

414 UNIT INVESTMENT TRUST FUNDS

The following rules and regulations shall govern the creation, administration and investment/s of Unit Investment Trust Funds (UITFs).

Establishment of a UITF. Any trust entity authorized to perform trust functions may establish, administer and maintain one (1) or more UITFs subject to applicable provisions under this Section. A UITF may be allowed to operate as a 1) feeder fund, 2) fund-of-funds, and/or 3) multi-class fund: *Provided*, That the plan rules and related documents shall state that the UITF is a feeder fund or a fund-of-funds, and/or multi-class fund, and provide an explanation or illustration of such structures. A UITF may also be allowed to have a unit-paying feature where the income of the fund is distributed in the form of units called unit income.

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

Relationship of trustee with UITF. A trustee administering a UITF shall not have any other relationship with such fund other than its capacity as trustee of the UITF: *Provided, however*, That a trustee which simultaneously administers other trust, fiduciary or investment management funds may invest such funds in the trustee's UITF, if allowed under a policy approved by the board of directors.

Operating and accounting methodology. A UITF shall be operated and accounted for in accordance with the following:

- a. The total assets and accountabilities of each fund shall be accounted for as a single account referred to as pooled-fund accounting method. The investments of a multi-class fund shall remain as one (1) pool and are not separately allocated to classes.
- b. Contributions to each fund by clients shall always be through participation in units of the fund and each unit shall have uniform rights and privileges, as any other unit; in the case of multi-class fund, units shall be issued as units in a class of a fund.
- c. All such participations shall be pooled and invested as one (1) account (referred to as collective investments).
- d. The beneficial interest of each participation unit shall be determined under a unitized net asset

value per unit (NAVPu) valuation methodology defined in the written plan of the UITF, and no participation shall be admitted to, or redeemed from, the fund or class of a fund, except on the basis of such valuation. To arrive at a fund's NAVPu, the fund's total Net Assets is divided by the total outstanding units. Total Net Assets is a summation of the market value of each investment less fees, taxes, and other qualified expenses, as defined under the plan rules.

When there is a different fee structure for each class, the NAVPu of each class shall be computed by dividing total net assets of a class by the total outstanding units of such class; where the net assets of each class shall represent its proportionate share on the net assets of the multi-class fund less the trustee fee and expenses attributable to that class. The net assets of the multi-class fund is the summation of the market value of each investment less fees, taxes, and other qualified expenses, but gross of trustee fees and expenses attributable to a particular class, as defined under the plan rules.

- e. For a UITF with unit-paying feature, the trustee may distribute the income of the Fund subject to the minimum conditions enumerated hereunder.
 - (1) Distribution of income shall be made only from cash received from interest income earned and cash dividends;
 - (2) Distribution of income shall be made after the trust entity has taken into consideration the following:
 - (a) Income for the period; and
 - (b) The investment objective and distribution policy of the fund;
 - (3) Distribution of income to participants shall be after deduction of taxes and expenses (net distribution);
 - (4) Distribution of income shall be effected through conversion of the income for distribution into its equivalent units based on the NAVPu as at the first business day when units in the fund are quoted ex-distribution. Participants shall be entitled to his/her pro-rata share of said units which, on distribution date, shall be automatically considered redeemed;
 - (5) The Plan rules shall state the distribution policy, including the sources of income to be distributed and the intended frequency of distribution;
 - (6) For monitoring purposes, the trustee shall separately account for the fund's income due for distribution; and

- (7) Where a distribution is made, a notice to each participant on his/her unit income shall be made available containing information on the total amount of income for distribution by the trustee, NAVPu ex-distribution and its basis, total number of units for distribution, and unit income. Unit income refers to the number of units for every unit held by the participant entitled for distribution.

Plan rules. Each UITF shall be established, administered and maintained in accordance with a written trust agreement drawn by the trustee, referred to as the “Plan” which shall be approved by the board of directors of the trustee and a copy of which shall be submitted to the Bangko Sentral for processing and approval prior to its implementation. Each new UITF Plan filed for approval shall be charged a processing fee of P10,000.00.

The *Plan* shall contain the following minimum elements:

- a. *Title of the Plan.* This shall correspond to the product/brand name by which the UITF is proposed to be known and made available to its clients. The Plan rules shall state the classification of the UITF (e.g., money market fund, bond fund, balanced fund and equity fund).
- b. *Manner by which the fund is to be operated.* A statement of the fund’s investment objectives, policies and limitations, and, if applicable, income distribution policies, distinctive features of the different classes of units such as the level of trustee fees and expenses for each class and other peculiarities which the Bangko Sentral may allow.
- c. *Risk disclosure.* The Plan rules shall state both the general risks and risks specific to the type of fund.
- d. *Investment powers of the trustee with respect to the fund, including the character and kind of investments, which may be purchased, by the fund.* There must be an unequivocal statement of the full discretionary powers of the trustee as far as the fund’s investments are concerned. These powers shall be limited only by the duly stated investment objective and policies of the fund.
- e. The unitized NAVPu valuation methodology as prescribed under this Section on *Operating and accounting methodology* shall be employed. The plan rules shall also provide the method of determining the proportionate share of the classes of units to the value of the assets of the fund.
- f. *Terms and conditions governing the admission or redemption of units of participation in the fund.* The Plan rules shall state that the trustee, prior to admission of a client’s initial participation in the UITF, shall conduct a client suitability assessment to profile the risk-return orientation and

suitability of the client to the specific type of fund. If the frequency of admission or redemption is other than daily; that is, any business day, the same should be explicitly stated in the Plan rules: *Provided*, That the admission and redemption prices shall be based on the end-of-day NAVPu of the fund or of the class of a fund, if applicable, computed after the cut-off time for fund participation and redemption for that reference day, in accordance with existing Bangko Sentral regulations on mark-to-market valuation of investment securities.

- g. Aside from the regular audit requirement applicable to all trust accounts, an external audit of each UITF shall be conducted annually by an independent auditor acceptable to the Bangko Sentral and the results thereof made available to participants. The external audit shall be conducted by the same external auditor engaged for the audit of the trust entity.
- h. *Basis upon which the fund may be terminated.* The Plan rules shall state the rights of participants in case of termination of the fund. Termination of the fund shall be duly approved by the trustee's board of directors and a copy of the resolution submitted to the appropriate department of the Bangko Sentral.
- i. *Liability clause of the trustee.* There must be a clear and prominent statement adjacent to where a client is required to sign the participating trust agreement that (1) the UITF is a trust product and not a deposit account or an obligation of, or guaranteed, or insured by the trust entity or its affiliates or subsidiaries; (2) the UITF is not insured or governed by the PDIC; (3) due to the nature of the investment, yields and potential yields cannot be guaranteed; (4) any loss/income arising from market fluctuations and price volatility of the securities held by the UITF, even if invested in government securities, is for the account of the client/participant; (5) as such, the units of participation of the investor in the UITF, when redeemed, may be worth more or be worth less than his/her initial investment/ contributions; (6) historical performance, when presented, is purely for reference purposes and is not a guarantee of similar future result; and (7) the trustee is not liable for losses unless upon willful default, bad faith or gross negligence.
- j. *Amount of fees/commission and other charges to be deducted from the fund.* The amount of fees that shall be charged to a fund shall cover the fund's fair and equitable share of the routine administrative expenses of the trustee such as salaries and wages, stationery and supplies, credit investigation, collateral appraisal, security, messengerial and janitorial services, EDP expenses, Bangko Sentral supervision fees and internal audit fees. However, the trustee may charge a UITF for special expenses in case such expenses are (1) necessary to preserve or enhance the value of the fund, (2) payable to a third party covered by a separate contract, and (3) disclosed to participants. The trustee shall secure prior Bangko Sentral approval for outsourcing services provided under existing regulations. No other fees shall be charged to the fund.

Sales, distribution, marketing and/or other promotional related expenses shall be for the account of the trustee and shall be presumed covered by the trust fee.

In the case of a multi-class fund that have different level of trustee fees and expenses, there shall be a policy on the equitable allocation of any costs, charges, and expenses payable out of the multi-class fund, which are not attributable to any particular class.

- k. Such other matters as may be necessary or proper to define clearly the rights of participants in the UIT. The provisions of the Plan shall govern participation in the fund including the rights and benefits of persons having interest in such participation, as beneficiaries or otherwise. The Plan may be amended by a resolution of the board of directors of the trustee: *Provided, however,* That participants in the fund shall be immediately notified of such amendments and shall be allowed to withdraw their participations within a reasonable time but in no case less than thirty (30) calendar days after the amendments are approved, if they are not in conformity with the amendments made thereto: *Provided, further,* That amendments to the Plan shall be submitted to the Bangko Sentral within ten (10) business days from approval of the amendments by the board of directors. For purposes of imposing monetary penalties provided under Sec. 171 for Delayed/Unsubmitted reports, the amendments to the Plan shall be considered as “Category A-3” report. The amendments shall be deemed approved after thirty (30) business days from date of completion of requirements.

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

Minimum disclosure requirements

- a. *Key Information and Investment Disclosure Statement (KIIDS).* This document shall contain the key features and the prospective and outstanding investments of a UIT. It shall use plain language presented in a concise manner, and shall comply substantially with the format prescribed in *Appendix 56*. This document shall be updated and made available to participants at least every calendar quarter thereof.

For investments of feeder funds/fund-of-funds, the trustee shall likewise make available to all UIT clients all relevant information on the target fund/s.

For a UIT with unit-paying feature, the KIIDS shall include the intended frequency of income distribution and the last five distribution dates, with information on the unit income and the distribution yield: *Provided,* That the KIIDS shall disclose that distributions are not guaranteed

and are determined by the trustee in accordance with the plan rules; and that income distribution may result in an immediate decrease in NAVPu by the amount of the distribution.

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

(1) *Marketing materials.* All marketing materials related to the sale of a UIT shall clearly state:

(a) The designated name and classification of the fund, the fund's trustee, and the classes of a UITF fund, if any.

(b) Minimum information regarding:

(i) The general investment policy and applicable risk profile. There shall be a clear description/explanation of the general risks attendant with investing in a UITF, including risk specific to a type of fund. Technical terms should likewise be defined in layman's terms¹.

(ii) Particulars including administrative and marketing details, such as but not limited to, pricing, cutoff time for participation and redemption, early redemption penalty/ies, and any special features of the UITF, as applicable. For a UITF with unit-paying feature, the marketing materials shall provide relevant information on this feature including, but not limited to, disclosures that distributions are not guaranteed and shall be determined by the trustee in accordance with the plan rules; and that income distribution may result in an immediate decrease in NAVPu by the amount of distribution.

(iii) All charges made/to be made against the fund or class of a UITF, including trust fees and other related charges.

(iv) The availability of the Plan Rules governing the fund, upon the client's request and the contact details of the trustee.

(v) Client and Product Suitability Standards. Prior to admission, the trustee shall perform a client profiling process for all UITF participants under the general principles on client suitability assessment to guide the client in choosing investment outlets that are best suited to his objectives, risk tolerance, preferences and experience. The profiling process shall, at the minimum, require the trustee to obtain client information through the Client Suitability Assessment (CSA) form, classify the client

according to his financial sophistication and communicate the CSA results to the subject client. The general principles on CSA shall also require the trustee to adopt a notice mechanism whereby clients are advised and/or reminded of the explicit requirement to notify the trustee or its UITF marketing personnel of any change in their characteristics, preferences or circumstances to enable the trustee to update client's profile at least every three (3) years.

- (c) The participation is not a "deposit account" but a trust product; and that any loss/income is for the account of the participant; that the trustee is not liable for losses unless upon willful default, bad faith or gross negligence.
 - (d) A balanced assessment of the possible gains and losses of the UITF and that the participation does not carry any guaranteed rate of return, and is not insured by the PDIC.
 - (e) An advisory that the investor must read the complete details of the fund in the Plan Rules, make his/her own risk assessment, and when necessary, he/she must seek independent/professional opinion, before making an investment.
- (2) Evidence of participation. Every UITF participant shall be given –
- (a) A participating trust agreement. Such agreement shall clearly indicate that (1) the UITF is a trust product and not a deposit account or an obligation of, or guaranteed, or insured by the trust entity or its affiliates or subsidiaries; (2) the UITF is not insured or governed by the PDIC; due to the nature of the investment, yields and potential yields cannot be guaranteed; any loss/income arising from market fluctuations and price volatility of the securities held by the UITF, even if invested in government securities, is for the account of the client/participant; (5) as such, the units of participation of the investor in the UITF, when redeemed, may be worth more or be worth less than his/her initial investment/contributions; (6) historical performance, when presented, is purely for reference purposes and is not a guarantee of similar future result; and (7) the trustee is not liable for losses unless upon willful default, bad faith or gross negligence.

In addition to the agreement, every UITF participant shall be provided with –

- (i) CSA form to be accomplished during the profiling process required under the general principles on CSA. This is designed to ensure that based on relevant information about the client, his investment profile is matched against the investment parameters of the UITF. At the minimum, client information shall include personal or institutional data, investment objective, investment horizon, investment experience, and risk

tolerance; and

- (ii) Risk disclosure statement, which in reference to to this Section *under Plan Rules*, shall describe the attendant general and specific risks that may arise from investing in the UITF. This statement shall be accomplished by the client every time he participates in a different fund and shall be substantially in the form as shown in *Appendix 57*.

Both documents shall be signed by the client/participant and the UIT marketing personnel who assessed and explained to the concerned client his/her ability to bear the risks and potential losses.

- (b) A confirmation of participation and redemption made to/from the fund that shall contain the following information:

- (i) NAVPu of the fund on day of purchase/redemption;
- (ii) Number of units purchased/ redeemed; and
- (iii) Absolute peso or foreign currency value.

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

- c. Regular computation and availability of NAVPu and other information. The trustee managing a UITF shall:

- (1) Compute the NAVPu daily;
- (2) Publish at least weekly the NAVPu in one (1) or more newspapers of national circulation: *Provided, That a pooled weekly publication of such NAVPu shall be considered as substantial compliance with this requirement. The said publication, at the minimum, shall clearly state the name of the fund, its general classification, the fund's NAVPu and the moving return on investment (ROI) of the fund on a year-to- date (YTD) and year-on-year (YOY) basis; and*
- (3) Make available the historical net asset value per unit, declaration of trust or its equivalent document, disclosure documents, and other pertinent information about a UITF via its website or the Trust Officers Association of the Philippines (TOAP)-administered website. For a UITF with unit-paying feature, it shall also disclose when there is an income declaration, the total amount of income for distribution, NAVPu exdistribution and its basis, total number of

units for distribution, unit income and historical distributions, if any.

d. Marketing personnel. The trustee shall ensure that there are board-approved policies and procedures covering the following:

- (1) Duties and responsibilities of all UITF marketing personnel;
- (2) Conduct of due diligence check on the fitness and propriety of all UIT marketing personnel which includes monitoring and reviewing on an ongoing basis their performance; and
- (3) Conduct of continuing training and education especially on updates relative to the fund products.

For purposes of this Section, a UITF may be sold by a bank employee belonging to the same financial conglomerate as the trustee, subject to the provision of the cross-selling framework.

To ensure the competence and integrity of all duly designated UITF Marketing Personnel, all personnel involved in the sales of UITF must be certified as a UITF Marketing Personnel through a UITF Certification Program (UCP) administered by a reputable financial services industry association/organization acceptable to the Bangko Sentral. The certification program, at a minimum, should have a qualifying examination, a requirement for continuing education, and a requirement for registration of the Certified UITF Marketing Personnel. The Guidelines for the Administration of the UCP are provided in *Appendix 137*.

It shall be the responsibility of the Trust Entity (TE) to ensure that its UITF Marketing Personnel continuously comply with the qualification requirements prescribed by the Bangko Sentral, and that they conduct themselves with integrity, honesty and with proper representation to the clients of the TE.

Exposure limits. The combined exposure of the UITF to any entity and its related parties shall not exceed fifteen percent (15%) of the market value of the UITF: *Provided, That, a UITF invested, partially or substantially, in exchange traded equity securities shall be subject to the fifteen percent (15%) exposure limit to a single entity/issuer: Provided, further, That, in the case of an exchange traded equity security which is included in an index and tracked by the UITF shall be the actual benchmark weighting of the issuer or fifteen percent (15%), whichever is higher.*

This limitation shall not apply to non-risk assets as defined by the Bangko Sentral.

In the case of feeder fund/fund-of-funds, the exposure limit shall be applied on the target fund's underlying investments. Notwithstanding said limit, if the target fund is allowed by its respective regulatory authority to invest in units/shares of other open-ended CIS, the exposure limit prescribed by said regulatory authority shall instead apply. Furthermore, the investments in any one (1) target fund

shall not exceed ten percent (10%) of the total net asset value of the target fund.

In case the limits prescribed above are breached due to the marking-to-market of certain investment/s or any extraordinary circumstances, e.g., abnormal redemptions which are beyond the control of the trustee, the trustee shall be given thirty (30) days from the time the limit is breached, or in case of investor funds thirty (30) days from date of receipt of report indicating the net asset value of the fund, to correct the same.

Allowable investments and valuation. UITF investments shall be limited to bank deposits and the following financial instruments:

- a. Securities issued by or guaranteed by the Philippine government, or the Bangko Sentral;
- b. Tradable securities issued by the government of a foreign country, any political subdivision of a foreign country or any supranational entity;
- c. Exchange-listed securities;
- d. Marketable instruments that are traded in an organized exchange;
- e. Loans traded in an organized market;
- f. Loans arising from repo agreements which are transacted through an exchange recognized by the SEC, subject to the condition that the repo contracts may be pre-terminated lawfully by the trust entity administering the UITF and acting as lender, with due notice to its counterparty and the market operator;
- g. Units/shares in collective investment schemes (CIS), i.e., target fund, shall include exchange traded fund (ETF) and other CIS, subject to the following:
 - (1) The investment objectives of the target fund are aligned with that of the investor fund;
 - (2) The underlying investments of target funds are limited to the allowable investment outlets set forth in this Section;
 - (3) The target fund is neither structured nor similarly structured as a feeder fund or fund-of-funds; and
 - (4) The target fund is supervised by a regulatory authority, as follows:
 - (a) a local target fund shall either be approved by the Bangko Sentral or registered with the SEC.

(b) a target fund constituted in another jurisdiction shall be registered/authorized/ approved, as the case may be, and is recognized as a collective investment scheme in its home jurisdiction by a regulatory authority that is a member of the International Organization of Securities Commissions (IOSCO); or any regulatory authority acceptable to the Bangko Sentral to supervise the CIS; and

h. Such other tradable investment outlets/categories as the Bangko Sentral may allow:

Provided, That the investment of the peso UITF in tradable foreign currency denominated financial instruments shall be subject to Items “e” and “f” of *Other applicable regulations on loans and investments* under Sec. 413.

Provided, further, That a financial instrument is regarded as tradable if quoted two-way prices are readily and regularly available from an exchange, dealer, broker, industry group, pricing service or regulatory agency, and those prices represent actual and regularly occurring market transactions on an arm’s length basis: *Provided, finally, That* the financial instrument is easy to realize upon sale at any time.

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

The use of hedging instruments shall also be disclosed in the “*Plan*” as provided in Item “c” of the *Plan rules* and specified in the key information and investment disclosure statement as provided in Item “a” on *Minimum disclosure requirements* of this Section.

In the case of Feeder Fund or Fund-of-Funds, offshore/global funds which use financial derivatives for efficient portfolio management (EPM) may be allowed as target fund: *Provided, That* financial derivatives shall not be extensively or primarily used as an investment strategy of the target fund and that the risk level of the target fund remain consistent with the objective and risk profile of the investor fund. For this purpose, the use of financial derivatives is deemed to be for EPM if:

- a. it is economically appropriate in that it is realized in a cost effective manner;
- b. the exposure is fully covered to meet any obligation to pay or deliver;
- c. it has at least one of the following aims:

- (1) reduction of risk;
- (2) reduction of cost with no increase or a minimal increase in risk; or

- (3) generation of additional capital or income for the scheme with no increase or a minimal increase in risk.

Alternatively, the target fund should comply with the relevant regulatory requirements of its home jurisdiction as regards the use of financial derivatives for EPM.

Other related guidelines on valuation of allowable investments.

- a. In marking to market debt securities, the provisions of *Appendix 28* shall apply.
- b. In case outstanding UITF investments may deteriorate in quality, i.e., no longer tradable as defined under *allowable investments and valuation* of this Section, the trustee shall immediately provision to reflect fair value in accordance with generally accepted accounting principles or as may be prescribed by the Bangko Sentral. If no fair value is available, the instrument shall be assumed to be of no market value.

Unit Investment Trust Fund administration support.

- a. *Backroom operations.* Administrative rules on backroom under Sec. 435 shall be applicable to UITF. Adequate systems to support the daily marking-to-market of the fund's financial instruments shall be in place at all times. In this respect, a daily reconciliation of the fund's resultant marked-to-market value with the unrealized market losses and gains (respective contra asset balance) versus the book value of the fund for investments in financial instruments shall be done and all differences resolved within the day.
- b. *Custody of securities.* Investments in securities of a UITF shall be held for safekeeping by Bangko Sentral accredited third party custodians which shall perform independent marking-to-market of such securities.

Investments in target funds of a UITF structured as an investor fund shall be held for safekeeping by an institution registered/authorized/approved by a relevant regulatory authority in its home jurisdiction to act as third party custodian.

Counterparties.

- a. *Dealings with related interests/bank proper/holding company/subsidiaries/ affiliates and related companies.* A trustee of a UITF shall be transparent at all times and maintain an audit trail for all transactions with related parties or entities. The trustee shall observe the principle of best execution and no purchase/sale shall be made with related counterparties without considering at

least two (2) competitive quotes from other sources.

Consistent with the provisions of this Section under relationship of trustee with UITF, a trustee may invest the funds of a UITF structured as an investor fund in a target fund that is administered by the trustee or its related party/company: *Provided, That:*

- (1) there shall be no cross-holding between the investor fund and the target fund, where cross-holding refers to the holding of shares/units of participation in one another by two (2) or more funds;
- (2) all initial charges on the target fund are waived; and
- (3) the trust/management fee shall be charged only once, either at the level of the investor fund or at level of the target fund.

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

Foreign currency-denominated unit investment trust funds. UIT Fund denominated in any acceptable foreign currency provided under existing Bangko Sentral rules and regulations may be established. Such fund may only be invested in allowable investments denominated in pesos or any acceptable foreign currency as expressly allowed under the fund's plan rules and properly disclosed to fund participants.

Exemptions from statutory and liquidity reserves, single borrower's limit, director, officers, stockholders and their related interests. The provisions on reserves, single borrower's limit and DOSRI ceilings under Sec. 418, and Secs. 362, 344 and 345, respectively, applicable to trust funds in general shall not be made applicable to UITFs.

(Circular Nos. 1021 dated 15 November 2018, 1018 dated 26 October 2018, 999 dated 14 March 2018, 963 dated 27 June 2017, 907 dated 10 March 2016, 876 dated 20 April 2015, 852 dated 21 October 2014 and 853 dated 21 October 2014)

Footnotes

1. Example: "Fixed income securities" does not really mean a guarantee of fixed earnings on the investor's participation; "Risk-free" government securities which may be sovereign "risk-free" but not interest rate "risk-free"