

## OFFICE OF THE GOVERNOR

### CIRCULAR NO. 447 Series of 2004

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

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

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

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

#### **Subsection UX410.1/U4410Q.1 Definitions**

- a. *Unit Investment Trust Funds.* Unit Investment Trust Funds are open-ended pooled trust funds denominated in pesos or any acceptable currency, which are operated and administered by a trust entity and made available by participation. The term Unit Investment Trust Funds is synonymous to common trust funds (CTFs). As an open-ended fund, participation or redemption is allowed as often as stated in its plan rules.
- b. *Trust Entity.* Any bank, investment house or a stock corporation duly authorized by the Monetary Board to engage in trust, investment management and fiduciary business.
- c. *Board of Directors.* For this purpose, the term shall include a trust entity's duly constituted Board of Directors or its functional oversight equivalent which shall include the country head in the case of foreign banks / institutions.

**Subsection UX410.2/U4410Q.2 Establishment of a Unit Investment Trust Fund.** Any Trust Entity authorized to perform trust functions may establish, administer and maintain one or more UIT Funds subject to applicable provisions under this Circular.

**Subsection UX410.3/U4410Q.3 Administration of a Unit Investment Trust Fund.** The trustee shall have exclusive management and control of each UIT Fund under its administration, and the sole right at any time to sell, convert, reinvest, exchange, transfer or otherwise change or dispose of the assets comprising the fund: *Provided*, That no participant in a UIT Fund shall have or be deemed to have any ownership or interest in any particular account or investment in the UIT Fund but shall have only its proportionate beneficial interest in the fund as a whole.

**Subsection UX410.4/U4410Q.4 Relationship of trustee with Unit Investment Trust Fund.** A trustee administering a UIT Fund shall not have any other relationship with such fund other than its capacity as trustee of the UIT Fund. *Provided, however*, That a trustee which simultaneously administers other trust, fiduciary or investment management funds may invest such funds in the Trustee's UIT Fund, if allowed under a policy approved by the Board of Directors.

**Subsection UX410.5/U4410Q.5 Operating and accounting methodology.** A UIT Fund shall be operated and accounted for in accordance with the following:

- a. The total assets and accountabilities of each fund shall be accounted for as a single account referred to as pooled-fund accounting method.
- b. Contributions to each fund by clients shall always be through participation in units of the fund and each unit shall have uniform rights or privileges, as any other unit.
- c. All such participations shall be pooled and invested as one account (referred to as collective investments).
- d. The beneficial interest of each participation unit shall be determined under a unitized net asset value per unit (*NAVPU*) valuation methodology defined in the written plan of the UIT Fund, and no participation shall be admitted to, or redeemed from, the fund except on the basis of such valuation. To arrive at a fund's *NAVPU*, the fund's total Net Assets is divided by the total outstanding units. *Total Net Assets* is a summation of the market value of each investment less fees, taxes, and other qualified expenses, as defined under the Plan rules.

**Subsection UX410.6/U4410Q.6 Plan rules.** Each UIT Fund shall be established, administered and maintained in accordance with a written trust agreement drawn by the trustee, referred to as the "Plan" which shall be approved by the Board of Directors of the trustee and a copy of which shall be submitted to the Bangko Sentral for approval prior to its implementation.

The Plan shall contain the following minimum elements:

- a. Title of the Plan. This shall correspond to the product/brand name by which the UIT fund is proposed to be known and made available to its clients.
- b. Manner in which the fund is to be operated. A statement of the fund's investment objectives and policies including limitations, *if any*.
- c. Investment powers of the trustee with respect to the fund, including the character and kind of investments, which may be purchased, by the fund. There must be an unequivocal statement of the full discretionary powers of the trustee as far as the fund's investments are concerned. These powers shall be limited only by the duly stated investment objective and policies of the fund.
- d. The unitized NAV $P_u$  valuation methodology as prescribed under *Subsection UX410.5.d /U4410Q.5.d* shall be employed.
- e. Terms and conditions governing the admission or redemption of units of participation in the fund. If the frequency of admission or redemption is other than daily; that is, any business day, the same should be explicitly stated in the Plan rules: *Provided* That the admission and redemption prices shall be based on the prevailing market value of underlying investments at that time.
- f. Aside from the regular audit requirement applicable to all trust accounts, an external audit of each UIT fund shall be conducted annually by an independent auditor acceptable to the BSP and the results thereof made available to participants. The external audit shall be conducted by the same external auditor engaged for the audit of the Trust Entity.
- g. Basis upon which the fund may be terminated. The Plan shall state the rights of participants in case of termination of the fund. Termination of the fund shall be duly approved by the trustee's Board of Directors and a copy of the resolution submitted to the appropriate department of the BSP.
- h. Liability clause of the trustee. There must be clear and prominent statement adjacent to where a client is required to sign that contract is not a deposit account but a trust agreement and that any loss/income is for the account of the participant; that the trustee is not liable for losses unless upon willful default; and that the fund is not insured by the PDIC;

- i. Amount of fees/commission and other charges to be deducted from the fund. The amount of fees that shall be charged to a fund shall cover the fund's fair and equitable share of the routine administrative expenses of the trustee such as salaries and wages, stationery and supplies, credit investigation, collateral appraisal, security, messengerial and janitorial services, EDP expenses, BSP supervision fees and internal audit fees. However, the trustee may charge a UIT fund for special expenses if such is necessary to preserve or enhance the value of the Fund. Such special expense shall be payable to a third party covered by a separate contract and disclosed to participants. No other fees shall be charged to the fund.

Marketing or other promotional related expenses shall be for the account of the trustee and shall be presumed covered by the trust fee.

- j. Such other matters as may be necessary or proper to define clearly the rights of participants in the UIT Fund. The provisions of the plan shall govern participation in the fund including the rights and benefits of persons having interest in such participation, as beneficiaries or otherwise. The Plan may be amended by a resolution of the Board of Directors of the trustee: *Provided however*, That participants in the fund shall be immediately notified of such amendments and shall be allowed to withdraw their participations within a reasonable time but in no case less than thirty (30) calendar days after the amendments are approved, if they are not in conformity with the amendments made thereto: *Provided further*, That amendments to the plan shall be submitted to the Bangko Sentral within ten (10) business days from approval of the amendments by the Board of Directors. The amendments shall be deemed approved after thirty (30) business days from date of completion of requirements.

A copy of the Plan shall be available at the principal office of the trustee during regular office hours, for inspection by any person having an interest in the fund or by his authorized representative. Upon request, a copy of the plan shall be furnished such interested person.

#### ***Subsection UX410.7/U4410Q.7 Minimum disclosure requirements***

a. **Disclosure of Unit Investment Trust Fund investments.** A list of prospective and outstanding investment outlets shall be made available by the trustee for the review of all UIT Fund clients. Such disclosure shall be substantially in the form hereto attached as *Appendix 'A'*. The list of investment outlets shall be updated quarterly.

b. **Distribution of investment units.** The trustee may issue such conditions or rules, as may affect the distribution of investment units subject to the minimum conditions enumerated hereunder.

- (1) Marketing Materials. All printed marketing materials related to the sale of a UIT Fund shall clearly state:
  - a) The designated name of the fund and the fund's trustee.
  - b) The participation is not a "*deposit account*" but a trust product; and that any loss/income is for the account of the participant; that the Bank is not liable for losses unless proven to be negligent.
  - c) The participation does not carry any guaranteed rate of return and it is not insured by the PDIC.
  - d) Minimum information regarding:
    - (i) The general investment policy and applicable risk profile.
    - (ii) Particulars or administrative and marketing details like pricing and cut-off time.
    - (iii) All charges made/to be made against the fund, including trust fees, other related charges.
    - (iv) The availability of the Plan rules governing the Fund, upon the client's request.
    - (v) Customer and Product Suitability Standards.
  
- (2) Evidence of participation. Every UIT Fund participant shall be given -
  - (a) A participating trust agreement. Such agreement shall clearly indicate that the trust product does not have any guaranteed rate of return and it is not insured with the PDIC.
  - (b) A confirmation of participation and redemption made to /from the Fund that shall contain the following information:
    - (i) NAVPu of the fund on day of purchase /redemption;
    - (ii) Number of units purchased/redeemed; and
    - (iii) Absolute peso or foreign currency value

No indicative rates of return shall be provided in the trust participating agreement. Marketing materials may present relevant historical performance purely for reference and with clear indication that past results do not guarantee similar future results.

- (3) A participating trust agreement or confirmation of contribution /redemption need not be manually signed by the trustee or his authorized representative if the same is in the form of an electronic document that conforms with the implementing rules and regulations of R.A. No. 8792, otherwise known as the Electronic Commerce Act.

**c. Regular publication / computation / availability of the fund's NAVPu.**

Trust Entities managing a UIT Fund shall cause at least the weekly publication of the NAVPu of such fund in one or more newspaper of national circulation: *Provided*, That a pooled weekly publication of such NAVPu shall be considered as substantial compliance with this requirement. The said publication, at the minimum, shall clearly state the name of the fund, its general classification, the fund's NAVPu and the moving return on investment (ROI) of the fund on a year-to-date (YTD) and year-on-year (YOY) basis.

NAVPu shall be computed daily and shall be made available to participants and prospective participants upon request.

**d. Marketing Personnel.** To ensure the competence and integrity of all duly designated UIT marketing personnel, all personnel involved in the sales of these funds shall be required to undergo standardized training program in accordance with the guidelines of this Circular. This training program may be conducted by their respective Trust Entities in accordance with the minimum training program guidelines provided by the Trust Officers Association of the Philippines ('TOAP'). Such training program shall however be regularly validated by TOAP.

***Subsection UX410.8/U4410Q.8 Exposure limit to single person/entity.***

The combined exposure of the UIT Fund to any entity and its related parties shall not exceed fifteen percent (15%) of the market value of the UIT Fund: *Provided* That, this limitation shall not apply to non-risk assets as defined by the BSP.

In case the limit is breached due to the marking-to-market of certain investment/s or any extraordinary circumstances, e.g. abnormal redemptions which are beyond the control of the trustee, the trustee shall be given thirty (30) days from the time the limit is breached to correct the same.

***Subsection UX410.9/U4410Q.9 Allowable investments and valuation.***

UIT Fund investments shall be limited to bank deposits and the following financial instruments: (a) Securities issued by or guaranteed by the Philippine government, or the Bangko Sentral ng Pilipinas; (b) Tradable securities issued by the government of a foreign country, any political subdivision of a foreign country or any supranational entity; (c) Exchange-listed securities, (d) Marketable instruments that are traded in an organized exchange; (e) Loans traded in an organized market; and (f) such other tradable investments outlets/categories as the BSP may allow.

*Provided*, That a financial instrument is regarded as tradable if quoted two-way prices are readily and regularly available from an exchange, dealer, broker, industry group, pricing service or regulatory agency, and those prices represent actual and regularly occurring market transactions on an arm's length basis.

The UIT Fund may avail itself of financial derivatives instruments solely for the purpose of hedging risk exposures of the existing investments of the Fund, provided these are accounted for in accordance with existing BSP hedging guidelines as well as the Trust Entity's risk management and hedging policies duly approved by the Trust Committee and disclosed to participants.

The use of hedging instruments shall also be disclosed in the "Plan" as provided in Item "c" of Subsection UX410.6/U4410Q.6 and specified in the quarterly "list of investment outlets" as provided in item "a" of Subsection UX410.7/ U4410Q.7.

**Subsection UX410.10/U4410Q.10      Other related guidelines on valuation of allowable investments**

- a. In pricing debt securities, interpolated yields shall be used for securities with odd or off-the-run tenors using the straight-line basis and generally accepted market convention.
- b. In case outstanding UIT investments may deteriorate in quality, i.e., no longer tradable as defined under Subsection UX410.9/U4410Q.9, the trustee shall immediately provision to reflect fair value in accordance with generally accepted accounting principles or as may be prescribed by the BSP. If no fair value is available, the instrument shall be assumed to be of no market value.

**Subsection UX410.11/U4410Q.11      Unit Investment Trust Fund administration support**

a. *Backroom operations.* Administrative rules on backroom under Sections X421/4421Q of the MORB/MORNBF1 shall be applicable to UIT Fund. Adequate systems to support the daily marking-to-market of the fund's financial instruments shall be in place at all times. In this respect, a daily reconciliation of the fund's resultant marked-to-market value with the unrealized market losses and gains (*respective contra asset balance*) versus the book value of the fund for investments in financial instruments shall be done and all differences resolved within the day.

b. *Custody of securities.* Investments in securities of a UIT Fund shall be held for safekeeping by BSP accredited third party custodians which shall perform independent marking-to-market of such securities.

**Subsection UX410.12/U4410Q.12      Counterparties**

a. *Dealings with related interests/bank or NBQB proper/holding company/ subsidiaries/affiliates and related companies.* A trustee of a UIT Fund shall be transparent at all times and maintain an audit trail for all transactions with related parties or entities. The trustee shall observe the principle of best execution and no purchase/sale shall be made with related counterparties without considering at least two (2) competitive quotes from other sources.

b. *Accreditation of counterparties.* The Fund shall only invest with approved counterparties qualified in accordance with the policy duly approved by the Trust Committee. Counterparties shall be subject to appropriate limits in accordance with sound risk management principles.

***Subsection UX410.13/U4410Q.13 Foreign currency-denominated Unit Investment Trust Funds.*** UIT Fund denominated in any acceptable foreign currency provided under existing BSP rules and regulations may be established. Such fund may only be invested in allowable investments denominated in pesos or any acceptable foreign currency as expressly allowed under the fund's Plan rules and properly disclosed to fund participants.

***Subsection UX410.14 /U4410Q.14 Exemptions from statutory and liquidity reserves, single borrowers limit, DOSRI.*** The provisions on reserves, single borrower's limit and DOSRI ceilings under Subsection X405.5, and Sections X303, X330/4360Q and X331/4361Q, respectively, applicable to trust funds in general shall not be made applicable to UIT Funds.

**SECTION 2.** This Circular shall take effect fifteen (15) calendar days after its publication in a newspaper of general circulation in the Philippines.

For the Monetary Board:

**ALBERTO V. REYES**  
Officer-in-Charge

3 September 2004