131 POLICY STATEMENT AND DEFINITION OF TERMS

It is the thrust of the Bangko Sentral to continuously strengthen corporate governance in its supervised financial institutions cognizant that this is central in sustaining the resiliency and stability of the financial system. In this light, the Bangko Sentral is aligning its existing regulations with the Code of Corporate Governance for Publicly-Listed Companies issued by the SEC as well as with best practices and standards issued by globally recognized standard setting bodies.

Definition of terms. For purposes of these regulations, the following definitions shall apply:

a. *Affiliate* shall refer to an entity linked directly or indirectly to a BSFI by means of:

(1) Ownership, control as defined under Item *"d"* hereof, or power to vote of at least twenty percent (20%) of the outstanding voting stock of the entity, or vice-versa;
(2) Interlocking directorship or officership, where the director or officer concerned owns, controls, as defined under Item *"d"* hereof, or has the power to vote, at least twenty percent (20%) of the outstanding voting stock of the entity;
(3) Common ownership, whereby the common stockholders own at least ten percent (10%) of the outstanding voting stock of the BSFI and at least twenty percent (20%) of the outstanding voting stock of the entity;
(4) Management contract or any arrangement granting power to the BSFI to direct or cause the direction of management and policies of the entity; or
(5) Permanent proxy or voting trusts in favor of the BSFI constituting at least twenty percent (20%) of the outstanding voting stock of the entity, or vice versa.

b. *Close family members* shall refer to persons related to the BSFI's directors, officers and stockholders (DOS) within the second degree of consanguinity or affinity, legitimate or common-law. These shall include the spouse, parent, child, brother, sister, grandparent, grandchild, parent-in-law, son-/daughter-in-law, brother/sister-in-law, grandparent-in-law, and grandchild-in-law of the BSFI's DOS.

c. *Complex banks* shall refer to UBs/KBs. Nonetheless, a UB/KB may apply with the Bangko Sentral for a reclassification as simple or non-complex bank in order to avail of the reduced minimum requirement on the constitution of board committees. The Bangko Sentral may likewise declare TBs, RBs or Coop Banks as complex. Any TB, RB or Coop Bank having at least three (3) of the following characteristics shall be deemed a complex bank:

(1) Total assets of at least P6 billion;

(2) Extensive branch network;

(3) Non-traditional financial products and services by virtue of special authorities (e.g., trust, quasi-banking, derivatives licenses), as well as distinctive products like credit cards, remittance, trade-related services, contract-to-sell (CTS) financing, among other financial services;

(4) Use of non-conventional business model, such as those using non-traditional delivery platform such as electronic platforms; and

(5) Business strategy characterized by risk appetite that is aggressive, and risk exposures which are increasing, such as those with robust branch expansion programs or acquisition plans as determined by the Bangko Sentral.

d. *Control* of an enterprise exists when there is:

(1) Power over more than one-half of the voting rights by virtue of an agreement with other stockholders; or
(2) Power to govern the financial and operating policies of the enterprise under a statute or an agreement; or
(3) Power to appoint or remove the majority of the members of the board of directors or equivalent governing body; or
(4) Power to cast the majority votes at meetings of the board of directors or equivalent governing body; or
(5) Any other arrangement similar to any of the above.

Control is presumed to exist if there is ownership or holding, whether direct or indirect, of twenty percent (20%) or more of a class of voting shares of a company.

Should the BSFI choose to disclaim or rebut the presumption, it should provide facts sufficient to show that there is indeed no control. *Further*, the BSFI shall submit a written commitment that: (a) shares owned or held are exclusively for investment purposes; (b) the BSFI-stockholder will not serve on the board of directors and will not nominate any candidate to serve on the board of directors or otherwise seek board representation; (c) the BSFI-stockholder will have only limited contacts with BSFI management that are customary for interested shareholders; (d) the BSFI-stockholder will engage only in normal and customary transactions with the enterprise; and (e) the BSFI will not pledge the shares acquired to secure a loan with any institution.

e. *Corresponding persons in affiliated companies* shall refer to the DOS of the affiliated companies and their close family members.

f. *Directors*. Directors shall include:

(1) directors who are named as such in the articles of incorporation;
(2) directors duly elected in subsequent meetings of the stockholders or those appointed by virtue of the charter of government-owned BSFIs; and
(3) those elected to fill vacancies in the board of directors.

g. *Independent directors*. An independent director shall refer to a person who –

(1) is not or was not a director, officer or employee of the BSFI, its subsidiaries, affiliates or related interests during the past three (3) years counted from the date of his election/appointment;

(2) is not or was not a director, officer, or employee of the BSFI's substantial stockholders and their related companies during the past three (3) years counted from the date of his election/appointment;

(3) is not an owner of more than two percent (2%) of the outstanding shares or a stockholder with shares of stock sufficient to elect one (1) seat in the board of directors of the institution, or in any of its related companies or of its majority corporate shareholders;

(4) is not a close family member of any director, officer or stockholder holding shares of stock sufficient to elect one (1) seat in the board of directors of the BSFI or any of its related companies or of any of its substantial stockholders;

(5) is not acting as a nominee or representative of any director or substantial shareholder of the BSFI, any of its related companies or any of its substantial shareholders;

(6) is not or was not retained as professional adviser, consultant, agent or counsel of the BSFI, any of its related companies or any of its substantial shareholders, either in his personal capacity or through his firm during the past three (3) years counted from the date of his election;

(7) is independent of management and free from any business or other relationship, has not engaged and does not engage in any transaction with the BSFI or with any of its related companies or with any of its substantial shareholders, whether by himself or with other

persons or through a firm of which he is a partner or a company of which he is a director or substantial shareholder, other than transactions which are conducted at arm's length and could not materially interfere with or influence the exercise of his judgment;

(8) was not appointed in the BSFI, its subsidiaries, affiliates or related interests as Chairman "Emeritus", "Ex-Officio", Directors/Officers or Members of any Advisory Board, or otherwise appointed in a capacity to assist the board of directors in the performance of its duties and responsibilities during the past three (3) years counted from the date of his appointment;

(9) is not affiliated with any non-profit organization that receives significant funding from the BSFI or any of its related companies or substantial shareholders; and

(10) is not employed as an executive officer of another company where any of the BSFI's executives serve as directors.

h. *Majority stockholder or majority shareholder* shall refer to a person, whether natural or juridical, owning more than fifty percent (50%) of the voting stock of a BSFI.

i. *Non-executive directors* shall refer to those who are not part of the day to day management of operations and shall include the independent directors. However, not all non-executive directors are considered independent directors.

j. *Officers* shall include the chief executive officer (CEO) [1], executive vice president, senior vice-president, vice president, general manager, treasurer, secretary, trust officer and others mentioned as officers of the BSFI, or those whose duties as such are defined in the by-laws, or are generally known to be the officers of the BSFI (or any of its branches and offices other than the head office) either through announcement, representation, publication or any kind of communication made by the BSFI: *Provided*, That a person holding the position of chairman or vice-chairman of the board of directors or another position in the board of directors shall not be considered as an officer unless the duties of his position in the board of directors include functions of management such as those ordinarily performed by regular officers: *Provided, further,* That members of a group or committee, including sub-groups or sub-committees, whose duties include functions of management such as those ordinarily performed by regular officers, and are not purely recommendatory or advisory, shall likewise be considered as officers.

k. *Parent* shall refer to a corporation which has control over another corporation directly or indirectly through one (1) or more intermediaries;

l. *Related company* shall refer to another company which is:

(1) Its parent or holding company;

(2) Its subsidiary or affiliate; or

(3) A corporation where a BSFI or its majority stockholder own such number of shares that will allow/enable such person or group to elect at least one (1) member of the board of directors or a partnership where such majority stockholder is a partner.

m. *Related interest* shall refer to any of the following:

(1) Spouse or relative within the first degree of consanguinity or affinity, or relative by legal adoption, of a director, officer or stockholder of the BSFI;

(2) Partnership of which a director, officer, or stockholder of a BSFI or his spouse or relative within the first degree of consanguinity or affinity, or relative by legal adoption, is a general partner;

(3) Co-owner with the director, officer, stockholder or his spouse or relative within the first degree of consanguinity or affinity, or relative by legal adoption, of the property or interest or right mortgaged, pledged or assigned to secure the loans or other credit accommodations, except when the mortgage, pledge or assignment covers only said co-owner's undivided interest;

(4) Corporation, association or firm of which any or a group of directors, officers, stockholders of the BSFI and/or their spouses or relatives within the first degree of consanguinity or affinity, or relative by legal adoption, hold or own at least twenty percent (20%) of the subscribed capital of such corporation, or of the equity of such association or firm;

(5) Corporation, association or firm wholly or majority-owned or controlled by any related entity or a group of related entities mentioned in Items *"m(2)"* and *"m(4)"* above;

(6) Corporation, association or firm which owns or controls directly or indirectly whether singly or as part of a group of related interest at least twenty percent (20%) of the subscribed capital of a substantial stockholder of the BSFI or which controls majority interest of the BSFI pursuant to Item *"g"* of Sec. 362 (*Definition of terms*);

(7) Corporation, association or firm which has an existing management contract or any similar arrangement with the parent of the BSFI; and

(8) Non-governmental organizations (NGOs)/foundations that are engaged in retail microfinance operations which are incorporated by any of the stockholders and/or directors and/or officers or related BSFIs.

The general principles and standards that will govern the business relationship between BSFIs and their related NGOs/foundations engaged in retail microfinance are found in *Appendix 23*.

n. *Related parties* shall cover the BSFI's subsidiaries as well as affiliates and any party (including their subsidiaries, affiliates and special purpose entities) that the BSFI exerts direct/indirect control over or that exerts direct/indirect control over the BSFI; the BSFI's DOSRI, and their close family members, as well as corresponding persons in affiliated companies. These shall also include such other person/juridical entity whose interests may pose potential conflict with the interest of the BSFI, hence, is identified as a related party.

The above definition shall also include direct or indirect linkages to a BSFI identified as follows:

(1) Ownership, control or power to vote, of ten percent (10%) to less than twenty percent (20%) of the outstanding voting stock of the borrowing entity, or vice versa;
(2) Interlocking directorship or officership, except in cases involving independent directors as defined under existing regulations or directors holding nominal share in the borrowing corporation;
(3) Common stockholders owning at least ten percent (10%) of the outstanding voting stock of the BSFI and ten percent (10%) to less than twenty percent (20%) of the outstanding voting stock of the borrowing entity; or
(4) Permanent proxy or voting trusts in favor of the BSFI constituting ten percent (10%) to less than twenty percent (20%) of the outstanding voting stock of the borrowing entity, or vice versa.

o. *Related party transactions (RPTs)* shall refer to transactions or dealings with related parties of the BSFI, including its trust department regardless of whether or not a price is charged. These shall include, but not limited to the following:

(1) On- and off-balance sheet credit exposures and claims and write-offs;
(2) Investments and/or subscriptions for debt/equity issuances;
(3) Consulting, professional, agency and other service arrangements/contracts;
(4) Purchases and sales of assets, including transfer of technology and intangible items (e.g., research and development, trademarks and license agreements);

(5) Construction arrangements/contracts;
(6) Lease arrangements/contracts;
(7) Trading and derivative transactions;
(8) Borrowings, commitments, fund transfers and guarantees;
(9) Sale, purchase or supply of any goods or materials; and
(10) Establishment of joint venture entities.

RPTs shall be interpreted broadly to include not only transactions that are entered into with related parties but also outstanding transactions that were entered into with an unrelated party that subsequently becomes a related party.

p. *Risk appetite statement* shall refer to the articulation in written form of the aggregate level and types of risk that a BSFI is willing to accept, or to avoid, in order to achieve its business objectives. It includes qualitative statements as well as quantitative measures expressed relative to earnings, capital, risk measures, liquidity and other relevant measures as appropriate.

q. *Risk governance framework* shall refer to the framework through which the board of directors and management establish the BSFI's strategy; articulate and monitor adherence to risk appetite and risk limits; and identify, measure, and manage risks.

r. *Risk limits* shall refer to the allocation of the BSFI's risk appetite statement to: specific risk categories (e.g., credit, market, liquidity, operational); the business unit or platform level (e.g., retail, capital markets); lines of business or product level [e.g., concentration, value-at-risk (VaR), or other limits]; and other levels, as appropriate.

s. *Stockholder* shall refer to any stockholder of record in the books of the BSFI, acting personally, or through an attorney-in-fact; or any other person duly authorized by him or through a trustee designated pursuant to a proxy or voting trust or other similar contracts, whose stockholdings in the BSFI, individual and/or collectively with the stockholdings of: (1) his spouse and/or relative within the first degree by consanguinity or affinity or legal adoption; (2) a partnership in which the stockholder and/or the spouse and/or any of the aforementioned relatives is a general partner; and (3) corporation, association or firm of which the stockholder and/or his spouse and/or the aforementioned relatives own more than fifty percent (50%) of the total subscribed capital stock of such corporation, association or firm, amount to one percent (1%) or more of the total subscribed capital stock of the BSFI.

t. *Substantial stockholder* shall refer to a person, or group of persons whether natural or juridical, owning such number of shares that will allow such person or group to elect at least one (1) member of the board of directors of a BSFI or who is directly or indirectly the registered or

beneficial owner of more than ten percent (10%) of any class of its equity security.

u. *Subsidiary* shall refer to a corporation or firm more than fifty percent (50%) of the outstanding voting stock of which is directly or indirectly owned, controlled or held with power to vote by its parent corporation.

Footnotes

1. Shall also refer to the President or any other title referring to the top management post in the BSFI