

I Mina'Trentai Dos Na Liheslaturan Guahan

Bill Log Sheet

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES
59-32 (COR), P.L. 32-038	V.C. Pangelinan	AN ACT TO ADD CHAPTER 162 TO TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT, AND TO REPEAL SECTION 106155 OF CHAPTER 106, TITLE 11, GUAM CODE ANNOTATED.	3/1/13	3/4/13	Committee on Aviation, Ground Transportation, Regulatory Concerns, and Future Generations	03/19/13	5/20/13 10:42 a.m.	Fiscal Note Requested 3/4/13 Fiscal Notes Submitted 3/26/13 11:15 A.M.
	DATE PASSED	TITLE	TRANSMITTED		DUE DATE	<small>DATE SIGNED BY I MAGA'LAHEN GUAHAN</small>	PUBLIC LAW NO.	NOTES
	5/28/2013	AN ACT TO <i>ADD</i> A NEW CHAPTER 162 TO TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT.	5/29/13	12:40 PM	6/8/13	5/29/13, 12:40pm	32-038	As amended; substituted by the Committee on Aviation, Ground Transportation, Regulatory Concerns, and Future Generations; and further amended on the Floor.

EDDIE BAZA CALVO
Governor



RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

JUN 07 2013

2013 JUN 10 PM 4:32

32-13-3279


Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'trentai Dos Na Liheslaturan Guåhan
155 Hesler Street
Hagåtña, Guam 96910

Office of the Speaker
Judith T. Won Pat, Ed. D.
Date 6/10/13
Time 4:05 PM
Received by RTUPAZ

Dear Madame Speaker:

Transmitted herewith is Bill No.59-32 (COR) "AN ACT TO ADD A NEW CHAPTER 162 TO TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT" which I signed into law on June 7, 2013 as **Public Law 32-038**.

Senseramente,


EDDIE BAZA CALVO
I Maga'láhen Guåhan
Governor of Guam

2013 JUN 10 PM 4:32

On

Attachment: copy of Bill



I MINA 'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

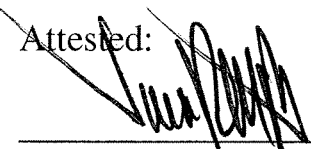
CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that **Substitute Bill No. 59-32 (COR)**, "AN ACT TO ADD A NEW CHAPTER 162 TO TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT", was on the 28th day of May, 2013, duly and regularly passed.

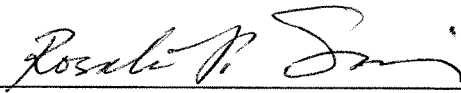


Judith T. Won Pat, Ed.D.
Speaker

Attested:


Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 24 day of May,
2013, at 12:40 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:


EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: JUN 07 2013

Public Law No. 32-038

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 59-32 (COR)

As amended; substituted
by the Committee on Aviation, Ground
Transportation, Regulatory Concerns,
and Future Generations; and further amended on the Floor.

Introduced by:

Vicente (ben) C. Pangelinan
Michael F. Q. San Nicolas

T. C. Ada
V. Anthony Ada
Frank B. Aguon, Jr.
B. J.F. Cruz
Chris M. Dueñas
Michael T. Limtiaco
Brant T. McCreadie
Tommy Morrison
T. R. Muña Barnes
R. J. Respicio
Dennis G. Rodriguez, Jr.
Aline A. Yamashita, Ph.D.
Judith T. Won Pat, Ed.D.

**AN ACT TO ADD A NEW CHAPTER 162 TO TITLE 11,
GUAM CODE ANNOTATED, RELATIVE TO
ESTABLISHING THE COLLECTIVE INVESTMENT
FUNDS ACT.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Chapter 162 is hereby *added* to Title 11, Guam Code
Annotated, to read as follows:

“CHAPTER 162
COLLECTIVE INVESTMENT FUNDS ACT

1 § 162101. Definitions.

2 § 162102. Establishment of Collective Investment Funds.

3 § 162103. Written Plan.

4 § 162104. Management of the Fund.

5 § 162105. Internal Controls.

6 § 162106. Rights and Interests of Participating Accounts and
7 Contributors to the Participating Accounts.

8 § 162107. Interests of a Financial Institution.

9 § 162108. Annual Financial Reports.

10 § 162109. Management Fees.

11 § 162110. Mistakes in Administration of Funds.

12 § 162111. Regulation.

13 **§ 162101. Definitions.** As used in this Chapter, *unless* the context
14 otherwise requires:

15 (a) *Collective investment fund* means a fund maintained by a
16 financial institution that consists solely of assets of retirement, pension,
17 profit sharing, stock bonus or other trusts that are exempt from federal
18 income tax.

19 (b) *Commissioner* means the Commissioner of Banking and
20 Insurance, appointed under §103102 of Chapter 103 of Title 11, Guam Code
21 Annotated.

22 (c) *Fiduciary* means a financial institution or other person acting in
23 the capacity of guardian, conservator, personal representative, or trustee,
24 either solely or together with others, or custodian under a uniform gifts or
25 transfer to minors act of any state or territory.

26 (d) *Financial institution* means a territorial bank, a state bank, a
27 national bank, a state or federally chartered savings and loan association, or

1 a trust company under the Guam-Based Trust Companies Act that, in each
2 case, is authorized to act in a fiduciary capacity in Guam.

3 (e) *Fund* means a collective investment fund.

4 (f) *Participating Account* means a trust or other fiduciary account
5 that has contributed assets to a collective investment fund.

6 (g) *Plan* means the written plan for a fund described in §162103.

7 **§ 162102. Establishment of Collective Investment Funds.** A
8 financial institution may establish and maintain collective investment funds
9 for the investment of assets of retirement, pension, profit sharing, stock
10 bonus or other trusts that are exempt from federal income tax, and may
11 invest assets of retirement, pension, profit sharing, stock bonus, or other
12 employee benefit trusts exempt from federal income tax, and that the
13 financial institution holds in any capacity (including agent) in such
14 collective investment funds, maintained pursuant to 15 USC §80(c)(10) (B).

15 **§ 162103. Written Plan.**

16 (a) A financial institution *shall* establish and maintain a fund in
17 accordance with a written plan approved by resolution by the board of
18 directors of the financial institution, or by a committee authorized by the
19 board. The plan's provisions *shall* be consistent with the provisions of this
20 Chapter, as well as the rules and regulations of the Office of the Comptroller
21 of the Currency, 12 C.F.R. § 9.18 (or any successor provision), and such
22 rules and regulations as may from time to time be promulgated by the
23 Commissioner, to the extent that such respective rules and regulations are
24 *not* inconsistent with the provisions of this Chapter. The plan *shall* be
25 updated quarterly, as needed, to reflect the recently available information
26 relevant to the plan.

1 (b) The plan *shall* contain appropriate provisions as to the manner
2 in which the financial institution will operate the fund, including, but *not*
3 limited to, provisions relating to all of the following:

- 4 (1) Investment powers and policies with respect to the fund;
- 5 (2) Allocation of income, profits, and losses;
- 6 (3) Fees and expenses that will be charged to the fund and to
7 participating accounts, and the individuals contributing to the
8 participating accounts stated as an expense ratio of the fund, inclusive
9 of the expense ratios of all underlying investments;
- 10 (4) Terms and conditions governing the admission and
11 withdrawal of participating accounts;
- 12 (5) Audits of participating accounts;
- 13 (6) Basis and method of valuing assets in the fund;
- 14 (7) Expected frequency of income distribution from the fund
15 to participating accounts;
- 16 (8) Minimum frequency of valuation of fund assets;
- 17 (9) Amount of time following a valuation date in which a
18 valuation of fund assets must be made;
- 19 (10) Basis upon which the financial institution may terminate
20 the funds;
- 21 (11) Any other matters necessary to define clearly the rights
22 of participating accounts and contributors to the participating
23 accounts; and
- 24 (12) Annual performance history of the Fund, if any, for each
25 year up to 10 years, and since inception net of all fees.

1 (c) The financial institution *shall* make a copy of the plan available
2 at its principal office for inspection during all regular business hours, and
3 *shall* provide a copy of the plan to any person who requests it.

4 (d) The financial institution *shall* submit a copy of the written plan,
5 and any amendments made to the written plan, to the Commissioner upon
6 adoption of such amendments.

7 (e) The financial institution *shall* provide to the investor a copy of
8 the plan prior to any initial investment, and *shall* provide the most recently
9 available copy of the plan to each investor annually, *no later than* the
10 anniversary date of the initial investment.

11 **§ 162104. Management of the Fund.** The financial institution *shall*
12 have the exclusive management and control of each fund administered by it,
13 and the sole right at any time to sell, convert, exchange, transfer, or
14 otherwise change or dispose of the assets comprising within the fund, *except*
15 as a prudent person might delegate responsibilities to others. The ownership
16 of the fund's assets *shall* be solely in the financial institution as fiduciary,
17 and *shall* be considered as assets held by it as fiduciary. No assets of the
18 fund shall be pledged as collateral.

19 **§ 162105. Internal Controls.** A financial institution *shall* implement
20 and maintain effective operational controls to ensure that:

21 (a) The fund is valued regularly. For a fund that holds investments
22 with daily valuations, such as mutual funds and publicly traded stocks,
23 bonds, and exchange-traded funds, values *shall* be updated each business
24 day. For a fund that holds assets that are *not* readily marketable, such as real
25 estate, values *shall* be determined no less often than annually. The Net Asset
26 Value of the fund *shall* be determined based on such valuations, and all

1 investor redemptions *shall* be for an amount *no less than* the most recent net
2 asset value of record.

3 (b) Contributions and withdrawals are executed on a timely basis,
4 as specified by the terms of the plan.

5 (c) Each participating account is eligible and authorized to
6 participate in the fund.

7 (d) An annual audit and fund report are completed in a timely
8 manner.

9 (e) Assets are invested in accordance with the plan and the fund's
10 written investment policy.

11 (f) Fund documents are maintained in a central repository.

12 (g) A formal process is in place for the board of directors of the
13 bank, or a committee appointed by the board, to approve and oversee major
14 fund decisions and the operation of the fund.

15 **§ 162106. Rights and Interests of Participating Accounts and**
16 **Contributors to the Participating Accounts.**

17 (a) All participating accounts in a fund *shall* have a proportionate
18 undivided interest in all the fund's assets, which *shall* be reported in units of
19 beneficial interest. No participating account shall have individual ownership
20 of any asset in the fund.

21 (b) A hard copy or electronic statement of participation *shall* be
22 issued to each participating account and contributors to the participating
23 accounts at least quarterly. The statement of participation *shall* indicate that
24 the statement valuation is *not* guaranteed by the financial institution; that the
25 units of beneficial interest held by the participating account are *not*
26 negotiable or assignable; and that the statement is a representation of the

1 participating account's undivided interest in the fund, and *does not* represent
2 individual ownership of any asset in the fund.

3 **§ 162107. Interests of a Financial Institution.** A financial institution
4 administering a fund *shall not* have an interest in that fund other than in its
5 fiduciary capacity. If, because of a creditor relationship or otherwise, the
6 bank acquires an interest in a participating account, the participating account
7 must be withdrawn on the next withdrawal date. However, a financial
8 institution may invest assets that it holds as fiduciary for its own employees
9 in a fund.

10 **§ 162108. Annual Financial Reports.**

11 (a) At least once during each 12-month period, the financial
12 institution administering a fund *shall* arrange for an audit of the fund by
13 auditors responsible *only* to the board of directors of the financial institution.

14 (b) At least once during each 12-month period, the financial
15 institution *shall* prepare an annual financial report based on the audit
16 required by Subsection (a) and containing the following information:

17 (1) The fund's fees and expenses.

18 (2) A list of the investments in the fund with their costs and
19 market values on the date of closing of the report.

20 (3) A statement summary of transactions for the year,
21 organized by type of investment, including the following transactions:

22 (A) a summary of purchases, including costs;

23 (B) a summary of sales, including profit or loss and
24 any other investment changes;

25 (C) income to and disbursements from the fund; and

26 (D) a description of any investments in default.

1 (c) The financial institution may include in the financial report a
2 description of the fund's value on previous dates, as well as its income and
3 disbursements during previous accounting periods. The financial institution
4 *may not* publish in the financial report any predictions or representations as
5 to future performance.

6 (d) The financial institution *shall* provide a copy of the annual
7 report (or provide notice that a copy of the report is available upon request
8 or online) to each person or entity who would ordinarily receive a regular
9 periodic accounting statement.

10 (e) A copy of the annual financial report *shall* be filed with the
11 Commissioner.

12 **§ 162109. Management Fees.** The financial institution
13 administering a collective investment fund may charge a reasonable fund
14 management fee *only* if the amount of the fee *does not* exceed an amount
15 commensurate with the value of legitimate services of tangible benefit to the
16 participating fiduciary accounts that would not have been provided to the
17 accounts were they not invested in the fund. No fees shall be assessed based
18 on fund performance. The aggregate expenses of the fund, to include
19 management fees and administrative services to all accounts, but *not*
20 inclusive of the expense ratio of underlying investments, *shall not* exceed
21 two percent (2%).

22 **§ 162110. Mistakes in Administration of Funds.** A mistake made
23 in good faith and in the exercise of due care in connection with the
24 administration of a fund is *not* a violation of this Chapter or any rules or
25 regulations issued under this Chapter, if promptly after discovery of the
26 mistake the financial institution takes whatever action is reasonable under
27 the circumstances to remedy the mistake and reports the mistake to the

1 Commissioner and appropriate federal regulatory agencies as required by
2 this Act.

3 **§ 162111. Regulation.** The Division of Insurance, Securities and
4 Banking *shall* regulate all aspects of this Chapter, and *shall* inspect all such
5 funds *no less than* annually for compliance. Audits of funds by the
6 respective federal authorities of the parent companies of such funds *shall*
7 suffice to meet this requirement.”

8 **Section 2. Severability.** If any of the provisions of this Act or the
9 application thereof to any person or circumstance is held invalid, such invalidity
10 *shall* not affect any other provision or application of this Act which can be given
11 effect without the invalid provision or application, and to this end the provisions of
12 this Act are severable.



FILE COPY

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
THIRTY-SECOND GUAM LEGISLATURE
155 Hesler Place, Hagåtña, Guam 96910

May 28, 2013

The Honorable Edward J.B. Calvo
I Maga'lahen Guåhan
Ufisinan I Maga'lahi
Hagåtña, Guam 96910

Dear *Maga'lahi* Calvo:

Transmitted herewith are Bill and Substitute Nos. 26-32(COR), 59-32(COR), 64-32(COR), 69-32(COR), 79-32(COR), 96-32(COR) and 105-32(COR) which were passed by *I Mina'Trentai Dos Na Liheslaturan Guåhan* on May 28, 2013.

Sincerely,



Tina Rose Muña Barnes
Legislative Secretary

Enclosures (7)

OFFICE OF THE GOVERNOR
CENTRAL FILES

RECEIVED BY
TIME 12:40 DATE 5/29/13

FILE COPY

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

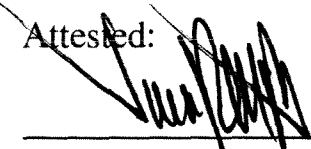
CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that **Substitute Bill No. 59-32 (COR)**, “AN ACT TO ADD A NEW CHAPTER 162 TO TITLE 11, GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT”, was on the 28th day of May, 2013, duly and regularly passed.



Judith T. Won Pat, Ed.D.
Speaker

Attested:


Tina Rose Muña Barnes
Legislative Secretary

This Act was received by *I Maga'lahen Guåhan* this 29 day of May,
2013, at 12:40 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:

EDWARD J.B. CALVO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) Regular Session

Bill No. 59-32 (COR)

As amended; substituted
by the Committee on Aviation, Ground
Transportation, Regulatory Concerns,
and Future Generations; and further amended on the Floor.

Introduced by:

Vicente (ben) C. Pangelinan

Michael F. Q. San Nicolas

T. C. Ada

V. Anthony Ada

Frank B. Aguon, Jr.

B. J.F. Cruz

Chris M. Dueñas

Michael T. Limtiaco

Brant T. McCreadie

Tommy Morrison

T. R. Muña Barnes

R. J. Respicio

Dennis G. Rodriguez, Jr.

Aline A. Yamashita, Ph.D.

Judith T. Won Pat, Ed.D.

**AN ACT TO *ADD* A NEW CHAPTER 162 TO TITLE 11,
GUAM CODE ANNOTATED, RELATIVE TO
ESTABLISHING THE COLLECTIVE INVESTMENT
FUNDS ACT.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Chapter 162 is hereby *added* to Title 11, Guam Code
Annotated, to read as follows:

“CHAPTER 162

COLLECTIVE INVESTMENT FUNDS ACT

1 a trust company under the Guam-Based Trust Companies Act that, in each
2 case, is authorized to act in a fiduciary capacity in Guam.

3 (e) *Fund* means a collective investment fund.

4 (f) *Participating Account* means a trust or other fiduciary account
5 that has contributed assets to a collective investment fund.

6 (g) *Plan* means the written plan for a fund described in §162103.

7 **§ 162102. Establishment of Collective Investment Funds.** A
8 financial institution may establish and maintain collective investment funds
9 for the investment of assets of retirement, pension, profit sharing, stock
10 bonus or other trusts that are exempt from federal income tax, and may
11 invest assets of retirement, pension, profit sharing, stock bonus, or other
12 employee benefit trusts exempt from federal income tax, and that the
13 financial institution holds in any capacity (including agent) in such
14 collective investment funds, maintained pursuant to 15 USC §80(c)(10) (B).

15 **§ 162103. Written Plan.**

16 (a) A financial institution *shall* establish and maintain a fund in
17 accordance with a written plan approved by resolution by the board of
18 directors of the financial institution, or by a committee authorized by the
19 board. The plan's provisions *shall* be consistent with the provisions of this
20 Chapter, as well as the rules and regulations of the Office of the Comptroller
21 of the Currency, 12 C.F.R. § 9.18 (or any successor provision), and such
22 rules and regulations as may from time to time be promulgated by the
23 Commissioner, to the extent that such respective rules and regulations are
24 *not* inconsistent with the provisions of this Chapter. The plan *shall* be
25 updated quarterly, as needed, to reflect the recently available information
26 relevant to the plan.

1 (b) The plan *shall* contain appropriate provisions as to the manner
2 in which the financial institution will operate the fund, including, but *not*
3 limited to, provisions relating to all of the following:

- 4 (1) Investment powers and policies with respect to the fund;
- 5 (2) Allocation of income, profits, and losses;
- 6 (3) Fees and expenses that will be charged to the fund and to
7 participating accounts, and the individuals contributing to the
8 participating accounts stated as an expense ratio of the fund, inclusive
9 of the expense ratios of all underlying investments;
- 10 (4) Terms and conditions governing the admission and
11 withdrawal of participating accounts;
- 12 (5) Audits of participating accounts;
- 13 (6) Basis and method of valuing assets in the fund;
- 14 (7) Expected frequency of income distribution from the fund
15 to participating accounts;
- 16 (8) Minimum frequency of valuation of fund assets;
- 17 (9) Amount of time following a valuation date in which a
18 valuation of fund assets must be made;
- 19 (10) Basis upon which the financial institution may terminate
20 the funds;
- 21 (11) Any other matters necessary to define clearly the rights
22 of participating accounts and contributors to the participating
23 accounts; and
- 24 (12) Annual performance history of the Fund, if any, for each
25 year up to 10 years, and since inception net of all fees.

1 (c) The financial institution *shall* make a copy of the plan available
2 at its principal office for inspection during all regular business hours, and
3 *shall* provide a copy of the plan to any person who requests it.

4 (d) The financial institution *shall* submit a copy of the written plan,
5 and any amendments made to the written plan, to the Commissioner upon
6 adoption of such amendments.

7 (e) The financial institution *shall* provide to the investor a copy of
8 the plan prior to any initial investment, and *shall* provide the most recently
9 available copy of the plan to each investor annually, *no later than* the
10 anniversary date of the initial investment.

11 **§ 162104. Management of the Fund.** The financial institution *shall*
12 have the exclusive management and control of each fund administered by it,
13 and the sole right at any time to sell, convert, exchange, transfer, or
14 otherwise change or dispose of the assets comprising within the fund, *except*
15 as a prudent person might delegate responsibilities to others. The ownership
16 of the fund's assets *shall* be solely in the financial institution as fiduciary,
17 and *shall* be considered as assets held by it as fiduciary. No assets of the
18 fund shall be pledged as collateral.

19 **§ 162105. Internal Controls.** A financial institution *shall* implement
20 and maintain effective operational controls to ensure that:

21 (a) The fund is valued regularly. For a fund that holds investments
22 with daily valuations, such as mutual funds and publicly traded stocks,
23 bonds, and exchange-traded funds, values *shall* be updated each business
24 day. For a fund that holds assets that are *not* readily marketable, such as real
25 estate, values *shall* be determined no less often than annually. The Net Asset
26 Value of the fund *shall* be determined based on such valuations, and all

1 investor redemptions *shall* be for an amount *no less than* the most recent net
2 asset value of record.

3 (b) Contributions and withdrawals are executed on a timely basis,
4 as specified by the terms of the plan.

5 (c) Each participating account is eligible and authorized to
6 participate in the fund.

7 (d) An annual audit and fund report are completed in a timely
8 manner.

9 (e) Assets are invested in accordance with the plan and the fund's
10 written investment policy.

11 (f) Fund documents are maintained in a central repository.

12 (g) A formal process is in place for the board of directors of the
13 bank, or a committee appointed by the board, to approve and oversee major
14 fund decisions and the operation of the fund.

15 **§ 162106. Rights and Interests of Participating Accounts and**
16 **Contributors to the Participating Accounts.**

17 (a) All participating accounts in a fund *shall* have a proportionate
18 undivided interest in all the fund's assets, which *shall* be reported in units of
19 beneficial interest. No participating account shall have individual ownership
20 of any asset in the fund.

21 (b) A hard copy or electronic statement of participation *shall* be
22 issued to each participating account and contributors to the participating
23 accounts at least quarterly. The statement of participation *shall* indicate that
24 the statement valuation is *not* guaranteed by the financial institution; that the
25 units of beneficial interest held by the participating account are *not*
26 negotiable or assignable; and that the statement is a representation of the

1 participating account's undivided interest in the fund, and *does not* represent
2 individual ownership of any asset in the fund.

3 **§ 162107. Interests of a Financial Institution.** A financial institution
4 administering a fund *shall not* have an interest in that fund other than in its
5 fiduciary capacity. If, because of a creditor relationship or otherwise, the
6 bank acquires an interest in a participating account, the participating account
7 must be withdrawn on the next withdrawal date. However, a financial
8 institution may invest assets that it holds as fiduciary for its own employees
9 in a fund.

10 **§ 162108. Annual Financial Reports.**

11 (a) At least once during each 12-month period, the financial
12 institution administering a fund *shall* arrange for an audit of the fund by
13 auditors responsible *only* to the board of directors of the financial institution.

14 (b) At least once during each 12-month period, the financial
15 institution *shall* prepare an annual financial report based on the audit
16 required by Subsection (a) and containing the following information:

17 (1) The fund's fees and expenses.

18 (2) A list of the investments in the fund with their costs and
19 market values on the date of closing of the report.

20 (3) A statement summary of transactions for the year,
21 organized by type of investment, including the following transactions:

22 (A) a summary of purchases, including costs;

23 (B) a summary of sales, including profit or loss and
24 any other investment changes;

25 (C) income to and disbursements from the fund; and

26 (D) a description of any investments in default.

1 (c) The financial institution may include in the financial report a
2 description of the fund's value on previous dates, as well as its income and
3 disbursements during previous accounting periods. The financial institution
4 *may not* publish in the financial report any predictions or representations as
5 to future performance.

6 (d) The financial institution *shall* provide a copy of the annual
7 report (or provide notice that a copy of the report is available upon request
8 or online) to each person or entity who would ordinarily receive a regular
9 periodic accounting statement.

10 (e) A copy of the annual financial report *shall* be filed with the
11 Commissioner.

12 **§ 162109. Management Fees.** The financial institution
13 administering a collective investment fund may charge a reasonable fund
14 management fee *only* if the amount of the fee *does not* exceed an amount
15 commensurate with the value of legitimate services of tangible benefit to the
16 participating fiduciary accounts that would not have been provided to the
17 accounts were they not invested in the fund. No fees shall be assessed based
18 on fund performance. The aggregate expenses of the fund, to include
19 management fees and administrative services to all accounts, but *not*
20 inclusive of the expense ratio of underlying investments, *shall not* exceed
21 two percent (2%).

22 **§ 162110. Mistakes in Administration of Funds.** A mistake made
23 in good faith and in the exercise of due care in connection with the
24 administration of a fund is *not* a violation of this Chapter or any rules or
25 regulations issued under this Chapter, if promptly after discovery of the
26 mistake the financial institution takes whatever action is reasonable under
27 the circumstances to remedy the mistake and reports the mistake to the

1 Commissioner and appropriate federal regulatory agencies as required by
2 this Act.

3 **§ 162111. Regulation.** The Division of Insurance, Securities and
4 Banking *shall* regulate all aspects of this Chapter, and *shall* inspect all such
5 funds *no less than* annually for compliance. Audits of funds by the
6 respective federal authorities of the parent companies of such funds *shall*
7 suffice to meet this requirement.”

8 **Section 2. Severability.** If any of the provisions of this Act or the
9 application thereof to any person or circumstance is held invalid, such invalidity
10 *shall* not affect any other provision or application of this Act which can be given
11 effect without the invalid provision or application, and to this end the provisions of
12 this Act are severable.

LEGISLATIVE SESSION

I MINA'TRENTAI DOS NA LIHESLATURAN

2013 (FIRST) Regular Session

Voting Sheet

Bill No: 59-32 (COR)

Speaker Antonio R. Unipingo Legislative Session Hall

As amended and further substituted by the Committee on
Aviation, Ground Transportation, Regulatory Concerns, and Future
Generations and amended on the Floor.

NAME	Yea	Nay	Not Voting/ Abstained	Out During Roll Call	Absent
Senator Thomas "Tom" C. ADA	✓				
Senator V. Anthony "Tony" ADA	✓				
Senator Frank Blas AGUON Jr.	✓				
Vice-Speaker Benjamin J.F. CRUZ	✓				
Senator Christopher M. DUENAS	✓				
Senator Michael LIMTIACO	✓				
Senator Brant McCREADIE					✓ Ex
Senator Thomas "Tommy" MORRISON	✓				
Senator Tina Rose MUÑA BARNES	✓				
Senator Vicente (ben) Cabrera PANGELINAN	✓				
Senator Rory J. RESPICIO	✓				
Senator Dennis G. RODRIGUEZ, Jr.	✓				
Senator Michael F. Q.SAN NICOLAS	✓				
Speaker Judith T. WON PAT, Ed.D.	✓				
Senator Aline A. YAMASHITA, Ph.D.	✓				

TOTAL

14

Yea

Nay

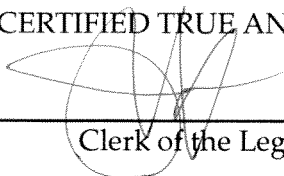
Not Voting/
Abstained

Out During
Roll Call

1

Absent

CERTIFIED TRUE AND CORRECT:



Clerk of the Legislature

I = Pass

May 28, 2013



Senator Michael F.Q. San Nicolas

Chairman – Committee on Aviation, Ground Transportation,
Regulatory Concerns and Future Generations
I Mina'trentai Dos Na Liheslaturan Guåhan | 32nd Guam Legislature



MAY 20 2013

The Honorable Judith T. Won Pat, Ed.D.
Speaker
I Mina'trentai Dos na Liheslaturan Guåhan
155 Hesler Place
Hagatna, Guam 96910

VIA: The Honorable Rory J. Respicio
Chairman
Committee on Rules, Federal, Foreign & Micronesian Affairs,
Human & Natural Resources, and Election Reform

RE: Committee Report on Bill No. 59-32 (COR), As Amended by the Committee

Dear Speaker Won Pat,

Håfa adai! Transmitted herewith is the committee report on Bill No. 59-32 (COR), as amended by the Committee on Aviation, Ground Transportation, Regulatory Concerns and Future Generations – “AN ACT TO *ADD* CHAPTER 162 TO TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT, AND TO *REPEAL* SECTION 106155 OF CHAPTER 106, TITLE 11, GUAM CODE ANNOTATED.”

Committee votes are as follows:

<u>5</u>	TO DO PASS
<u> </u>	TO NOT PASS
<u>3</u>	TO REPORT OUT ONLY
<u> </u>	TO ABSTAIN
<u> </u>	TO PLACE IN INACTIVE FILE

Respectfully,


MICHAEL F.Q. SAN NICOLAS

2013 MAY 20 AM 10:42





Senator Michael F.Q. San Nicolas

Chairman – Committee on Aviation, Ground Transportation,
Regulatory Concerns and Future Generations
I Mina'trentai Dos Na Liheslaturan Guåhan | 32nd Guam Legislature



COMMITTEE REPORT

BILL NO. 59-32 (COR) AS AMENDED BY THE COMMITTEE

AN ACT TO *ADD* CHAPTER 162 TO TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT, AND TO *REPEAL* SECTION 106155 OF CHAPTER 106, TITLE 11, GUAM CODE ANNOTATED.



Senator Michael F.Q. San Nicolas

Chairman - Committee on Aviation, Ground Transportation,
Regulatory Concerns and Future Generations
I Mina'trentai Dos Na Liheslaturan Guåhan | 32nd Guam Legislature



May 17, 2013

MEMORANDUM

TO: All Members
Committee on Aviation, Ground Transportation,
Regulatory Concerns and Future Generations

RE: **Committee Report on Bill No. 59-32 (COR), As Amended by the Committee**

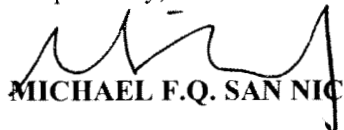
Håfa adai! Transmitted herewith for your consideration is the Committee Report on Bill No. 59-32 (COR), as amended by the Committee – “AN ACT TO *ADD* CHAPTER 162 TO TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT, AND TO *REPEAL* SECTION 106155 OF CHAPTER 106, TITLE 11, GUAM CODE ANNOTATED.”

This report includes the following:

- Committee Voting Sheet
- Report Digest
- Copy of Bill No. 59-32 (COR), As Introduced
- Copy of Bill No. 59-32 (COR), As Amended
- Public Hearing Sign-in Sheet
- Copy of COR Referral of Bill No. 59-32 (COR)
- Request for Fiscal Note
- Notices of Public Hearing
- Copy of the Public Hearing Agenda
- Public Testimony

Please take the appropriate action on the attached voting sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact my office.

Respectfully,


MICHAEL F.Q. SAN NICOLAS





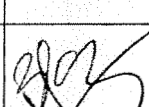
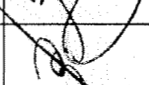
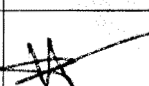

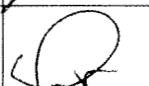

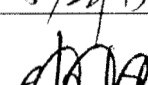
Senator Michael F.Q. San Nicolas

Chairman - Committee on Aviation, Ground Transportation,
Regulatory Concerns and Future Generations
I Mina'trentai Dos Na Liheslaturan Guåhan | 32nd Guam Legislature



COMMITTEE VOTING SHEET

Bill No. 59-32 (COR), as Amended by the Committee – “AN ACT TO ADD CHAPTER 162 TO TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT, AND TO REPEAL SECTION 106155 OF CHAPTER 106, TITLE 11, GUAM CODE ANNOTATED.”

	SIGNATURE	TO DO PASS	TO NOT PASS	TO REPORT OUT ONLY	TO ABSTAIN	TO PLACE IN INACTIVE FILE
Senator Michael F.Q. San Nicolas Chairman	 5/20/13			✓		
Senator Thomas C. Ada Vice Chairman				✓		
Speaker Judith T. Won Pat, Ed.D. Member						
Vice Speaker Benjamin J.F. Cruz Member		✓ 5/20/13				
Senator Tina Rose Muña Barnes Member		✓				
Senator Vicente C. Pangelinan Member		✓				
Senator Rory J. Respicio Member		✓ 5/20/13				
Senator V. Anthony Ada Member		✓ 5/20/13				
Senator Aline A. Yamashita, Ph.D. Member				5/20/13 ✓		



Senator Michael F.Q. San Nicolas

Chairman – Committee on Aviation, Ground Transportation,
Regulatory Concerns and Future Generations
I Mina'trentai Dos Na Liheslaturan Guåhan | 32nd Guam Legislature



COMMITTEE REPORT DIGEST

I. OVERVIEW

Bill No. 59-32 (COR) was introduced on March 1, 2013 by Senator Vicente C. Pangelinan. The bill was subsequently referred by the Committee on Rules to the Committee on Aviation, Ground Transportation, Regulatory Concerns and Future Generations on March 4, 2013.

The Committee on Aviation, Ground Transportation, Regulatory Concerns and Future Generations convened a public hearing on March 19, 2013 at 10:06 a.m. in *I Liheslatura's* Public Hearing Room. Among the items on the hearing agenda was Bill No. 59-32 (COR). The hearing was adjourned at 10:37 a.m.

Public Notice Requirements

Public Hearing notices were disseminated via electronic mail to all senators and all main media broadcasting outlets on March 11, 2013, and on March 15, 2013.

Senators Present

Senator Michael F.Q. San Nicolas, Chairman
Vice Speaker Benjamin J. Cruz, Committee Member
Senator Vicente C. Pangelinan, Committee Member

Public Testimony

Artemio Illagan, Banking and Insurance Commissioner
David John, President, ASC Trust Corporation

Written Testimony

Artemio Illagan, Banking and Insurance Commissioner
David John, President, ASC Trust Corporation
William D. Leon Guerrero, Executive Vice President and Chief Operating Officer, Bank of Guam

II. TESTIMONY & DISCUSSION

Chairman Michael San Nicolas: We'll begin with Bill 59-32 and I will yield to the author, Speaker Ben Pangelinan.

Senator Vicente Pangelinan: Thank you and *Si Yu'os Ma'åse*, Mister Chairman. Bill 59-32 is an act that will allow the formation of collective investments funds within the financial industry on Guam. The intent of the legislation is that we have a growing number of companies and financial services organizations on Guam that are beginning to manage investments of retirement funds, pension plans, profit sharing, stock bonuses and distributions within our local community. Legislation that allows for the management of these funds, and the reporting and handling of these funds by the financial institutions, is something that is being desired by these financial institutions to ensure that they comply with local law with regards to reporting requirements. It is made clear, in the establishment of these funds, the rights of the individuals

as well as the institutions that present their money to these financial management firms for managing these investment trust funds, that individuals and companies will have the assets of the funds to meet its obligations for distribution when the members of the fund retire. At the behest of some of these financial institutions, we began working on the legislation to outline local legislation to be a companion to federal legislation for the management of these funds that clearly outline the expectations, the investment philosophies, and the fees and expenses of these funds to ensure that those who present their money for management to these firms understand their rights and the associated costs. Also, it ensures that the members of the fund and those who accept the money on this understand what their duties are to these institutions and to these members. That is the intent of this legislation and it outlines the rights and the interests of both the investment managers and the members of the funds whose monies are being managed by these investment managers. Thank you very much.

Chairman San Nicolas: Thank you, Mister Speaker. We do have two individuals who have signed up who wish to provide oral testimony. They have also submitted written testimony. I would like to invite up Mister Art Illagan and Mister David John. Normally, we have individuals testify based on the order they signed up but I understand, Mister Illagan, that you are here on behalf of the government and, Mister John, you are here as an interested private citizen. Did any of you wish to yield to the other to testify first because sometimes you want to hear the regulatory side before your own testimony? Okay. Mister Illagan.

Mr. Artemio Illagan: I am in favor of Bill 59-32. Our office has reviewed Bill 59-32. In substance, this bill incorporates the provisions of the Collective Investment Funds as set forth in 12 Code of Federal Regulations (CFR) 9.18. A collective investment fund ("CIF") is a bank-administered trust that holds commingled assets that meet specific criteria established by 12 CFR 9.18. The commingled assets in the CIF generally include assets of retirement, pension, profit sharing, stock bonus or other trusts that are exempt from the federal income tax, which is the Guam territorial income tax. The bank acts as a fiduciary for the CIF and holds legal title to the fund's assets. Each person or trust that places money into the CIF is given a specific percentage in relation to the total amount contributed into the CIF. The CIFs allow banks to avoid costly purchases of small lot investments for their smaller fiduciary accounts. For this reason, a CIF translates to lower administrative costs for each trusts or persons that invest in the CIF. To protect the investors into the CIF, a financial institution is required to establish and maintain a written plan. This plan must be approved by resolution of the board of directors. The plan can be executed by the board of directors or by a committee authorized by the board. In general, this act will enable each chartered territorial bank in Guam, a federally chartered savings and loan association, and a trust company organized under Guam-Based Trust Companies Act to provide the services of a CIF in a fiduciary capacity. It is our hope that each financial institution shall look into the staff and technical requirements to establish and operate a CIF and provide benefits to the consumers of Guam. Lastly, there appears to be a typographical error in the citation used into the definition of a "Plan." As defined in Bill 59-32, Section 162101(i), "plan" means the written plan for a fund described in Section 162104. I believe this a typographical error and should read Section 162103. The section that contains the provisions for a written plan is found in Section 162103. In closing, I am in favor of Bill 59-32.

Chairman San Nicolas: Thank you, Mister Illagan. Do any Senators on the panel have questions for Mister Illagan? If not, Mr. John.

Mr. David John: Good morning, Mister Chair and the Committee. I would like to thank you for your time and allowing me the opportunity to testify before your committee. I am here to testify in support of Bill 59-32. I represent ASC Trust Corporation, a local retirement plan provider. ASC has been servicing retirement plans on Guam for over twenty years. We currently represent approximately 300 retirement plans with an estimated 19,000 participants and over \$400 million under management. My comments will be brief in order to allow enough time to answer your questions. The bill will allow our company, and

companies like us, to offer collective investment trusts to our retirement clients. A collective investment trust is designed specifically to help manage money for qualified retirement plans in a cost effective manner and also in a structured manner, which is one of the things we really want to make sure is there so that the appropriate audits can be done and that we have a structure for everything that is flowing through. A CIT would provide us another tool to help participants properly plan for a successful retirement. The key word is successful. Most of us have some sort of retirement account. However, how many of us are confident enough that we will have enough for our family's finances when we retire? Today's workers can expect to live 20-30 years in retirement in a time when the future of government safety nets such as Social Security and the government qualified plans are in question. We only look to the north to see what can happen if proper planning is not put in place and monitored. With this, it is becoming more and more important for individuals to create their own safety net. CITs will provide an additional tool to help us design proper asset allocation programs for our members to better their chances for a successful retirement. CITs are not new; they have been around for decades. However, they have become more popular since the Pension Protection Act of 2006 allowed these programs to be default investment options on DC plans. I urge you to pass this bill to provide opportunities to our financial services industry so that we can work together to develop products to help create a successful retirement system for our workers. Again, I would like to thank you for your time and would welcome any questions you might have.

Chairman San Nicolas: Thank you, Mister John. Do any Senators on the panel have any questions for Mister John?

Senator Pangelinan: No. I just want to thank Mister John for his input on the bill. As I mentioned, we have been working with some of the financial institutions on the island to try and get this program into place to benefit the beneficiaries of these pension plans. It lowers investment costs and it allows greater flexibility for the establishment of these funds, plus the protection for both the financial institution providing the service as well as the members of the investment accounts turned over for management by these institutions. So, we thank him for his input.

Chairman San Nicolas: Thank you, Mister Speaker. I did have one question for Mister Illagan concerning the regulatory aspects of the bill. I understand that the particular branch that you have purview over has lots of challenges. I wanted to ask whether or not you are confident that your department will be able to thoroughly look to these provisions and make sure that the regulatory aspect is being taken care of.

Mr. Illagan: It is important that we do this because it is a trust fund. We have a staff of five and we also administer other duties – UCC, the insurance, banking, real estate. We had our board meeting last Thursday and the Board was concerned about too much work and not enough people. In the past, there was a fund for the insurance and banking – a special fund that was removed a few years ago because it was listed as one of the accounts that weren't necessary. Our fund comes out of the Rev and Tax fund which at times I had to argue and fight with [Director] John Camacho for funding. One of those times was back in September, when the year was closing, and we wanted to have a board meeting and there wasn't enough money in the fund so we couldn't hold a meeting because we couldn't advertise that there was going to be a Banking Board meeting. That is an issue and I think that the special fund should be reinstated. Based on what we receive for insurance and banking and all the regulatory fees that we charge, we should set those aside for a special fund for the operations of insurance and banking.

Chairman San Nicolas: Do you guys have the resources to go out and do regular inspections of all these mandates as they apply to the companies, investment plans, the insurance companies – the realistic companies?

Mr. Illagan: At the moment, we don't have that many. What we do for the insurance side, we hire an auditor to come in and look at the insurance companies to see if they're complying. What they do is charge that cost to the insurance companies. With banking, we go with the FDIC when they come in. When there are enough personnel, we use that person to go with the FDIC auditors.

Chairman San Nicolas: But the agency isn't doing its own regulatory practices or spot checks?

Mr. Illagan: We don't have the staff.

Chairman San Nicolas: So you guys don't have anyone who is licensed on the staff to be able to go out and do these kinds of inspections and regulatory reviews?

Mr. Illagan: No. They're employees.

Chairman San Nicolas: If possible, could you please provide the Committee with a wish list of what you think you might need if you were going to properly go out and doing these regulatory inspections – in terms of personnel, resources? That way, we can make sure on the agency side that you guys are given the tools to make sure that all these things are being complied with as they are being mandated.

Mr. Illagan: We will do that sir.

Chairman San Nicolas: My other question was regarding the... it is noted here that the rules and regulations will be promulgated in accordance with what is outlined by the Office of the Comptroller of Currency. One of the things that I've noted as a challenge is that when you have these investment practices being done by banks that are regulated by FDIC, there is supposed to be a uniform-type of regulatory review determined by either FDIC or FINRA, one of the two regulatory bodies. I just wanted to get clarification: is it going to be the comptroller of currency? Is it going to be FDIC? Or is it going to be FINRA that will be looking at these individual collective investment trusts? Who is the agency going to be soliciting on the federal side to be coming in and looking at these and making sure they're compliant with the federal regulations?

Mr. Illagan: On the banking side, it is usually the FDIC. This is the first time this law has been enacted. We need to look and see which agency would come in and regulate this industry.

Chairman San Nicolas: Okay. Does anyone else have any questions?

Mr. John: I just wanted to point out that one of the big reasons behind why we would like to see this is that it would create the structure for... one of the audits that come into place with it is an annual surprise audit that comes along with this, it's just one more level of review from our side. From an audit standpoint, it brings one more level of structure to it.

Mr. Illagan: One of the requirements is a qualified audit, which means by a CPA. At our Banking Board meetings, there is this issue with outside ATMs and regulation of that. In the law, it says just an audit and not a qualified audit. In the industry of ATMs, you're swiping your life away, you're giving your identity away, and it needs to be more regulated than it is now. Maybe we should look at that law.

Chairman San Nicolas: Thank you, gentlemen. Vice Speaker Cruz.

Vice Speaker Cruz: When the Chairman was asking the question (*inaudible*)...

Mr. Illagan: The way we do it in the insurance industry is that we set-up a schedule for them to be audited. We set-up a company that would come in and look at this investment trust or funds, do an audit and report to their board and Rev and Tax the same way that the insurance company does.

Chairman San Nicolas: Thank you. I would like to provide an opportunity for the author of the legislation to close if he would like to. This will conclude the hearing on Bill 59-32.

III. FINDINGS AND RECOMMENDATIONS

A technical amendment was necessary to correct an error in Bill No. 59-32 (COR), as introduced, and an amended version of the bill has been introduced by the Committee to reflect said correction. The amendment is found on page 2, line 21 of the bill, as amended.

The Committee on Aviation, Ground Transportation, Regulatory Concerns and Future Generations hereby reports out Bill No. 59-32(COR), as amended by the Committee on Aviation, Ground Transportation, Regulatory Concerns and Future Generations, with the recommendation TO DO PASS.

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) REGULAR SESSION

2013 MAR - 1 PM 3: 14

Bill No. 59-32(10R)

Introduced by:

V.C. Pangelinan

AN ACT TO *ADD* CHAPTER 162 TO TITLE 11 OF THE
GUAM CODE ANNOTATED, RELATIVE TO
ESTABLISHING THE COLLECTIVE INVESTMENT
FUNDS ACT, AND TO *REPEAL* SECTION 106155 OF
CHAPTER 106, TITLE 11, GUAM CODE ANNOTATED.

BE IT ENACTED BY THE PEOPLE OF GUAM:

SECTION 1. Chapter 162 is hereby *added* to Title 11 of the Guam Code
Annotated to read as follows:

“CHAPTER 162

Collective Investment Funds Act

§ 162101. Definitions.

§ 162102. Establishment of Collective Investment Funds.

§ 162103. Plans for Operation of Funds.

§ 162104. Management of the Fund.

§ 162105. Internal Controls.

§ 162106. Rights and Interests of Participating Accounts and Contributors to
the Participating Accounts.

§ 162107. Interests of a Financial Institution,

§ 162108. Annual Financial Reports.

§ 162109. Management Fees.

§ 162110. Mistakes in administration of funds.

1 **§ 162101. Definitions.** As used in this chapter, unless the context otherwise
2 requires:

3 (a) "*Collective investment fund*" means a fund maintained by a financial
4 institution that consists solely of assets of retirement, pension, profit sharing, stock
5 bonus or other trusts that are exempt from federal income tax.

6 (b) "*Commissioner*" means the Commissioner of Banking and Insurance,
7 appointed under Title 11, Section 103102 of the Guam Code Annotated.

8 (e) "*Fiduciary*" means a financial institution or other person acting in the
9 capacity of guardian, conservator, personal representative, or trustee, either solely or
10 together with others, or custodian under a uniform gifts or transfer to minors act of
11 any state or territory.

12 (f) "*Financial institution*" means a territorial bank, a state bank, a national
13 bank, a state or federally chartered savings and loan association, or a trust company
14 under the Guam-Based Trust Companies Act that, in each case, is authorized to act in
15 a fiduciary capacity in Guam.

16 (g) "*Fund*" means a collective investment fund.

17 (h) "*Participating Account*" means a trust or other fiduciary account that has
18 contributed assets to a collective investment fund.

19 (i) "*Plan*" means the written plan for a fund described in Section 162104.

20 **§ 162102. Establishment of Collective Investment Funds.** A financial
21 institution may establish and maintain collective investment funds for the investment
22 of assets of retirement, pension, profit sharing, stock bonus or other trusts that are
23 exempt from federal income tax and may invest assets of retirement, pension, profit
24 sharing, stock bonus, or other employee benefit trusts exempt from federal income
25 tax and that the financial institution holds in any capacity (including agent) in such
26 collective investment funds.

1 **§ 162103. Written Plan.**

2 (a) A financial institution shall establish and maintain a fund in accordance
3 with a written plan approved by resolution by the board of directors of the financial
4 institution or by a committee authorized by the board. The plan's provisions shall be
5 consistent with the provisions of this chapter, as well as the rules and regulations of
6 the Office of the Comptroller of the Currency, 12 C.F.R. § 9.18 (or any successor
7 provision), and such rules and regulations as may from time to time be promulgated
8 by the Commissioner, to the extent that such respective rules and regulations are not
9 inconsistent with the provisions of this chapter.

10 (b) The plan shall contain appropriate provisions as to the manner in which
11 the financial institution will operate the fund, including, but not limited to, provisions
12 relating to all of the following:

- 13 (1) Investment powers and policies with respect to the fund;
- 14 (2) Allocation of income, profits, and losses;
- 15 (3) Fees and expenses that will be charged to the fund and to
16 participating accounts and the individuals contributing to the participating
17 accounts;
- 18 (4) Terms and conditions governing the admission and withdrawal of
19 participating accounts;
- 20 (5) Audits of participating accounts;
- 21 (6) Basis and method of valuing assets in the fund;
- 22 (7) Expected frequency of income distribution from the fund to
23 participating accounts;
- 24 (8) Minimum frequency of valuation of fund assets;
- 25 (9) Amount of time following a valuation date in which a valuation of
26 fund assets must be made;

1 (10) Bases upon which the financial institution may terminate the funds;

2 (11) Any other matters necessary to define clearly the rights of
3 participating accounts and contributors to the participating accounts.

4 (c) The financial institution shall make a copy of the plan available at its
5 principal office for inspection during all regular business hours and shall provide a
6 copy of the plan to any person who requests it.

7 (d) The financial institution shall submit a copy of the written plan, and any
8 amendments made to the written plan, to the Commissioner upon adoption of such
9 amendments.

10 **§ 162104. Management of the Fund.** The financial institution shall have the
11 exclusive management and control of each fund administered by it, and the sole right
12 at any time to sell, convert, exchange, transfer, or otherwise change or dispose of the
13 assets comprising within the fund, except as a prudent person might delegate
14 responsibilities to others. The ownership of the fund's assets shall be solely in the
15 financial institution as fiduciary and shall be considered as assets held by it as
16 fiduciary.

17 **§162105. Internal Controls.** A financial institution shall implement and
18 maintain effective operational controls to ensure:

19 (a) The fund is valued regularly. For a fund that holds investments with daily
20 valuations, such as mutual funds and publicly traded stocks, bonds, and exchange-
21 traded funds, values shall be updated each business day. Values shall in any case be
22 determined no less often than quarterly, except that for a fund that holds assets that
23 are not readily marketable, such as real estate, values shall be determined no less
24 often than annually.

25 (b) Contributions and withdrawals are executed on a timely basis, as specified
26 by the terms of the plan.

1 (c) Each participating account is eligible and authorized to participate in the
2 fund.

3 (d) An annual audit and fund report are completed in a timely manner.

4 (e) Assets are invested in accordance with the plan and the fund's written
5 investment policy.

6 (f) Fund documents are maintained in a central repository.

7 (g) A formal process is in place for the board of director of the bank, or a
8 committee appointed by the board, to approve and oversee major fund decisions and
9 the operation of the fund.

10 **§162106. Rights and Interests of Participating Accounts and Contributors**
11 **to the Participating Accounts.**

12 (a) All participating accounts *in a* fund shall have a proportionate undivided
13 interest in all the fund's assets, which shall be reported in units of beneficial interest.
14 No participating account shall have individual ownership of any asset in the fund.

15 (b) A hardcopy or electronic statement of participation shall be issued to each
16 participating account and contributors to the participating accounts at least quarterly.
17 The statement of participation shall indicate that the statement valuation is not
18 guaranteed by the financial institution; that the units of beneficial interest held by the
19 participating account are not negotiable or assignable; and that the statement is a
20 representation of the participating account's undivided interest in the fund and does
21 not represent individual ownership of any asset in the fund.

22 **§162107. Interests of a Financial Institution.** A financial institution
23 administering a fund shall not have an interest in that fund other than in its fiduciary
24 capacity. If, because of a creditor relationship or otherwise, the bank acquires an
25 interest in a participating account, the participating account must be withdrawn on the
26 next withdrawal date. However, a financial institution may invest assets that it holds

1 as fiduciary for its own employees in a fund.

2 **§ 162108. Annual Financial Reports.**

3 (a) At least once during each 12-month period, the financial institution
4 administering a fund shall arrange for an audit of the fund by auditors responsible
5 only to the board of directors of the financial institution.

6 (b) At least once during each 12-month period, the financial institution shall
7 prepare an annual financial report based on the audit required by subsection (a) and
8 containing the following information:

9 (1) The fund's fees and expenses.

10 (2) A list of the investments in the fund with their costs
11 and market values on the date of closing of the report.

12 (3) A statement summary of transactions for the year,
13 organized by type of investment, including the following transactions:

14 (i) A summary of purchases, including costs.

15 (ii) A summary of sales including profit or loss and
16 any other investment changes.

17 (iii) Income to and disbursements from the fund.

18 (iv) A description of any investments in default.

19 (c) The financial institution may include in the financial report a description of the
20 fund's value on previous dates, as well as its income and disbursements during
21 previous accounting periods. The financial institution may not publish in the financial
22 report any predictions or representations as to future performance.

23 (d) The financial institution shall provide a copy of the annual report (or provide
24 notice that a copy of the report is available upon request or online) to each person or
25 entity who would ordinarily receive a regular periodic accounting statement.

26 (e) A copy of the annual financial report shall be filed with the Commissioner.

1 **§ 162109. Management Fees.** The financial institution administering a collective
2 investment fund may charge a reasonable fund management fee only if the amount of
3 the fee does not exceed an amount commensurate with the value of legitimate services
4 of tangible benefit to the participating fiduciary accounts that would not have been
5 provided to the accounts were they not invested in the fund.

6 **§ 162110. Mistakes in Administration of Funds.** A mistake made in good faith
7 and in the exercise of due care in connection with the administration of a fund is not a
8 violation of this chapter or any rules or regulations issued under this chapter, if
9 promptly after discovery of the mistake the financial institution takes whatever action
10 is reasonable under the circumstances to remedy the mistake and reports the mistake
11 to the Commissioner and appropriate federal regulatory agencies as required by this
12 Act.”

13 **SECTION 3. Severability.** If any of the provisions of this Act or the
14 application thereof to any person or circumstance is held invalid, such invalidity *shall*
15 not affect any other provision or application of this Act which can be given effect
16 without the invalid provision or application, and to this end the provisions of this Act
17 are severable.

**I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) REGULAR SESSION**

Bill No. 59-32 (COR)

Introduced by:

V.C. Pangelinan

**Amended by the Committee on Aviation, Ground
Transportation, Regulatory Concerns, and
Future Generations**

**AN ACT TO *ADD* CHAPTER 162 TO TITLE 11 OF THE
GUAM CODE ANNOTATED, RELATIVE TO
ESTABLISHING THE COLLECTIVE INVESTMENT
FUNDS ACT, AND TO *REPEAL* SECTION 106155 OF
CHAPTER 106, TITLE 11, GUAM CODE ANNOTATED.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

SECTION 1. Chapter 162 is hereby *added* to Title 11 of the Guam Code
Annotated to read as follows:

“CHAPTER 162

Collective Investment Funds Act

§ 162101. Definitions.

§ 162102. Establishment of Collective Investment Funds.

§ 162103. Plans for Operation of Funds.

§ 162104. Management of the Fund.

§ 162105. Internal Controls.

§162106. Rights and Interests of Participating Accounts and Contributors to
the Participating Accounts.

§ 162107. Interests of a Financial Institution,

§ 162108. Annual Financial Reports.

1 § 162109. Management Fees.

2 § 162110. Mistakes in administration of funds.

3 **§ 162101. Definitions.** As used in this chapter, unless the context otherwise
4 requires:

5 (a) "*Collective investment fund*" means a fund maintained by a financial
6 institution that consists solely of assets of retirement, pension, profit sharing, stock
7 bonus or other trusts that are exempt from federal income tax.

8 (b) "*Commissioner*" means the Commissioner of Banking and Insurance,
9 appointed under Title 11, Section 103102 of the Guam Code Annotated.

10 (c) "*Fiduciary*" means a financial institution or other person acting in the
11 capacity of guardian, conservator, personal representative, or trustee, either solely or
12 together with others, or custodian under a uniform gifts or transfer to minors act of
13 any state or territory.

14 (f) "*Financial institution*" means a territorial bank, a state bank, a national
15 bank, a state or federally chartered savings and loan association, or a trust company
16 under the Guam-Based Trust Companies Act that, in each case, is authorized to act in
17 a fiduciary capacity in Guam.

18 (g) "*Fund*" means a collective investment fund.

19 (h) "*Participating Account*" means a trust or other fiduciary account that has
20 contributed assets to a collective investment fund.

21 (i) "*Plan*" means the written plan for a fund described in Section 162103.

22 **§ 162102. Establishment of Collective Investment Funds.** A financial
23 institution may establish and maintain collective investment funds for the investment
24 of assets of retirement, pension, profit sharing, stock bonus or other trusts that are
25 exempt from federal income tax and may invest assets of retirement, pension, profit
26 sharing, stock bonus, or other employee benefit trusts exempt from federal income

1 tax and that the financial institution holds in any capacity (including agent) in such
2 collective investment funds.

3 **§ 162103. Written Plan.**

4 (a) A financial institution shall establish and maintain a fund in accordance
5 with a written plan approved by resolution by the board of directors of the financial
6 institution or by a committee authorized by the board. The plan's provisions shall be
7 consistent with the provisions of this chapter, as well as the rules and regulations of
8 the Office of the Comptroller of the Currency, 12 C.F.R. § 9.18 (or any successor
9 provision), and such rules and regulations as may from time to time be promulgated
10 by the Commissioner, to the extent that such respective rules and regulations are not
11 inconsistent with the provisions of this chapter.

12 (b) The plan shall contain appropriate provisions as to the manner in which
13 the financial institution will operate the fund, including, but not limited to, provisions
14 relating to all of the following:

- 15 (1) Investment powers and policies with respect to the fund;
- 16 (2) Allocation of income, profits, and losses;
- 17 (3) Fees and expenses that will be charged to the fund and to
18 participating accounts and the individuals contributing to the participating
19 accounts;
- 20 (4) Terms and conditions governing the admission and withdrawal of
21 participating accounts;
- 22 (5) Audits of participating accounts;
- 23 (6) Basis and method of valuing assets in the fund;
- 24 (7) Expected frequency of income distribution from the fund to
25 participating accounts;
- 26 (8) Minimum frequency of valuation of fund assets;

1 (9) Amount of time following a valuation date in which a valuation of
2 fund assets must be made;

3 (10) Bases upon which the financial institution may terminate the funds;

4 (11) Any other matters necessary to define clearly the rights of
5 participating accounts and contributors to the participating accounts.

6 (c) The financial institution shall make a copy of the plan available at its
7 principal office for inspection during all regular business hours and shall provide a
8 copy of the plan to any person who requests it.

9 (d) The financial institution shall submit a copy of the written plan, and any
10 amendments made to the written plan, to the Commissioner upon adoption of such
11 amendments.

12 **§ 162104. Management of the Fund.** The financial institution shall have the
13 exclusive management and control of each fund administered by it, and the sole right
14 at any time to sell, convert, exchange, transfer, or otherwise change or dispose of the
15 assets comprising within the fund, except as a prudent person might delegate
16 responsibilities to others. The ownership of the fund's assets shall be solely in the
17 financial institution as fiduciary and shall be considered as assets held by it as
18 fiduciary.

19 **§162105. Internal Controls.** A financial institution shall implement and
20 maintain effective operational controls to ensure:

21 (a) The fund is valued regularly. For a fund that holds investments with daily
22 valuations, such as mutual funds and publicly traded stocks, bonds, and exchange-
23 traded funds, values shall be updated each business day. Values shall in any case be
24 determined no less often than quarterly, except that for a fund that holds assets that
25 are not readily marketable, such as real estate, values shall be determined no less
26 often than annually.

1 (b) Contributions and withdrawals are executed on a timely basis, as specified
2 by the terms of the plan.

3 (c) Each participating account is eligible and authorized to participate in the
4 fund.

5 (d) An annual audit and fund report are completed in a timely manner.

6 (e) Assets are invested in accordance with the plan and the fund's written
7 investment policy.

8 (f) Fund documents are maintained in a central repository.

9 (g) A formal process is in place for the board of director of the bank, or a
10 committee appointed by the board, to approve and oversee major fund decisions and
11 the operation of the fund.

12 **§162106. Rights and Interests of Participating Accounts and Contributors**
13 **to the Participating Accounts.**

14 (a) All participating accounts *in a* fund shall have a proportionate undivided
15 interest in all the fund's assets, which shall be reported in units of beneficial interest.
16 No participating account shall have individual ownership of any asset in the fund.

17 (b) A hardcopy or electronic statement of participation shall be issued to each
18 participating account and contributors to the participating accounts at least quarterly.
19 The statement of participation shall indicate that the statement valuation is not
20 guaranteed by the financial institution; that the units of beneficial interest held by the
21 participating account are not negotiable or assignable; and that the statement is a
22 representation of the participating account's undivided interest in the fund and does
23 not represent individual ownership of any asset in the fund.

24 **§162107. Interests of a Financial Institution.** A financial institution
25 administering a fund shall not have an interest in that fund other than in its fiduciary
26 capacity. If, because of a creditor relationship or otherwise, the bank acquires an

1 interest in a participating account, the participating account must be withdrawn on the
2 next withdrawal date. However, a financial institution may invest assets that it holds
3 as fiduciary for its own employees in a fund.

4 **§ 162108. Annual Financial Reports.**

5 (a) At least once during each 12-month period, the financial institution
6 administering a fund shall arrange for an audit of the fund by auditors responsible only
7 to the board of directors of the financial institution.

8 (b) At least once during each 12-month period, the financial institution shall
9 prepare an annual financial report based on the audit required by subsection (a) and
10 containing the following information:

11 (1) The fund's fees and expenses.

12 (2) A list of the investments in the fund with their costs
13 and market values on the date of closing of the report.

14 (3) A statement summary of transactions for the year,
15 organized by type of investment, including the following transactions:

16 (i) A summary of purchases, including costs.

17 (ii) A summary of sales including profit or loss and
18 any other investment changes.

19 (iii) Income to and disbursements from the fund.

20 (iv) A description of any investments in default.

21 (c) The financial institution may include in the financial report a description of the
22 fund's value on previous dates, as well as its income and disbursements during
23 previous accounting periods. The financial institution may not publish in the financial
24 report any predictions or representations as to future performance.

25 (d) The financial institution shall provide a copy of the annual report (or provide
26 notice that a copy of the report is available upon request or online) to each person or

1 entity who would ordinarily receive a regular periodic accounting statement.

2 (e) A copy *of* the annual financial report shall be filed with the Commissioner.

3 **§ 162109. Management Fees.** The financial institution administering a collective
4 investment fund may charge a reasonable fund management fee only if the amount of
5 the fee does not exceed an amount commensurate with the value of legitimate services
6 of tangible benefit to the participating fiduciary accounts that would not have been
7 provided to the accounts were they not invested in the fund.

8 **§ 162110. Mistakes in Administration of Funds.** A mistake made in good faith
9 and in the exercise of due care in connection with the administration of a fund is not a
10 violation of this chapter or any rules or regulations issued under this chapter, if
11 promptly after discovery of the mistake the financial institution takes whatever action
12 is reasonable under the circumstances to remedy the mistake and reports the mistake
13 to the Commissioner and appropriate federal regulatory agencies as required by this
14 Act.”

15 **SECTION 3. Severability.** If any of the provisions of this Act or the
16 application thereof to any person or circumstance is held invalid, such invalidity *shall*
17 not affect any other provision or application of this Act which can be given effect
18 without the invalid provision or application, and to this end the provisions of this Act
19 are severable.



I Mina'Trentai Dos na Liheslaturan Guåhan

Committee on Aviation, Ground Transportation,
Regulatory Concerns, and Future Generations
SENATOR MICHAEL F.Q. SAN NICOLAS

March 19, 2013

Bill No. 59-32 (COR): AN ACT TO *ADD* CHAPTER 162 TO TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT, AND TO *REPEAL* SECTION 106155 OF CHAPTER 106, TITLE 11, GUAM CODE ANNOTATED.

NAME (Please print)	AGENCY/ ORGANIZATION	CONTACT NUMBER	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR
ART ILAGAN	Rev & Tax	635-1817	✓	✓	✓	
DAVID John	ASCTC	687-4365	✓	✓	✓	



Dipáttamenton Kontribusion yan Adu'ána

DEPARTMENT OF

REVENUE AND TAXATION

GOVERNMENT OF GUAM

Gubetnamenton Guåhan

EDDIE BAZA CALVO, Governor / *Maga'låhi*
RAY TENORIO, Lt. Governor / *Tiñente Gubetnadot*

JOHN P. CAMACHO, Director
Direktot
MARIE M. BENITO, Deputy Director
Sigundo Direktot

March 19, 2013

The Honorable Michael F.Q. San Nicolas
Chairman, Committee on Aviation, Ground
Transportation, Regulatory Concerns, and
Future Generations
Thirty-Second Guam Legislature
Hagatna, Guam 96910

Re: Bill No. 59-32 "AN ACT TO ADD CHAPTER 162 TO TITLE 11 OF THE GUAM
CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE
INVESTMENT FUNDS ACT, AND TO REPEAL SECTION 106155 OF
CHPATER 106, TITLE 11, GUAM CODE ANNOTATED"

Dear Senator San Nicolas:

My name is Artemio B. Ilagan. I am the Banking and Insurance Commissioner. I am in
favor of Bill No. 59-32.

Our office has reviewed Bill No. 59-32. In substance this bill incorporates the provisions
of the Collective Investment Funds as set forth in 12 CFR 9.18..

A collective investment fund (CIF) is a bank-administered trust that holds commingled
assets that meet specific criteria established by 12 CFR 9.18 .The comingled assets in
the CIF generally include assets of retirement, pension, profit sharing, stock bonus or
other trusts that are exempt from the Federal income tax (Guam territorial income tax)..

The bank acts as a fiduciary for the CIF and holds legal title to the fund's assets. Each
person or trust that places money into the CIF is given a specific percentage in relation
to the total amount contributed into the CIF. The CIFs allow banks to avoid costly
purchases of small lot investments for their smaller fiduciary accounts. For this reason a
CIF translates to lower administrative costs for each trusts or persons that invest in the
CIF.

2 Bill No. 59-32 Collective Investment Fund

To protect the investors into the CIF, a financial institution is required to establish and maintain a written plan. This plan must be approved by resolution of the board of directors. The plan can be executed by the board of directors or by a committee authorized by the board.

In general, this act will enable each chartered territorial bank in Guam, a federally chartered savings and loan associations, and a trust company organized under Guam-Based Trust Companies Act to provide the services of CIF in a fiduciary capacity. It is our hope that each financial institution shall look into the staff and technical requirements to establish and operate a CIF and provide benefits to the consumers of Guam.

Lastly, there appears to be a typographical error in the citation used into the definition of a "Plan". As defined in Bill 59-32 §162101(i) "Plan" means the written plan for a fund described in Section 162104. I believe this is a typographical error and should read Section 162103. The section that contains the provisions for a written plan is found in Section 162103.

In closing , I am in favor of Bill No. 59-32.

Sincerely,



ARTEMIO B. ILAGAN
Banking and Insurance Commissioner

Legislative Testimony

In Support Bill No. 59-32(COR): An Act to ADD Chapter 162 to Title 11 of the Guam Code Annotated Relative to Establishing the Collective Investments Funds Act and to REPEAL Section 106155 of Chapter 106, Title 11, Guam Code Annotated.

Dated: March 19, 2013

By: David J. John
President
ASC Trust Corporation

Mr. Chair, members of the committee, I would like to Thank you for time and allowing me the opportunity to testify before your committee here today.

I am here today to testify in support of Bill 29-32(COR).

My name is David John. I represent ASC Trust Corporation, a local retirement plan provider.

ASC has been servicing retirement plans on Guam for over 20 years. We currently represents approximately 300 retirement plans, with an estimated 19,000 participants and over \$400 million under management.

My comments will be brief in order to allow enough time to answer your questions.

The Bill will allow our company, and companies like us, to offer Collective Investment Trusts to our retirement clients.

A Collective Investment trust is designed specifically to help manage money for qualified retirement plans in a cost effective manner.

A CIT would provide us another tool to help participants properly plan for a successful retirement.

They key word being successful. Most of us have some sort of retirement account. However, how many of us our confident we will have enough in our accounts to finance a successful retirement for our families?

Today workers can expect to live 20-30 years in retirement in a time when the future of government safety nets such as Social Security and government qualified plans are in question. We only need to look to the north to see what can happen if proper planning is not put in place and monitored.

With this, it is becoming more and more important for individuals to create their own safety net.

Collective Investment Trusts will provide an additional tool to help us design proper asset allocation programs for our members to better their chances of a successful retirement .

CITs are not new. They have been around for decades. However, they have been on the rise in both Defined Benefit Pension Plans and Defined Contribution 401(k) Plans across the country since 2006 when the Pension Protection Act approved them as default investment options in DC plans.

I urge you to pass this Bill to provide opportunities to our financial services industry so that we can work together to develop products to help create a successful retirement system for our workers.

Again, I would like to thank you for your time and would welcome any questions you might have for me.

WILLIAM D. LEON GUERRERO

Executive Vice President/
Chief Operating Officer



Bank of Guam

"The People's Bank"

MEMBER OF THE FEDERAL
DEPOSIT INSURANCE CORP.

P.O. Box BW
Agana, Guam 96910
Tel: 472-5271/3/5

Only locally owned Bank - founded 1972 by Jesus S. Leon Guerrero

March 19, 2013

The Honorable Senator Michael F.Q. San Nicolas
Chairman, Committee on Aviation, Ground Transportation,
Regulatory Concerns, and Future Generations
Thirty-Second Guam Legislature
Guam Legislature Building
155 Hesler St.
Hagåtña, Guam 96910

Dear Senator:

I have received and reviewed Bill 59-32, as well as an invitation to provide testimony.

I find that, despite a few modifications, Bill 59-32 is quite similar to Bill 444-31 in the 31st Guam Legislature, and the Bank's position has not changed.

Attached, you will find a copy of the testimony relating to Bill 444-31 that was prepared and submitted by Ms. Lou Leon Guerrero, President and Chair of the Board of Bank of Guam, on May 11, 2012. Our input on this issue remains the same.

Should you have any questions or require additional information, please feel free to contact me at 472-5273. Until then, I remain

Sincerely yours,

William D. Leon Guerrero
Executive Vice President and
Chief Operating Officer

BANK OF GUAM

THE PEOPLE'S BANK

Headquarters • P.O. Box BW • Hagåtña, Guam 96932

Tel: (671) 472-5271
Fax: (671) 477-8687



Member FDIC

May 11, 2012

The Honorable Senator Vicente C. Pangelinan
Chairman, Committee on Appropriations,
Taxation, Public Debt, Banking, Insurance,
Retirement, and Land
Thirty-First Guam Legislature
324 W. Soledad Ave., Suite 100
Hagåtña, Guam 96910

Dear Senator:

I am pleased to submit this testimony regarding Bill 444-31, before the Committee today. I am glad that the Legislature is taking up the important issue of enhancing and modernizing the laws governing the financial industry in Guam. Providing a vehicle for the formation of local collective investment funds is an important step in that direction, and providing a framework for local investment funds to stay in Guam will help our economic growth and development.

Having reviewed the Bill, and after discussing it with members of the Bank of Guam management team, I conclude that it is a good first attempt at meeting our common objective of providing more investment opportunities and expanded financial services to our community. Nonetheless, in contemplating the establishment of something as important as a new class of fiduciary in Guam, I would like to suggest several improvements that could be made to better protect the interests of local investors of limited means.

I note that 12 CFR §9.18, issued by the Office of the Comptroller of the Currency to implement regulation of collective investment funds, constitutes a portion of the regulations to govern the activities and practices of such funds in Guam provided that they are not inconsistent with the provisions of the legislation. However, those regulations apply specifically to federally-chartered banks, and 12CFR §9.18 is a very small part of a vast regulatory structure under which those banks operate; there are much broader fiduciary standards applied to national banks to protect their customers (including investors) that are not reflected here, and that do not apply to non-bank financial institutions. It is crucial that Guam's corresponding regulations provide those same protections, and I strongly recommend explicitly expressing that objective in the proposed statute.

The structure proposed for collective investment funds appears to be the same as a qualified mutual fund, and provides more narrow authority than the Comptroller would allow. (12 CFR §9.18 allows a much broader range of assets to be invested into a collective investment fund than

the Bill would allow.) However, under 12 CFR §9.18, national banks are prohibited (except under certain restricted circumstances) from issuing shares or certificates, whether or not negotiable, and thus Guam's collective investment funds might conceivably circumvent the Investment Company Act of 1940, the Securities Exchange Act of 1934 and the Securities Act of 1933. This is not advisable. These three federal laws and their related regulations would serve to provide the protections for Guam investors that Bill 444-31, as written, would not, and should be considered in this legislation. Guam investors should be protected to the same extent as bank regulations would require. Perhaps requiring the issuance of shares or certificates would resolve this concern. At the very least, adding a paragraph (d) to proposed §162104 requiring submission of the fund plan to the Commissioner of Banking and Insurance would provide a higher level of protection.

As for common trust funds, banks and trust companies are already authorized to create one or more in which individuals may participate and invest under Title 11, Chapter 106, §106155 GCA (a part of the Guam banking code), which would be repealed by this Bill. While the existing law would potentially allow banks to engage in investment banking activities, those activities are currently being closely scrutinized by federal lawmakers who are leaning toward modification. There is a very strong perception in Congress and elsewhere that the final repeal of the Glass-Steagall Act's that allowed the merger of investment banking and commercial banking was a major contributing factor to the near-collapse of the U.S. financial system in 2008.

The reporting requirements stipulated in Bill 444-31 are relatively broad and may not be sufficient to provide adequate information to current and prospective investors. In particular, many of the limitations listed in 12 CFR §9.18(b)(6)(iii), §9.18(b)(7), (8) and (9) may not be applicable under Bill 444-31 in its present form. These provisions of the federal regulations provide important protections and impose fiduciary standards that are missing here.

Again, I want to express my appreciation that the Legislature is addressing some of the older provisions of law governing the financial industry here, and that an effort is being made to expand the type and scope of financial services available to our community. With that in mind, I encourage you to incorporate consideration of the concerns that I have presented today in this and other legislation in the future.

I thank you for the opportunity to submit my testimony on this important legislation.

Respectfully,

Lourdes A. Leon Guerrero
President and Chair of the Board



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature

155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com

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Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

Senator
Vicente (Ben) C. Pangelinan
Member

Speaker
Judith T.P. Won Pat, Ed.D.
Member

Senator
Dennis G. Rodriguez, Jr.
Member

Vice-Speaker
Benjamin J.F. Cruz
Member

Legislative Secretary
Tina Rose Muña Barnes
Member

Senator
Frank Blas Aguon, Jr.
Member

Senator
Michael F.Q. San Nicolas
Member

Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

March 26, 2013

Memorandum

To: **Reanne Meno**
Clerk of the Legislature

From: **Senator Rory J. Respicio**
Chairperson, Committee on Rules

Subject: **Fiscal Notes**

Hafa Adai!

Attached please find the fiscal notes for the bill numbers listed below. Please note that the fiscal notes, or waivers, are issued on the bills as introduced.

FISCAL NOTES:

Bill Nos.: 5-32 (LS), 11-32 (COR), 29-32 (COR), 35-32 (COR), 39-32 (COR), 47-32 (COR), 56-32 (COR), and 59-32 (COR)

WAIVERS:

Bill Nos.: 23-32 (COR), 58-32 (COR), and 67-32 (COR)

Please forward the same to MIS for posting on our website. Please contact our office should you have any questions regarding this matter.

Si Yu'os ma'åse'!

2013 MAR 26 AM 11:15
WR

**BUREAU OF BUDGET & MANAGEMENT RESEARCH**

OFFICE OF THE GOVERNOR
Post Office Box 2950, Hagåtña Guam 96932

EDDIE BAZA CALVO
GOVERNOR

JOHN A. RIOS
DIRECTOR

RAY TENORIO
LIEUTENANT GOVERNOR

MAR 25 2013

Senator Rory J. Respicio
Chairperson, Committee on Rules
I Mina'trentai Unu na Liheslaturan Guåhan
The 31st Guam Legislature
155 Hesler Place
Hagåtña, Guam 96932

Hafa Adai Senator Respicio:

Transmitted herewith is Fiscal Note on the following Bill Nos.: 5-32(LS), 11-32(COR), 29-32(COR), 35-32(COR), 39-32(COR), 47-32(LS), 56-32(COR), and 59-32(COR), and Fiscal Note Waiver on the following Bill Nos.: 23-32(COR), 58-32(COR) and 67-32(COR).

If you have any question(s), please do not hesitate to call the office at 475-9412/9106.

JOHN A. RIOS
Director

Enclosures

cc: Senator Vicente (ben) Pangelinan

**Bureau of Budget & Management Research
Fiscal Note of Bill No. 59-32**

AN ACT TO ADD CHAPTER 162 TO TITLE II OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT, AND TO REPEAL SECTION 106155 OF CHAPTER 106, TITLE II, GUAM CODE ANNOTATED

Department/Agency Appropriation Information

Dept./Agency Affected:	Dept./Agency Head:
Department's General Fund (GF) appropriation(s) to date:	
Department's Other Fund (Specify) appropriation(s) to date: Healthy Futures Fund & Environmental Health Fund	
Total Department/Agency Appropriation(s) to date:	\$0

Fund Source Information of Proposed Appropriation

	General Fund:	(Specify Special Fund):	Total:
FY 2012 Unreserved Fund Balance ¹		\$0	\$0
FY 2013 Adopted Revenues	\$0	\$0	\$0
FY 2013 Appro. (P.L. 31-233)	\$0	\$0	\$0
Sub-total:	\$0	\$0	\$0
Less appropriation in Bill	\$0	\$0	\$0
Total:	\$0	\$0	\$0

Estimated Fiscal Impact of Bill

	One Full Fiscal Year	For Remainder of FY 2013 (If applicable)	FY 2014	FY 2015	FY 2016	FY 2017
General Fund	\$0	\$0	\$0	\$0	\$0	\$0
(Specify Special Fund)	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0	\$0

1. Does the bill contain "revenue generating" provisions? / / Yes / X / No
If Yes, see attachment
2. Is amount appropriated adequate to fund the intent of the appropriation? / X / N/A / / Yes / / No
If no, what is the additional amount required? \$ / X / N/A
3. Does the Bill establish a new program/agency? / X / Yes / / No
If yes, will the program duplicate existing programs/agencies? / X / N/A / / Yes / / No
Is there a federal mandate to establish the program/agency? / / Yes / X / No
4. Will the enactment of this Bill require new physical facilities? / / Yes / X / No
5. Was Fiscal Note coordinated with the affected dept/agency? If no, indicate reason: / / Yes / X / No
/ / Requested agency comments not received as of the due date / / Other:

Analyst: John AB Pangelinan Date: 3/20/13 Director: John A. Rios Date: MAR 25
John AB Pangelinan, Acting Deputy Dir John A. Rios, Director

Footnotes:

Please see attached comment sheet.

Comments to Legislative Bill No. 59-32

Legislative Bill No. 59-32 is proposing to repeal Section 106155, Common Trust Fund, of Chapter 106, Title II of the Guam Code Annotated (GCA). This section authorizes a bank or trust company to create one or more common trust funds in which individuals may elect to participate and invest. The proposed legislation is attempting to replace this section with a New Chapter 162 of the same Title II, GCA which involves the establishment of a Collection Investment Fund within financial institutions on Guam. By definition Collective Investment Funds are funds composed of a group of assets that are managed by a bank or trust company. This group of assets may be retirement plans, pension plans, and/or reinvestments of profit sharing plan trusts for specific purpose. Such gathering of assets is a strategic process to create investment portfolio that are highly diversified so that such investments will perform well in a wide range of economic situations.

In this proposed bill, the Collection Investment Fund that is to be established is based only on its assets being exempt from federal and local tax requirements. It does not consider other assets being invested for profit for which such profits are federally and locally taxed. The outcome of such exclusion limits participating financial institutions from participation in investment groups seeking returns in their investments. This limitation indirectly prevents the local government from receiving that one additional tax dollar generated from the profitability of taxed investment returns held in trust.

There is no immediate fiscal impact should this proposed legislation is passed; however, the Government does incur the opportunity cost of not being able to realize any gain in tax revenues from such investments as the result of the tax exemption afforded such collection investment funds.

Testimony on Legislative Bill No. 59-32
Prepared by
The Bureau of Budget and Management Research

AN ACT TO ADD CHAPTER 162 OF TITLE II OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUND ACT, AND TO REPEAL SECTION 106155 OF CHAPTER 106, TITLE II, GUAM CODE ANNOTATED

My name is John A. Rios, Director of the Bureau of Budget and Management Research (BBMR) and I thank Senator Michael San Nicolas and Committee Members for allowing me to testify on Bill No. 59-32.

Legislative Bill No. 59-32 is proposing to repeal Section 106155, Common Trust Fund, of Chapter 106, Title II of the Guam Code Annotated (GCA). This section authorizes a bank or trust company to create one or more common trust funds in which individuals may elect to participate and invest. The proposed legislation is attempting to replace this section with a New Chapter 162 of the same Title II, GCA which involves the establishment of a Collection Investment Fund within financial institutions on Guam. By definition Collective Investment Funds are funds composed of a group of assets that are managed by a bank or trust company. This group of assets may be retirement plans, pension plans, and/or reinvestments of profit sharing plan trusts for specific purpose. Such gathering of assets is a strategic process to create investment portfolio that are highly diversified so that such investments will perform well in a wide range of economic situations.

In this proposed bill, the Collection Investment Fund that is to be established is based only on its assets being exempt from federal and local tax requirements. It does not consider other assets being invested for profit for which such profits are federally and locally taxed. The outcome of such exclusion limits participating financial institutions from participation in investment groups seeking returns in their investments. This limitation indirectly prevents the local government from receiving that one additional tax dollar generated from the profitability of taxed investment returns held in trust.

There is no immediate fiscal impact should this proposed legislation is passed; however, the Government does incur the opportunity cost of not being able to realize any gain in tax revenues from such investments as the result of the tax exemption afforded such collection investment funds.

**BUREAU OF BUDGET & MANAGEMENT RESEARCH**

OFFICE OF THE GOVERNOR
Post Office Box 2950, Hagåtña Guam 96932

EDDIE BAZA CALVO
GOVERNOR

JOHN A. RIOS
DIRECTOR

RAY TENORIO
LIEUTENANT GOVERNOR

FACSIMILE INFORMATION PAGE

PLEASE DELIVER TO: Senator Rory Respicio

FACSIMILE NUMBER: 472-3547

FROM: BBMR

Total Pages including this page: 23

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as possible. Phone numbers (671) 475-9412/9450. Fax number (671) 472-2825

RE: Fiscal Note on the following Bill Nos.: 5-32(LS), 11-32(COR), 29-32(COR), 35-32(COR), 39-32(COR), 47-32(LS), 56-32(COR), and 59-32(COR), and Fiscal Note Waiver on the following Bill Nos.: 23-32(COR), 58-32(COR), and 67-32(COR).

COMMENTS: Fiscal Notes to be picked up via Central Files.

Thank You!



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature

155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com

E-mail: roryforguam@gmail.com • Tel: (671)472-7679 • Fax: (671)472-3547

Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

Senator
Vicente (Ben) C. Pangelinan
Member

Speaker
Judith T.P. Won Pat, Ed.D.
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Senator
Frank Blas Aguon, Jr.
Member

Senator
Michael F.Q. San Nicolas
Member

Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

March 4, 2013

MEMORANDUM

To: **Rennae Meno**
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: **Senator Rory J. Respicio**
Majority Leader & Rules Chair

Subject: **Referral of Bill No. 59-32(COR)**

As the Chairperson of the Committee on Rules, I am forwarding my referral of Bill No. 59-32(COR).

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

Si Yu'os Ma'åse!

Attachment

I Mina'Trentai Dos Na Liheslaturan Guahan
Bill Log Sheet

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	STATUS
59-32 (COR)	V.C. Pangelinan	AN ACT TO ADD CHAPTER 162 TO TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT, AND TO REPEAL SECTION 106155 OF CHAPTER 106, TITLE 11, GUAM CODE ANNOTATED.	3/1/13	3/4/13	Committee on Aviation, Ground Transportation, Regulatory Concerns, and Future Generations			



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First Notice - 3.19.13 Public/Confirmation Hearing

Senator Michael San Nicolas <senatorsannicolas@gmail.com>

Mon, Mar 11, 2013 at 6:05 PM

To: Senator Michael San Nicolas <senatorsannicolas@gmail.com>

Bcc: aperez@gpagwa.com, bmkelman@guampdn.com, dmgeorge@guampdn.com, dtamondong@guampdn.com, edavis@k57.com, editor@mvguam.com, gerry@mvguam.com, gmmsinc@guam.net, info@chinesetimesguam.com, jason@kuam.com, john@kuam.com, kcn.kelly@gmail.com, koreannews@guam.net, kprg@guam.net, life@guampdn.com, mabuhaynews@yahoo.com, mindy@kuam.com, mwatanabe@guampdn.com, news@k57.com, parroyo@k57.com, radioprod@kuam.com, rgibson@k57.com, sabrina@kuam.com, slimtiaco@guampdn.com, sports@mvguam.com, tcoffman@k57.com, dcristost@guam.gannett.com, publisher@glimpsesofiguam.com, weavert@pstripes.osd.mil, news@guampdn.com, jtyquiengco@spbgguam.com, kevin@spbgguam.com, hill.bruce@abc.net.au, pacificjournalist@gmail.com, parroyo@spbgguam.com, editor@saipantribune.com, clynt@spbgguam.com, mcpherson.kathryn@abc.net.au, cimiculka@guampdn.com, arcordoba@guampdn.com, communications@guam.gov, natalie.quinata@guam.gov, troy.torres@guam.gov, phnotice@guamlegislature.org, alerta.jermaine@gmail.com, baza.matthew@gmail.com, delisakloppenbourg@gmail.com, geraldine@mvguam.com, joy@mvguam.com, louella@mvguam.com, david@mvguam.com, jpmanuel@gmail.com, josh@spbgguam.com, speaker@judiwonpat.com, senadotbjcruz@aol.com, senator@tinamunabarnes.com, roryforguam@gmail.com, senatordrodriguez@gmail.com, senbenp@guam.net, office@senatorada.org, aline4families@gmail.com, tony@tonyada.com, duenasenator@gmail.com, brantforguam@gmail.com, aguon4guam@gmail.com, mike@mikelimtiaco.com, tommy@senatormorrison.com, mayormcdonald@hotmail.com, agatmayorsoffice@hotmail.com, asanmainamayorsoffice@yahoo.com, bmoadmin@teleguam.net, ocp.mayor@gmail.com, melissa.savares@gmail.com, peter_daigo@hotmail.com, hagatnamayor@hotmail.com, mayordorisfloreslujan@gmail.com, nblas_mangilaomayor@yahoo.com, vicemayor_allan.ungacta@yahoo.com, mayorernestc@yahoo.com, mtm_mayors_office@yahoo.com, pitimayor@yahoo.com, guammayor@gmail.com, rudyiriarte@gmail.com, talotofomayor@gmail.com, mayorlcrivera.tatuha@gmail.com, vicemayorksantos.tatuha@gmail.com, umatacmo@gmail.com, koner.r@gmail.com, arleen81@gmail.com, kenjoeada@yahoo.com, msavares@teleguam.net, anghet@hotmail.com, kenq@kuam.com, raymond.gibson@guam.gov, daleealvarez@gmail.com, responsableguam@gmail.com, christopherchenay@gmail.com, floterlaje@gmail.com, derickbazahills@gmail.com, regineb.lee@gmail.com, chuck.ada@guamairport.net, peterroy@guamairport.net, lorilee.crisostomo@bsp.guam.gov, doagridir@yahoo.com, george.santos@dol.guam.gov, carl.dominguez@dpw.guam.gov, jay.rojas@dpw.guam.gov, eduardo.ordonez@clb.guam.gov, cgarcia@investguam.com, eric.palacios@epa.guam.gov, felixberto.dungca@grta.guam.gov, kpangelinan@visitguam.org, ndenight@visitguam.org, jbrown@portguam.com, monte.mafnas@dlim.guam.gov, david.camacho@galc.guam.gov, mjduenas@ghura.org, fcamacho@ghura.org, martin.benavente@ghc.guam.gov, alfredo.antolin@dol.guam.gov, joseph.cameron@hrra.guam.gov, cgogue@pbsguam.org, Adonis.mendiola@dya.guam.gov, jose.sanagustin@doc.guam.gov, pedro.leonguerrero@cqa.guam.gov, joey.sannicolas@gtd.guam.gov, fred.bordallo@gpd.guam.gov, chief@gpd.guam.gov, jim.mcdonald@ghs.guam.gov, benito.servino@disid.guam.gov, james.gillan@dphss.guam.gov, leo.casil@dphss.guam.gov, joseph.verga@gmha.org, john.rios@bbmr.guam.gov, Benita.manglona@doa.guam.gov, Anthony.blaz@doa.guam.gov, jpcamacho@revtax.gov.gu, mmbenito@revtax.gov.gu, benny.m.paulino@ng.army.mil, john.unpingco@gvao.guam.gov, jonfernandez@gdoe.net, mary.okada@guamcc.edu, raunderwood@uguam.uog.edu, jflores@gpagwa.com, ed.cruz@bit.guam.gov

Hafa adai,

Please be advised that the Committee on Aviation, Ground Transportation, Regulatory Concerns and Future Generations will be conducting a hearing on Tuesday, March 19, 2013, 10:00 a.m. The hearing will take place in I Liheslaturan Guahan's Public Hearing Room. See attachments for more information. Thank you for your time and attention on this matter.

Regards,

Jermaine Alerta

Chief Policy Analyst

Office of Senator Michael F.Q. San Nicolas

I Mina' Freyta Dos na Liheslaturan Guahan

32nd Guam Legislature

Tel: (671) 472-6453

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3.19.13 agenda_hearing.pdf

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Bill No. 56-32 (COR).pdf

53K



Bill No. 59-32 (COR).pdf

181K



Senator Michael F.Q. San Nicolas

Chairman - Committee on Aviation, Ground Transportation,
Regulatory Concerns and Future Generations
I Mina'trentai Dos Na Liheslaturan Guåhan | 32nd Guam Legislature



FIRST PUBLIC NOTICE

FOR IMMEDIATE RELEASE

March 11, 2013

In accordance with the Open Government Law, relative to notice for public meetings, please be advised that the Committee on Aviation, Ground Transportation, Regulatory Concerns and Future Generations will be conducting a hearing on **Tuesday, March 19, 2013, 10:00 a.m.** at *I Liheslaturan Guåhan*'s Public Hearing Room for the following items:

Public Hearing

Bill No. 56-32 (COR), introduced by Benjamin J.F. Cruz and Thomas C. Ada: AN ACT RELATIVE TO REPEALING AND REENACTING §9108 OF TITLE 16 GUAM CODE ANNOTATED.

Bill No. 59-32 (COR), introduced by Vicente C. Pangelinan: AN ACT TO ADD CHAPTER 162 TO TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT, AND TO REPEAL SECTION 106155 OF CHAPTER 106, TITLE 11, GUAM CODE ANNOTATED.

Confirmation Hearing

Appointment of Donald Taitano, Member, Cockpit License Board
Length of Term: One (1) Year

If written testimonies are to be presented at the hearing, copies should be delivered prior to the meeting date. Testimonies should be addressed to Senator Michael F.Q. San Nicolas and will be accepted via hand delivery to our office; our mailbox at the Main Legislature Building at 155 Hesler Place, Hagatna, Guam 96910; or via email to senatorsannicolas@gmail.com. In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services should contact the Office of Senator Michael F.Q. San Nicolas at 472-6453.

###



Senator Michael San Nicolas <senatorsannicolas@gmail.com>

Second Notice - 3.19.13 Public/Confirmation Hearing

Senator Michael San Nicolas <senatorsannicolas@gmail.com>

Fri, Mar 15, 2013 at 9:21 AM

To: Senator Michael San Nicolas <senatorsannicolas@gmail.com>

Bcc: aperez@gpagwa.com, bmkelman@guampdn.com, dmgeorge@guampdn.com, dtamondong@guampdn.com, edavis@k57.com, editor@mvguam.com, gerry@mvguam.com, gmmsinc@guam.net, info@chinesetimesguam.com, jason@kuam.com, john@kuam.com, kcn.kelly@gmail.com, koreannews@guam.net, kprg@guam.net, life@guampdn.com, mabuhaynews@yahoo.com, mindy@kuam.com, mwatanabe@guampdn.com, news@k57.com, parroyo@k57.com, radioprod@kuam.com, rgibson@k57.com, sabrina@kuam.com, slimtiaco@guampdn.com, sports@mvguam.com, tcoffman@k57.com, dcristost@guam.gannett.com, publisher@glimpsesofiguam.com, weavert@pstripes.osd.mil, news@guampdn.com, jtyquiengco@spbgum.com, kevin@spbgum.com, hill.bruce@abc.net.au, pacificjournalist@gmail.com, parroyo@spbgum.com, editor@saipantribune.com, clynt@spbgum.com, mcpherson.kathryn@abc.net.au, cimiculka@guampdn.com, arcordoba@guampdn.com, communications@guam.gov, natalie.quinata@guam.gov, troy.torres@guam.gov, phnotice@guamlegislature.org, alerta.jermaine@gmail.com, baza.matthew@gmail.com, delisakloppenbourg@gmail.com, geraldine@mvguam.com, joy@mvguam.com, louella@mvguam.com, david@mvguam.com, jpmanuel@gmail.com, josh@spbgum.com, speaker@judiwonpat.com, senadotbjcruz@aol.com, senator@tinamunabarnes.com, roryforguam@gmail.com, senatordrodriguez@gmail.com, senbenp@guam.net, office@senatorada.org, aline4families@gmail.com, tony@tonyada.com, duenasenator@gmail.com, brantforguam@gmail.com, aguon4guam@gmail.com, mike@mikelimtiaco.com, tommy@senatormorrison.com, mayormcdonald@hotmail.com, agatmayorsoffice@hotmail.com, asanmainamayorsoffice@yahoo.com, bmoadmin@teleguam.net, ocp.mayor@gmail.com, melissa.savares@gmail.com, peter_daigo@hotmail.com, hagatnamayor@hotmail.com, mayordoristloreslujan@gmail.com, nblas_mangilaomayor@yahoo.com, vicemayor_allan.ungacta@yahoo.com, mayorernestc@yahoo.com, mtm_mayors_office@yahoo.com, pitimayor@yahoo.com, guammayor@gmail.com, rudyiriarte@gmail.com, talofomayor@gmail.com, mayorcrivera.tatuha@gmail.com, vicemayorsantos.tatuha@gmail.com, umatacmo@gmail.com, koner.r@gmail.com, arleen81@gmail.com, kenjoada@yahoo.com, msavares@teleguam.net, anghet@hotmail.com, kenq@kuam.com, raymond.gibson@guam.gov, daleealvarez@gmail.com, responsibleguam@gmail.com, christopherchenay@gmail.com, floterlaje@gmail.com, derickbazahills@gmail.com, regineb.lee@gmail.com, chuck.ada@guamairport.net, peterroy@guamairport.net, lorilee.crisostomo@bsp.guam.gov, doagridir@yahoo.com, george.santos@dol.guam.gov, carl.dominguez@dpw.guam.gov, jay.rojas@dpw.guam.gov, eduardo.ordonez@clb.guam.gov, cgarcia@investguam.com, eric.palacios@epa.guam.gov, felixberto.dungca@grta.guam.gov, kpangelinan@visitguam.org, ndenight@visitguam.org, jbrown@portguam.com, monte.mafnas@dlm.guam.gov, david.camacho@galc.guam.gov, mjduenas@ghura.org, lcamacho@ghura.org, martin.benavente@ghc.guam.gov, alfredo.antonin@dol.guam.gov, joseph.cameron@hrra.guam.gov, cgogue@pbsguam.org, Adonis.mendiola@dya.guam.gov, jose.sanagustin@doc.guam.gov, pedro.leonguerrero@cqa.guam.gov, joey.sannicolas@gfd.guam.gov, fred.bordallo@gpd.guam.gov, chief@gpd.guam.gov, jim.mcdonald@ghs.guam.gov, benito.servino@disid.guam.gov, james.gillan@dphss.guam.gov, leo.casil@dphss.guam.gov, joseph.verga@gmha.org, john.rios@bbmr.guam.gov, Benita.manglona@doa.guam.gov, Anthony.blaz@doa.guam.gov, jpcamacho@revtax.gov.gu, mmbenito@revtax.gov.gu, benny.m.paulino@ng.army.mil, john.unpingco@gvao.guam.gov, jonfernandez@gdoe.net, mary.okada@guamcc.edu, raunderwood@uguam.uog.edu, jflores@gpagwa.com, ed.cruz@bit.guam.gov

Hafa adai,

Please be advised that the Committee on Aviation, Ground Transportation, Regulatory Concerns and Future Generations will be conducting a hearing on Tuesday, March 19, 2013, 10:00 a.m. The hearing will take place in / Liheslaturan Guáhari's Public Hearing Room. See attachments for more information. Thank you for your time and attention on this matter.

Regards,

Jermaine Alerta

Chief Policy Analyst

Office of Senator Michael F.Q. San Nicolas

I Mina' Trentai Dos na Liheslaturan Guahan

32nd Guam Legislature

Tel: (671) 472-6453

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Bill No. 56-32 (COR).pdf

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Bill No. 59-32 (COR).pdf

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Senator Michael F.Q. San Nicolas

Chairman - Committee on Aviation, Ground Transportation,
Regulatory Concerns and Future Generations
I Mina'trentai Dos Na Liheslaturan Guahan | 32nd Guam Legislature



SECOND PUBLIC NOTICE

FOR IMMEDIATE RELEASE

March 15, 2013

In accordance with the Open Government Law, relative to notice for public meetings, please be advised that the Committee on Aviation, Ground Transportation, Regulatory Concerns and Future Generations will be conducting a hearing on **Tuesday, March 19, 2013, 10:00 a.m.** at *I Liheslaturan Guahan's* Public Hearing Room for the following items:

Public Hearing

Bill No. 56-32 (COR), introduced by Benjamin J.F. Cruz and Thomas C. Ada: ~~AN ACT RELATIVE TO REPEALING AND REENACTING §9108 OF TITLE 16 GUAM CODE ANNOTATED.~~

AN ACT TO REPEAL AND REENACT §9108 OF TITLE 16, GUAM CODE ANNOTATED, RELATIVE TO CHANGING THE PENALTY FOR VIOLATION OF THE TRAFFIC CODE FROM A PETTY MISDEMEANOR TO A CIVIL VIOLATION PUNISHABLE BY A FINE, AND TO AUTHORIZE THE TRAFFIC COURT OR JUDICIARY TO SET TRAFFIC FINES THAT ARE NOT SET BY LAW. *(title amended by Legal Counsel with the concurrence of the primary sponsor)*

Bill No. 59-32 (COR), introduced by Vicente C. Pangelinan: AN ACT TO ADD CHAPTER 162 TO TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT, AND TO REPEAL SECTION 106155 OF CHAPTER 106, TITLE 11, GUAM CODE ANNOTATED.

Confirmation Hearing

Appointment of Donald Taitano, Member, Cockpit License Board
Length of Term: One (1) Year

If written testimonies are to be presented at the hearing, copies should be delivered prior to the meeting date. Testimonies should be addressed to Senator Michael F.Q. San Nicolas and will be accepted via hand delivery to our office; our mailbox at the Main Legislature Building at 155 Hesler Place, Hagatna, Guam 96910; or via email to senatorsannicolas@gmail.com. In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services should contact the Office of Senator Michael F.Q. San Nicolas at 472-6453.

###



Senator Michael F.Q. San Nicolas

Chairman - Committee on Aviation, Ground Transportation,
Regulatory Concerns and Future Generations
I Mina'trentai Dos Na Liheslaturan Guåhan | 32nd Guam Legislature



PUBLIC HEARING

Tuesday, March 19, 2013

10:00 a.m.

Public Hearing Room

I Liheslaturan Guåhan

AGENDA

I. Call to Order

II. Opening Remarks/Announcements

III. Items for Public Consideration

Bill No. 56-32 (COR), introduced by Benjamin J.F. Cruz and Thomas C. Ada: AN ACT RELATIVE TO REPEALING AND REENACTING §9108 OF TITLE 16 GUAM CODE ANNOTATED.

AN ACT TO REPEAL AND REENACT §9108 OF TITLE 16, GUAM CODE ANNOTATED, RELATIVE TO CHANGING THE PENALTY FOR VIOLATION OF THE TRAFFIC CODE FROM A PETTY MISDEMEANOR TO A CIVIL VIOLATION PUNISHABLE BY A FINE, AND TO AUTHORIZE THE TRAFFIC COURT OR JUDICIARY TO SET TRAFFIC FINES THAT ARE NOT SET BY LAW. *(title amended by Legal Counsel with the concurrence of the primary sponsor)*

Bill No. 59-32 (COR), introduced by Vicente C. Pangelinan: AN ACT TO ADD CHAPTER 162 TO TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT, AND TO REPEAL SECTION 106155 OF CHAPTER 106, TITLE 11, GUAM CODE ANNOTATED.

~~Appointment of Donald Taitano, Member, Cockpit License Board~~

IV. Closing Remarks

V. Adjournment



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature
155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com
E-mail: roryforguam@gmail.com • Tel: (671)472-7679 • Fax: (671)472-3547

2013 MAR 26 AM 11:15
wp

Senator
Rory J. Respicio
CHAIRPERSON
MAJORITY LEADER

Senator
Thomas C. Ada
VICE CHAIRPERSON
ASSISTANT MAJORITY LEADER

Senator
Vicente (Ben) C. Pangelinan
Member

Speaker
Judith T.P. Won Pat, Ed.D.
Member

Senator
Dennis G. Rodriguez, Jr.
Member

Vice-Speaker
Benjamin J.F. Cruz
Member

Legislative Secretary
Tina Rose Muña Barnes
Member

Senator
Frank Blas Aguon, Jr.
Member

Senator
Michael F.Q. San Nicolas
Member

Senator
V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

March 26, 2013

Memorandum

To: **Reanne Meno**
Clerk of the Legislature

From: **Senator Rory J. Respicio** *[Signature]*
Chairperson, Committee on Rules

Subject: **Fiscal Notes**

Hafa Adai!

Attached please find the fiscal notes for the bill numbers listed below. Please note that the fiscal notes, or waivers, are issued on the bills as introduced.

FISCAL NOTES:

Bill Nos.: 5-32 (LS), 11-32 (COR), 29-32 (COR), 35-32 (COR), 39-32 (COR), 47-32 (COR), 56-32 (COR), and 59-32 (COR)

WAIVERS:

Bill Nos.: 23-32 (COR), 58-32 (COR), and 67-32 (COR)

Please forward the same to MIS for posting on our website. Please contact our office should you have any questions regarding this matter.

Si Yu'os ma'åse'!

**BUREAU OF BUDGET & MANAGEMENT RESEARCH**

OFFICE OF THE GOVERNOR
Post Office Box 2950, Hagåtña Guam 96932

EDDIE BAZA CALVO
GOVERNOR

JOHN A. RIOS
DIRECTOR

RAY TENORIO
LIEUTENANT GOVERNOR

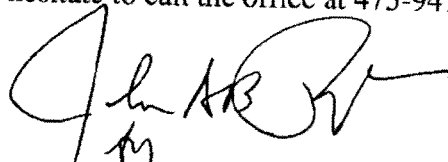
MAR 25 2013

Senator Rory J. Respicio
Chairperson, Committee on Rules
I Mina'trentai Unu na Liheslaturan Guåhan
The 31st Guam Legislature
155 Hesler Place
Hagåtña, Guam 96932

Hafa Adai Senator Respicio:

Transmitted herewith is Fiscal Note on the following Bill Nos.: 5-32(LS), 11-32(COR), 29-32(COR), 35-32(COR), 39-32(COR), 47-32(LS), 56-32(COR), and 59-32(COR), and Fiscal Note Waiver on the following Bill Nos.: 23-32(COR), 58-32(COR) and 67-32(COR).

If you have any question(s), please do not hesitate to call the office at 475-9412/9106.



JOHN A. RIOS
Director

Enclosures

cc: Senator Vicente (ben) Pangelinan

**Bureau of Budget & Management Research
Fiscal Note of Bill No. 59-32**

AN ACT TO ADD CHAPTER 162 TO TITLE II OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT, AND TO REPEAL SECTION 106155 OF CHAPTER 106, TITLE II, GUAM CODE ANNOTATED

Department/Agency Appropriation Information

Dept./Agency Affected:	Dept./Agency Head:
Department's General Fund (GF) appropriation(s) to date:	-
Department's Other Fund (Specify) appropriation(s) to date: Healthy Futures Fund & Environmental Health Fund	-
Total Department/Agency Appropriation(s) to date:	\$0

Fund Source Information of Proposed Appropriation

	General Fund:	(Specify Special Fund):	Total:
FY 2012 Unreserved Fund Balance ¹		\$0	\$0
FY 2013 Adopted Revenues	\$0	\$0	\$0
FY 2013 Appro. (P.L. 31-233)	\$0	\$0	\$0
Sub-total:	\$0	\$0	\$0
Less appropriation in Bill	\$0	\$0	\$0
Total:	\$0	\$0	\$0

Estimated Fiscal Impact of Bill

	One Full Fiscal Year	For Remainder of FY 2013 (if applicable)	FY 2014	FY 2015	FY 2016	FY 2017
General Fund	\$0	\$0	\$0	\$0	\$0	\$0
(Specify Special Fund)	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0	\$0

1. Does the bill contain "revenue generating" provisions? / / Yes / X / No
If Yes, see attachment
2. Is amount appropriated adequate to fund the intent of the appropriation? / X / N/A / / Yes / / No
If no, what is the additional amount required? \$ / X / N/A
3. Does the Bill establish a new program/agency? / X / Yes / / No
If yes, will the program duplicate existing programs/agencies? / X / N/A / / Yes / / No
Is there a federal mandate to establish the program/agency? / / Yes / X / No
4. Will the enactment of this Bill require new physical facilities? / / Yes / X / No
5. Was Fiscal Note coordinated with the affected dept/agency? If no, indicate reason: / / Yes / X / No
/ / Requested agency comments not received as of the due date / / Other:

Analyst: John AB Pangelinan Date: 3/20/13 Director: John A. Rios Date: MAR 25
John AB Pangelinan, Acting Deputy Dir John A. Rios, Director

Footnotes:

Please see attached comment sheet.

Comments to Legislative Bill No. 59-32

Legislative Bill No. 59-32 is proposing to repeal Section 106155, Common Trust Fund, of Chapter 106, Title II of the Guam Code Annotated (GCA). This section authorizes a bank or trust company to create one or more common trust funds in which individuals may elect to participate and invest. The proposed legislation is attempting to replace this section with a New Chapter 162 of the same Title II, GCA which involves the establishment of a Collection Investment Fund within financial institutions on Guam. By definition Collective Investment Funds are funds composed of a group of assets that are managed by a bank or trust company. This group of assets may be retirement plans, pension plans, and/or reinvestments of profit sharing plan trusts for specific purpose. Such gathering of assets is a strategic process to create investment portfolio that are highly diversified so that such investments will perform well in a wide range of economic situations.

In this proposed bill, the Collection Investment Fund that is to be established is based only on its assets being exempt from federal and local tax requirements. It does not consider other assets being invested for profit for which such profits are federally and locally taxed. The outcome of such exclusion limits participating financial institutions from participation in investment groups seeking returns in their investments. This limitation indirectly prevents the local government from receiving that one additional tax dollar generated from the profitability of taxed investment returns held in trust.

There is no immediate fiscal impact should this proposed legislation is passed; however, the Government does incur the opportunity cost of not being able to realize any gain in tax revenues from such investments as the result of the tax exemption afforded such collection investment funds.

Testimony on Legislative Bill No. 59-32
Prepared by
The Bureau of Budget and Management Research

AN ACT TO ADD CHAPTER 162 OF TITLE II OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUND ACT, AND TO REPEAL SECTION 106155 OF CHAPTER 106, TITLE II, GUAM CODE ANNOTATED

My name is John A. Rios, Director of the Bureau of Budget and Management Research (BBMR) and I thank Senator Michael San Nicolas and Committee Members for allowing me to testify on Bill No. 59-32.

Legislative Bill No. 59-32 is proposing to repeal Section 106155, Common Trust Fund, of Chapter 106, Title II of the Guam Code Annotated (GCA). This section authorizes a bank or trust company to create one or more common trust funds in which individuals may elect to participate and invest. The proposed legislation is attempting to replace this section with a New Chapter 162 of the same Title II, GCA which involves the establishment of a Collection Investment Fund within financial institutions on Guam. By definition Collective Investment Funds are funds composed of a group of assets that are managed by a bank or trust company. This group of assets may be retirement plans, pension plans, and/or reinvestments of profit sharing plan trusts for specific purpose. Such gathering of assets is a strategic process to create investment portfolio that are highly diversified so that such investments will perform well in a wide range of economic situations.

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**BUREAU OF BUDGET & MANAGEMENT RESEARCH**

OFFICE OF THE GOVERNOR
Post Office Box 2950, Hagåtña Guam 96932

EDDIE BAZA CALVO
GOVERNOR

JOHN A. RIOS
DIRECTOR

RAY TENORIO
LIEUTENANT GOVERNOR

FACSIMILE INFORMATION PAGE

PLEASE DELIVER TO: Senator Rory Respicio

FACSIMILE NUMBER: 472-3547

FROM: BBMR

Total Pages including this page: 23

If you do not receive legible copies of all the pages, please call back as soon

as possible. Phone numbers (671) 475-9412/9450. Fax number (671) 472-2825

RE: Fiscal Note on the following Bill Nos.: 5-32(LS), 11-32(COR), 29-32(COR), 35-32(COR), 39-32(COR), 47-32(LS), 56-32(COR), and 59-32(COR), and Fiscal Note Waiver on the following Bill Nos.: 23-32(COR), 58-32(COR), and 67-32(COR).

COMMENTS: Fiscal Notes to be picked up via Central Files.

Thank You!



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature

155 Hesler Place, Hagåtña, Guam 96910 • www.guamlegislature.com

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Senator

Rory J. Respicio

CHAIRPERSON

MAJORITY LEADER

Senator

Thomas C. Ada

VICE CHAIRPERSON

ASSISTANT MAJORITY LEADER

Senator

Vicente (Ben) C. Pangelinan

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Speaker

Judith T.P. Won Pat, Ed.D.

Member

Senator

Dennis G. Rodriguez, Jr.

Member

Vice-Speaker

Benjamin J.F. Cruz

Member

Legislative Secretary

Tina Rose Muña Barnes

Member

Senator

Frank Blas Aguon, Jr.

Member

Senator

Michael F.Q. San Nicolas

Member

Senator

V. Anthony Ada

Member

MINORITY LEADER

Senator

Aline Yamashita

Member

March 04, 2013

VIA FACSIMILE

(671) 472-2825

John A. Rios

Director

Bureau of Budget & Management Research

P.O. Box 2950

Hagåtña, Guam 96910

RE: Request for Fiscal Note – Bill Nos. 59-32 (COR) and 60-32 (COR)

Hafa Adai Mr. Rios:

Transmitted herewith is a listing of *I Mina'trentai Dos na Liheslaturan Guåhan's* most recently introduced bill. Pursuant to 2 GCA §9103, I respectfully request the preparation of fiscal notes for the referenced bill.

Si Yu'os ma'åse' for your attention to this matter.

Very Truly Yours,

Senator Rory J. Respicio

Chairperson, Committee on Rules

Attachments

Cc: Clerk of the Legislature

2013 MAR -4 AM 10:38

Request for Fiscal Note – Bill Nos. 57-32 (COR) and 58-32 (COR)

Bill No. 59-32 (COR) - *V.C. Pangelinan* - AN ACT TO ADD CHAPTER 162 TO TITLE 11 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING THE COLLECTIVE INVESTMENT FUNDS ACT, AND TO REPEAL SECTION 106155 OF CHAPTER 106, TITLE 11, GUAM CODE ANNOTATED.

Bill No. 60-32 (COR) - *Michael T. Limtiaco* - AN ACT TO CREATE THE “MADE IN GUAM” BUSINESS INCUBATOR PROGRAM WITHIN THE ANTONIO B. WON PAT GUAM INTERNATIONAL AIRPORT AUTHORITY; TO AUTHORIZE THE PROMULGATION OF RULES AND REGULATIONS FOR THE PROGRAM; TO PROVIDE INCENTIVES FOR ELIGIBLE BUSINESSES; AND, TO PROVIDE SOURCES OF FUNDING FOR THE PROGRAM.



COMMITTEE ON RULES

I Mina'trentai Dos na Liheslaturan Guåhan • The 32nd Guam Legislature
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Senator
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V. Anthony Ada
Member
MINORITY LEADER

Senator
Aline Yamashita
Member

March 4, 2013

MEMORANDUM

To: **Rennae Meno**
Clerk of the Legislature

Attorney Therese M. Terlaje
Legislative Legal Counsel

From: **Senator Rory J. Respicio** 
Majority Leader & Rules Chair

Subject: **Referral of Bill No. 59-32(COR)**

As the Chairperson of the Committee on Rules, I am forwarding my referral of Bill No. 59-32(COR).

Please ensure that the subject bill is referred, in my name, to the respective committee, as shown on the attachment. I also request that the same be forwarded to all members of *I Mina'trentai Dos na Liheslaturan Guåhan*.

Should you have any questions, please feel free to contact our office at 472-7679.

Si Yu'os Ma'åse!

Attachment

**I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2013 (FIRST) REGULAR SESSION**

2013 MAR - 1 PM 3:14

Bill No. *59-32(dor)*

Introduced by:

V.C. Pangelinan 

**AN ACT TO *ADD* CHAPTER 162 TO TITLE 11 OF THE
GUAM CODE ANNOTATED, RELATIVE TO
ESTABLISHING THE COLLECTIVE INVESTMENT
FUNDS ACT, AND TO *REPEAL* SECTION 106155 OF
CHAPTER 106, TITLE 11, GUAM CODE ANNOTATED.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

SECTION 1. Chapter 162 is hereby *added* to Title 11 of the Guam Code
Annotated to read as follows:

“CHAPTER 162

Collective Investment Funds Act

§ 162101. Definitions.

§ 162102. Establishment of Collective Investment Funds.

§ 162103. Plans for Operation of Funds.

§ 162104. Management of the Fund.

§ 162105. Internal Controls.

§ 162106. Rights and Interests of Participating Accounts and Contributors to
the Participating Accounts.

§ 162107. Interests of a Financial Institution,

§ 162108. Annual Financial Reports.

§ 162109. Management Fees.

§ 162110. Mistakes in administration of funds.

1 **§ 162101. Definitions.** As used in this chapter, unless the context otherwise
2 requires:

3 (a) "*Collective investment fund*" means a fund maintained by a financial
4 institution that consists solely of assets of retirement, pension, profit sharing, stock
5 bonus or other trusts that are exempt from federal income tax.

6 (b) "*Commissioner*" means the Commissioner of Banking and Insurance,
7 appointed under Title 11, Section 103102 of the Guam Code Annotated.

8 (c) "*Fiduciary*" means a financial institution or other person acting in the
9 capacity of guardian, conservator, personal representative, or trustee, either solely or
10 together with others, or custodian under a uniform gifts or transfer to minors act of
11 any state or territory.

12 (f) "*Financial institution*" means a territorial bank, a state bank, a national
13 bank, a state or federally chartered savings and loan association, or a trust company
14 under the Guam-Based Trust Companies Act that, in each case, is authorized to act in
15 a fiduciary capacity in Guam.

16 (g) "*Fund*" means a collective investment fund.

17 (h) "*Participating Account*" means a trust or other fiduciary account that has
18 contributed assets to a collective investment fund.

19 (i) "*Plan*" means the written plan for a fund described in Section 162104.

20 **§ 162102. Establishment of Collective Investment Funds.** A financial
21 institution may establish and maintain collective investment funds for the investment
22 of assets of retirement, pension, profit sharing, stock bonus or other trusts that are
23 exempt from federal income tax and may invest assets of retirement, pension, profit
24 sharing, stock bonus, or other employee benefit trusts exempt from federal income
25 tax and that the financial institution holds in any capacity (including agent) in such
26 collective investment funds.

1 **§ 162103. Written Plan.**

2 (a) A financial institution shall establish and maintain a fund in accordance
3 with a written plan approved by resolution by the board of directors of the financial
4 institution or by a committee authorized by the board. The plan's provisions shall be
5 consistent with the provisions of this chapter, as well as the rules and regulations of
6 the Office of the Comptroller of the Currency, 12 C.F.R. § 9.18 (or any successor
7 provision), and such rules and regulations as may from time to time be promulgated
8 by the Commissioner, to the extent that such respective rules and regulations are not
9 inconsistent with the provisions of this chapter.

10 (b) The plan shall contain appropriate provisions as to the manner in which
11 the financial institution will operate the fund, including, but not limited to, provisions
12 relating to all of the following:

- 13 (1) Investment powers and policies with respect to the fund;
- 14 (2) Allocation of income, profits, and losses;
- 15 (3) Fees and expenses that will be charged to the fund and to
16 participating accounts and the individuals contributing to the participating
17 accounts;
- 18 (4) Terms and conditions governing the admission and withdrawal of
19 participating accounts;
- 20 (5) Audits of participating accounts;
- 21 (6) Basis and method of valuing assets in the fund;
- 22 (7) Expected frequency of income distribution from the fund to
23 participating accounts;
- 24 (8) Minimum frequency of valuation of fund assets;
- 25 (9) Amount of time following a valuation date in which a valuation of
26 fund assets must be made;

1 (10) Bases upon which the financial institution may terminate the funds;

2 (11) Any other matters necessary to define clearly the rights of
3 participating accounts and contributors to the participating accounts.

4 (c) The financial institution shall make a copy of the plan available at its
5 principal office for inspection during all regular business hours and shall provide a
6 copy of the plan to any person who requests it.

7 (d) The financial institution shall submit a copy of the written plan, and any
8 amendments made to the written plan, to the Commissioner upon adoption of such
9 amendments.

10 **§ 162104. Management of the Fund.** The financial institution shall have the
11 exclusive management and control of each fund administered by it, and the sole right
12 at any time to sell, convert, exchange, transfer, or otherwise change or dispose of the
13 assets comprising within the fund, except as a prudent person might delegate
14 responsibilities to others. The ownership of the fund's assets shall be solely in the
15 financial institution as fiduciary and shall be considered as assets held by it as
16 fiduciary.

17 **§162105. Internal Controls.** A financial institution shall implement and
18 maintain effective operational controls to ensure:

19 (a) The fund is valued regularly. For a fund that holds investments with daily
20 valuations, such as mutual funds and publicly traded stocks, bonds, and exchange-
21 traded funds, values shall be updated each business day. Values shall in any case be
22 determined no less often than quarterly, except that for a fund that holds assets that
23 are not readily marketable, such as real estate, values shall be determined no less
24 often than annually.

25 (b) Contributions and withdrawals are executed on a timely basis, as specified
26 by the terms of the plan.

1 (c) Each participating account is eligible and authorized to participate in the
2 fund.

3 (d) An annual audit and fund report are completed in a timely manner.

4 (e) Assets are invested in accordance with the plan and the fund's written
5 investment policy.

6 (f) Fund documents are maintained in a central repository.

7 (g) A formal process is in place for the board of director of the bank, or a
8 committee appointed by the board, to approve and oversee major fund decisions and
9 the operation of the fund.

10 **§162106. Rights and Interests of Participating Accounts and Contributors**
11 **to the Participating Accounts.**

12 (a) All participating accounts *in a* fund shall have a proportionate undivided
13 interest in all the fund's assets, which shall be reported in units of beneficial interest.
14 No participating account shall have individual ownership of any asset in the fund.

15 (b) A hardcopy or electronic statement of participation shall be issued to each
16 participating account and contributors to the participating accounts at least quarterly.
17 The statement of participation shall indicate that the statement valuation is not
18 guaranteed by the financial institution; that the units of beneficial interest held by the
19 participating account are not negotiable or assignable; and that the statement is a
20 representation of the participating account's undivided interest in the fund and does
21 not represent individual ownership of any asset in the fund.

22 **§162107. Interests of a Financial Institution.** A financial institution
23 administering a fund shall not have an interest in that fund other than in its fiduciary
24 capacity. If, because of a creditor relationship or otherwise, the bank acquires an
25 interest in a participating account, the participating account must be withdrawn on the
26 next withdrawal date. However, a financial institution may invest assets that it holds

1 as fiduciary for its own employees in a fund.

2 **§ 162108. Annual Financial Reports.**

3 (a) At least once during each 12-month period, the financial institution
4 administering a fund shall arrange for an audit of the fund by auditors responsible
5 only to the board of directors of the financial institution.

6 (b) At least once during each 12-month period, the financial institution shall
7 prepare an annual financial report based on the audit required by subsection (a) and
8 containing the following information:

9 (1) The fund's fees and expenses.

10 (2) A list of the investments in the fund with their costs
11 and market values on the date of closing of the report.

12 (3) A statement summary of transactions for the year,
13 organized by type of investment, including the following transactions:

14 (i) A summary of purchases, including costs.

15 (ii) A summary of sales including profit or loss and
16 any other investment changes.

17 (iii) Income to and disbursements from the fund.

18 (iv) A description of any investments in default.

19 (c) The financial institution may include in the financial report a description of the
20 fund's value on previous dates, as well as its income and disbursements during
21 previous accounting periods. The financial institution may not publish in the financial
22 report any predictions or representations as to future performance.

23 (d) The financial institution shall provide a copy of the annual report (or provide
24 notice that a copy of the report is available upon request or online) to each person or
25 entity who would ordinarily receive a regular periodic accounting statement.

26 (e) A copy of the annual financial report shall be filed with the Commissioner.

1 **§ 162109. Management Fees.** The financial institution administering a collective
2 investment fund may charge a reasonable fund management fee only if the amount of
3 the fee does not exceed an amount commensurate with the value of legitimate services
4 of tangible benefit to the participating fiduciary accounts that would not have been
5 provided to the accounts were they not invested in the fund.

6 **§ 162110. Mistakes in Administration of Funds.** A mistake made in good faith
7 and in the exercise of due care in connection with the administration of a fund is not a
8 violation of this chapter or any rules or regulations issued under this chapter, if
9 promptly after discovery of the mistake the financial institution takes whatever action
10 is reasonable under the circumstances to remedy the mistake and reports the mistake
11 to the Commissioner and appropriate federal regulatory agencies as required by this
12 Act.”

13 **SECTION 3. Severability.** If any of the provisions of this Act or the
14 application thereof to any person or circumstance is held invalid, such invalidity *shall*
15 not affect any other provision or application of this Act which can be given effect
16 without the invalid provision or application, and to this end the provisions of this Act
17 are severable.