

Republic of the Philippines
House of Representatives
Quezon City

Thirteenth Congress

First Regular Session

HOUSE BILL NO. 117



Introduced by **Representative JOEY SARTE SALCEDA**

EXPLANATORY NOTE

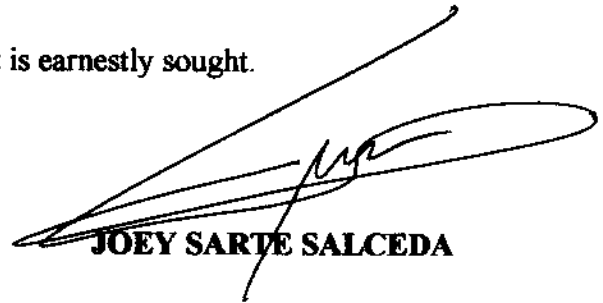
This bill seeks to amend Republic Act No. 2629, otherwise known as The Investment Company Act, to provide a more conducive regulatory environment for the development of investment companies including mutual funds.

Salient features of the bill include:

- (1) An investment company shall be allowed to sell securities within or without the Philippines to both Filipinos and foreigners.
- (2) A foreign mutual funds shall be allowed to sell securities, provided that a portion of the funds raised from any public offer shall be invested in the Philippines.
- (3) Foreign national shall be eligible to become members of the board of directors, which is consistent with the provision allowing a mutual fund to issue shares to foreigners.
- (4) A mutual funds shall be allowed to issue initial or additional shares of common stock without having to increase its paid-in equity, thereby offering an unlimited member of shares to small investors.
- (5) An Investment Company Investors Protection Fund shall be created to compensate investors for financial injury they may suffer due to reasons other than market decline in the investment portfolio of the company.
- (6) It requires the registration not only of principal distributors of mutual funds but also of mutual funds dealers so that all persons distributing mutual funds are regulated.
- (7) It provides certain investing standards for mutual funds to ensure that they are reasonably liquid diversified at all time.
- (8) It simplifies the registration process by consolidating the registration statements required under the Investment Company Act and Securities Regulation Code.

- (9) It Expands the definition of a disinterested person as any person who does not receive any form of compensation or remuneration from the investment adviser, principal distributor, legal counsel and custodian of an investment company. This is to ensure that a majority of the members of the Board of Directors of an investment company is truly independent.
- (10) It prohibits investment companies from underwriting or participating in any underwriting of securities.

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



JOEY SARTE SALCEDA

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Introduced by **Representative JOEY SARTE SALCEDA**

**AN ACT
PROVIDING FOR THE REGULATION OF INVESTMENT COMPANIES**

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

PART I. TITLE AND DEFINITIONS

SECTION 1. *Short Title.* – This Act shall be known as the “Investment Company Act of 2004.”

SEC. 2. *Declaration of Policy.* – The policy of the State to foster a fair, orderly and efficient capital market in order to protect investors and provide the private and public sectors access to funds that are vital to the development of the national economy. The State seeks to: (1) promote the public interest by providing a favorable framework for investment companies to facilitate the flow of investment capital from sources within the country and abroad; (2) encourage the participation in the mutual fund industry of the best qualified investment advisers regardless of origin; (3) broaden participation in securities ownership by Filipinos so that more are able to share in economic growth; (4) provide equal protection to investors in all similar pooled investment vehicles; and (5) provide the same competitive environment for all similar pooled investment vehicles, their investment advisers and promoters.

The purpose of this Act is to establish a comprehensive scheme of regulation to enable investment companies to play a key role in capital formation. This Act promotes the application of fiduciary principles in the investment management and administration of investment companies, promotes high standards in their distribution, and seeks to prevent abuses and protect the interests of

the investing public.

SEC. 3. *Definitions and Interpretation.* – (a) When used in this Act:

- (1) **“Administrative Manager”** is a person who, under a contract with a registered investment company, is responsible for the provision of administrative services to the company.
- (2) **“Affiliated Person”** of another person is:
 - (i) A person directly or indirectly owning, controlling or holding with power to vote securities carrying more than ten percent (10%) of the votes of the other person;
 - (ii) A person which has securities carrying ten percent (10%) or more of its votes directly or indirectly owned, controlled or held with power to vote by the other person;
 - (iii) A person directly or indirectly controlling, controlled by, or under common control with the other person;
 - (iv) An officer, director, partner, or employee of the other person; and
 - (v) If the other person is an investment company, any investment adviser of the other person.
- (3) **“Bank”** is an entity organized under the laws of the Philippines or doing business in the Philippines that is engaged in the lending of funds obtained in the form of deposits and duly authorized to operate as such by the Monetary Board of the *Bangko Sentral ng Pilipinas*.
- (4) **“Commission”** is the Securities and Exchange Commission.
- (5) **“Company”** is a corporation, registered partnership, trust or association.
- (6) **“Control”** is the power to exercise a controlling influence over the management or policies of a company. Any person who owns beneficially, either directly or through one or more controlled companies, securities carrying more than twenty-five percent (25%) of the votes of a company is presumed to control that company. This presumption may be rebutted by order of the Commission either on its own motion or on application by an interested person based on evidence satisfactory to the Commission.
- (7) **“Convicted”** includes a verdict, judgment or plea of guilty, if it has not been reversed, set aside or withdrawn.
- (8) **“Disinterested Person”** of a company is a person who is not:

- (i) An affiliated person of the company (other than solely by being a director or a stockholder who does not control it);
 - (ii) An affiliated person of an investment adviser, principal distributor, principal underwriter or custodian of the company;
 - (iii) A person who has acted as a legal counsel or accountant to the company during the past two years;
 - (iv) A person who has had a material business or professional relationship with the company during the past two years;
 - (v) A person who has acted as a legal counsel to the company's investment adviser during the past two years;
 - (vi) A spouse, sibling, parent or child of any of them; or
 - (vii) A person who is receiving a salary, allowance or other form of compensation or remuneration from an investment adviser, principal distributor, legal counsel or custodian of an investment company.
- (9) "Investment Adviser" is a person who, under an advisory contract:
- (i) regularly furnishes advice or recommends investment decisions concerning a securities portfolio; or
 - (ii) manage another person's securities portfolio, including the arrangement of purchases, sales or exchanges of securities through a dealer or broker.
- (10) "Investment Advisory Contract" is a contract between a registered investment company and an investment adviser, under which the investment adviser manages the investment of the investment company's securities portfolio.
- (11) "Investment House" is a person engaged in the underwriting of securities of other issuers and registered for that purpose under the Investment Houses Law.
- (12) "Investment Solicitor" is an individual who for compensation:
- (i) Solicits or obtains investments on behalf of a registered investment company or its agents or principal distributors;
 - (ii) Transmits for a person other than himself an investment or application for investment in a registered investment company; or
 - (iii) Offers or assumes to act as an agent or investment solicitor of an investment company.
- (13) "Mutual Fund Dealer" is a company other than a principal distributor which for compensation:

- (i) Solicits or obtains investments on behalf of a registered investment company or its agents or principal distributors;
 - (ii) Transmits for a person other than himself an investment or application for investment in a registered investment company; or
 - (iii) Offers or assumes to act as an agent or investment solicitor of an investment company.
- (14) "Net Asset Value" is the value of all assets less all liabilities of an investment company as determined in accordance with this Act and the rules and regulations under it, supplemented by generally accepted accounting principles and practices established by the Accounting Standards Council of the Philippines uniformly applied.
- (15) "Principal Distributor" is a person who, under a contract with a mutual fund, has the right to sell securities issued by the company to a dealer or to the public or both, but does not include a dealer who purchases securities issued by the company through a principal distributor acting as the company's agent.
- (16) "Principal Underwriter" is an underwriter who, in connection with a primary distribution of securities:
- (i) is in privity of contract with the issuer or an affiliated person of the issuer;
 - (ii) acting alone or in concert with one or more persons, initiates or directs the formation of an underwriting syndicate; or
 - (iii) is allowed a rate of gross commission, spread or other profit greater than the rate allowed another underwriter participating in the distribution.
- (17) "Promoter" of a company or a proposed company is a person who is initiating or directing, or has within the preceding year initiated or directed, the organization of the company, acting alone or in concert with one or more persons.
- (18) "Quasi-bank" is a company engaged in the borrowing of funds through the issuance, endorsement or assignment with recourse or acceptance of deposit substitutes for the purpose of re-lending or purchasing of receivables and other obligations.
- (19) "Redeemable Security" is a security, other than short-term debt, the terms of which entitle the holder to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent, upon surrender of the security.
- (20) "Reorganization" is:
- (i) a reorganization under the supervision of a court of competent jurisdiction;
 - (ii) a merger or consolidation;

- (iii) a sale of seventy-five percent (75%) or more in value of the assets of a company;
 - (iv) a restatement of the capital of a company, or an exchange of securities issued by a company for any of its own outstanding securities;
 - (v) a voluntary dissolution or liquidation of a company;
 - (vi) a recapitalization or other procedure or transaction which alters, modifies or eliminates any rights, preferences or privileges of any class of securities of a company, as provided in its charter or other instrument creating or defining those rights, preferences and privileges;
 - (vii) an exchange of securities issued by another company or companies for the purpose of effecting or consummating any of the foregoing; or
 - (viii) an exchange of securities by a company which is not an investment company for securities issued by a registered investment company.
- (21) "Sales Load" includes:
- (i) the fees and expenses for sales and promotional activities that are charged in connection with the sale of a security issued by an investment company and deducted from the subscription price paid by an investor;
 - (ii) promotional or sales fees paid by an investment company in connection with a specific sale of its securities to an investor; or
 - (iii) the fee deducted from the redemption proceeds paid to an investor on account of sales or promotional activities.
- Any tax paid or payable on the issuance, purchase, sale or redemption of the securities of an investment company, such as the value-added tax, is not included in the sales load.
- (22) "SRC" means The Securities Regulation Code, Republic Act No. 8799.
- (23) "Trust Company" is a person duly authorized by the Monetary Board of the Bangko Sentral ng Pilipinas to engage in trust business.
- (24) "Underwriter" is a person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking. However, "underwriter" does not include a person whose interest is limited to a commission from an underwriter or dealer not exceeding the usual and customary distributors' or sellers' commission.

(25) "Value" is

- (i) with respect to securities for which market quotations are readily available, the market value of the securities; and
- (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors of the company. The market value of a security is its closing price and, if there is no closing price, the previous closing price. In the case of an option or other right, the market value is the daily mark-to-market price, if available.

(26) "Wholly-owned Subsidiary" of a person is a company that has outstanding securities carrying ninety-five percent (95%) or more of its votes being owned by the person or the person's wholly-owned subsidiaries.

(b) No provision of this Act shall apply to, or be deemed to include, the Philippines or any political subdivisions, or any agency, authority or instrumentality of any of them, or any corporation which is wholly-owned directly or indirectly by any of them, or any officer, agent or employee of any of them acting as such in the course of his official duty, unless the provision states otherwise.

(c) Terms defined in the SRC and not otherwise defined in this Act have the meaning given to them in the SRC. Any other term not otherwise defined in this Act has its usual and commonly understood trade, business, commercial or investment meaning.

(d) Any reference in this Act or any rule, regulation or order under it to the filing of material requires that the material be deposited with the Commission.

SEC. 4. *Definition of Investment Company.* – (a) When used in this Act, "investment company" is an issuer which:

- (1) Holds itself out as being engaged primarily in the business of investing, reinvesting or trading in securities; or
- (2) Engages or proposes to engage primarily in the business of investing, reinvesting or trading in securities.

An issuer shall be deemed to engage or propose to engage primarily in the business of investing in securities if it owns or proposes to acquire securities (other than government securities, securities of majority-owned subsidiaries that are not investment companies, and securities issued by an employees' stock, bonus, pension, or profit sharing plan or fund) having a value at the end of the last fiscal quarter exceeding forty percent (40%) of the issuer's unconsolidated total assets (exclusive of government securities and cash items).

(b) None of the following persons is an investment company, unless the Commission prescribes otherwise by rule:

- (1) An issuer whose outstanding securities (other than short-term debt) are beneficially owned by not more than fifty (50) persons, and which is not making or intending to make a public offering of its securities. In determining the number of beneficial owners, a company is counted as one (1) person, but if a company owns beneficially securities carrying twenty-five percent (25%) or more of the votes of the issuer, each holder of the company's outstanding securities (other than short-term debt) is counted.
- (2) A bank, quasi-bank or trust company, or a common trust fund administered by a bank, quasi-bank or trust company for the collective investment of funds contributed by the bank, quasi-bank or trust entity in its capacity as a trustee, executor, administrator or guardian.
- (3) An insurance company engaged in the conduct of its ordinary business, except that a variable annuity issued by an insurance company is an investment company for purposes of this Act.
- (4) An employee's stock bonus, pension or profit sharing plan or fund.
- (5) A broker, dealer or investment house, registered as such with the Commission, primarily engaged in the business of underwriting securities, purchasing and selling securities for its own account, or effecting transactions in securities for the accounts of others.
- (6) A company that primarily engages in the business of factoring or mortgage lending, unless it engages in the business of issuing redeemable securities.
- (7) A company organized and operated exclusively for religious, educational, benevolent, fraternal, charitable or reformatory purposes, unless any net earnings of the company go to the benefit of any of its shareholders.
- (8) An issuer primarily engaged in investing in securities issued by its majority-owned subsidiaries, unless any of them is an investment company.
- (9) A wholly-owned subsidiary of any person excepted by this subsection from the definition of investment company.
- (10) An issuer or class of issuers which the Commission, by rule or order, determines not to be an investment company, or excepts from the definition of investment company as not necessary in the public interest or for the protection of investors.

SEC. 5. *Classification of Investment Companies.* – Investment companies are classified as follows:

- (1) A “mutual fund” is an investment company that issues and offers for sale or has outstanding redeemable securities.
- (2) A “closed-end fund” is an investment company that is not a mutual fund.

PART II. REGISTRATION OF INVESTMENT COMPANIES

SEC. 6. *Registration Requirements for Investment Companies.* – (a) An investment company is permitted to engage, directly or indirectly, in any of the following acts in the Philippines only if registered under Section 7:

- (1) Offer for sale, sell or deliver after sale any security, or any interest in a security, whether or not the issuer is the investment company.
 - (2) Purchase, redeem, retire or otherwise acquire, or attempt to acquire, any security, or any interest in a security, whether or not the issuer is the investment company.
- (b) A registered investment company shall not act as an underwriter of the securities of another person.
- (c) A registered investment company may engage in the acts enumerated in paragraphs (1) and (2) of Subsection (a) without obtaining a separate license as a dealer under the SRC.
- (d) A promoter of or underwriter for an investment company shall not engage in the acts enumerated in paragraphs (1) and (2) of Subsection (a) in the Philippines in respect of any security issued by the company, and no underwriter for an investment company shall sell or purchase for the account of the company in the Philippines the security of any issuer, unless the company is registered under Section 7.
- (e) The Commission may, by rule or order, require that a portion of the funds raised by an investment company organized under the laws of a foreign country in the Philippines be invested in the Philippines. The Commission may, by rule or order, also impose such other conditions in connection with any offer or sale by any such investment company of its securities in the Philippines that it finds necessary or appropriate in the public interest or for the protection of investors.

SEC. 7. *Registration Procedure for Investment Companies.* – (a) An investment company may register under this Act by filing a registration statement under the SRC and the rules and regulations issued under the SRC, except that, instead of the information and documents required by

Section 8 and 12 of the SRC and the rules and regulations under them, it shall file a registration statement, including a prospectus, containing such information and documents as the Commission by rule may prescribe by rule or regulation under this subsection. The registration statement shall include the following:

- (1) A statement in bold letters on the outside front cover page of the prospectus as follows:
 "[Name of company] is registered with the Securities and Exchange Commission as an investment company under the Investment Company Act of 2004. A registration statement relating to the sale or offering of the [name of the product] has been filed under Section 7 of that Act. The Commission has not passed upon the accuracy or adequacy of this prospectus."
- (2) A description of the investment company and its classification.
- (3) The fundamental investment policies of the investment company, including its investment objectives, investment concentration by issuer or industry group, liquidity standards, and portfolio mix.
- (4) Terms and pricing of the securities to be offered by the investment company, sales load, minimum purchase requirements, income distribution policy and procedures for the purchase and sale of securities.
- (5) Risk factors.
- (6) For mutual funds, the method and basis of computation of net asset value, manner and method of redemption, authorized redemption centers and redemption charges, if any.
- (7) The maximum sales load.
- (8) The names and business experience for the past five (5) years and compensation of the directors, officers and promoters of the investment company, including past and present affiliations, and extent of participation or ownership in the common stock or debt securities issued or to be issued by the investment company.
- (9) The names, business experience, affiliations and principal responsibilities of the investment advisers, principal distributors and principal underwriters of the investment company, and the fees and other compensation to be paid to each of them.
- (10) The names of the custodian, independent auditor and legal counsel of the investment company.
- (11) A statement whether any person subject to Subsection 29 has a disability listed in that subsection.
- (12) Audited financial statements for the last fiscal year, if applicable, and for the quarter

ended as of a date not earlier than ninety (90) days before the date of the filing of the registration statement.

- (13) Schedule of investments indicating issuer, cost and market value.
- (14) The articles of incorporation and by-laws of the investment company.
- (15) Any proposed investment advisory contract, the proposed custodian agreement and, in the case of a mutual fund, any proposed contract with a principal distributor.
- (16) Evidence that the investment company is, or when registered will be, in compliance with the structural and capital requirements set out in Section 12.

(b) Within forty five (45) days after the filing of a registration statement, or such later date to which the investment company has consented, the Commission shall declare the registration statement effective or rejected, unless the investment company is allowed to amend the registration statement as provided in Section 14 of the SRC. The Commission shall enter an order declaring the registration statement to be effective if it finds that the registration statement, together with all attached documents, is on its face complete and that there has been compliance with the registration requirements. The Commission may impose such terms and conditions as may be necessary or appropriate in the public interest or for the protection of investors. Despite paragraph 12.5(b) of the SRC and the rules and regulations under it, the order of the Commission granting registration shall become effective when it is entered.

(c) The Commission may reject a registration statement and refuse registration of a security, or revoke the effectivity of a registration statement and the registration of a security after due notice and hearing by issuing an order to that effect, setting forth its findings, if it finds any of the following:

- (1) The investment company made or caused to be made a materially false or misleading statement in its registration statement, or omitted to state in its registration statement a material fact that was required to be stated.
- (2) The investment company or any of its affiliated persons, investment advisers, principal distributors, principal underwriters, promoters or custodian has violated any provision of this Act, the SRC or any rules or regulations of the Commission.
- (3) Any person subject to Subsection 29(a) has a disability listed in that subsection and has not been exempted by the Commission under subsection 29(b).
- (4) The investment company has not paid the registration fee prescribed by the Commission.

(d) Section 13 of the SRC, dealing with rejection and revocation of registration of securities, Section 14 of the SRC, dealing with amendments to the registration statement, and Section 15 of the

SRC, dealing with suspension of registration, together with the rules and regulations under them, apply to investment companies registered under this Act, except that an amended registration statement shall become effective in accordance with Subsection (b). Subsection 15.1 of the SRC shall also apply to a ground for revocation of registration specified in this Act. The reference in Subsections 15.1 and 15.2 of the SRC to notification of the issuer, underwriter, dealer or broker participating in an offering shall apply similarly to a principal distributor participating in an offering.

(e) Whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the taking effect of the order, the company's registration under this Act shall cease to be in effect.

PART III. OPERATION OF INVESTMENT COMPANIES

SEC. 8. *Distribution and Redemption of Mutual Fund Securities.* – (a) A registered mutual fund shall not sell any redeemable security issued by it except through a principal distributor for distribution at the public offering price determined as described in the prospectus. A principal distributor or dealer shall not sell any such security except at the public offering price determined as described in the prospectus. However, these restrictions do not apply to a sale made (1) under Subsection 23(b); (2) under an offer made solely to all registered holders of the securities issued by the mutual fund proportionate to their holdings or proportionate to any cash distribution made to them by the mutual fund, subject to appropriate qualifications designed solely to avoid issuance of fractional securities; or (3) as otherwise provided in a rule or order made under Subsection 19.

(b) Within seven (7) banking days after the surrender of a security to a registered mutual fund or its agent designated for that purpose, or such other period as the Commission may prescribe by rule, the mutual fund shall redeem and make payment for the security in accordance with its terms as stated in the prospectus. A registered mutual fund shall not suspend the right of redemption or postpone the date of payment upon redemption, except:

- (1) for any period (a) during which the Philippine Stock Exchange is closed other than the customary weekend and holiday closing, or (b) during which trading on the Philippine Stock Exchange is restricted;
- (2) For any period during which an emergency exists as a result of which (a) disposal by the mutual fund of securities owned by it is not reasonably practicable, or (b) when it is not reasonably practicable for the mutual fund to determine fairly its net asset value; or
- (3) For such other periods as the Commission may permit by order or regulation for the

protection of security holders of the mutual fund.

The Commission shall determine by rule or regulation the conditions under which (i) trading is restricted, or (ii) an emergency exists for purposes of this subsection. A registered mutual fund shall not sell any redeemable securities issued by it during any period for which there is a suspension or postponement under this subsection.

(c) A registered mutual fund shall not restrict the transferability or negotiability of any security issued by it, except in conformity with the statements contained in its prospectus, and in compliance with any rules and regulations the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(d) A registered mutual fund shall not issue any of its securities (1) for services, or (2) for property other than cash or securities (including securities issued by it), except as a dividend or distribution to its security holders or in connection with a reorganization.

(e) Sales of securities of a registered investment company shall be on a cash basis only. Securities of a registered investment company shall not be issuable on an installment basis. Unless the Commission specifically prescribes otherwise by rule or regulation, credit shall not be, directly or indirectly, extended, maintained or arranged based upon the market price of a security issued by a mutual fund as contemplated by Section 48 of the SRC.

(f) Any provision of The Corporation Code of the Philippines in conflict with this section shall not apply to a registered mutual fund.

(g) The Commission may issue rules concerning the procedures used for the purchase and redemption of securities of a registered mutual funds and the purchase and redemption price for those securities. These rules may prescribe the manner in which fees and commissions are included in the price at which those securities are sold and redeemed and determine a maximum sales load that may be charged.

SEC. 9. *Distribution and Repurchase of Closed-End Fund Securities.* – (a) A registered closed-end fund shall not issue any of its securities (1) for services, or (2) for property other than cash or securities (including securities issued by it), except as a dividend or distribution to its security holders or in connection with a reorganization.

(b) A registered closed-end fund shall not sell any common stock issued by it at a price below its current net asset value (determine as of a time within 48 hours, excluding Sundays and holidays, before the price is determined), exclusive of any distributing commission or discount, except (1) in connection with an offering to all the holders of its common stock; (2) with the consent of the holders

of a majority of its common stock; or (3) upon conversion of a convertible security in accordance with its terms.

(c) A registered closed-end fund shall not purchase any shares of stock issued by it except:

- (1) On a securities exchange or such other open market as the Commission may designate by rule, regulation or order if the fund has, within the preceding six (6) months, informed its stockholders of its intention to purchase the stock by letter or report addressed to all its stockholders;
- (2) Pursuant to tenders, after reasonable opportunity to submit tenders have been given to all its stockholders; or
- (3) Under such other circumstances as the Commission may permit by rule, regulation or order for the protection of investors in order to insure that the purchases are made in a manner and on a basis that does not unfairly discriminate against any of its stockholders.

SEC. 10. *Advertising.* – A registered investment company shall not circulate or distribute any advertisement unless it has been filed. The Commission is authorized to adopt rules governing the content, format and use of advertising material, and may limit, restrict or require revision of advertising material if it finds the advertising material to be false or misleading, or not in accordance with this Act or any rules or regulations under it. If the Commission initiates proceedings to determine whether to limit, restrict or revise advertising material, it may not be used while the proceedings are pending. The terms "advertisement" or "advertising material" include any form of notice, circular, letter or other written or email communication addressed to more than two (2) persons, any fax transmission available on demand, any poster in a public place, or any notice or announcement in any publication or by radio, television or the internet intended to promote or induce the sale of securities of an investment company.

SEC. 11. *Limit on Fees and Expenses.* – (a) The operating expenses of a registered investment company during a fiscal year, including salaries, fees and emoluments received by its directors from the investment company, shall not exceed five percent (5%) of its average daily net asset value for that fiscal year, or such other amount as the Commission may prescribe by rule. The investment advisers and administrative managers to a registered investment company shall reimburse the investment company to the extent the prescribed amount is exceeded in proportion to their fees paid by the investment company during that year.

(b) If a registered investment company invests in the securities of another investment company, any fee or sales load payable in respect of the investment in the other investment company shall be deducted from the fee payable to the investment advisers of the registered investment company.

SEC. 12. *Structure and Capitalization of Investment Companies.* – (a) Unless the Commission prescribe otherwise by rule or regulation, a registered investment company shall:

- (1) Be organized in the form of a stock corporation;
- (2) Issue shares of stock consisting solely of one class of voting common stock;
- (3) If a mutual fund, provide in its articles of incorporation that shareholders are not entitled to pre-emptive rights, despite any provision of The Corporation Code of the Philippines to the contrary;
- (4) Have, at the time of registration, an initial subscribed and paid-up capital from its promoter of at least Fifty million pesos (P50,000,000.00);
- (5) Require that initial paid-up capital not be withdrawn for a period of one (1) year following registration; and
- (6) If a mutual fund, maintain at all times a reserve in liquid or semi-liquid assets, as prescribed by the Commission by rule, equal to ten percent (10%) of the fund's total net asset value.

(b) A registered investment company is not required to have paid-up capital for the issuance of shares of common stock in excess of the amount specified under this section.

(c) The securities of a registered investment company initially subscribed by the promoter shall not be sold, transferred or otherwise disposed of within twelve (12) months of the date of registration.

(d) The Commission may prescribe by rule or order such other or additional requirements concerning the form, share structure, restricted period for withdrawals, and level of and restrictions on capitalization and liquidity as are necessary or appropriate in the public interest or for the protection of

investors. The Commission shall consider whether a smaller amount of paid-up capital is appropriate if an investment company is one of a group of investment companies under common management.

(e) The Commission is authorized to conduct examinations of the financial condition of investment companies as often as may be necessary or appropriate in the public interest or for the protection of investors.

(f) A registered investment company, its principal distributors and its principal underwriters shall not make a public offering of the investment company's securities unless the investment company is in compliance with the provisions of this section.

SEC. 13. *Board of Directors.* – (a) Starting from the date that is ninety (90) days after the effective date of this Act, a majority of the directors of a registered investment company shall be disinterested persons.

(b) A registered investment company shall not have as a majority of its directors, persons who are officers or directors of any one bank, investment house or broker or its affiliated persons.

(c) A majority of the directors of a registered investment company shall be residents of the Philippines, unless the Commission prescribes otherwise by rule.

(d) No person shall serve as a director of a registered investment company unless elected to that office by the company's stockholders at a meeting of the stockholders duly called for that purpose at least annually, except that vacancies occurring between meetings may be filled in any otherwise legal manner if immediately after filling any such vacancy at least two-thirds (2/3) of the directors then holding office shall have been elected as directors by the company's stockholders.

SEC. 14. *Reporting Requirements for Investment Companies.* – (a) Within one hundred five (105) days after the end of its fiscal year, a registered investment company shall transmit to its stockholders and file an annual report containing the following:

- (1) A balance sheet, income statement, statement of cash flows and statement of changes in net assets for the period covered by the report, including a statement of the aggregate value of investments as of the balance sheet date. The income statement shall be itemized with respect to each category of income and expense representing more than five percent (5%) of total income or expense. The statement of surplus shall be itemized with respect to each charge or credit to the surplus account representing more than five percent (5%) of the total charges or credits for the period. The financial statements shall be; (i) prepared in accordance with generally accepted accounting

principles and practices established by the Accounting Standards Council of the Philippines uniformly applied and pursuant to any rules the Commission prescribes respecting financial statement presentation and disclosure, and (ii) audited and certified by independent certified public accountants whose opinion shall state that they have verified the securities owned, either by actual examination or by receipt of a certificate from the custodian, as the Commission by rule may prescribe.

- (2) A list showing the amount and value of securities owned on the date of the balance sheet.
- (3) A statement of the aggregate remuneration paid by the investment company during the period covered by the report to each of its affiliated persons.
- (4) A statement of the aggregate peso amounts of purchases and sales of portfolio securities, other than government securities, made during the period covered by the report.
- (5) A description of any transactions between the investment company and any of its affiliated persons during the period covered by the report.
- (6) A summary of financial information on a per share basis, a statement showing the calculation of net asset value per share with comparisons to the same period in the three (3) preceding fiscal years, and the total investment return per share.
- (7) Such other information as the Commission may prescribe by rule.

If, in the Commission's judgment, any item required under this subsection is inapplicable or inappropriate to a specified type of investment company, the Commission may by rule instead permit the inclusion of an item of a comparable character as it deems applicable to that type of investment company.

(b) A registered investment company shall file such other information and documents as the Commission may prescribe by rule to keep reasonably current its registration statement filed under Section 7 or its annual report filed under Subsection (a).

(c) Reports, including financial statements, filed by a registered investment company under Subsections (a) and (b) shall be instead of any periodical or current reports or financial statements otherwise required to be filed under Section 17 of the SRC or under The Corporation Code of the Philippines.

SEC. 15. *Purchases on Margin, Short Selling and Limits on Indebtedness.* – (a) Unless the Commission prescribes otherwise by rule or order as necessary or appropriate in the public interest or

for the protection of investors, a registered investment company shall not purchase any security on margin, except short-term credits necessary for the clearance of transactions.

(b) A registered mutual fund shall not issue any debt securities, but is permitted to borrow from a bank. If asset coverage for its borrowings at any time falls below three hundred percent (300%), the fund shall, within three (3) banking days, reduce its borrowings until the asset coverage is at least three hundred percent (300%).

(c) A registered closed-end fund shall not:

- (1) Incur any indebtedness, through the issue of a debt security or otherwise, unless, immediately after incurring the indebtedness, it has an asset coverage of at least three hundred percent (300%) for all of its indebtedness; or
- (2) Declare a dividend or distribution on its common stock unless, at the time of declaration, it has asset coverage of at least three hundred percent (300%) for all its indebtedness, after deducting the amount of the dividend.

SEC. 16. *Investment Restrictions.* – (a) Unless the Commission prescribes otherwise by rule or order as necessary or appropriate in the public interest or for the protection of investors, a registered investment company shall not, directly or indirectly:

- (1) Purchase securities of an investment company if, immediately after the purchase, it will have more than ten percent (10%) of its net asset value invested in aggregate in securities of investment companies;
- (2) Purchase securities of an issuer if, immediately after the purchase, it will have more than ten percent (10%) of its net asset value invested in shares of that issuer;
- (3) Purchase securities of an issuer if, immediately after the purchase, it will hold securities carrying more than ten percent (10%) of (i) the votes of that issuer, or (ii) the aggregate market value of the equity securities of that issuer;
- (4) Purchase assets if, immediately after the purchase, it will have more than ten percent (10%) of its net asset value invested in illiquid assets, as prescribed by the Commission by rule;
- (5) Purchase commodity future contracts;
- (6) Purchase precious metals; or
- (7) Purchase investments that could result in the investment company having unlimited liability.

(b) The Commission shall issue rules restricting or prohibiting any investment policy of a registered investment company as it finds necessary or appropriate in the public interest or for the protection of investors.

SEC. 17. *Misleading Names.* – A registered investment company shall not adopt as part of its name or title, or that of any securities issued by it, any word or words which the Commission finds, and by rule or order declares to be, deceptive or misleading. The Commission is authorized to deny the registration of an investment company using a deceptive or misleading name or title.

SEC. 18. *Prohibition on Loans and Guarantees.* – A registered investment company shall not lend money or property to any person or guarantee an obligation of any kind. Issuance of a variable annuity shall be deemed not to violate this prohibition.

SEC. 19. *Other Prohibited Activities of Investment Companies.* – Unless the Commission by rule or order prescribes otherwise as necessary or appropriate in the public interest or for the protection of investors, a registered investment company shall not:

- (1) Act as a distributor of its securities, except through a principal distributor or a principal underwriter;
- (2) Generate funds for promoting the private business of any employee, officer, director, promoter or stockholder; or
- (3) Knowingly acquire, during the existence of any underwriting or selling syndicate, a security (except a security issued by it) the underwriter of which is an officer, director, investment adviser or employee of the investment company, or is a person of which any such officer, director, investment adviser or employee is an affiliated person, unless in acquiring the security the investment company is itself acting as an underwriter.

SEC. 20. *Changes in Investment Policy.* – (a) Without the prior approval of the Commission and its board of directors, a registered investment company shall not:

- (1) Borrow money, issue senior securities, or purchase or sell real estate or commodities, except in accordance with the policies contained in its registration statement;
- (2) Deviate from the policies contained in its registration statement concerning concentration of investments in any particular industry or group of industries; or
- (3) Deviate from any other investment policy contained in its registration statement,

including any statement of investment objectives.

(b) The Commission may impose such conditions in granting its approval as it finds necessary or appropriate in the public interest or for the protection of investors, including without limitation a favorable vote of the outstanding shares carrying a majority of the votes of the investment company or of the shares carrying a majority of the votes whose holders are present or represented by proxy at a general meeting of the stockholders.

SEC. 21. *Reorganizations.* – (a) A person who solicits or permits the use of his name to solicit any proxy, consent, authorization, power of attorney, ratification, deposit or dissent in respect to a plan of reorganization of a registered investment company shall, within twenty-four (24) hours after the solicitation begins, transmit to the Commission a copy of the plan and any deposit agreement relating to it, to the extent they have not already been filed.

(b) A plan for the reorganization of a registered investment company shall be carried out only with the prior approval of the Commission and subject to such conditions as the Commission finds necessary or appropriate in the public interest or for the protection of investors.

SEC. 22. *Dividends.* – If a registered investment company pays a dividend, or makes a distribution in the nature of a dividend payment, from a source other than:

(1) Its accumulated undistributed net income, determined in accordance with good accounting practice, but not including profits or losses realized upon the sale of securities or other property; or

(2) Its earned surplus so determined for the current or preceding fiscal year, the payment shall be accompanied by a written statement that adequately discloses the sources of the payment. The Commission may prescribe the form of the statement by rule, regulation or order in the public interest and for the protection of investors.

SEC. 23. *Offers to Exchange Securities.* – (a) Neither a registered mutual fund nor any of its principal distributors shall make or cause to be made an offer to the holder of a security of the mutual fund or any other mutual fund to exchange his security for a security in the same or another mutual fund on any basis other than the relative net asset values of the securities to be exchanged, unless the terms of the offer have first been approved by the Commission or are in accordance with rules or regulations issued by the Commission. For purposes of this section:

(1) An offer by a principal distributor means an offer communicated to the holder of a

security, but does not include an offer made by the principal distributor to an individual investor in the course of its retail business.

(2) Net asset value means the net asset value in effect for determining the price at which the securities involved are offered for sale to the public at the time of the receipt of the acceptance of the offer or at such later time as is specified in the offer.

(b) Subsection (a) does not apply to an offer made under (1) a plan of reorganization approved by the holders of a majority of the outstanding shares of the class or series to which the security being offered belongs; or (2) a right of conversion, at the option of the holder, upon the terms specified in the applicable charter, certificate or articles of incorporation or by-laws.

SEC. 24. Proxies and Voting Trusts. – (a) A solicitation of a proxy, consent or authorization with respect to a security of a registered investment company shall comply with any rules and regulations prescribed by the Commission under this Act or the SRC. A proxy, consent or authorization that is solicited with respect to a security of a registered investment company shall be valid for a matter requiring stockholder approval under this Act or a conditional order or approval granted by the Commission under this Act only if it has been solicited expressly for the meeting at which that matter is to be acted upon or for action on that matter without a meeting. A proxy, consent or authorization relating to an approval by stockholders may not be valid and effective for a period longer than two (2) years. A solicitation of a proxy, consent or authorization shall not be made by means of a proxy statement, form of proxy, consent or authorization, notice of meeting or other communication, written or oral, that is materially false or misleading, or which fails to disclose material facts necessary to correct any statement made in an earlier communication with respect to a solicitation for the same meeting or subject matter if the earlier communication has become false or misleading.

(b) A registered investment company, any of its affiliated persons, any issuer of a voting trust certificate relating to a security of a registered investment company, or any underwriter of such a certificate shall not offer for sale, sell or deliver after sale any such voting trust certificate in connection with a public offering.

PART IV. REGULATION OF SECURITIES MARKET PROFESSIONALS AND AFFILIATED PERSONS

SEC. 25. Registration Requirement for Investment Advisers, Principal Distributors and Mutual Fund Dealers. – (a) A person shall not serve as an investment adviser of a registered investment

company or enter into an investment advisory contract unless registered with the Commission as an investment adviser. The Commission shall be the sole regulator of a registered investment adviser, without prejudice to the authority of Bangko Sentral ng Pilipinas over subsidiaries and affiliates of banks and quasi-banks as set out in the New Central Bank Act.

(b) A person shall not serve as a principal distributor unless registered with the Commission as a principal distributor.

(c) A person shall not serve as a mutual fund dealer unless registered with the Commission as a broker, dealer or mutual fund dealer.

(d) A person may register as an investment adviser, principal distributor or mutual fund dealer by filing an application for registration in such form and containing such information and documents as the Commission may prescribe by rule. Within thirty (30) days after the filing of the application, or such later date to which the applicant has consented, the Commission shall by order (1) grant registration if it determines that the requirements of this Section and the qualifications for registration set forth in its rules and regulations have been satisfied, or (2) institute proceedings to determine whether to deny registration.

(e) Every person registered under this section shall pay to the Commission an annual fee at such time and in such reasonable amount as the Commission prescribes. Upon notice by the Commission that a person has not paid the required annual fee, the registration of the person shall be suspended until payment is made.

(f) The Commission may by order, after hearing, deny an application for registration by a person made under this section or suspend or revoke any such registration, if it finds that:

- (1) The person or any of its affiliated persons has a disability listed in Subsection 29(a) and has not been exempted by the Commission under Subsection 29(b).
- (2) The person is not organized in the form of a corporation or such other form as the Commission by rule may prescribe;
- (3) The person did not have, at the time of filing, its application for registration or subsequently maintain at all times, the minimum net capital prescribed by the Commission;
- (4) In the case of an applicant for registration as an investment adviser, any of its officers, directors, partners or employees who is engaged in advising a registered investment company as to the investing in or the buying and selling of securities has not satisfied the standards of training, experience, competence and other qualifications prescribed by the Commission by rule in the public interest and for the protection of investors; or

- (5) If the person does not have an office in the Philippines, it has failed to file a written consent to service of process upon the Commission under Section 44.

SEC. 26. *Investment Advisory and Distribution Contracts.* – (a) An investment adviser shall not serve in that capacity for a registered investment company except under a written investment advisory contract that, without limitation, contains the following:

- (1) A precise description of the services to be provided by the investment adviser and the advisory fee and other compensation to be paid for that services;
- (2) The allocation of expenses between the investment company and the investment adviser;
- (3) A statement of the investment objectives of the investment company and other investment policies (indicating which are fundamental), including concentrations of investments in equity, debt and other instruments, and in securities of issuers and industry sectors;
- (4) Provision for termination of the contract at any time by the investment company on not more than sixty (60) days notice to the investment adviser;
- (5) A prohibition on assignment of the contract, in whole or in part, except to a registered investment adviser and only with the consent of the investment company;
- (6) The conditions, if any, under which the investment company may be liquidated; and
- (7) The period of the contract, which shall not be more than two (2) years, subject to renewal upon approval by the board of directors of the investment company.

(b) A principal distributor shall not serve in that capacity for a registered mutual fund, except under a written contract with the mutual fund. The contract shall contain a prohibition on assignment, except to a registered principal distributor and only with the consent of the company.

(c) A registered investment company shall not enter into or renew an investment advisory contract or a contract with a principal distributor or administrative manager, unless the contract is approved by a majority of the directors of the investment company who are disinterested persons.

(d) A registered investment company shall not terminate an investment advisory contract or a contract with a principal distributor or administrative manager, except (1) with the approval of a majority of the directors of the investment company who are disinterested persons, or (2) by the vote of two-thirds (2/3) of its outstanding common stock.

(e) A registered investment company shall not approve (1) an increase in the advisory fee or other compensation payable under an investment advisory contract, (2) an assignment of an

investment advisory contract or a delegation of any advisory functions, or (3) a new investment advisory contract following termination by the company of an existing investment advisory contract, except by the vote of a majority of its outstanding common stock.

SEC. 27. *Investment Company Association.* – The Commission may prescribe rules as may be necessary or appropriate in the public interest or for the protection of investors to govern any association of registered investment companies and other persons who are registered under this Act. Upon application of any such association, the Commission may grant it registration as an “Investment Company Association” and, under rules issued by the Commission, confer upon the association authority to act as a self-regulatory organization for its members, including the power to provide training programs, administer proficiency examinations and discipline its members.

SEC. 28. *Investor Protection Fund.* – The Commission may establish or facilitate the establishment of an investor protection fund, which shall be contributed to by registered investment companies, their principal distributors, principal underwriters and investment advisers, mutual fund dealers and other persons associated with their business activities as the Commission may require, for the purpose of compensating investors in registered investment companies for financial loss they may suffer due to reasons prescribed by the Commission other than market decline in the investment portfolio of the investment company. The Commission, having due regard for the public interest and the protection of investors, shall regulate, supervise and examine the fund and shall have the power to suspend or otherwise discontinue the fund under rules prescribed by it.

SEC. 29. *Ineligibility of Certain Affiliated Persons and Underwriters.* – (a) It shall be unlawful for any of the following persons to serve in the capacity of officer, employee, director, investment adviser, principal distributor, principal underwriter, administrative manager or mutual fund dealer of or for a registered investment company:

- (1) Any person who has been convicted by a competent judicial or administrative body of any crime involving the purchase or sale of a security, proprietary or non-proprietary membership certificate, commodity futures contract, or interest in a common trust fund, pre-need plan, pension plan or life plan, or arising out of the person’s conduct as an underwriter, broker, dealer, investment company, investment adviser, principal distributor, mutual fund dealer, futures commission merchant, commodity trading advisor, floor broker, bank, quasi-bank, trust company, investment house, insurance

company or real estate broker or as an affiliated person of any of them;

- (2) Any person who, by reason of any misconduct, after hearing or trial or upon consent, is permanently or temporarily enjoined by order, judgment or decree of the Commission or any court or other administrative body of competent jurisdiction from acting as an underwriter, broker, dealer, investment company, investment adviser, principal distributor, mutual fund dealer, futures commission merchant, commodity trading advisor, floor broker, bank, quasi-bank, trust company, investment house, insurance company or real estate broker or as an affiliated person of any of them, or from engaging in or continuing any conduct or practice in connection with any such activity or willfully violating laws governing securities, commodities, banking, insurance or real estate activities; or is subject to an effective order of the Commission or any court or other administrative body refusing, revoking or suspending any registration, license or permit under this Act or any other law administered by the Commission or Bangko Sentral ng Pilipinas, or under any rule or regulation promulgated by the Commission or Bangko Sentral ng Pilipinas, or otherwise required to engage in any activity involving securities, commodities, banking, insurance or real estate; or is currently subject to an effective order of a self-regulatory organization suspending or expelling him from membership or participation or from association with a member or participant of the organization;
- (3) Any person convicted judicially or administratively of an offense involving moral turpitude or involving fraud, embezzlement, theft, estafa, counterfeiting, misappropriation, forgery, bribery, false oath, perjury or other fraudulent act or transaction;
- (4) Any person found by the Commission or a court or other administrative body to have willfully violated, or willfully aided, abetted, counseled, induced or procured the violation of, any provision of this Act, the SRC, any other law administered by the Commission or Bangko Sentral ng Pilipinas, or any rule, regulation or order of the Commission or Bangko Sentral ng Pilipinas, or who has filed a materially false or misleading application, report or registration statement required to be filed under this Act, the SRC, any other law administered by the Commission, or any rule, regulation or order of the Commission;
- (5) Any person judicially declared to be insolvent;
- (6) Any person found guilty by a foreign court or equivalent financial regulatory authority

of acts, violations or misconduct similar to any of the acts, violations or misconduct listed in paragraphs (1) to (5); or

(7) A company, any affiliated person of which is ineligible, by reason of paragraphs (1) to (5), to serve or act in the capacities listed in those paragraphs.

(b) Any person who is ineligible, by reason of Subsection (a), to serve in the capacities listed in that subsection may file an application for an exemption from its provisions. The Commission shall by order grant the application, either unconditionally or on an appropriate temporary or permanent conditional basis, if it is established that the prohibitions of the subsection, as applied to that person, are unduly or disproportionately severe or that the conduct of that person has been such as not to make it contrary to the public interest or protection of investors to grant the application.

SEC. 30. Requirements for Affiliations Persons. – (a) An officer or employee of a registered investment company who may singly or jointly with others, have access to securities or funds of a registered investment company, either directly or through authority to draw upon the funds or to direct generally the disposition of the securities, shall be bonded by a reputable fidelity insurance company against larceny and embezzlement in such reasonable minimum amounts as the Commission may prescribe.

(b) The charter, certificate or articles of incorporation or by-laws of a registered investment company, or any other instrument under which it is organized or administered, shall not contain any provision that protects or purports to protect any of its directors or officers against any liability to the investment company or to its security holders to which he would otherwise be subject by reason of willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his office.

(c) An agreement under which a person undertakes to act as investment adviser, administrative manager, principal distributor, underwriter or custodian for a registered investment company shall not contain any provision that protects or purports to protect the person against any liability to the company or its security holders to which he would otherwise be subject by reason of willful misfeasance, bad faith or gross negligence in the performance of his duties, or by reason of his reckless disregard of his duties under the agreement.

(d) A person who is directly or indirectly the beneficial owner of more than ten percent (10%) of any class of outstanding securities (other than short-term debt) issued by a registered close-end fund, or who is an officer, director, investment adviser, or affiliated person of an investment adviser of a registered close-end fund, shall be subject to the same duties and liabilities as those imposed by

Section 23 of the SRC and the rules and regulations under it on certain beneficial owners, directors and officers in respect to their transactions in equity securities.

SEC. 31. *Prohibited Transactions of Affiliated Persons.* – (a) An affiliated person or promoter of, or principal distributor or principal underwriter for, a registered investment company or any of their affiliated persons, acting as principal, shall not:

- (1) Knowingly sell any security or other property to the investment company or to any company controlled by the investment company, unless the sale involves solely (i) securities issued by the buyer, or (ii) securities issued by the seller and which are part of a general offering to the holders of a class of its securities;
- (2) Knowingly purchase from the investment company, or from any company controlled by the investment company, any security or other property except securities issued by the seller; or
- (3) Borrow money or other property from the investment company or from any company controlled by the investment company, unless the lender controls the borrower.

(b) Any person may file an application for an order exempting a proposed transaction from Subsection (a). The Commission shall issue an order granting the application if the evidence establishes that:

- (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve one person taking unfair advantage of another;
- (2) The proposed transaction is consistent with the policies of each registered investment company concerned, as recited in its registration statement and reports filed under this Act; and
- (3) The proposed transaction is consistent with the general purposes of this Act.

(c) An affiliated person of, or principal distributor or principal underwriter for, a registered investment company or an affiliated person of any of them, acting as principal, shall not effect any transaction in which it participates with the investment company or any company controlled by it in any joint enterprise or other joint arrangement or profit-sharing plan, unless the Commission has granted an order approving the enterprise, arrangement or plan, or the Commission has exempted the enterprise, arrangement or plan from the provisions of this subsection by rule. In deciding whether to grant an order under this subsection, the Commission shall consider the extent to which the participation by the investment company or company controlled by it in the enterprise, arrangement or

plan is on a basis different from or less advantageous than that of the other participants and whether participation by the investment company or company controlled by it is appropriate in the public interest or for the protection of investors.

(d) An affiliated person of a registered investment company or its affiliated persons shall not:

- (1) Acting as agent, accept from any source compensation for the purchase or sale of any property to or for the investment company or any company controlled by the investment company other than a regular salary from the investment company or company controlled by it, except in the course of its business as a principal distributor, mutual fund dealer, underwriter or broker; or
- (2) Acting as a broker, receive from any source, in connection with a sale of securities to or by the investment company or any company controlled by the investment company, a commission, fee or other remuneration which exceeds:
 - (i) A customary broker's commission if the sale is effected on a securities exchange;
 - (ii) Two percent (2%) of the sale price if the sale is effected in connection with a secondary distribution; or
 - (iii) One percent (1%) of the sale price if the sale is effected otherwise, or such larger commission as the Commission permits by rule, regulation or order in the public interest and consistent with the protection of investors.

SEC. 32. *Registration Requirement for Investment Solicitors.* – (a) A person shall not serve as an investment solicitor unless registered with the Commission as an investment solicitor. A registered investment company doing business in the Philippines or its agents shall not pay any commission or other compensation to any individual for services in obtaining investments in the investment company, unless the person is registered by the Commission as an investment solicitor or as a salesman under the SRC.

(b) A person may register as an investment solicitor by filling an application for registration in such form and containing such information and documents as the Commission may prescribe by rule. The application must be approved and certified by the principal distributor or mutual fund dealer with which the investment solicitor is to become affiliated, or by the investment company in the case of an investment solicitor employed, appointed or authorized solely by the investment company.

(c) The Commission shall not register a person as an investment solicitor unless he has passed a written examination approved for the purpose by the Commission. The Commission may refuse to issue and may revoke the registration of an investment solicitor at its discretion.

(d) Every person registered as an investment solicitor shall pay to the Commission an annual fee at such time and in such reasonable amount as the Commission prescribes. Upon notice by the Commission that a person has not paid the required annual fee, the registration of the person shall be suspended until payment is made.

(e) Any person who holds a certificate of authority issued by the Commission to act as an agent or investment solicitor of an investment company on the date of this Act takes effect shall be deemed to be registered as an investment solicitor under Subsection (a) on that date.

SEC. 33. *Register and Changes in Information.* – (a) The names and addresses of all persons approved for registration as investment advisers, principal distributors, mutual fund dealers and investment solicitors and all related orders of the Commission shall be recorded in the Register of Securities Market Professionals kept by the Commission under Subsection 28.9 of the SRC.

(b) Every person registered under this Act shall file, in such form as the Commission shall prescribe, information necessary to keep the application for registration current and accurate.

(c) The registration of an investment solicitor shall automatically terminate upon the cessation of his affiliation with a principal distributor or mutual fund dealer, or with an investment company in the case of an investment solicitor employed, appointed or authorized by the investment company. Promptly following any such cessation of affiliation, the principal distributor, mutual fund dealer or investment company shall file a notice of separation of the investment solicitor.

PART V. CUSTODIANSHIP AND RECORDKEEPING

SEC. 34. *Custodians and Sub-Custodians.* – (a) A registered investment company shall place and maintain its securities and similar investments and its funds in the custody of a bank or such other categories of persons as the Commission may designate by rule as qualifying to act as a custodian. All custodians for registered investment company shall satisfy the requirements prescribed by the Commission by rule, regulation or order.

(b) Sub-custodians may be appointed to act as custodians for a registered investment company's foreign securities, similar investments and funds on the basis prescribed by rule, regulation or order.

SEC. 35. *Auditors.* – (a) The financial statements of every registered investment company that are required or permitted to be audited by this Act or the rules or regulations of the Commission shall

be audited and certified by an independent certified public accountant appointed by the investment company.

(b) A registered investment company shall appoint, may remove at any time, and shall select a successor to fill a vacancy caused by death, resignation or removal, an independent certified public accountant by a majority vote of its directors who are disinterested persons.

(c) The term of engagement of an independent certified public accountant shall not exceed two (2) years.

SEC. 36. *Recordkeeping.* – (a) A registered investment company and its investment advisers, administrative managers, principal distributors and principal underwriters shall maintain and preserve all records of the investment company or pertaining to actions or transactions by, for or on behalf of the investment company, for a period of six (6) years, the most recent two (2) years in a readily accessible place, or for such other periods as the Commission may prescribe by rule.

(b) All records maintained and preserved pursuant to Subsection (a) shall be open to periodic or special examination and copying by the Commission during regular business hours.

(c) It shall be unlawful for any person, except as permitted by rule, regulation or order of the Commission, to willfully destroy, mutilate or alter any record that is required to be preserved by Subsection (a).

(d) For purposes of this Section, the term "records" refers to accounts, books, correspondence, memoranda, tapes, discs, papers, books and other documents or transcribed information of any type, whether written or electronic in character.

PART VI. ENFORCEMENT AND LIABILITY

SEC. 37. *Liabilities of Controlling Persons and Aider and Abettor and other Secondary Liability.* – (a) Subsections 51.1, 51.2, 51.3 and 51.4 of the SRC shall apply to violations of this Act and rules, regulations and orders made under this Act in the same manner as they apply to the SRC and rules, regulations and orders made under the SRC.

(b) The civil liability provided under Subsection 51.5 of the SRC shall apply to a person who substantially assists the act or omission of any person primarily liable under Section 42.

SEC. 38. *Investigations, Injunctions and Prosecution of Offenses.* – (a) The powers of the Commission to make investigations under Subsections 53.1 and 53.2 of the SRC shall apply to this Act and any rule, regulation or order under it in the same manner as they apply to the SRC.

(b) The powers of the Commission to issue orders or transmit evidence under Subsection 53.3 of the SRC shall apply to this Act and any rule, regulation or order under it in the same manner as they apply to the SRC.

(c) Subsection 53.4 of the SRC shall apply to any lawful order, decision or subpoena issued by the Commission under Subsection (a) or (b).

SEC. 39. *Administrative Sanctions.* – (a) if, after proper notice and hearing, the Commission finds any of the following, it shall, in its discretion, impose any or all of the sanctions listed in Subsection (b) as may be appropriate in light of the facts and circumstances:

- (1) There is a violation of this Act or any rule, regulation or order under it.
 - (2) A registered investment company, principal distributor or mutual fund dealer has failed reasonably to supervise, with a view to preventing violations, any investment solicitor who violated this Act or any rule, regulation or order under it and whose application for registration was certified by it.
 - (3) Any registered investment company or other person has, in a registration statement, application, report, account, record and other document required to be filed under this Act or any rule, regulation or order under it made any untrue statement of a material fact or omitted to state any material fact required to be stated or necessary to make the statements in it not misleading.
 - (4) A person has refused to permit any lawful examination into its affairs.
- (b) The sanctions under Subsection (a) are:
- (1) Suspension or revocation of any registration issued by the Commission under this Act or the SRC.
 - (2) A fine of not less than one thousand pesos (P1,000.00) nor more than five hundred thousand pesos (P500,000.00) plus not more than ten thousand pesos (P10,000.00) for each day of continuing violation.
 - (3) Disqualification from being an investment adviser, administrative manager, custodian, principal distributor, mutual fund dealer or principal underwriter.
 - (4) Other penalties within the power of the Commission to impose.
- (c) The imposition of administrative sanctions under this section shall be without prejudice to

the filing of criminal charges.

(d) The Commission shall have the power to issue writs of execution to enforce the provisions of this section and to enforce payment of the fees and other amounts collectible under this Act.

(e) Section 55 of the SRC, concerning settlement offers, and any rules or regulations under it shall apply to any investigation or proceeding under this Act.

SEC. 40. *Penalties.* – (a) Any person who:

- (1) Steals, unlawfully abstracts, unlawfully and willfully converts to his own use or to the use of another, or embezzles any of the moneys, funds, securities, credits, property or assets of a registered investment company;
- (2) Violates any provision of this Act or any rule, regulation or order under it; or
- (3) In any registration statement, application, report, account, record or other document required to be filed under this Act makes any untrue statement of a material fact or omits to state any material fact required to be stated or necessary to make the statements in it not misleading,

shall, except as provided elsewhere in this Act, upon conviction suffer a fine, imprisonment or other penalties as prescribed in Section 73 of the SRC.

(b) Any person who violates Section 32 shall upon conviction be subject to a fine of up to fifty thousand pesos (P50,000.00). Upon the conviction of any person acting as an investment solicitor or salesman for the commission of an offense connected with the business of a registered investment company, the Commission shall immediately revoke his registration under this Act or the SRC and not grant him registration under either statute subsequently.

SEC. 41. *Validity of Contracts.* – (a) Any condition, stipulation or provision binding any person to waive compliance with any provision of this Act or any rule, regulation or order under it shall be void.

(b) A contract made in violation of this Act or any rule, regulation or order under it, and a contract the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, this Code or any rule, regulation or order under it shall be void as regards the rights of:

- (1) Any person who, in violation of any of them, shall have made or engaged in the performance of any such contract, and

- (2) Any person who, not being a party to the contract, shall have acquired any right under it with actual knowledge of the facts by reason of which the making or performance of the contract was in violation of any of them.

SEC. 42. *Civil Liability.* – (a) An affiliated person of a registered investment company, or an investment adviser, administrative manager, principal distributor, mutual fund dealer, underwriter or custodian of a registered investment company, or any of their affiliated persons, who unlawfully and willfully diverts the funds, securities or other assets of the investment company to his personal use, or who otherwise willfully commits a breach or abuse of trust in respect to the assets of, or transactions with, the investment company shall be liable for damages to the investment company.

(b) The civil liability provided under Sections 56 and 57 of the SRC in respect of a false or misleading registration statement, prospectus or other communication, or report or document filed under the SRC, shall apply in respect of a false or misleading registration statement, prospectus or other communications by means of which a person offers to sell or sells a security under this Act, or a report or documents filed under this Act or any rule, regulation or order under this Act.

(c) Section 63 of the SRC shall apply in respect of suits to recover damages under Subsection (b) in the same manner as it applies to suits to recover damages under Sections 56 or 57 of the SRC.

(d) A security holder of a registered investment company may recover any unreasonable or excessive sales load imposed upon and paid by him in connection with the sale to, or redemption from, him of securities of the investment company.

(e) A registered investment company, or any of its stockholders through a derivative suit, may recover any unreasonable or excessive payments by the investment company for management fees or other amounts paid as compensation for services to an investment adviser, administrative manager, principal distributor, mutual fund dealer, underwriter or custodian, or any of their affiliated persons.

(f) A registered investment company or any of its investment adviser, administrative manager, principal distributor, mutual fund dealer, underwriter or custodian, or any of their affiliated persons, who is a defendant in an action by a registered investment company, or any of its stockholders in a derivative suit, for an alleged breach of duty shall transmit, unless already transmitted to the Commission, the documents specified in Subsection (g) if (1) the action has been compromised or settled and the settlement or compromise has been approved by a court, or (2) a final judgment has been entered on the merits of the action.

(g) Within thirty (30) days after a settlement, compromise or final judgment referred to in Subsection (f), copies of all pleadings and any written record made in the action, together with a

statement of the terms of settlement or compromise if not included in the record, shall be transmitted to the Commission. Any information contained in those documents may be used by the Commission in connection with any report or study that the Commission may take. The Commission shall not disclose the names of persons it obtains from documents transmitted under this subsection.

SEC. 43. *Limitation of Actions.* – (a) No action shall be maintained to enforce any liability created under Subsection 42 (b) of this Act unless brought within two (2) years after the discovery of the untrue statement or the omission. In no event shall any such action be brought to enforce a liability created under Subsection 42 (b) more than five (5) years after the security was offered to the public.

(b) No action shall be maintained to enforce any liability created under any other provision of this Act unless brought within two (2) years after the discovery of the facts constituting the cause of action and within five (5) years after the cause of action accrued.

SEC. 44. *Substituted Service upon the Commission.* – Service of summons or other process shall be made upon the Commission in actions or legal proceedings against a person liable under this Act who is not domiciled in the Philippines. Within ten (10) days after receipt by the Commission of the summons, the Commission shall send by registered mail a copy of the summons and the complaint or other legal process to the person at his last known address or principal office. The sending of the summons by the Commission shall complete the service. The expenses for sending the summons shall be advanced by the party requesting it.

SEC. 45. *Effect of Action of Commission and Related Unlawful Representations.* – Subsection 67 of the SRC shall apply to an action or failure to act by the Commission in the administration of this Act in the same manner as it applies to an action or failure to act by the Commission in the administration of the SRC.

SEC. 46. *Effect on Existing Law.* – The rights and remedies provided by this Act shall be in addition to all rights and remedies that may otherwise exist. However, no person permitted to maintain a suit for damages under this Act may recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act for which remedy was sought, except that exemplary damages may be awarded in cases of bad faith, fraud, malevolence or wantonness in violation of this Act or the rules and regulations under it.

PART VII. GENERAL PROVISIONS

SEC. 47. *Revelation of Filed Information.* – (a) Subsections 66.1, 66.2, 66.3 and 66.5 of the SRC and rules and regulations under them shall apply to all information, applications, reports or other documents filed under this Act in the same manner as they apply to information, applications, reports or other documents filed under the SRC.

(b) Subsection 66.4 of the SRC shall apply to information not made available to the public under Subsection (a) in the same manner as it applies to information not available to the public under Subsection 66.3 of the SRC.

SEC. 48. *Rules, Regulations and Orders.* – Subsection 72.1 of the SRC shall apply to the issue, amendment and rescission by the Commission of rules, regulations and orders to effect the provisions and purposes of this Act in the same manner as rules, regulations and orders to effect the provisions and purposes of the SRC.

SEC. 49. *Fees.* – (a) The Commission is authorized to prescribe rules or regulations for the collection of fees for:

- (1) Registering an investment company, subject to a maximum of one-tenth percent (0.1%) of their maximum aggregate price to the extent the fee is based on the amount of securities registered by the company;
- (2) Registering an investment adviser, principal distributor, mutual fund dealer and investment solicitor;
- (3) An examination of the financial condition of an investment company;
- (4) An application for an exemption; and
- (5) An application for a right or privilege.

(b) Every right, privilege, exemption or registration under this Act shall be sought from the Commission in the form of a petition for which the authorized fee shall be paid before any action is taken. The grant or denial of the petition shall be in the form of an order issued by the Commission. No denial, withdrawal or abandonment of the petition shall be a ground for the refund of the fee.

SEC. 50. *Repealing Clause.* – Republic Act No. 2629, otherwise known as the Investment Company Act, is repealed in its entirety. All other laws, orders, rules and regulations that are inconsistent with this Act are repealed or modified accordingly.

SEC. 51. *Separability.* – The invalidity of any provision of this Act shall not affect the validity of the remainder of this Act.

SEC. 52. *Effective Date and Transition.* – This Act shall take effect fifteen (15) days from the date of its publication in at least two (2) newspapers of general publication in the Philippines. However, the Commission may by rule set a later date for the requirement to register as an investment adviser, principal distributor or mutual fund dealer for any person serving in any of those capacities on the date this Act takes effect.

Approved,