



Bangko Sentral ng Pilipinas

OFFICE OF THE GOVERNOR

CIRCULAR No. 396
Series of 2003

Pursuant to Monetary Board Resolution Nos. 630 and 996 dated May 8, 2003 and July 17, 2003, respectively, the provisions of the S Regulations of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended as follows:

Section 1. Section 4141S and its subsections are hereby amended to read as follows:

Sec. 4141S. Definition; Qualifications; Responsibilities and Duties of Trustees

For purposes of this Section, the following shall be the definition, qualifications, responsibilities and duties of trustees.

Subsec. 4141S.1 Definition of Trustees

Trustees shall include (1) those who are named as such in the articles of incorporation; (2) those duly elected in subsequent meetings of the NSSLA's members; and (3) those elected to fill vacancies in the board of trustees.

Subsec. 4141S.2 Qualifications of Trustees

No person shall be eligible as trustee of an NSSLA unless he is a member of good standing of such NSSLA.

In addition, such person shall have the qualifications and none of the disqualifications as provided in pertinent laws and BSP rules.

A trustee shall have the following minimum qualifications:

- a. He shall be at least **25** years of age at the time of his election/appointment;

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- b. He shall be at least a COLLEGE graduate OR have at least FIVE (5) years experience in business, OR shall have undergone any BSP training in NSSLA or banking operations; **provided, however, that undergraduates eligible to be elected as trustees in the NSSLA's by-laws may be allowed as may be approved by the Monetary Board;**
- c. He must have attended a special seminar on corporate governance for board of trustees conducted or accredited by the BSP; and
- d. He must be fit and proper for the position of a trustee of the NSSLA. In determining whether a person is fit and proper for the position of a trustee, the following matters must be considered:
 - integrity/probity;
 - competence;
 - education;
 - diligence; and
 - experience/training.

The foregoing qualifications for trustees shall be in addition to those already required or prescribed by R.A. No. 8367, as amended, and other existing applicable laws and regulations.

Subsec. 4141S.3 Powers and Authority of the Board of Trustees

The corporate powers of an NSSLA shall be exercised, its business conducted, and all its property shall be controlled and held by its board of trustees. The powers of the board of trustees as conferred by law are original and cannot be revoked by the members. The trustees hold their office charged with the duty to act for the NSSLA in accordance with their best judgment.

Subsec. 4141S.4 General Responsibility of the Board of Trustees

The position of an NSSLA trustee is a position of trust. A trustee assumes certain responsibilities to different constituencies or stakeholders (e.g. the NSSLA itself, its member-depositors and other creditors, its management and employees and the public at large). These constituencies or

stakeholders have the right to expect that the institution is being run in a prudent and sound manner.

The board of trustees is primarily responsible for the corporate governance of the NSSLA. To ensure good governance of the NSSLA, the board of trustees should establish strategic objectives, policies and procedures that will guide and direct the activities of the NSSLA and the means to attain the same as well as the mechanism for monitoring management's performance. While the management of the day-to-day affairs of the institution is the responsibility of the management team, the board of trustees is, however, responsible for monitoring and overseeing management action.

Subsec. 4141S.5 Duties and Responsibilities of the Board of Trustees

To ensure prudent and efficient administration of NSSLAs, the following guidelines shall govern the responsibilities and duties of the board of trustees of NSSLAs:

a. Specific Duties and Responsibilities of the Board of Trustees

- (1) To select and appoint officers who are qualified to administer the NSSLA affairs effectively and soundly and to establish adequate selection process for all personnel.***

It is the primary responsibility of the board of trustees to appoint competent management team at all times. The board of trustees should apply fit and proper standards on key personnel. Integrity, technical expertise and experience in the institution's business, either current or planned, should be the key considerations in the selection process. And because mutual trust and a close working relationship are important, the board of trustees' choice should share its general operating philosophy and vision for the institution. The board of trustees shall establish an appropriate compensation package for all personnel which shall be consistent with the interest of all stakeholders.

- (2) To establish objectives and draw up a business strategy for achieving them.***

Consistent with the institution's objectives, business plans should be established to direct its on-going activities. The board of trustees should ensure that performance against plan is regularly reviewed, with corrective action taken as needed.

(3) *To conduct the affairs of the institution with high degree of integrity.*

Since reputation is a very valuable asset, it is in the institution's best interest that in dealings with its members, it observes a high standard of integrity. The board of trustees should prescribe corporate values, codes of conduct and other standards of appropriate behavior for itself, the senior management and other employees. Among other matters, activities and transactions that could result or potentially result in conflict of interest, personal gain at the expense of the institution, or unethical conduct shall be strictly prohibited. It shall provide policies that will prevent the use of the facilities of the NSSLA in furtherance of criminal and other illegal activities.

(4) *To prescribe a clear assignment of responsibilities and decision-making authorities, incorporating a hierarchy of required approvals from individuals to the board of trustees.*

The board of trustees shall establish in writing the limits of the discretionary powers of each officer, committee, sub-committee and such other group for the purpose of lending, investing or committing the NSSLA to any financial undertaking or exposure to risk at any time. The board of trustees shall have a schedule of matters and authorities reserved to it for decision, such as major capital expenditures, equity investments and divestments.

(5) *To effectively supervise the NSSLA's affairs.*

The board of trustees shall establish a system of checks and balances which applies in the first instance to the board itself. Among the members of the board, an effective system of checks and balances must exist. The system shall also provide a mechanism for effective check and control by the board of trustees over the chief executive officer and key managers and by the latter over the line officers of the NSSLA.

(6) *To monitor, assess and control the performance of management.*

The board of trustees shall put in place an appropriate reporting system so that it is provided with relevant and timely information to be able to effectively assess the performance of management. For this purpose, it may constitute a governance committee.

(7) To adopt and maintain adequate risk management policy.

The board of trustees shall be responsible for the formulation and maintenance of written policies and procedures relating to the management of risks throughout the institution. The risk management policy shall include:

- a comprehensive risk management approach;
- a detailed structure of limits, guidelines and other parameters used to govern risk-taking;
- a clear delineation of lines of responsibilities for managing risk;
- an adequate system for measuring risk; and
- effective internal controls and a comprehensive risk-reporting process.

The board of trustees may constitute a committee for this purpose.

(8) To constitute the Audit Committee

To constitute the Audit Committee which shall be comprised of trustees, preferably with accounting and finance experience. Said audit committee provides oversight of the institution's internal and external auditors. It shall be responsible for the setting up of the internal audit department and for the appointment of the internal auditor as well as the independent external auditor. It shall monitor and evaluate the adequacy and effectiveness of the internal control system.

(9) To meet regularly.

To properly discharge its function, the board of trustees shall meet regularly. Independent views in board meetings shall be given full consideration and all such meetings shall be duly minuted.

(10) To keep the individual members of the board and the members informed.

It is the duty of the board of trustees to present to all its members and to the stakeholders a balanced and understandable assessment of the NSSLA's performance and financial condition. It should also provide appropriate information that flows internally and to the public. All members of the board shall have reasonable access to any information about the institution.

(11) To ensure that the NSSLA has beneficial influence on the economy

The board of trustees has a continuing responsibility to provide those services and facilities which will be supportive of the national economy.

(12) To assess at least annually its performance and effectiveness as a body, as well as its various committees, the chief executive officer and the NSSLA itself.

The composition of the board of trustees shall also be reviewed regularly with the end in view of having a balanced membership. Towards this end, a system and procedure for evaluation shall be adopted which may include, but not limited to, the setting of benchmark and peer group analysis.

(13) To keep their authority within the powers of the institution as prescribed in the articles of incorporation, by-laws and in existing laws, rules and regulations.

To conduct and maintain the affairs of the institution within the scope of its authority as prescribed in its charter and in existing laws and regulations, the board of trustees shall appoint a compliance officer who shall be responsible for coordinating, monitoring and facilitating compliance with existing laws and regulations. The compliance officer shall be vested with appropriate authority and provided with appropriate support and resources. It may also constitute a compliance committee.

b. Specific Duties and Responsibilities of a Trustee

(1) To conduct fair business transactions with the NSSLA and to ensure that personal interest does not bias board decisions.

Trustees should, whenever possible, avoid situations that would give rise to a conflict of interest. If transactions with the institution cannot be avoided, it should be done in the regular course of business and upon terms not less favorable to the institution than those offered to others. The basic principle to be observed is that a trustee should not use his position to make profit or to acquire benefit or advantage for himself and/or his related interests. He should avoid situations that would compromise his impartiality.

- (2) To act honestly and in good faith, with loyalty and in the best interest of the Association, its members, regardless of the amount of their capital contributions, and creditors, if any.**

A trustee must always act in good faith, with the care which an ordinarily prudent man would exercise under similar circumstances. While a trustee should always strive to promote the interest of all members, he shall also give due regard to the rights and interests of other stakeholders.

- (3) To devote time and attention necessary to properly discharge their duties and responsibilities.**

Trustees shall devote sufficient time to familiarize themselves with the institution's business. They must be constantly aware of the institution's condition and be knowledgeable enough to contribute meaningfully to the board's work. They must attend and actively participate in board and committee meetings, request and review meeting materials, ask questions and request explanations. If a person cannot give sufficient time and attention to the affairs of the institution, he shall neither accept his nomination nor run for election as member of the board of trustees.

- (4) To act judiciously.**

Before deciding on any matter brought before the board of trustees, every trustee should thoroughly evaluate the issues, ask questions and seek clarifications when necessary.

- (5) To exercise independent judgment.**

A trustee should view each problem/situation objectively. When a disagreement with others occurs, he should carefully evaluate the situation and state his position. He should not be afraid to take a position even though it might be unpopular. Corollarily, he should support plans and ideas that he thinks will be beneficial to the institution.

- (6) To have a working knowledge of the statutory and regulatory requirements affecting the Association, including the content of its articles of incorporation and by-laws, the requirements of the BSP,**

and where applicable, the requirements of other regulatory agencies.

A trustee also keeps himself informed of the industry developments and business trends in order to safeguard the institution's competitiveness.

(7) To observe confidentiality.

Trustees must observe the confidentiality of non-public information acquired by reason of their position as trustees. They may not disclose said information to any other person without the authority of the board.

Section 2. Section 4142S is hereby amended to read as follows:

Section 4142S.1 Definition of Officers

Officers shall include the President, Executive Vice President, Senior Vice President, Vice President, General Manager, Secretary, Treasurer, and others mentioned as officers of the bank, or those whose duties as such are defined in the by-laws, or are generally known to be the officers of the NSSLA (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 bank.

A person holding the position of chairman, vice-chairman or any other position of the board who also performs functions of management such as those ordinarily performed by regular officers shall also be considered an officer.

Section 4142S.2 Qualifications of Officers

An officer shall have the following minimum qualifications:

- a. He shall be at least twenty-one (21) years of age;
- b. He shall be at least a COLLEGE graduate OR have at least FIVE (5) years experience in NSSLA or banking operations or related activities or in a field related to his position and responsibilities, OR have undergone training in NSSLA or banking operations acceptable to the appropriate supervising and examining department of the BSP.

c. He must be fit and proper for the position of an officer of the NSSLA. In determining whether a person is fit and proper for the position of an officer, the following matters must be considered:

- i. integrity/probity;
- ii. competence;
- iii. education;
- iv. diligence; and
- v. experience/training.

The foregoing qualifications for officers shall be in addition to those already required or prescribed by R.A. No. 8367, as amended, and other existing applicable laws and regulations.

Section 3. Section 4143S is hereby amended to read as follows:

Sec. 4143S. Disqualifications of Trustees and Officers

The following regulations shall govern the disqualification of NSSLAs' trustees and officers.

Subsec. 4143S.1 Persons Disqualified to Become Trustees.

Without prejudice to specific provisions of laws prescribing disqualifications for trustees, the following are disqualified from becoming trustees:

a. Permanently disqualified

The following persons are permanently disqualified from holding a trustee position:

- (1) Persons who have been convicted by final judgment of the court for offenses involving dishonesty or breach of trust, such as estafa, embezzlement, extortion, forgery, malversation, swindling and theft;
- (2) Persons who have been convicted by final judgment of the court for violation of banking/quasi-banking/NSSLA laws;

- (3) Persons who have been judicially declared insolvent, spendthrift or incapacitated to contract; or
- (4) Directors/trustees, officers or employees of closed banks/quasi-banks/trust entities, NSSLAs or other non-bank financial institutions under BSP supervision/regulation who were responsible for such institution's closure as determined by the Monetary Board.

b. Temporarily disqualified

Persons disqualified from holding a trustee position for a specific/indefinite period of time are:

- (1) Persons who refuse to fully disclose the extent of their business interest to the appropriate supervising and examining department when required pursuant to a provision of law or of a circular, memorandum or rule or regulation of the BSP. This disqualification shall be in effect as long as the refusal persists;
- (2) Trustees who have been absent or who have not participated for whatever reasons in more than fifty percent (50%) of all meetings, both regular and special, of the board of trustees during their incumbency, or any twelve (12) month period during said incumbency. This disqualification applies for purposes of the succeeding election;
- (3) Persons who are delinquent in the payment of their obligations as defined hereunder:
 - (a) Delinquency in the payment of obligations means that an obligation of a person with an NSSLA where he/she is a trustee or officer, or at least two obligations with other banks/financial institutions, under different credit lines or loan contracts, are past due pursuant to existing regulations.
 - (b) Obligations shall include all borrowings from a bank/quasi-bank/trust entity/NSSLA/other financial institutions obtained by:

- i. A trustee or officer for his own account or as the representative or agent of others or where he/she acts as a guarantor, indorser, or surety for loans from such financial institutions;
- ii. The spouse or child under the parental authority of the trustee or officer;
- iii. Any person whose borrowings or loan proceeds were credited to the account of, or used for the benefit of a trustee or officer;
- iv. A partnership of which a trustee or officer, or his/her spouse is the managing partner or a general partner owning a controlling interest in the partnership; and
- v. A corporation, association or firm wholly-owned or majority of the capital of which is owned by any or a group of persons mentioned in the foregoing items (i), (ii) and (iv);

This disqualification shall be in effect as long as the delinquency persists.

- (4) Persons convicted for offenses involving dishonesty, breach of trust or violation of banking/quasi-banking and NSSLAs laws and regulations but whose conviction has not yet become final and executory;
- (5) Directors/trustees and officers of closed banks/quasi-banks/trust entities/NSSLAs and other financial institutions under BSP supervision/regulation pending their clearance by the Monetary Board;
- (6) Trustees disqualified for failure to observe/discharge their duties and responsibilities prescribed under existing regulations. This disqualification applies until the lapse of the specific period of disqualification or upon approval by the Monetary Board on recommendation by the appropriate supervising and examining department of such trustees' election/re-election;

- (7) Trustees who failed to attend the special seminar on Corporate Governance for board of trustees required by BSP. This disqualification applies until the trustee concerned had attended such seminar;
- (8) Persons dismissed/terminated from employment for cause. This disqualification shall be in effect until they have cleared themselves of involvement in the alleged irregularity;
- (9) Those under preventive suspension; or
- (10) Persons with derogatory records with the National Bureau of Investigation (NBI), court, police, Interpol and monetary authority (central bank) of other countries (for foreign trustees and officers) involving violation of any law, rule or regulation of the Government or any of its instrumentalities adversely affecting the integrity and/or ability to discharge the duties of an NSSLA trustee/officer. The disqualification applies until they have cleared themselves of involvement in the alleged irregularity.

Subsec. 4143S.2 Persons Disqualified to Become Officers.

- a. The disqualifications for trustees mentioned in Subsec. 4143S.1 shall likewise apply to officers, except those stated in Items b.2 and b.7.
- b. Except as may be authorized by the Monetary Board or the Governor, the spouse or a relative within the second degree of consanguinity or affinity of any person holding the position of Chairman, Vice Chairman, President, Executive Vice President or any position of equivalent rank, General Manager, Treasurer, Chief Cashier or Chief Accountant is disqualified from holding or being elected or appointed to any of said positions in the same NSSLA; and the spouse or relative within the second degree of consanguinity or affinity of any person holding the position of Manager, Cashier, or Accountant of a branch or office of a NSSLA is disqualified from holding or being appointed to any of said positions in the same branch or office;
- c. Except as may otherwise be allowed under C.A. No. 108, otherwise known as "The Anti-Dummy Law," as amended, foreigners cannot be officers or employees of NSSLAs; and

- d. Any appointive or elective public official, whether full time or part time, except in cases where such service is incident to financial assistance provided by the government or government owned or controlled corporations or in cases allowed under existing law.

Subsec. 4143S.3 Disqualification Procedures

- a. Upon the establishment of any of the grounds for disqualification, the office of the disqualified trustee or officer shall immediately become vacant, except in the case of delinquency in the payment of obligations wherein the trustee or officer concerned shall be given a grace period of thirty (30) days after such ground for disqualification has been established.
- b. All cases of disqualification shall be immediately reported to the Board of Trustees of the NSSLA concerned. If the ground for disqualification is delinquency in the payment of obligations, the report shall be made at the expiry of the 30-day grace period mentioned in item "a" above.

The board of trustees shall act on the report not later than the following board of trustees' meeting. Within seventy two (72) hours thereafter, the corporate secretary shall report to the Governor of the BSP through the appropriate supervising and examining department the name of the trustee or officer involved, the ground for his disqualification and the action taken by the Board.

- c. When the ground for disqualification ceases to exist, the trustee or officer concerned shall be eligible to become trustee or officer of any NSSLA only upon prior approval by the Monetary Board.

Subsec. 4143S.4 Effect of Non-possession of Qualifications or Possession of Disqualifications.

Trustees/officers elected or appointed without possessing the qualifications aforementioned or possessing any of the disqualifications as enumerated herein, shall vacate their respective positions immediately.

Subsec. 4143S.5 Watchlisting

To provide the BSP with a central information file to be used as reference in passing upon and reviewing the qualifications of persons elected or appointed as trustee or officer of a NSSLA, the Supervision and Examination Sector shall maintain a watchlist of disqualified NSSLA trustees/officers under the following procedures:

- a. **Watchlist categories.** Watchlisting shall be categorized as follows:
 - 1) Disqualification File "A" (Permanent)
Trustees/officers/employees permanently disqualified by the Monetary Board from holding a director/trustee/officer position in any institution under the supervision/regulation of BSP.
 - 2) Disqualification File "B" (Temporary) -
Trustees/officers/ employees temporarily disqualified by the Monetary Board from holding a director/trustee/officer position in any institution under the supervision/regulation of BSP.
- b. **Inclusion of trustees/officers/employees in the watchlist.** Upon recommendation by the Supervision and Examination Sector, the inclusion of trustees/officers/employees in watchlist disqualification files "A" and "B" on the basis of decisions, actions or reports of the courts, banks, quasi-banks, other NSSLAs and NBFIs under BSP supervision, BSP, NBI or any other administrative agencies shall first be approved by the Monetary Board.
- c. **Notification of trustees/officers/employees.** Upon approval by the Monetary Board, the concerned trustee/officer/employee shall be informed through registered mail, with registry return receipt card, at his/her last known address of his/her inclusion in the masterlist of watchlisted persons disqualified to be a trustee/officer in any financial institution under the supervision of the BSP.
- d. **Confidentiality.** Watchlisting shall be for internal use only and may not be accessed or queried upon by outside parties including banks, quasi-banks, trust entities, NSSLAs or other NBFIs under BSP supervision except with the authority of the person concerned and

with the approval of the Deputy Governor, SES, or the Governor, or the Monetary Board.

- e. **Delisting.** All delistings shall be approved by the Monetary Board upon recommendation of the operating departments of the SES except in cases of persons known to be dead, where delisting shall be automatic upon proof of death and need not be elevated to the Monetary Board. Delisting may be approved by the Monetary Board in the following cases:

Watchlist – Disqualification File “B” (Temporary) –

- i. After the lapse of the specific period of disqualification;
- ii. When the conviction by the court for crimes involving dishonesty, breach of trust and/or violation of banking laws becomes final and executory, in which case the trustee/officer/employee is relisted to Watchlist – Disqualification File “A” (Permanent);
- iii. Upon favorable decision or clearance by the appropriate body, i.e., court, NBI, bank, quasi bank, trust entity or such other agency/body where the concerned individual had derogatory record.

Trustees/officers/employees delisted from the Watchlist – Disqualification File “B” other than those upgraded to Watchlist – Disqualification File “A” shall be eligible for reemployment with any bank, quasi-bank, trust entity, NSSLA or NBFI under BSP supervision.

Section 4. A paragraph is hereby added to Section 4145S (Compensation of Trustees, Officers and Employees) which shall read as follows:

To protect the funds of depositors and creditors, the Monetary Board may regulate/restrict the payment by the NSSLA of compensation, allowances, fees, bonuses, and fringe benefits to its trustees and officers in exceptional cases and when the circumstances warrant, such as, but not limited to the following:

- a. When the NSSLA is found by the Monetary Board to be conducting business in an unsafe or unsound manner;

- b. When the NSSLA is found by the Monetary Board to be in an unsatisfactory financial condition such as, but not limited to, the following cases:
- (1) Its capital is impaired; and
 - (2) It has suffered continuous losses from operations for the past three years.

In the presence of any one or more of the circumstances mentioned above, the Monetary Board may impose the following restrictions in the compensation and other benefits of trustees and officers:

- (i) Except for the financial assistance to meet expenses for the medical, maternity, education and other emergency needs of the trustees or officers or their immediate family, other forms of financial assistance may be suspended.
- (ii) When the total compensation package including salaries, allowances, fees and bonuses of trustees and officers are significantly excessive as compared with industry averages, the Monetary Board may order their reduction to reasonable levels.

Section 5. Section 4148S is hereby added to read as follows:

Full-time Manager for NSSLAs .

All NSSLAs with total assets of at least Five Million Pesos (P 5,000,000.00) shall maintain a full-time Manager to take charge of the operations of the NSSLA. The Manager shall possess all the qualifications and shall not have any disqualification aforementioned herein.

Section 6. Section 4631S is hereby added to read as follows:

Revocation/Suspension of NSSLA License

In reference to Section 22 of R.A. No. 8367 or the Revised Non-Stock Savings and Loan Association Act of 1997, the Monetary Board, upon due notice and hearing, has the authority to either revoke or

suspend the license of any NSSLA for such period as it deems necessary, based on any of the following grounds:

a. Suspension of license:

- 1) repeated violations (uncorrected similar examination findings for the last two examinations, regular or special,) of any of the provisions of R.A. No. 8367, and/or any rules or regulations promulgated to implement said law, or BSP directives and/or instructions;
- 2) paid-up capital is impaired by continuing losses for the last two fiscal years;

Lifting of the suspension of license shall be approved by the Monetary Board upon recommendation of the appropriate BSP supervising department.

b. Revocation of license:

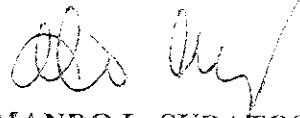
- 1) when the solvency of the NSSLA is imperiled by losses and irregularities;
- 2) when the NSSLA willfully violates any provision of R. A. No. 8367, any rule or regulation promulgated to implement said law and BSP directives and/or instructions;
- 3) when the NSSLA is conducting business in an unsafe and unsound manner;
- 4) when it is unable to pay its liabilities as they become due in the ordinary course of business;
- 5) when it has insufficient realizable assets, as determined by the BSP, to meet its liabilities;
- 6) when it cannot continue in business without involving probable losses to its members or creditors; and
- 7) when it has wilfully violated a cease and desist order of the Monetary Board involving acts or transactions which amount to fraud or a dissipation of assets of the institution.

As to the effects of the revocation/suspension of license of the NSSLA, the NSSLA is prohibited from engaging in the business of accumulating the savings of its members and using such accumulations for loans to its members, subject to applicable sanctions and penalties provided by law in case of violation thereof. After the cessation of its operations due to revocation of its license, the NSSLA should proceed with its dissolution, in accordance with the provisions under the Corporation Code. The dissolution of a corporation involves the termination of its corporate existence, at least, as far as the right to go on doing ordinary business is concerned, and the winding up of its affairs, the payments of its debts and distribution of its assets among the members or stakeholders or other persons involved. The board of trustees of the corporation also has the option of adopting a plan for the distribution of its assets, as stated under Section 95 of the Corporation Code.

After the revocation/suspension of its license, the Monetary Board may direct the board of trustees of the NSSLA to proceed with the voluntary dissolution of the corporation. In the event that the board of trustees refuses to effectuate such dissolution, the Monetary Board may refer the matter to the Solicitor General for the filing of a *quo warranto* case against the corporation in accordance with the provision under the Corporation Code.

This Circular shall take effect fifteen (15) days after publication in the Official Gazette or in two newspapers of general circulation.

FOR THE MONETARY BOARD:



ARMANDO L. SURATOS
Officer-in-Charge

August 20, 2003