BSP ISSUES IMPLEMENTING RULES OF FINANCIAL CONSUMER PROTECTION ACT

On 28 November 2022, the *Bangko Sentral ng Pilipinas* (the Philippine Central Bank or "***BSP***") issued Circular No. 1160, series of 2022 (link here) and adopted the *Amended Regulations and Guidelines on Financial Consumer Protection* ("***FCP***") *Framework* to implement Republic Act No. 11765 (the Financial Products and Services Consumer Protection Act or "***FPSCPA***" – link to Official Gazette version is here). The approval of the FP Guidelines carries with it the amendment of the relevant provisions of the Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBFI). Some of the more relevant points of the FPSCPA and FCP Framework are discussed below.

1. What is the objective of the FPSCPA?

The FPSCPA was enacted in May 2022 with the objective of helping establish appropriate mechanisms to protect the interest of consumers of financial products and services under the conditions of transparency, fair and sound market conduct, and fair, reasonable, and effective handling of financial consumer disputes, which are aligned with global best practices. The FPSCPA took effect on June 3, 2022.

The FCP Framework was adopted by the BSP pursuant to the directive in Section 18 of the FPSCPA that all "***financial regulators***" issue regulations to implement the law within one year from the law's effectiveness. As contemplated by the FPSCPA, the following agencies are "financial regulators": the BSP, the Securities and Exchange Commission ("***SEC***"), the Insurance Commission ("***IC***") and, generally with respect only to cooperatives that offer financial products or services, the Cooperative Development Authority.

The FCP Framework establishes the guidelines and expectations from BSP-Supervised Institutions (or "***BSIs***"; defined in item 3 below) to institutionalize consumer protection as an integral component of corporate governance and culture as well as risk management. The objectives of the FCP Framework are for BSIs to manage risks and potential harms to financial consumers, prevent unfair business practices, achieve fair and beneficial consumer outcomes and empower financial consumers to make better and informed financial decisions.

2. What is the scope and coverage of the FPSCPA and the FCP Framework?

The FPSCPA applies to all "financial products and services" that are offered or marketed by any "***financial services provider***."

Similarly, the FCP Framework applies to all "***financial products and services***" that are created, developed, offered or marketed by BSIs.

3. What are considered "financial products and services" under the FPSCPA? Which persons are considered "financial service providers"? Which are considered BSIs?

As defined by the law, the term "***financial product or service***" refers to financial products or services which are developed or marketed by a financial service provider. These products or services may include, but are not limited to, savings, deposits, credit, insurance, pre-need and health maintenance organization products, securities, investments, payments, remittances and other similar products and services. The term also includes digital financial products or services which pertain to the broad range of financial services accessed and delivered through digital channels.

In turn, persons (whether natural or juridical) that provide financial products or services that are under the jurisdiction of the financial regulators (as enumerated in the second paragraph of item 1 above) are considered "***financial service providers***." Notably, an "investment adviser" (or any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of investment products or the advisability of investing in, purchasing, or selling investment products, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning investment products) is also considered a "financial service provider" – however, certain persons whose performance of the services mentioned above is solely incidental to the practice of their profession or business are expressly excluded from the definition of "investment advisers." These include (but are not limited to) trust departments of banks; investment bankers; and lawyers, accountants, engineers, teachers or insurance agents.

For its part, the FCP Framework defines BSP-Supervised Institutions (or "***BSIs***") as any person (whether natural or juridical) that provides financial products or services under the jurisdiction of the BSP, as provided in existing laws and regulations. This would include banks, for example.

4. ***Which persons are considered "financial consumers" who are entitled to protection under the FPSCPA and FCP Framework?***

Any person or entity (or their duly appointed representatives) who is a purchaser, lessee, recipient (or a prospective purchaser, lessees or recipient) of financial products or services (as defined above) are considered ***"financial consumers"*** under the FPSCPA and FCP Framework.

Additionally, any person (whether natural or juridical) who had or has current or prospective financial transactions with a financial services provider pertaining to financial products or services is considered a "financial consumer."

5. ***What are the obligations of BSIs under the FCP Framework?***

In general terms, BSIs are required to comply with the following:

a. establish a *Consumer Protection Risk Management System* that ensures that FCP risks are identified, measured, monitored and mitigated;

b. the board of directors and senior management of the BSI should exercise *oversight* and identify, measure, monitor and mitigate FCP risks;

c. comply with the following *Consumer Protection Standards of Conduct*:

    i. *Disclosure and Transparency* – ensure that financial consumers have a reasonably comprehensive understanding of the financial products or services they are availing of;

    ii. *Protection of Client Information* – comply with the requirements of the Philippine Data Privacy Act;

    iii. *Fair Treatment* – *e.g.*, not discriminate against clients on the basis of race, age, and similar factors; ensure that terms and conditions of client agreements are not significantly imbalanced (note that clauses that permit banks to unilaterally amend a contract without adequate notice or specifying the circumstances under which amendments are permitted, or which permit banks to unilaterally assign agreements to the detriment of financial consumers without their consent, are among the clauses deemed "unfair" under the FCP Framework);

    iv. *Effective Recourse* – establish a FCP Assistance Mechanism that provides free assistance to financial consumers on their concerns about the BSI's financial products and services.

    v. *Protection of Consumer Assets against Fraud and Misuse* – provide necessary assistance, including information relating to fraudulent or unauthorized transactions.

6. ***What are the penalties imposed for non-compliance with the FPSCPA?***

Persons violating the FPSCPA and its implementing regulations may be punished by imprisonment for a minimum of one year to a maximum of five years, or by fine ranging from PhP50,000 to PhP2,000,000, or both, at the discretion of the court. If the violation is committed by a corporation or a juridical entity, the directors, officers, employees, or other officers directly responsible for the violation will be liable.

However, in case of investment fraud, the SEC may impose a fine ranging from PhP50,000 to PhP10,000,000 for each instance of investment fraud plus a maximum of PhP10,000 for each day of continuing violation. In case profit is gained or loss is avoided as a result of the violation of the FPSCPA or investment fraud, a fine of not more than thrice the profit gained or loss avoided may be imposed by the financial regulators.

In addition, the BSP may also (among other available remedies): (a) restrict a BSI's ability to collect excessive or unreasonable interest, fees or charges; (b) require a BSI to render an accounting of and disgorge any profits obtained or losses avoided in violation of the FCPA and implementing rules.

The relevant financial regulators may also impose administrative sanctions, and suspend or cancel the authority of the financial service provider to operate in relation to the financial product or service.

7. ***May financial consumers waive their rights under the FPSCPA?***

The FCP Framework states that no provision of a contract for a financial product or service shall be lawful or enforceable if such provision operates as a waiver of or otherwise deprives a financial consumer of its right to sue the BSI, receive information, have its complaints addressed and resolved, or to have its data protected.

8. ***Apart from BSIs, are there other financial service providers that are governed by more specific rules or implementing regulations?***

Although the IC and SEC have published drafts of their respective rules to implement the FPSCPA (which would apply to the financial service providers under their jurisdiction), those rules have not been officially approved and published yet. The Cooperative Development Authority has not yet issued its own rules to implement the FPSCPA.

BSP AMENDS UITF REGULATIONS

1. ***What are Unit Investment Trust Funds ("UITFs")?***

UITFs refer to an open-ended pooled trust funds denominated in pesos or any acceptable currency, which are operated and administered by a trust entity (*"TE"*) and made available by participation. UITFs are generally similar to mutual funds, except that investments in mutual funds involve the purchase of shares in a mutual fund company, whereas investments in UITFs involve the purchase of units of investments in a trust administered by a bank.

UITFs do not include long term funds that are designed as long-term investments (i.e., those with a tenor of at least five years), the interest income from which is currently exempt from income taxes (subject to certain conditions, including where the recipient is an individual citizen (resident or non-resident) or resident alien or non-resident alien engaged in trade or business in the Philippines). (Manual of Regulations for Banks (*"MORB"*), Section 403; Manual of Regulations for Non-Bank Financial Institutions (*"MORNBFI"*), Section 403-Q). Note, however, that this exemption will be lifted if the current version of the Passive Income and Financial Intermediary Taxation Act (PIFITA) is enacted into law (which is expected to take place later in 2023).

2. ***How are UITFs established?***

TEs authorized to perform trust functions may create one or more UITFs, subject to prior approval by, or notification to, the Bangko Sentral ng Pilipinas ("*BSP*").

BSP Circular No. 1152, series of 2022, dated 5 September 2022 ("*BSP Circular No. 1152-22*") amends the relevant provisions of the MORB and MORNBFI on UITFs, particularly, by adding a ***prior approval*** *or* ***prior notification*** requirement for TEs creating a UITF (discussed below).

3. ***Which UITFs require prior BSP approval?***

Under Section 414 of the MORB and Section 414-Q of the MORNBFI, as amended by BSP Circular No. 1152-22, a TE that intends to create a UITF that falls under any of the following categories for the first time shall secure ***prior approval*** from the BSP:

a. Fixed income fund (a UITF that invests in fixed income instruments and has a weighted average portfolio life of more than one year);

b. Multi-asset fund (a UITF that invests in a diversified portfolio of fixed income securities, equities, and other allowable investments for UITFs);

c. Equity fund (a UITF that has at least 80% of its net asset value in equities);

d. Fund-of-funds (a UITF structure that mandates the fund to invest at least 90% of its assets in more than one collective investment scheme);

e. Feeder fund (a UITF structure that mandates the fund to invest at least 90% of its assets in a single collective investment scheme);

f. Multi-class fund (a UITF structure which has more than one class of units in the fund and is invested in the same pool of securities and the same portfolio, investment objectives and policies);

g. Distributing fund (a UITF that has an income distribution feature whereby the income of the fund is distributed in the form of units called unit income).

4. ***Which UITFs require prior notification with BSP?***

a. UITF that falls under the same category as an existing UITF of the TE. Thus, once the TE secures BSP approval, the subsequent creation and offering of UITFs under the same restricted category will only require notification to the BSP.

b. Money market fund (a UITF that invests in bank deposits and fixed income securities with remaining terms to maturity of not more than three years and has a weighted average portfolio life of one year or less).

5. ***What are the qualification requirements for a TE seeking approval to create a UITF?***

A TE seeking approval to create a UITF must satisfy existing prudential criteria, implement adequate risk management practices, and demonstrate operational readiness (in terms of personnel, IT systems, policies and procedures, etc.) to manage the UITF it wants to create.

6. ***When shall the application for approval or the notification be submitted with the BSP?***

Applications or notifications must be sent to the BSP within 10 banking days from the approval of the authority to create the UITFs by the TE's board of directors. There are additional requirements for fund-of-funds or feeder fund applications.

A nonrefundable processing fee of PhP25,000 will be charged for each application for UITFs that need prior BSP approval, except for Personal Equity & Retirement Account UITFs.

7. ***When shall the UITF be launched?***

The UITF shall be launched:

a. For UITFs requiring prior approval - within one year from the date of the TE's receipt of the letter of approval from the BSP, otherwise the BSP approval shall be automatically revoked;

b. For UITFs requiring notification - within one year from receipt by the BSP of the notification letter from the TE, otherwise the notification shall be considered withdrawn.

The TE is required to inform the BSP in writing of the date of the actual launch of a UITF.

8. How are UITFs administered, operated, and accounted for?

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

A UITF shall be operated and accounted for in accordance with the rules provided in Section 414 of the MORB and Section 414-Q of the MORNBFI. Contributions to each fund by clients shall always be through units of participation in the fund and each unit shall have uniform rights and privileges as any other unit. In the case of a multi-class fund, units shall be issued as units in a class of the fund.

Each UITF shall be governed by a written trust agreement drawn by the trustee, which shall be approved by the trustee's board of directors and a copy of which shall be submitted to the BSP and shall contain the minimum elements provided in Section 414 of the MORB and Section 414-Q of the MORNBFI.

9. What other amendments are introduced by BSP Circular No. 1152-22 on the UITF regulations?

BSP Circular No. 1152-22 also includes new rules covering the computation of the Net Asset Value per Unit (NAVPu); distribution of income for distributing funds; the Plan governing UITFs; other notification requirements with the BSP; UITF marketing personnel; UITF participant admission and redemption requirements; minimum disclosure requirements; and the BSP's enforcement rights.

10. What is the transitory provision of BSP Circular No. 1152-22?

BSP Circular No. 1152-22 also includes new rules covering the computation of the Net Asset Value per Unit (NAVPu); distribution of income for distributing funds; the Plan governing UITFs; other notification requirements with the BSP; UITF marketing personnel; UITF participant admission and redemption requirements; minimum disclosure requirements; and the BSP's enforcement rights.

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