

**[ BSP MEMORANDUM, May 26, 1992 ]**

**AMENDMENTS TO THE RULES AND REGULATIONS ON TRUST,  
OTHER FIDUCIARY BUSINESS AND INVESTMENT MANAGEMENT  
ACTIVITIES**

The Monetary Board, in its Resolution No. 472 dated May 22, 1992, approved the following amendments to the Rules and Regulations on Trust, Other Fiduciary Business and Investment Management Activities:

SECTION 1. Section 407 is hereby amended to read as follows:

*SECTION 407. Non-Trust, Non-Fiduciary and/or Non-Investment Management Activities.*

THE BASIC CHARACTERISTIC OF TRUST AND OTHER FIDUCIARY RELATIONSHIP IS THE ABSOLUTE NON-EXISTENCE OF A DEBTOR-CREDITOR RELATIONSHIP, THUS THERE IS NO OBLIGATIONS ON THE PART OF THE TRUSTEE OR FIDUCIARY TO GUARANTEE RETURNS ON THE FUNDS OR PROPERTIES REGARDLESS OF THE RESULTS OF THE INVESTMENT. THE TRUSTEE OR FIDUCIARY 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 OR OTHER FIDUCIARY RELATIONSHIP.

The following shall not constitute a trust, 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, as determined by the Governor or Monetary Board upon the findings and recommendations of the appropriate supervising and examining department of the Central Bank;
- 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 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 INVESTMENT.

PROVIDED, FINALLY, THAT ANY OF THE FOLLOWING 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 UNDER-TAKING, OR OTHER SIMILAR DOCUMENTS PROVIDING FOR FIXED RATES OR GUARANTEEING INTEREST, INCOME OR RETURN;
2. PAYING TRUST/IMA EARNINGS BASED ON INDICATED OR EXPECTED YIELD REGARDLESS OF THE ACTUAL INVESTMENT RESULTS;
3. INCREASING OR REDUCING FEES/COMMISSIONS 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/IMA INVESTMENTS OR IN THE PAYMENT OF THE INDICATED OR EXPECTED YIELD REGARDLESS OF THE ACTUAL INVESTMENT RESULTS."

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 which are accepted, renewed or