

## **438 NON-TRUST, NON-FIDUCIARY AND/OR NON-INVESTMENT MANAGEMENT ACTIVITIES**

The basic characteristic of trust, other fiduciary and investment management relationship is the absolute non-existence of a debtor-creditor relationship, thus, there is no obligation on the part of the trustee, fiduciary or investment manager to guarantee returns on the funds or properties regardless of the results of the investment. The trustee, fiduciary or investment manager is entitled to fees/commissions which shall be stipulated and fixed in the contract or indenture and the trustor or principal is entitled to all the funds or properties and earnings less fees/commissions, losses and other charges. Any agreement/arrangement that does not conform to these shall not be considered as trust, other fiduciary and/or investment management relationship.

The following shall not constitute a trust, other fiduciary and/or investment management relationship:

- a. When there is a preponderance of purpose or of intent that the arrangement creates or establishes a relationship: other than a trust, fiduciary and/or investment management;
- b. When the agreement or contract is itself used as a certificate of indebtedness in exchange for money placement from clients and/or as the medium for confirming placements and investment thereof;
- c. When the agreement or contract of an account is accepted under the signature(s) of those other than the trust officer or subordinate officer of the trust department or those authorized by the board of directors to represent the trust officer;
- d. Where there is a fixed rate or guaranty of interest, income or return in favor of its client or beneficiary: *Provided, however,* That where funds are placed in fixed income-generating investments, a quotation of income expectation or like terms, shall neither be considered as arrangements with a fixed rate nor a guaranty of interest, income or return when the agreement or indenture categorically states in bold letters that the quoted income expectation or like terms is neither assured nor guaranteed by the trustee or fiduciary and it does not, therefore, entitle the client to a fixed interest or return on his investments: *Provided, further,* That any of the following practices or practices similar and/or tantamount thereto shall be construed as fixing or guaranteeing the rate of interest, income or return:
  - (1) Issuance of certificates, side agreements, letters of undertaking or other similar documents providing for fixed rates or guaranteeing interest, income or return;
  - (2) Paying trust earnings based on indicated or expected yield regardless of the actual

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investment results;

- (3) Increasing or reducing fees in order to meet a quoted or expected yield;
  - (4) Entering into any arrangement, scheme or practice which results in the payment of fixed rates or yield on trust investments or in the payment of the indicated or expected yield regardless of the actual investment results; and
- e. Where the risk or responsibility is exclusively with the trustee, fiduciary or investment manager in case of loss in the investment of trust, fiduciary or investment management funds, when such loss is not due to the failure of the trustee or fiduciary to exercise the skill, care, prudence and diligence required by law.

Trust, other fiduciary and investment management activities involving any of the foregoing shall be reported as deposit substitutes and shall be subject to the reserve requirement for deposit substitutes from the time of inception, without prejudice to the imposition of the applicable sanctions provided for in Sections 36 and 37 of R.A. No. 7653.