent of the Commission shall be secured.

21  
22 (e) The CIS distributor shall be principally responsible for marketing,  
23 distributing and selling CIS securities. It shall perform such other duties and  
24 responsibilities as the IRR may prescribe.

25  
26 **SECTION 16. *Marketing and Distribution Agreement*** – (a) The  
27 agreement between the CIS distributor and the corporate CIS or the trustee  
28 of a contractual CIS shall contain, among others, provisions pertaining to:

- 29 1. *Extent of services to be rendered by the CIS distributor;*
- 30 2. *Fees, remuneration and other expenses of the CIS distributor;*
- 31 3. *Any restrictions or prohibitions regarding the performance of*  
32 *the functions by the CIS distributor;*
- 33 4. *Undertaking to employ or appoint only CIS solicitors duly*  
34 *licensed by the Commission; and*
- 35 5. *Reporting requirements.*

36

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

5  
6 **SECTION 17. *CIS Solicitor*** – No person shall be allowed to solicit,  
7 sell or offer to sell CIS securities unless duly licensed by the appropriate  
8 regulatory agency after compliance with such requirements and standards for  
9 eligibility as may prescribed in the IRR.

10  
11 **SECTION 18. *Accountants and Auditors***.- (a) The financial  
12 statements of every corporate CIS, fund manager and contractual CIS shall  
13 be audited and certified by an independent certified public accountant duly  
14 accredited by the Commission.

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

- 18 1. Report to the fund manager any irregularity or undesirable  
19 practice in the operation of the CIS which has come to its  
20 knowledge. Any inaction by the fund manager, irregularity or  
21 undesirable practice shall be reported by the independent  
22 auditor to the Commission;
- 23 2. Report to the Commission non-compliance by the fund manager  
24 with its contractual and regulatory requirements; and
- 25 3. Report to the Commission whether the internal control and  
26 audit structures in the operation of the CIS are at an acceptable  
27 level.

28  
29 **SECTION 19. *Common Duties and Responsibilities of Parties*** –  
30 In addition to their specific duties and responsibilities, each of the corporate  
31 CIS, fund manager, trustee, CIS distributor, CIS solicitor, and the CIS  
32 custodian shall have the following common duties and responsibilities:

- 33 (a) Carry on and manage its business and the CIS in a proper,  
34 diligent and efficient manner;
- 35 (b) Observe honesty, due care and diligence, utmost good faith and  
36 high standards of integrity;

- 1 (c) Act in the best interests of the CIS investors;
- 2 (d) Establish systems, procedures and processes to be observed by  
3 its officers and employees to ensure compliance with this Law  
4 and its implementing rules and regulations and to protect the  
5 interests of the CIS investors;
- 6 (e) Take responsibility for all actions and omissions of any third  
7 party to whom it delegates any of its duties and responsibilities,  
8 except for any resulting damage or liability arising from force  
9 majeure or other similar occurrence beyond the control of such  
10 third party;
- 11 (f) Ensure that any person appointed or employed by it is of good  
12 repute, having relevant expertise and experience to act in the  
13 capacity so appointed or employed;
- 14 (g) Refrain from using its position to gain, directly or indirectly, an  
15 advantage for itself or for any other person or to cause detriment  
16 to the interests of CIS investors;
- 17 (h) Avoid and eliminate conflicts of interest in the performance of  
18 their functions, which may be identified by the appropriate  
19 regulatory agency as prejudicial to the interests of the investing  
20 public;
- 21 (i) Disclose all conflicts of interest in the performance of their  
22 functions; and
- 23 (j) Comply with orders, rules and regulations as may be prescribed  
24 by the Commission or other appropriate regulatory agency.

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

30

31 **SECTION 20. *Revocation, Refusal or Suspension of License of***  
32 ***the Fund Manager, Corporate CIS, Trustee, Insurance Company,***  
33 ***Custodian, CIS Distributor and CIS Solicitor.*** –The licensing or  
34 authorization of a fund manager, corporate CIS, trustee, insurance company,  
35 custodian, CIS distributor or CIS solicitor to engage in CIS business under  
36 this Law may be refused, or any license granted thereunder may be revoked,

1 suspended, or limitations placed thereon by the appropriate regulatory  
2 agency if, after due notice and hearing, the appropriate regulatory agency  
3 which granted the license determines that the applicant or licensee:

- 4 (a) Has willfully violated any provision of this Law, any rule,  
5 regulation or order made hereunder, or any other law administered  
6 by the Commission or the appropriate regulatory agency, or has  
7 failed to supervise, with a view to preventing such violation,  
8 another person who commits such violation;
- 9 (b) Has willfully made or caused to be made a materially false or  
10 misleading statement in any application for license or report filed  
11 with the Commission or the appropriate regulatory agency, or has  
12 willfully omitted to state any material fact that is required to be  
13 stated therein or necessary to make the statement therein not  
14 misleading;
- 15 (c) Has failed to satisfy the qualifications or requirements for licensing  
16 prescribed under this Law and the IRR;
- 17 (d) Any of its directors or officers has been convicted by a competent  
18 body of an offense involving fraud, embezzlement, counterfeiting,  
19 theft, estafa, misappropriation, forgery, bribery, false oath, perjury,  
20 or of a violation of securities, commodities, banking, real estate or  
21 insurance laws;
- 22 (e) Is enjoined or restrained by a competent body from engaging in  
23 securities, commodities, banking, real estate or insurance activities;
- 24 (f) Is subject to an order of a competent body refusing, revoking or  
25 suspending any license or other permit under this Law, the IRR,  
26 any other law or regulation administered by the Commission, the  
27 Bangko Sentral ng Pilipinas, the Insurance Commission, or any  
28 other governmental authority;
- 29 (g) Has been found by a competent body to have violated any  
30 provisions of securities, commodities, banking, real estate or  
31 insurance laws, or has aided, abetted, counseled, commanded,  
32 induced or procured such violation; or
- 33 (h) Has been judicially declared insolvent.
- 34

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

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

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

- 18           (a) any person convicted of any crime involving any security or  
19 financial product,  
20           (b) any person convicted of an offense involving fraud or embezzlement,  
21 theft, estafa or other fraudulent acts or transactions;  
22           (c) any person who, by reason of any misconduct, is enjoined by order,  
23 judgment, or decree by any court, quasi-judicial body or  
24 administrative agency of competent jurisdiction from acting as a  
25 director, officer, employee, consultant, or agent occupying any  
26 fiduciary position.  
27           (d) any person found by the appropriate regulatory agency to have  
28 violated, or aided, abetted, counseled, commanded, induced, or  
29 procured the violation of this Law, the General Banking Law, the  
30 Insurance Code, the Securities Regulation Code, or any related laws  
31 and any rules, regulations or orders thereunder;  
32           (e) any person judicially declared to be insolvent, or incapacitated to  
33 contract; and  
34           (f) any person found guilty by a foreign court, regulatory authority or  
35 government agency of the acts or violations similar to any of the  
36 acts or misconduct enumerated in the foregoing paragraphs.

1 A conviction in the first instance shall be considered sufficient ground  
2 for disqualification.

3  
4 **Chapter 3 - Provisions applicable to Contractual CIS**

5  
6 **SECTION 22. *Establishment of a Contractual CIS.***

- 7 (a) Units of participation in a contractual CIS shall not be sold or  
8 offered for sale or distribution within the Philippines without a  
9 CIS plan duly filed and approved by the Commission.
- 10 (b) Any fund manager may establish, administer and manage one  
11 or more contractual CIS. Such fund manager shall enter into a  
12 fund management contract with a trustee or insurance company  
13 that is not an affiliate of the fund manager; Provided, that no  
14 director and/or officer of the fund manager shall at the same  
15 time serve as director and/or officer of the trustee or insurance  
16 company;
- 17 (c) In a contractual CIS, the trust agreement shall be between the  
18 trustee and the CIS investors, and the insurance contract shall  
19 be between the insurance company and policy holders. The  
20 trust agreement or the insurance contract, as the case may be,  
21 shall define the rights and obligations of the parties.
- 22 (d) The assets of each contractual CIS shall be deemed separate and  
23 independent of the assets of the fund manager, trustee and/or  
24 insurance company, and shall not be available to the creditors of  
25 such fund manager, trustee and/or insurance company in the  
26 event of attachment, garnishment, execution, bankruptcy,  
27 insolvency or rehabilitation or any form of action or claim  
28 against the fund manager, trustee and/or insurance company.
- 29 (e) In case the functions of the fund manager, on the one hand, and  
30 the trustee or insurance company, on the other hand, are  
31 performed by the same or affiliated entities, there must be an  
32 independent oversight body which shall be created pursuant to,  
33 and shall perform the oversight duties and responsibilities  
34 enumerated in Section 50 (b)(2) hereof.

1           **SECTION 23. Register of CIS Investors** – An up-to-date register of  
2 all CIS investors shall be kept and maintained by or under the control of a  
3 registrar, which may be kept and maintained either in written form or by  
4 other means which are capable of being reproduced in written form,  
5 including, but not limited to, computer records, microfilm, microfiche or  
6 electronic recording, as the fund manager shall from time to time determine.  
7 There shall be entered into the register such relevant information as may be  
8 prescribed by the fund manager or the trustee.

9  
10           **SECTION 24. The Contractual CIS Plan.** A Contractual CIS shall  
11 be established upon the registration of its CIS plan with the Commission.  
12 The CIS plan shall contain the following matters:

- 13           (a) Title of the CIS plan. This shall correspond to the product or brand  
14           name by which the CIS is proposed to be known and made available  
15           to its investors;
- 16           (b) Names of the fund manager and the trustee;
- 17           (c) In cases where the trustee or its affiliate, or insurance company or  
18           its affiliate, performs the functions of the fund manager, a  
19           description of the independent oversight body, as prescribed under  
20           Section 22 (e) of this Law.
- 21           (d) A statement of the fund's investment objectives and policies  
22           including limitations, if any, and risk factors in investing in the  
23           fund;
- 24           (e) A profile of the proposed investors;
- 25           (f) Investment powers of the fund manager with respect to the fund,  
26           including the character and kind of investments which may be  
27           purchased by the fund;
- 28           (g) Initial unit value and the basis thereof;
- 29           (h) Total value to be issued in case of closed-end funds;
- 30           (i) Terms and conditions governing the issuance and redemption of  
31           units of participation in the fund;
- 32           (j) Provision for the external audit of the fund;
- 33           (k) Basis upon which the CIS may be terminated. The CIS plan shall  
34           state the rights of participants in case of termination of the CIS.
- 35           (l) Liabilities of the fund manager and the trustee or insurance  
36           company to the unit or policy holders;



- 1 (m) Amount of fees, commissions and other charges to be deducted  
2 from the fund;  
3 (n) Ceiling for marketing or other promotional expenses;  
4 (o) Annual meetings of unit or policy holders;  
5 (p) Public disclosures and reports; and  
6 (q) Such other matters as the Commission may prescribe.

7 A copy of the CIS plan shall be made available to any interested person  
8 at the principal office of the fund manager and the trustee or insurance  
9 company during regular office hours.  
10

#### 11 Chapter 4 – Provisions Applicable to Corporate CIS 12

13 **SECTION 25. *Establishment of a Corporate CIS.*** - Shares in a  
14 corporate CIS shall not be sold or offered for sale or distribution within the  
15 Philippines without a CIS plan duly filed and approved by the Commission.  
16

17 **SECTION 26. *Engagement of Fund Manager.*** Corporate CIS shall  
18 engage a duly registered fund manager to perform the functions prescribed in  
19 Section 8 hereof; Provided, that a majority of the directors of the corporate  
20 CIS are not directors, officers or employees of the fund manager; and  
21 Provided, further, that no Chairman, Chief Executive officer, President, Chief  
22 Operating Officer or equivalent positions may be interlocking but officers  
23 with lower rank may be common with prior approval of the appropriate  
24 regulatory authority.  
25

26 **SECTION 27. *The Corporate CIS plan*** - The CIS plan of corporate  
27 CIS shall contain the following matters:

- 28 (a) Title of the CIS plan. This shall correspond to the product or brand  
29 name by which the CIS is proposed to be known;  
30 (b) Name of the fund manager;  
31 (c) A statement of the corporate CIS's investment objectives and  
32 policies including limitations, if any, and risk factors in investing in  
33 the corporate CIS;  
34 (d) Investment powers of the fund manager with respect to the  
35 corporate CIS, including the character and kind of investments  
36 which may be purchased by the fund;

- 1 (e) Profile of the proposed investors;
- 2 (f) Par Value of the shares of stock of the corporate CIS;
- 3 (g) Total value to be issued in case of closed-end corporate CIS;
- 4 (h) Terms and conditions governing the issuance and redemption of
- 5 shares of stock;
- 6 (i) Provision for the external audit of the corporate CIS;
- 7 (j) The dissolution of the corporate CIS and the rights of shareholders
- 8 in case of dissolution of the corporate CIS;
- 9 (k) Liabilities of the corporate CIS and the fund manager to the
- 10 shareholders;
- 11 (l) Amount of fees, commissions and other charges and expenses to be
- 12 paid by the shareholders;
- 13 (m) Ceiling for marketing or other promotional expenses;
- 14 (n) Annual meetings of shareholders;
- 15 (o) Public disclosures and reports;
- 16 (p) Its classification, whether an open-end or closed-end company;
- 17 (q) Borrowing of money in accordance with the rules and regulations
- 18 as may be prescribed by the Commission;
- 19 (r) Issuance of senior securities, if any;
- 20 (s) Extension of loans to other persons in accordance with the rules
- 21 and regulations as may be provided by the Commission; and
- 22 (t) Such other matters as the Commission may prescribe.
- 23

24 **SECTION 28. Dividends.** (a) Dividends shall be declared and paid in

25 accordance with the requirements of the Corporation Code and applicable

26 laws and regulations; Provided, that the Commission may prescribe other

27 requirements or restrictions in the declaration and payment of dividends by

28 the corporate CIS as necessary or appropriate in the public interest and for

29 the protection of the investors.

30 (b) Dividend payments shall be accompanied by a written statement

31 which adequately discloses the source or sources of such payment. The

32 Commission may prescribe the form of such statement as necessary or

33 appropriate in the public interest and for the protection of the investors.

34

35 **SECTION 29. Proxies; Voting Trust.** The Commission may

36 prescribe rules and regulations for the solicitation of proxies and the issuance

1 and transfer of voting trust certificates in accordance with the requirements  
2 of the Corporation Code and applicable laws and regulations; Provided, that  
3 the Commission may prescribe other requirements or restrictions as may be  
4 necessary or appropriate in the public interest and for the protection of the  
5 investors; Provided, further, that no proxies shall be used as a device to  
6 control the management of any corporate CIS.

7  
8 **TITLE III- REGISTRATION OF CIS PLAN AND OPERATIONS OF**  
9 **CIS**

10  
11 **Chapter 1 - Registration, Amendment and Suspension of CIS Plan**

12  
13 **SECTION 30. *Registration of CIS Plans.*** — (a) All CIS must have a  
14 CIS plan which should be registered with the Commission before any  
15 securities of such CIS can be sold or offered for sale. All CIS plans shall be  
16 registered with the Commission by filing a sworn statement with respect to  
17 such CIS plan, in such form and containing such information and documents  
18 as prescribed by this Law, the IRR or the Commission. The CIS plan shall  
19 include any prospectus as required or permitted by the Commission to be  
20 delivered to CIS investors. It shall be unlawful for any person to sell or offer  
21 for sale CIS securities unless the corresponding CIS plan has been duly  
22 registered under this section.

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

31 (c) Upon effectivity of the CIS plan, the corporate CIS, fund manager,  
32 trustee or insurance company shall state in every sales material that all  
33 registration requirements have been met and that all information are true  
34 and correct as represented by the corporate CIS, fund manager, trustee or  
35 insurance company or the person making the statement. Any untrue  
36 statement of fact or omission to state a material fact required to be stated

1 therein or necessary to make the statement therein not misleading shall  
2 constitute fraud.

3 (d) The Commission may refuse the registration of a CIS plan if:

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

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

14  
15 **SECTION 31. *Revocation of Registration or Suspension of Offer***

16 ***and Sale of Securities*** – (a) The Commission may revoke the registration  
17 of the CIS plan, or order the suspension of the offer and sale of the CIS  
18 securities, in accordance with the Securities and Regulation Code and other  
19 applicable laws and regulations, provided that the Commission may cause  
20 the publication or dissemination of the order of suspension or revocation at  
21 the expense of the CIS, and provided further, that any sale of the subject CIS  
22 securities during the effectivity of the suspension or revocation order shall be  
23 void, and the Commission shall have the power to order the return of the  
24 purchase price and/or earnings arising from such sales subject to applicable  
25 laws and regulations.

26 (b) The Commission may conduct an examination, and, after due notice  
27 and hearing, issue an order revoking or suspending the effectivity of the CIS  
28 plan and the offer and sale of CIS securities.

29 (c) In making such examination the Commission or any officer or  
30 officers designated by it may administer oaths and affirmations and shall  
31 have access to, and may demand the production of any books, records or  
32 documents relevant to the examination. Failure of the fund manager, the  
33 corporate CIS, trustee, insurance company, CIS distributor, CIS solicitor or  
34 any other person to cooperate, or his obstruction or refusal to undergo an  
35 examination, shall be a ground for the issuance of a suspension order.

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

2  
3 **SECTION 32. *Rights and Privileges of CIS Investors.*** Each share  
4 of stock of a corporate CIS and each unit of participation of a contractual CIS  
5 shall be equal in all respects to every other share or unit belonging to the  
6 same class of shares or units.

7  
8 **SECTION 33. *Payment for CIS Securities.*** No CIS shall issue any  
9 of its securities for services or for property other than cleared funds.

10  
11 **SECTION 34. *Distribution and Redemption of CIS Securities.*** (a)  
12 Unless otherwise allowed in this Law, securities of a CIS shall be sold  
13 through a licensed CIS distributor and by licensed CIS solicitors.

14 (b) CIS investors have the right to surrender their securities for  
15 redemption in accordance with the CIS plan. Redemption shall not be  
16 suspended except pursuant to the CIS plan as approved by the Commission  
17 in the public interest or for the protection of investors.

18  
19 **SECTION 35. *Transferability of Securities.*** No CIS shall restrict  
20 the transferability or negotiability of its CIS securities except as provided in  
21 the CIS plan or by any rule or regulation prescribed by the Commission.

22  
23 **Chapter 3 – Operations of CIS**

24  
25 **SECTION 36. *Custody of Investment Assets.*** Every CIS shall place  
26 and maintain its investment assets in the custody of a custodian in  
27 accordance with Sections 13 and 14 hereof.

28  
29 **SECTION 37. *Investment Limitations.*** (a) The CIS funds may be  
30 invested only in the following assets, subject to limitations as may be  
31 provided by this Law or by the IRR:

- 32 1. Bank deposits;  
33 2. Securities issued by or guaranteed by the Philippine  
34 government, or the *Bangko Sentral ng Pilipinas*;

- 1           3. Tradable securities issued by the government of a foreign
- 2           country, any political subdivision of a foreign country or any
- 3           supranational entity;
- 4           4. Exchange-listed securities;
- 5           5. Marketable instruments that are traded in an organized
- 6           exchange or market;
- 7           6. Loans traded in an organized market;
- 8           7. Exchange traded funds;
- 9           8. Derivatives;
- 10          9. Real estate investment trusts or companies;
- 11          10. Commercial papers, bonds or loans which are registered with
- 12          the Commission, or are exempt from registration with the
- 13          Commission;
- 14          11. Other CIS; and
- 15          12. Such other investments or instruments as the appropriate
- 16          regulatory agency may allow.

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

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

24           (b) The appropriate regulatory agencies may jointly issue such IRR, in

25           accordance with Section 62 hereof, as may be necessary or appropriate in the

26           public interest or for the protection of investors, that provide for different

27           percentages or further restrictions with respect to investments in other CIS

28           or the concentration of investments by a CIS.

29

30           **SECTION 38. *Liquidity Requirement.*** Unless otherwise prescribed

31           by the IRR, at least ten percent (10%) of the assets of a CIS shall be invested

32           in liquid/semi-liquid assets such as, but not limited to:

- 33           (a) Treasury notes or bills, certificates of indebtedness issued by the
- 34           *Bangko Sentral ng Pilipinas*, and other government securities or
- 35           bonds and such other evidence of indebtedness or obligations, the

1 servicing and repayment of which are fully guaranteed by the  
2 Republic of the Philippines; and

- 3 (b) Savings or time deposits with government owned banks or  
4 commercial banks, provided that in no case shall any such savings  
5 or time deposit accounts be accepted or allowed under a "bearer" or  
6 "numbered" account or other similar arrangement;

7 Provided that the requirement under this Section shall not apply to a  
8 closed-end CIS.

9  
10 **SECTION 39. *Prohibited Acts of CIS.*** - (a) Unless it complies with  
11 the IRR and orders which the Commission may prescribe as necessary or  
12 appropriate in the public interest or for the protection of investors, a  
13 registered corporate CIS is not permitted to:

- 14 1. Purchase any security on margin, except such short-term credits  
15 as are necessary for the clearance of transactions;  
16 2. Participate on a joint or a joint and several basis in any trading  
17 account in securities; or  
18 3. Effect a short sale of any security.

19 (b) It shall be unlawful for any CIS to -

- 20 1. generate funds for promoting the private business or industry of  
21 any employee, officer, director, promoter or stockholder thereof;  
22 or  
23 2. allow any of its employees, officers, directors, organizers,  
24 incorporators or stockholders to sell real estate, personal  
25 property or any other kind of property to the CIS at a price  
26 higher than the procurement cost or the market value thereof, or  
27 sell to any of the aforementioned persons any property of the  
28 corporate CIS, or a portion thereof, at a price below the market  
29 value thereof.

30 (c) The IRR may prohibit CIS from engaging in such other acts as may  
31 defeat the policy and purpose of this Law.

32  
33 **SECTION 40. *Meetings of CIS Investors.*** (a) Meetings of unit  
34 holders in a contractual CIS or stockholders in a corporate CIS shall be held  
35 at least annually. The following matters shall be presented to the CIS  
36 investors:

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

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

18           (c) The Commission shall prescribe by rule or regulation the  
19                 requirements for the conduct of meetings.

20  
21           **SECTION 41. *Requirements for selling materials and***  
22           ***advertisements.*** Sales and marketing documents and advertisements shall  
23                 be subject to such requirements as the IRR or the Commission may prescribe.  
24           All sales and marketing documents, and advertisements shall:

- 25           (a) Not contain any untrue statement of fact or omit to state any fact  
26                 that is necessary in order to prevent the statements made, in the  
27                 light of the circumstances in which they were made, from being  
28                 misleading;
- 29           (b) The CIS performance information in advertisements should be  
30                 calculated and presented from the viewpoint of the average investor  
31                 to whom the CIS is targeted;
- 32           (c) All CIS should calculate and present their performance information  
33                 in advertisements in a substantially similar manner so that CIS  
34                 investors may (i) make meaningful comparisons among various  
35                 CIS, and (ii) not be misled by differences in the method of  
36                 calculation and presentation; and



1 (d) Comply with such other terms and conditions prescribed by the  
2 Commission which are necessary or appropriate in the public  
3 interest or for the protection of CIS investors.  
4

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

- 8 1. Such information and documents including financial statements as  
9 the IRR and the Commission and/or appropriate regulatory agency  
10 may require, to keep reasonably current the information and  
11 documents contained in the CIS plan filed under this Law; and
- 12 2. Copies of every periodic or interim report or similar communication  
13 transmitted to the CIS investors.

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

- 19 1. a balance sheet accompanied by a statement of the aggregate  
20 value of investments on the date of such balance sheet;
- 21 2. a list showing the amounts and values of securities owned on  
22 the date of such balance sheet;
- 23 3. a statement of income, for the period covered by the report,  
24 which shall be itemized at least with respect to each category of  
25 income and expense representing more than five *per centum* of  
26 total income or expense;
- 27 4. a statement of surplus, which shall be itemized at least with  
28 respect to each charge or credit to the surplus account which  
29 represents more than five *per centum* of the total charges or  
30 credits during the period covered by the report;
- 31 5. a statement of the aggregate fees or remuneration paid by the  
32 CIS during the period covered by the report to (i) the fund  
33 manager, trustee, CIS distributor and independent auditor; and  
34 (ii) each director and all officers as regular or special  
35 compensation; and

1           6. a statement of the aggregate amounts of purchases and sales of  
2           investment assets made during the period covered by the  
3           report.  
4

5           *Provided*, That the IRR may permit, in lieu of any item required under  
6 this subsection which may be inapplicable or inappropriate to any specified  
7 type or types of CIS, the inclusion of such item of a comparable character as  
8 it may deem applicable or appropriate to such type or types of CIS.  
9

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

13           (b) The computation of the net asset value per share or unit shall be  
14 made in accordance with the valuation method prescribed by the IRR or the  
15 Commission and shall be applied consistently.  
16

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

22           (b) All accounts, books and other records required to be maintained and  
23 preserved by any person pursuant to subsection (a) shall be subject to  
24 examination by the appropriate regulatory agency.  
25

26           **SECTION 45. *Salaries and Emoluments.*** - No member of the board  
27 of directors or any executive officer of a CIS, fund manager, trustee,  
28 insurance company or CIS distributor shall receive, directly or indirectly, any  
29 salary or emolument from the CIS at a rate higher than that fixed by the  
30 appropriate regulatory agency after taking into consideration the experience  
31 and qualifications of the director or officer concerned; the amount and nature  
32 of securities issued; the size and standing of the CIS in the business  
33 community; the volume of business done by the CIS; the number of years the  
34 CIS has been in business; and other pertinent conditions and circumstances  
35 that the appropriate regulatory agency may prescribe.  
36

1           **SECTION 46. *Marketing, Operational and Promotional***  
2 ***Expenses and fees charged to CIS investors.*** - In no case shall the  
3 marketing, operational and promotional expenses of the CIS, and the fees  
4 charged to the CIS investors, exceed such limitations as the appropriate  
5 regulatory agency may prescribe pursuant to the IRR.

6  
7           **SECTION 47. *Changes in Investment Policy*** - Proposals to change  
8 the investment policies shall be subject to approval by the CIS investors  
9 pursuant to Section 40 hereof and by the Commission. The fund manager,  
10 trustee or insurance company shall disseminate to all CIS investors all  
11 material information pertaining to proposals to amend the investment  
12 policies and objectives. The Commission shall prescribe by rule or regulation  
13 the requirements for changes in investment policies.

14  
15           **SECTION 48. *Dissolution*** - (a) The corporate CIS, trustee or  
16 insurance company shall cause the dissolution of the CIS whenever any of the  
17 following grounds is present:

- 18           1. Dissolution is required by the CIS plan, when the specified  
19           conditions or time for dissolution have been met or reached;
- 20           2. In CIS other than a separate account fund, dissolution is agreed  
21           upon in a resolution of the CIS investors owning at least the  
22           majority interest in a CIS at a meeting duly held; Provided, that  
23           the IRR may prescribe a different percentage interest taking  
24           into account the nature and size of the CIS and the number of  
25           CIS investors; Provided, further, that there has been prior  
26           publication of the notice of time, place and object of the meeting  
27           for two (2) consecutive weeks in a newspaper of general  
28           circulation; and Provided, finally, that dissolution of separate  
29           account funds shall be governed by the relevant rules and  
30           regulations of the Insurance Commission;
- 31           3. Dissolution is required by a lawful order of the court;
- 32           4. Dissolution is ordered by the appropriate regulatory agency for  
33           non-compliance with the conditions for the lifting of a  
34           suspension or revocation order previously issued; provided that  
35           the appropriate regulatory agency shall not issue an order of

1 dissolution within six months from the issuance of the  
2 suspension or revocation order; and

- 3 5. Dissolution is deemed necessary in view of the dissolution or the  
4 revocation of the license of the fund manager, trustee or  
5 insurance company;

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

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

10 (ii) The dissolution or the loss of license of the trustee, insurance  
11 company or fund manager is due to a merger and the  
12 surviving company in such merger is also an authorized  
13 trustee, insurance company or fund manager, as the case  
14 may be; and

15 (iii) The new company that is established as a result of the  
16 consolidation of trust institutions, insurance companies or  
17 fund managers promptly obtains a license to act as trustee,  
18 insurance company or fund manager, as the case may be.

19 (b) Upon dissolution, the fund manager shall transfer the CIS property  
20 to the CIS investors as prescribed by the CIS plan and in accordance with the  
21 IRR.

22  
23 **SECTION 49. *Merger or Consolidation*** – No merger or  
24 consolidation of CIS will be authorized by the appropriate regulatory agency  
25 unless the following conditions are met:

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

29 (b) The merger plan has been approved by the CIS investors owning at  
30 least a majority interest in each of the CIS to be merged or  
31 consolidated in a meeting duly called for the purpose;

32 The IRR shall prescribe the procedures and requirements for merger or  
33 consolidation in the public interest and for the protection of investors.

1       **TITLE IV – SPECIAL RULES GOVERNING ESTABLISHMENT OF**  
2       **CONTRACTUAL CIS BY TRUST INSTITUTIONS AND INSURANCE**  
3       **COMPANIES**

4  
5       **SECTION 50. *Establishment of Contractual CIS by Trust***  
6       ***Institutions and Insurance Companies-*** (a) Any trust institution or  
7 insurance company may establish a contractual CIS, subject to the following  
8 provisions:

9       The trust institution or insurance company may engage the services of  
10 a fund manager; Provided, that no director and/or officer of the trust  
11 institution or insurance company shall at the same time serve as director  
12 and/or officer of the fund manager; Provided, further, that the trust  
13 institution or insurance company shall not engage a fund manager which is  
14 an affiliate of the trust institution or insurance company, unless it complies  
15 with the requirements of paragraph (b) (2) of this Section.

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

- 18       1. In addition to the functions of a trustee prescribed under this  
19 Law, the trust institution or insurance company shall comply  
20 with and observe the duties, responsibilities and prohibitions of  
21 a fund manager under Sections 8 and 9 hereof;
- 22       2. The CIS plan provides for the creation of an Independent  
23 Oversight Body. The independent oversight body shall be  
24 composed of at least three (3) members who shall be appointed  
25 in accordance with such rules as the IRR shall prescribe, all of  
26 whom shall have the qualifications and none of the  
27 disqualifications of an independent director, or may be a  
28 juridical entity organized and existing pursuant to the IRR.

29  
30       The independent oversight body shall have the following duties and  
31 responsibilities:

- 32       i. Monitor the activities of the CIS distributors in the sale  
33 and/or redemption of the CIS units and ensure that the  
34 provisions of any marketing document relating to the sale  
35 or offer for sale of the CIS units do not contain any matter

- 1 which is inconsistent with the provisions of the CIS plan,  
2 this Law and its implementing rules and regulations;
- 3 ii. Ensure that the management and investments of the CIS  
4 funds are in accordance with the CIS plan;
- 5 iii. Ensure that the trust institution or insurance company  
6 remedies any breach of the CIS plan or any contravention  
7 of the provisions of this Law or its implementing rules  
8 and regulations;
- 9 iv. Ensure that CIS funds, assets and properties are clearly  
10 identified and held separately from the trust institution's  
11 or insurance company's own properties and other  
12 properties held in trust;
- 13 v. Ensure that all payments out of CIS funds, assets and  
14 properties are made in accordance with the CIS plan, this  
15 Law and its implementing rules and regulations;
- 16 vi. Monitor the existence of conflict of interest situations and  
17 address the same for the best interests of the CIS  
18 investors;
- 19 vii. Instruct the trust institution or insurance company to  
20 remedy a breach of the provisions or covenants of the CIS  
21 plan, the provisions of this Law or its implementing rules  
22 and regulations; and
- 23 viii. Report to the Commission and/or appropriate regulatory  
24 agency any breach of the provisions or covenants of the  
25 CIS plan, the provisions of this Law or its implementing  
26 rules and regulations that (i) relates to the establishment,  
27 operation or dissolution of the CIS, and (ii) has had or is  
28 likely to have a material adverse effect on the interests of  
29 the CIS investors.

## 30 TITLE V- ASSOCIATION OF CIS

31  
32  
33 **SECTION 51. *Membership in the Association of CIS-*** For the  
34 further protection of the CIS investors, all corporate CIS, and all fund  
35 managers, trustees, and insurance companies engaged or involved in CIS  
36 shall be members of the association of CIS duly accredited by the Commission

1 within one (1) year from the approval of this Law. Such corporate CIS, fund  
2 managers, trustees and insurance companies which are newly established or  
3 authorized to engage in CIS shall be registered members of the association  
4 within sixty (60) days after the Commission and/or appropriate regulatory  
5 agency shall have approved their registration or authorization. The  
6 association shall work with the regulators and Congress to ensure that the  
7 best laws and regulations are enacted and enforced for the protection of the  
8 investors and to promote the growth of the CIS industry.

9  
10 **TITLE VI – CIS INVESTORS PROTECTION FUND**

11  
12 **SECTION 52. *Establishment of the CIS Investors Protection***  
13 ***Fund*** -The Commission may, in consultation with the other appropriate  
14 regulatory agencies, establish or facilitate the establishment of a CIS  
15 investors protection fund, for the purpose of compensating CIS investors for  
16 the extraordinary losses or damage they may suffer due to fraud or  
17 mismanagement or business failure other than market decline in the  
18 investment portfolio, subject to such rules and regulations as the Commission  
19 may from time to time prescribe or approve in the public interest. The  
20 Commission, having due regard for the public interest and the protection of  
21 investors, shall regulate, supervise, examine, suspend or otherwise  
22 discontinue such funds under rules which the Commission may prescribe. In  
23 the performance of such functions, the Commission may take over custody  
24 and management of the fund itself as well as investments in and  
25 disbursements from the fund under such forms of control and supervision by  
26 the Commission as it may from time to time require. The authority granted  
27 to the Commission under this section shall also apply to all funds established  
28 for the protection of CIS investors, whether established by the Commission or  
29 otherwise.

1                   **TITLE VII – SUPERVISION AND ENFORCEMENT**

2  
3                   **SECTION 53. *Powers and Functions of the Commission and***  
4 ***Appropriate Regulatory Agencies*** - The Commission shall, at all times, act  
5 with transparency and dispatch and shall have, among others, the following  
6 powers and functions:

- 7                   (a) Primary jurisdiction and supervision over the registration,  
8                   distribution and sale of all CIS securities;
- 9                   (b) Approve, amend, renew or deny any license, registration or  
10                   certificate issued by the Commission under this Law;
- 11                   (c) Fix and assess fees and/or charges as it may find reasonable in the  
12                   exercise of regulation;
- 13                   (d) Regulate, supervise and monitor, in coordination with the  
14                   appropriate regulatory agency, the operations, management and/or  
15                   activities of all CIS, fund managers, CIS distributors and CIS  
16                   solicitors to ensure compliance with the provisions of this Law, the  
17                   IRR and other applicable laws, rules and regulations, including but  
18                   not limited to the power to:
- 19                   1. Revoke or nullify CIS investments which are contrary to  
20                   existing laws and regulations; and
- 21                   2. Demand the conversion of CIS investments into cash or other  
22                   liquid assets to protect the interests of the CIS investors.
- 23                   (e) In coordination with the appropriate regulatory agency, order the  
24                   refund or return of any monies or investments to CIS investors in  
25                   appropriate cases or in accordance with such rules and regulations  
26                   as the Commission may prescribe and in coordination with the  
27                   appropriate regulatory agency;
- 28                   (f) In coordination with the appropriate regulatory agency, issue cease  
29                   and desist orders to prevent fraud and injury to the investing  
30                   public;
- 31                   (g) In coordination with the appropriate regulatory agency, issue  
32                   subpoena duces tecum and ad testificandum, order the  
33                   examination, search and seizure of documents, papers, files, tax  
34                   returns, books of accounts and other records, in whatever form, of  
35                   any entity or person under investigation;
- 36                   (h) Punish for contempt of the Commission, both direct and indirect, in



- 1 accordance with the pertinent provisions of and penalties  
2 prescribed by the Rules of Court;
- 3 (i) In coordination with the appropriate regulatory agency, impose  
4 sanctions, institute cases and/or prosecute offenders for violation of  
5 this Law, related laws, rules, regulations and orders issued  
6 pursuant thereto, in coordination with the appropriate regulatory  
7 agency;
- 8 (j) Suspend or revoke registrations and/or licenses issued by the  
9 Commission;
- 10 (k) Enlist the aid and support of and/or deputize any and all  
11 enforcement agencies of the Government in the implementation of  
12 its powers and exercise of its functions under this Law;
- 13 (l) In coordination with the appropriate regulatory agency, take over a  
14 CIS or fund manager which fails to comply with this Law, related  
15 laws, rules, regulations and orders issued pursuant thereto, either  
16 through the appointment of a conservator, receiver or liquidator, in  
17 coordination with the appropriate regulatory agency;
- 18 (m) Jointly with the other appropriate regulatory agencies, issue,  
19 amend or repeal implementing rules and regulations in accordance  
20 with Section 62 and orders for the proper enforcement of this Law,  
21 and issue opinions and provide guidance on and supervise  
22 compliance with such rules, regulations and orders;
- 23 (n) Formulate policies and recommendations on issues concerning CIS,  
24 including proposed legislation;
- 25 (o) Retain and utilize, in addition to its annual budget, an amount up  
26 to One Hundred Million Pesos (P 100,000,000.00) of the fees,  
27 charges and other income derived from the regulation of CIS; and
- 28 (p) Exercise such other powers as may be provided by law as well as  
29 those which may be implied from, or which are necessary or  
30 incidental to carry out the express powers granted the Commission  
31 to achieve the objectives and purposes of this Law.

## 32 33 **TITLE VIII –REMEDIAL PROVISIONS**

34  
35 **SECTION 54. *Solidary Liability*** – (a) The fund manager, trustee  
36 and/or insurance company shall be jointly and severally liable for all losses

1 and damages that CIS investors may suffer as a result of any violation by the  
2 fund manager, trustee and/or insurance company of this Law, its  
3 implementing rules and regulations, or their failure to observe and comply  
4 with the terms and conditions of the CIS plan.

5 (b) The directors and/or officers of the CIS, fund manager, trustee  
6 and/or insurance company shall also be liable jointly and severally liable for  
7 all losses and damages that CIS investors may suffer as a result of any  
8 violation by the corporate CIS, trustee and/or insurance company of this Law,  
9 its implementing rules and regulations, or their failure to observe and comply  
10 with the terms and conditions of the CIS plan. Notwithstanding any  
11 provision of law to the contrary, in no case shall such directors and officers  
12 recover their liability from the CIS, fund manager, trustee and/or insurance  
13 company.

14 (c) If the offender is a corporation or other juridical entity, the  
15 administrative sanctions and/or criminal penalties may in the discretion  
16 of the Commission or the court be imposed upon such corporation or other  
17 juridical entity and upon the officer or officers of the corporation or entity  
18 responsible for the violation, and if such officer is an alien, he shall in  
19 addition to the penalties prescribed, be deported without further  
20 proceedings after service of sentence.

21  
22 **SECTION 55. *Investigations, Injunctions and Prosecution of***  
23 ***Offences.*** (a) The Commission may, in its discretion, and in coordination  
24 with the appropriate regulatory agency, make such investigations as it deems  
25 necessary to determine whether any person has violated or is about to violate  
26 any provision of this Law, any rule, regulation or order thereunder, and may  
27 require or permit any person to file with it a statement in writing, under oath  
28 or otherwise, as the Commission shall determine, as to all facts and  
29 circumstances concerning the matter to be investigated. The Commission  
30 may publish information concerning any such violations, and to investigate  
31 any fact, condition, practice or matter which it may deem necessary or proper  
32 to aid in the enforcement of the provisions of this Law, in the prescribing of  
33 rules and regulations thereunder, or in securing information to serve as a  
34 basis for recommending further legislation concerning the matters to which  
35 this Law relates: Provided, however, That any person requested or  
36 subpoenaed to produce documents or testify in any investigation shall

1 simultaneously be notified in writing of the purpose of such investigation:  
2 Provided, further, That all criminal complaints for violations of this Law, and  
3 the implementing rules and regulations enforced or administered by the  
4 Commission shall be referred to the Department of Justice for preliminary  
5 investigation and prosecution before the proper court: Provided, furthermore,  
6 That in instances where the law allows independent civil or criminal  
7 proceedings of violations arising from the same act, the Commission shall  
8 take appropriate action to implement the same: Provided, finally, That the  
9 investigation, prosecution, and trial of such cases shall be given priority.

10  
11 (b) For the purpose of any such investigation, or any other proceeding  
12 under this Law, the Commission or any officer designated by it is empowered  
13 to administer oaths and affirmations, subpoena witnesses, compel  
14 attendance, take evidence, require the production of any book, paper,  
15 correspondence, memorandum, or other record which the Commission deems  
16 relevant or material to the inquiry, and to perform such other acts necessary  
17 in the conduct of such investigation or proceedings.

18  
19 (c) Whenever it shall appear to the Commission that any person has  
20 engaged or is about to engage in any act or practice constituting a violation of  
21 any provision of this Law, any rule, regulation or order thereunder, it may  
22 issue an order to such person to desist from committing such act or practice.  
23 After finding that such person has engaged in any such act or practice and  
24 that there is a reasonable likelihood of continuing, further or future  
25 violations by such person, the Commission may issue ex-parte a cease and  
26 desist order for a maximum period of ten (10) days, enjoining the violation  
27 and compelling compliance with such provision. The Commission may  
28 transmit such evidence as may be available concerning any violation of any  
29 provision of this Law, or any rule, regulation or order thereunder, to the  
30 Department of Justice, which may institute the appropriate criminal  
31 proceedings under this Law.

32  
33 (d) Any person who, within his power but without cause, fails or refuses to  
34 comply with any lawful order, decision or subpoena issued by the Commission  
35 shall after due notice and hearing, be guilty of contempt of the Commission.  
36 Such person shall be fined in such reasonable amount as the Commission

1 may determine, or when such failure or refusal is a clear and open defiance of  
2 the Commission's order, decision or subpoena, shall be detained under an  
3 arrest order issued by the Commission, until such order, decision or subpoena  
4 is complied with.

5  
6 **SECTION 56. *Cease and Desist Order.*** (a) The Commission, after  
7 proper investigation or verification, motu proprio, or upon verified complaint  
8 by any aggrieved party, may issue a cease and desist order without the  
9 *necessity of a prior hearing if in its judgment the act or practice, unless*  
10 *restrained, will operate as a fraud on investors or is otherwise likely to cause*  
11 *grave or irreparable injury or prejudice to the investing public.*

12  
13 (b) Until the Commission issues a cease and desist order, the fact that an  
14 investigation has been initiated or that a complaint has been filed, including  
15 the contents of the complaint, shall be confidential. Upon issuance of a cease  
16 and desist order, the Commission shall make public such order and a copy  
17 thereof shall be immediately furnished to each person subject to the order.

18  
19 (c) Any person against whom a cease and desist order was issued may,  
20 within five (5) days from receipt of the order, file a formal request for a lifting  
21 thereof. Said request shall be set for hearing by the Commission not later  
22 than fifteen (15) days from its filing and the resolution thereof shall be made  
23 not later than ten (10) days from the termination of the hearing. If the  
24 Commission fails to resolve the request within the time herein prescribed, the  
25 cease and desist order shall automatically be lifted.

26  
27 **SECTION 57. *Administrative Sanctions.*** (a) If, after due notice and  
28 hearing, the appropriate regulatory agency finds that: (a) there is a violation  
29 of this Law, its rules, or its orders; (b) any fund manager, trustee, insurance  
30 company, corporate CIS, CIS distributor or CIS solicitor has failed reasonably  
31 to supervise, with a view to preventing violations, another person subject to  
32 supervision who commits any such violation; (c) any person has, in a CIS plan  
33 or in other reports, applications, accounts, records or documents required by  
34 law or rules to be filed with the Commission, made any untrue statement of a  
35 material fact, or omitted to state any material fact required to be stated  
36 therein or necessary to make the statements therein not misleading; or (d)

1 any person has refused to permit any lawful examinations into its affairs, it  
2 shall, in its discretion, and subject only to the limitations hereinafter  
3 prescribed, impose any or all of the following sanctions as may be appropriate  
4 in light of the facts and circumstances:

- 5
- 6 (1) Suspension or revocation of the license of such person;
- 7 (2) A fine of no less than Ten thousand pesos (P10,000.00) nor more  
8 than One million pesos (P1,000,000.00) plus not more than Two  
9 thousand pesos (P2,000.00) for each day of continuing violation;
- 10 (3) Disqualification from being an officer, member of the board of  
11 directors, or person performing similar functions, of the fund  
12 manager, trustee, insurance company, corporate CIS or CIS  
13 Distributor; and
- 14 (4) Other penalties within the power of the appropriate regulatory  
15 agency to impose.

16 (b) The imposition of the foregoing administrative sanctions shall be  
17 without prejudice to the filing of criminal charges against the individuals  
18 responsible for the violation.

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

22

23 **SECTION 58. *Criminal penalties.*** The following acts are criminal in  
24 nature and shall be penalized as follows:

- 25 (a) Refusal to comply with the orders of the appropriate regulatory  
26 agency for the production of books, records or documents, or to  
27 undergo an examination shall be penalized by imprisonment of one  
28 (1) month to six (6) months and fine in the amount of fifty thousand  
29 pesos (P50,000.00) to five hundred thousand pesos (P500,000.00).
- 30 (b) Selling or offering for sale a CIS security by unregistered persons  
31 shall be penalized by imprisonment of one (1) year and fine  
32 equivalent to triple the contract price of each of the CIS securities  
33 sold;
- 34 (c) Selling or offering for sale CIS securities of a CIS plan that has not  
35 been registered pursuant to this Law shall be penalized by

1 imprisonment of one (1) year and fine equivalent to triple the  
2 contract price of each of the CIS securities sold or offered for sale;

3 (d) Any negligent act or omission that is prejudicial or injurious to the  
4 CIS investors shall be penalized by imprisonment of one (1) year  
5 and one (1) day to six (6) years and fine in the amount of fifty  
6 thousand pesos (P50,000.00) to five hundred thousand pesos  
7 (P500,000.00);

8 (e) Any fraudulent act or omission that is prejudicial or injurious to the  
9 CIS investors shall be penalized by imprisonment of six (6) years  
10 and one (1) day to twelve (12) years and fine in the amount of one  
11 hundred thousand pesos (P100,000.00) to one million pesos  
12 (P1,000,000.00); and

13 (f) Violation of the provisions of this Law, the IRR or orders of the  
14 appropriate regulatory agency, provided that repeated violations  
15 shall constitute *prima facie* evidence against the offender, shall be  
16 penalized by imprisonment of six (6) years and one (1) day to twelve  
17 (12) years and a fine in the amount of one hundred thousand pesos  
18 (P100,000.00) to one million pesos (P1,000,000.00).

19 **SECTION 59. *Adjudicatory power.*** (a) The Commission shall have  
20 the power to adjudicate any and all claims involving CIS amounting to not  
21 more than One Million Pesos (P1,000,000.00) for each CIS Investor. The  
22 proceedings before the Commission shall be summary in nature, and the  
23 decision of the Commission shall be final and executory if the amount  
24 granted does not exceed Five Hundred Thousand Pesos (P 500,000.00).

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

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

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

34  
35 **SECTION 60. *Duty of the Regulator*** – In view of the nature of the  
36 CIS as one impressed with public interest, the officers and employees of the

1 appropriate regulatory agencies are strictly enjoined to monitor, enforce and  
2 ensure compliance with the provisions of this Law and its implementing rules  
3 and regulations. Failure to do so shall be dealt with under existing laws and  
4 regulations in the gravest degree.

5  
6 **TITLE IX – MISCELLANEOUS PROVISIONS**  
7

8 **SECTION 61. *Transitory Provisions.*** - Any corporate or contractual  
9 CIS which at the time of the effectivity of this Law has been established and  
10 has continued to exist, shall be considered registered and licensed under the  
11 provision of this Law and its implementing rules and regulations and shall be  
12 subject to and governed by the provisions hereof; provided, however, that  
13 compliance with the applicable provisions of the Law, may be deferred for  
14 such reasonable time as the Commission may determine but not to exceed  
15 two (2) years from approval of this Law.

16  
17 **SECTION 62. *Implementing Rules and Regulations.*** – The  
18 appropriate regulatory agencies, with the Commission as the lead agency,  
19 shall coordinate and jointly issue the IRR to implement this Law. In  
20 adopting and issuing the IRR, the Commission and the appropriate  
21 regulatory agencies shall be guided by and adhere to the declaration of policy  
22 contained in Section 2 and the other relevant provisions of this Law. The IRR  
23 shall pertain to the following matters, in addition to other matters in  
24 connection with which other provisions of this Law may require the  
25 appropriate regulatory agencies to issue rules and regulations:

- 26 a. Registration, amendment and suspension of CIS plans;  
27 b. Distribution, sale and marketing of CIS securities;  
28 c. Qualification and disqualification standards for directors and  
29 officers of the fund manager, corporate CIS, CIS distributors,  
30 independent oversight committee, CIS solicitor and other parties  
31 involved in CIS;  
32 d. Qualified and/or eligible CIS investments;  
33 e. Disclosure requirements on the terms and conditions of the CIS  
34 investments and material information regarding CIS operations;  
35 f. Minimum requirements for inculcating financial literacy in  
36 investors;

- 1 g. Ascertainment of client suitability for CIS securities;
- 2 h. Record-keeping, reporting and audit requirements of the fund
- 3 manager, corporate CIS, trustee, custodian and other relevant
- 4 parties in the CIS pertaining to records of all contributions,
- 5 earnings, total account balances and other matters;
- 6 i. Regulation, supervision and monitoring the operations,
- 7 management and/or activities of all CIS, fund managers, CIS
- 8 distributors, CIS solicitors and other parties involved in CIS;
- 9 j. Proper and effective enforcement of the provisions of this Law;
- 10 and
- 11 k. Such other matters necessary and desirable for the proper and
- 12 effective implementation of this Law.

13 The IRR may be repealed, amended or supplemented at any time in  
14 the same manner as the original IRR are adopted and issued pursuant to this  
15 Section.

16  
17 The IRR and its amendments or supplements shall be published once a  
18 week for two (2) consecutive weeks in two newspapers of general circulation.

19  
20 **SECTION 63. *Cooperation and Coordination.*** – The appropriate  
21 regulatory agencies, with the Commission as the lead agency, shall adopt all  
22 other appropriate measures as may be necessary or desirable for the effective  
23 implementation and enforcement of this Law, taking into full account  
24 declaration of policy contained in Section 2.

25  
26 **SECTION 64. *Effect on Existing Laws and Contracts.*** - The  
27 rights and remedies provided by this Law shall be in addition to any and all  
28 other rights and remedies that exist under existing laws.

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

32  
33 **SECTION 65. *Separability clause.*** – Any portion or provision of this  
34 Law that may be declared unconstitutional or invalid shall not have the effect



1 of nullifying other portions or provisions hereof as long as such remaining  
2 portion or provision can still subsist and be given effect in their entirety.

3  
4 **SECTION 66. *Suppletory Effect*** – This Law shall apply suppletorily  
5 to any law that may be hereinafter enacted on collective investment schemes  
6 governing specialized products or investments.

7  
8 **SECTION 67. *Repealing Clause***. – All acts, laws, executive orders  
9 and/or rules and regulations or any part thereof which are inconsistent with  
10 the provisions of this Law are hereby repealed or modified accordingly.

11  
12 **SECTION 68. *Effectivity Clause***. - This Law shall take effect upon  
13 its approval.

14  
15 *Approved,*

- 16
- 
- i Section 4. COVERAGE - SEC proposal adopted (April 21, 2006) ; add "Securities Market Professionals" in Definition of terms, assigned to SEC  
ii "Affiliated person" = TWG adopted the definition in SBN 211 as is (April 21, 2006)  
iii "Bank" - Based on the definition under the General Banking Law (R.A No. 8791); BSP proposal adopted (April 21, 2006)  
iv "Broker" – PSE proposal adopted (April 21, 2006)  
v "Certified Investment Solicitor" Adopted ICAP proposal (April 21, 2006)  
vi "Common Stock" - Definition based on TWG discussion (April 21,2006)  
vii "Control" - SEC proposal adopted (April 21, 2006)  
viii "Convicted" The TWG decided to maintain the definition provided under SBN 211, subject to further deliberation  
ix "Dealer" PSE proposal adopted (April 21, 2006)  
x "Director" - Chairman Lim stressed that the term "director" may mean a "trustee" for it refers to any person performing similar functions with respect to the organization. (April 21, 2006)  
xi "Exchange" - PSE proposal adopted (April 21, 2006)  
xii "Investment company Manager" - Adopted ICAP proposal (April 21, 2006), for further discussion  
xiii "Insurance Company Manager" - Adopted ICAP proposal (April 21, 2006)  
xiv "Investment Adviser" – Contained in Atty. Callangan's email dated 18 July 06.  
xv "Net Asset Value" - Based on the provisions of the Manual of Regulations for Banks regarding Net Asset Value of the UTIF; BSP proposal adopted (April 21, 2006). The definition was further revised on June 16, 2006  
xvi "Person" – definition retained from SBN 211 (April 21, 2006)  
xvii "Sale", "sell" "offer to sell" - Definition adopted from SBN 211 (June 16, 2006)  
xviii "Securities Regulation Code" - Definition adopted June 16, 2006  
xix "Separate Account Fund" – term introduced by ICAP on June 30, 2006  
xx IC proposal, adopted on September 15, 2006.  
xxi Section 7. *Definition of an Investment company* – (b)(1) – suggestion by SEC to change to "nineteen persons" was adopted by the TWG (June 30, 2006)